



### Class 3 Government Contract

<b>1. Document Numbers</b>	
D20/32353	
<b>2. Name and Address of the contractor</b>	
Quality Management and Construction Pty Ltd Suite 208, 29-31 Lexington Drive, Bella Vista NSW 2153	
<b>3. Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract</b>	
Not applicable.	
<b>4. The date on which the contract became effective and the duration of the contract</b>	
29/03/2020	5 October 2020
<b>5. Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract</b>	
Notts Avenue Safety and Streetscape Upgrade	
<b>6. The estimated amount payable to the contractor under the contract</b>	
\$6,621,131.16 (exc GST)	
<b>7. A description of any provisions under which the amount payable to the contractor may be varied</b>	
<ul style="list-style-type: none"> <li>• Contractor not to vary work except as directed in writing by the Superintendent.</li> <li>• Superintendent may direct the Contractor to vary the contract before the date of practical completion.</li> <li>• Superintendent may give the Contractor written notice of a proposed variation.</li> <li>• If Contractor requests the Superintendent to vary the contract, the Superintendent is not required to exercise its discretion reasonably or for the benefit of the Contractor.</li> </ul>	
<b>8. A description of any provisions with respect to the renegotiation of the contract</b>	
Not applicable.	
<b>9. In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed</b>	
Open Tender through Tenderlink. Evaluation Criteria: <ul style="list-style-type: none"> <li>• Lump Sum Price.</li> <li>• Proposed Methodology, Program and capacity to deliver.</li> </ul>	

<ul style="list-style-type: none"> <li>• Demonstrated experience in delivery of similar projects, including key personnel experience.</li> </ul>
<b>10. A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services</b>
Not applicable.
<b>11. Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer.</b>
Not applicable.
<b>12. Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer</b>
Not applicable.
<b>13. The results of any cost-benefit analysis of the contract conducted by the agency.</b>
Not applicable.
<b>14. The components and quantum of the public sector comparator if used.</b>
Not applicable.
<b>15. If relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges.</b>
Not applicable.
<b>16. If relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved.</b>
Not applicable.
<b>17. Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into.</b>
Not applicable.
<b>18. Particulars of any other key elements of the contract.</b>
Not applicable.

A20/0264  
Vault. D20/031764.



## **Construction Contract**

**A20/0036**

### **Construction Services – Notts Avenue Safety and Streetscape Upgrade**

**Waverley Council**  
ABN 12 502 583 608

and

**Quality Management & Constructions Pty Ltd**  
ACN 067 829 323

---

## Formal Instrument of Agreement

DATE 29 / 3 /20 20

### BETWEEN

**Waverley Council ABN 12 502 583 608**  
of 55 Spring Street, Bondi Junction NSW 2022

(*Principal*)

### AND

**Quality Management & Constructions Pty Ltd ACN 067 829 323**  
Of Suite 208, 29-31 Lexington Drive, Bella Vista NSW 2153

(*Contractor*)

### RECITALS

- A. The *Principal* wishes to engage the *Contractor* to construct *the Works*.
- B. The *Contractor* has agreed to accept the engagement and construct *the Works* in accordance with the terms of the *Contract*.

### IT IS AGREED

- 1. The *Contractor* agrees to carry out and complete its obligations in accordance with the *Contract*.
- 2. In consideration of the *Contractor* performing its obligations under the *Contract*, the *Principal* agrees to pay the *Contractor* the *contract sum* and perform its other obligations in accordance with the *Contract*.



EXECUTED as an agreement by the parties:

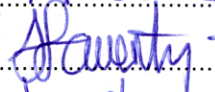
29<sup>th</sup> March 2020.

EXECUTED by Ross McLeod General  
Manager for Waverley Council ABN 012  
502 583 608 in the presence of:

  
..... Authorised signatory

ROSS BARRY MCLEOD  
..... Full name

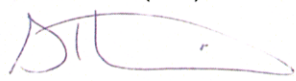
49A BONDI RD, BONDI JUNCTION  
2022  
..... Usual address

  
..... Witness

Jordan Leventy  
..... Full name

49A Bondi Rd, Bondi Junction  
2022  
..... Usual address

EXECUTED by Quality Management &  
Constructions Pty Ltd ACN 067 829 323 in  
accordance with Section 127 of the  
Corporations Act 2001 (Cth) in the  
presence of:

  
..... Director

Steven Commisso  
..... Full name

Suite 208, 29-31 Lexington Drive, Bella Vista 2153  
..... Usual address

..... Director (or Company Secretary)

..... Full name

..... Usual address

# **Amended from AS 4000-1997 Australian Standard™**

**AS 4000 - 1997  
Australian Standard™**

Incorporating:  
Amdt 1 – 1999  
Amdt 2 - 2000

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Construction Policy Steering Committee  
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# Australian Standard General Conditions of Contract

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## 1. Interpretation and construction of Contract

### 1.1 Definitions and Interpretation

In the *Contract*, except where the context otherwise requires the following terms have the following meanings (and like words have a corresponding meaning):

**approval** means any licence, permit, consent, approval, determination, certificate or other requirement of any *authority*, or under any other applicable *legislative requirement*, which shall be obtained or satisfied to:

- (a) carry out *WUC*; or
- (b) occupy or use *the Works* for their intended purpose, as stated in, or reasonably inferable from, the *Contract*.

**approved program** means the latest *construction program* submitted under subclause 32.2 which has not been rejected by the *Superintendent* within the time referred to in subclause 32.2.

**approved subcontractor** means a tenderer or subcontractor the subject of a *direction* or approval under subclause 3.4(d).

**artistic work** has the meaning given in the *Copyright Act 1968* (Cth).

**Asbestos Insurance** means a policy of insurance to cover rights, interests and liabilities resulting from the existence of asbestos on the *site*, *extra land*, any land referred to in *Item 22A*, or their respective surrounds.

**authority** includes any governmental or semi-governmental or local government authority, administrative or judicial person or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality, any private electricity, telecommunications, gas or other utility company or any other person having statutory rights in connection with the *site*, *extra land*, any land referred to in *Item 22A*, *the Works* or *WUC*.

**Buildability Problem** means any problem, difficulty or complexity relating to:

- (a) the means, methods or techniques by which *WUC* is to be carried out; or
- (b) the co-ordination or integration of *WUC*.

**Building Code** means the Code for the Tendering and Performance of Building Work 2016.

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

- (a) a Saturday, Sunday or public holiday in the State of New South Wales; or
- (b) in respect of subclauses 37.2 and 37.4 only, 27, 28, 29, 30 or 31 December.

**certificate of practical completion** means a certificate issued by the *Superintendent* under subclause 34.6(a) or 34.6A.

**Change in Control** means the change in direct or indirect legal or beneficial ownership of more than 50% of the issued share capital or (if it is convertible into shares), of the loan capital, of the *Contractor* or the entity stated in *Item 14A* (as applicable).

**claim** includes any claim (including for any increase in the *contract sum*, for payment of money (including damages) or for an *EOT*):

- (a) under, arising out of, or in any way in connection with, the *Contract*, including any *direction* of the *Superintendent*;
- (b) arising out of, or in any way in connection with, *WUC*, *the Works* or either party's conduct, including before the *Contract Date*; or
- (c) otherwise at law or in equity, including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation;
  - (iii) for restitution;
  - (iv) on a quantum meruit;
  - (v) under quasi contract; or
  - (vi) for unjust enrichment.

**compensable cause** means:

- (a) any breach of the *Contract* by the *Principal*; or
- (b) those events or circumstances listed in *Item 26*.

**construction program** means a *construction program* or revised *construction program* submitted under subclause 32.2.

**construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*.

**consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose contract is novated to the *Contractor* (including under subclause 9.4).

**Contaminate** means to cause *contamination*.

**contamination** means any waste, *pollution*, *hazardous substance*, toxic substance, dangerous good, hazardous waste or special waste, or any constituent of any such substance or waste in any solid, liquid or gas, including acid sulphate soils.

**Contract** means the contractual relationship between the parties constituted by:

- (a) the *formal instrument of agreement*;
- (b) these *General Conditions of Contract*;
- (c) Annexures Part A to J (inclusive) to these *General Conditions of Contract*;
- (d) the *Project Requirements*; and

- (e) the other documents (if any) described in *Item 6A*.

**Contract Date** means the date of execution of the *formal instrument of agreement*.

**contract sum** means the amount stated in *Item 6B*, including *provisional sums* and the amounts paid in connection with the *Early Works*, as adjusted in accordance with the *Contract*.

**Contractor** means the person stated in *Item 3*.

**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 arbitration, litigation or other final and binding dispute resolution process, it means the date resulting therefrom.

date of practical completion means:

- (a) the date specified in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
- (b) where another date is determined in any arbitration, litigation or other final and binding dispute resolution process as the date upon which *practical completion* was reached, that other date.

**deed of guarantee, undertaking and substitution** means a deed in the form set out in Annexure Part G.

**defects** means any defect, shrinkage, fault, error, or omission in or from *the Works* or *WUC*, including:

- (a) any part of *the Works* which is not in accordance with the requirements of the *Contract*; or
- (b) any part of *WUC* which is not carried out in accordance with the requirements of the *Contract*.

**defects liability period** means the period or periods referred to in clause 35.

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

**dispute** has the meaning in subclause 42.1.

**Early Works** has the meaning given in subclause 2.4.

**Early Works Agreement** has the meaning given in *Item 10A*.

**environment** has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

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

**excepted risk** has the meaning given in subclause 14.3.

**excluded claim** means:

- (a) a *claim* for payment on account of the original *contract sum*; and
- (b) a *claim* for an *EOT*.

**extra land** means land in addition to:

- (a) the *site*; and
- (b) those other areas of land referred to in *Item 22A*, which the *Contractor* may require for carrying out *WUC* or otherwise for the purposes of the *Contract*.

**final certificate** means the final certificate referred to in subclause 37.4.

**Final Dilapidation Report** means the report commissioned by the *Contractor* in accordance with subclause 2.5(e)(i).

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

**final payment claim date** means the date that is 20 *Business Days* after the expiry of the last *defects liability period* to expire;

**formal instrument of agreement** means the formal instrument of agreement to which these *General Conditions of Contract* are attached.

**GST Amount** has the meaning given in subclause 44.3.

**GST Law** has the meaning given in subclause 44.1.

**hazardous substance** means any hazardous materials or substances, including:

- (a) any form of organic or chemical matter whether solid, liquid or gas (including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica) that have the capacity to cause personal injury or death, damage to property, create a nuisance or in any way pollute, contaminate or otherwise damage the environment; and
- (b) without limiting paragraph (a), any material or substance which:
  - (i) is listed in the document entitled List of Designated Hazardous Substances NOHSC: 10005 (1999) Second Edition published by the National Occupational Health and Safety Commission of the Commonwealth; or
  - (ii) fits the criteria for a hazardous substance set out in the document entitled Approved Criteria for Classifying Hazardous Substances NOHSC: 1008 (2004) Third Edition published by the National Occupational Health and Safety Commission of the Commonwealth.

**information documents** means any document or information provided by or on behalf of the *Principal* to the *Contractor* prior to the *Contract Date*, which does not form part of the *Contract*, including the documents and other information described in *Item 7A*.

**Initial Dilapidation Report** means the dilapidation survey approved by the *Superintendent* in accordance with subclause 2.5(b).

**intellectual property right** means all statutory and other proprietary rights (whether registered or unregistered) in respect of inventions, innovations, patents, utility models, designs, circuit layouts, copyrights (including future copyrights), confidential information, trade secrets, know-how, trademarks and all other rights in respect of intellectual property.

**Item** means an *Item* in Annexure Part A.

**last certificate of practical completion** means:

- (a) where there are no *separable portions*, the *certificate of practical completion*; and
- (b) where there are *separable portions*, the *certificate of practical completion* issued in respect of the last *separable portion* to achieve *practical completion*;

**latent condition** means any physical condition on the *site*, including artificial things, but excluding weather conditions, which differs materially from the physical conditions which should reasonably have been anticipated by a reasonably competent and experienced contractor at the *Contract Date*, if such a contractor had inspected:

- (a) all written information made available by or on behalf of the *Principal* to the *Contractor* for the purpose of tendering, or otherwise in connection with the *Contract*, including the *information documents*;
- (b) all *Contract* documents;
- (c) all information relevant to risk allocation under the *Contract*, including the *contract sum* and the *date for practical completion*, which is reasonably obtainable by the making of reasonable enquiries; and
- (d) the *site* and its near surrounds,

and, for the avoidance of doubt, excludes any physical condition on the *site* disclosed in, referred to in, or reasonably ascertainable from, the *information documents*.

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, *approvals* and requirements of *authorities*; and
- (c) fees and charges payable in connection with the foregoing (including long service levies payable in respect of *WUC* and *the Works* under the *Building and Construction Industry Long Service Payments Act 1986* (NSW)).

**payment claim** has the meaning given in subclause 37.1.

**payment schedule** has the meaning given in subclause 37.2.

**pollution** includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance that makes or may make the *environment* permanently or temporarily:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or



- (d) otherwise environmentally degraded.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Law** means:

- (a) the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are completed in accordance with the *Contract*, except for minor defects:
  - (i) which the *Superintendent* determines do not prevent *the Works* from being reasonably capable of being used for their intended purpose, as stated in, or reasonably inferable from, the *Contract*;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which the *Superintendent* determines:
    - (A) will not prejudice the convenient use of the *Works*; and
    - (B) will not cause any undue inconvenience to the *Principal*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *practical completion* is achieved have been carried out and passed;
- (c) all warranties, certificates, 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 provided to the *Superintendent*, including as built documents and operation and maintenance manuals;
- (d) all *approvals* required to use or occupy *the Works* for their intended purpose have been obtained and provided to the *Superintendent*; and
- (e) the *Contractor* has done everything which the *Contract* requires it to do as a condition precedent to, or as a requirement of, *practical completion*, including those things in *Item 9A*.

**practical completion payment claim date** means the date on which the *last certificate of practical completion* is issued;

**prescribed notice** has the meaning given in subclause 41.1.

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

**progressive payment claim date** means, in respect of each month, until the earlier of:

- (a) termination of the *Contract*;
- (b) the date that the *Principal* exercises its rights under subclause 39.4(a) to take the whole of *WUC* out of the hands of the *Contractor*; and

(c) the date on which the *last certificate of practical completion* is issued,  
the date of that month specified in *Item 7B*;

**Project Requirements** means the document set out in Annexure Part I, including any drawings, specifications, standards and codes specified in that document.

**provisional sum** means, for each item of *provisional sum work*, the sum stated in *Item 9C*.

**provisional sum work** means work described in *Item 9C*.

**provisional sum work value** has the meaning given in subclause 3.3.

**public liability policy** means a policy of insurance complying with the requirements set out in clause 17.

**qualifying cause of delay** means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or separate contractors (not being employed by the *Contractor*); or
- (b) those events or circumstances listed in *Item 23*.

**schedule of rates** means the document set out in Annexure Part K.

**security** means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
- (e) an unconditional undertaking in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*) given by a financial institution or insurance company approved in writing by the *Principal*; or
- (f) such other form approved in writing by the *Principal*.

**Security Interest** has the meaning given in subclause 46.1.

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**selected subcontract work** has the meaning given in subclause 9.3.

**selected subcontractor** has the meaning given in subclause 9.3.

**separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* under clause 4.

**separate contractor** means any contractor engaged or authorised by the *Principal* (other than the *Contractor* or its *subcontractors*) to perform any work on the site.

**separate contractor works** means the *work* to be carried out, constructed, supplied, installed or erected by or on behalf of *separate contractors*.

**site** means the site for *the Works* described in *Item 9B*.

**site conditions** means:

- (a) any physical conditions encountered in the execution of *WUC* above, upon, under, or over the surface, or in the vicinity, of the *site*, the areas identified in *Item 22A* or any *extra land*; and
- (b) without limiting paragraph (a), any one or more of the following:
  - (i) ground water, surface water, ground water hydrology and the effects of any de-watering;
  - (ii) physical and structural conditions, above, upon and below the *site*, the areas identified in *Item 22A* or any *extra land* including buildings, improvements, partially completed structures, in-ground works (including foundations), retaining walls, services (including the location of services), utilities (including the location of utilities) and other structures whether or not installed by or on behalf of the *Principal*;
  - (iii) topography of the *site*, the areas identified in *Item 22A* or any *extra land*, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the *site*, the areas identified in *Item 22A* or any *extra land*;
  - (iv) climatic and other weather conditions including rain, surface water run-off and drainage, water seepage, wind blown dust, sand, hot weather, wind and seasons;
  - (v) conditions at the *site*, the areas identified in *Item 22A*, or any *extra land* that are a consequence of climatic and other weather conditions referred to in sub-paragraph (b)(iv);
  - (vi) all existing systems and services, above or below ground level and the location of all facilities with which such systems and services are connected;
  - (vii) any *contamination* and rubbish; and
  - (viii) the means of accessing the *site*.

**subcontractor** means any person engaged by the *Contractor* in connection with *WUC*, and includes a *consultant*.

**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.

**supporting documentation** means:

- (a) documentary evidence (to the reasonable satisfaction of the *Principal*) of the payment of moneys due and payable to:
  - (i) workers of the *Contractor* and its *subcontractors*; and
  - (ii) *subcontractors*,
 in respect of WUC performed up to the date of submission;
- (b) a duly completed and executed statutory declaration in the form of Annexure Part F by the *Contractor*, or where the *Contractor* is a corporation, by a representative of the *Contractor* who is in a position to know the facts attested to, completed to a date not earlier than the date of its submission; and
- (c) a duly completed and executed *supporting statement* dated no earlier than the date of submission of the *supporting statement*.

***supporting statement*** has the meaning given in section 13(9) of the *Security of Payment Act*.

***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*.

***temporary works*** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*.

***test*** means those tests, measurements and examinations (if any) referred to in the *Contract* (including *Item 22C*).

***the Works*** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*.

***variation*** means any variation to *the Works* or *WUC*, by any one or more of the following:

- (a) increasing, decreasing, deleting, omitting or changing any part;
- (b) changing the character or quality;
- (c) changing the levels, lines, positions or dimensions;
- (d) carrying out additional *work*; or
- (e) demolishing or removing material or *work*, including where no longer required by the *Principal*.

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

***WHS Regulation*** means the *Work Health and Safety Regulation 2017* (NSW).

***work*** includes the provision of materials.

***work method*** has the meaning given to that term in subclause 6.1.

***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* and includes *variations*, remedial *work*, *construction plant* and *temporary works*.

## 1.2 General interpretation

In the *Contract*:

- (a) references to days (other than *business days*) mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) except in respect of the carrying out of *WUC* or the achievement of *practical completion*, 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 shall not form part of, 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 and 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) 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)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8* and, subject to clause 42, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction (and courts entitled to hear appeals from those courts);
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the *Contract* or any part;
- (j) the words "includes" and "including" (and any variants of those words) shall be read as if followed by the words "without limitation";
- (k) references to "shall" will (unless the context otherwise requires) be construed as references to "must";
- (l) a reference to the *Contract* or to any other agreement, document or instrument is deemed to include a reference to the *Contract* or such other agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (m) a reference to any legislation or to any section or provisions of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by laws, regulations of and other statutory instruments issued under that legislation, section or provision; and
- (n) a reference to any body or agency (***Original Body***) which no longer exists or has been reconstituted, renamed or replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body or agency which most closely serves the purposes or objects of the *Original Body*.

### 1.3 Miscellaneous

- (a) The *Contract* constitutes the entire, final and concluded agreement and understanding between the parties and will take effect according to its tenor despite:
  - (i) any previous representations, correspondence or prior agreement in conflict or at variance with the *Contract*; or
  - (ii) any correspondence or other documents relating to the subject matter of the *Contract* which may have passed between the parties prior to the *Contract Date* and which are not included in the *Contract*.
- (b) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the *Contract*.
- (c) If any provision or part of any provision in the *Contract* is, in any way, illegal, void, invalid or unenforceable, it is to be read down so as to be legal, valid and enforceable. If this is not possible, the provision (or where possible, the offending part) is to be severed from the *Contract* to the extent only of such illegality, voidness, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions (or parts of these provisions) which will continue in full force and effect.
- (d) The *Works* and *WUC* include, and the *Contractor* is deemed to have made allowance in the *contract sum* and *date for practical completion* for, the provision and performance of, all *work*, services, activities, materials, *construction plant* and *temporary works* which are not expressly mentioned in the *Contract* but which should reasonably have been anticipated or inferred by a reasonably competent and experienced contractor at the *Contract Date* as being necessary or desirable for the performance of *WUC* had such contractor inspected:
  - (iii) all written information made available by or on behalf of the *Principal* to the *Contractor* for the purpose of tendering, or otherwise in connection with the *Contract*, including the *information documents*;
  - (iv) all *Contract* documents;
  - (v) all information relevant to risk allocation under the *Contract*, including the *contract sum* and the *date for practical completion*, which is reasonably obtainable by the making of reasonable enquiries; and
  - (vi) the *site* and its near surrounds, the areas identified in *Item 22A* and any *extra land*.
- (e) All obligations to indemnify under the *Contract* survive termination of the *Contract*.
- (f) It is not necessary for the *Principal* to incur expense or to make any payment before enforcing a right of indemnity under the *Contract*.
- (g) The *Contract* may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes an original of the *Contract*, all of which together constitute one agreement.
- (h) Subject to any express provision in the *Contract* to the contrary:
  - (i) a provision of the *Contract* which says that the *Principal* or the *Superintendent* "may" do or not do something is not to be construed as imposing an obligation on the *Principal* or the *Superintendent* to do or not do that thing; and

- (ii) there will be no procedural or substantive limitation upon the manner in which the *Principal* or the *Superintendent* may exercise any discretion, power or entitlement conferred by the *Contract*.
- (i) Without limiting subclause 1.3(h), neither the *Principal* nor the *Superintendent* will be under any obligation to exercise any discretion, power or entitlement, for the benefit of the *Contractor* or as required by any legal doctrine which in any way limits the express words used in the provision of the *Contract* conferring the discretion, power or entitlement.

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## **2. Nature of Contract**

### **2.1 Performance and payment**

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and directions given by the *Superintendent* in accordance with the *Contract*; and

The *Principal* shall, subject to the terms of the *Contract*, pay the *Contractor* the *contract sum*. Unless the *Contract* expressly provides otherwise, the *Contractor* shall carry out all its obligations under the *Contract* at its own cost and risk.

### **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) shall carry out and complete *WUC* so that *the Works*, when completed, shall:
    - (A) comply with all the requirements of the *Contract*; and
    - (B) comply with all *legislative requirements*; and
  - (iii) at all times shall have the requisite financial capacity and experience to carry out the *WUC*, and agrees to provide (from time to time, upon written request) evidence to the satisfaction of the *Principal*, or its nominees, of its financial capacity, including financial statements; and
- (b) all *subcontractors* shall be suitably qualified and experienced.

The warranties and obligations of the *Contractor* under the *Contract* remain unaffected notwithstanding;

- (c) any *variation*; or
- (d) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *subcontractor* or consultant of the *Principal* under subclause 9.4, including where it has thereafter retained that *subcontractor* or consultant in connection with *WUC*;
- (e) any receipt or review of, comment or *direction* on, rejection or approval of, or permission to use or deemed permission to use (or failure to review, comment or give a direction on, reject, approve, or give permission to use), any document



provided by the *Contractor*, by or on behalf of the *Superintendent* or the *Principal*;  
or

- (f) any *direction* by or on behalf of the *Principal* or the *Superintendent*.

## 2.3 Buildability Problems

The *Contractor*:

- (a) acknowledges and warrants that:
- (i) prior to the *Contract Date*, it fully and carefully reviewed the *Project Requirements* and the other documents comprising the *Contract* with a view to assuming the risk of all *Buildability Problems* and for this purpose it provided, allocated and otherwise committed sufficient resources to undertake a detailed due diligence of the *Project Requirements* and the other documents comprising the *Contract* to identify all *Buildability Problems*; and
  - (ii) it has included in the *contract sum* and the *date for practical completion* contingencies for these risks, including such that the *contract sum* and the *date for practical completion* covers, in addition to its other obligations under the *Contract*, the risk of *Buildability Problems*, including the risk of the *Contractor* being required to carry out additional construction or other *work* arising out of, or in any way in connection with, *Buildability Problems*; and
- (b) acknowledges and agrees that:
- (i) any additional *work* or activities (including the provision of different or additional *construction plant* and *work* and/or the carrying out of new or additional *work*) which it is required to perform arising out of, or in any way in connection with, any *Buildability Problem* will be deemed to form part of the *WUC* and shall not be a *variation*, even if the relevant *work* or activity is not contained, designed (wholly or partially), described or referred to (either expressly or impliedly) in the *Project Requirements* or any other document comprising the *Contract* or otherwise relating to the *Works*;
  - (ii) it bears the risk that the contingencies included in the *contract sum* and the *date for practical completion* for assuming the risk of any *Buildability Problems* are insufficient to properly compensate the *Contractor* for carrying out the *WUC* referred to in subclause 2.3(b)(i);
  - (iii) it will not be entitled to make, and the *Principal* will not be liable upon, any *claim* arising out of, or in any way in connection with, any *Buildability Problem*; and
  - (iv) neither the *Principal* nor the *Superintendent* owes or assumes any duty of care to the *Contractor* in preparing, or providing it with, the *Project Requirements* or the other documents comprising the *Contract*.

## 2.4 Early Works

- (a) This subclause 2.4 (other than this subclause 2.4(a)) applies only where provided in *Item 10*.
- (b) The parties acknowledge and agree that certain works and activities have been effected by the *Contractor* under the *Early Works Agreement* (or otherwise) prior to the *Contract Date* (***Early Works***).
- (c) The parties agree that the *Early Works Agreement* is terminated upon the *Contract Date*.

- (d) *The Contractor:*
  - (i) acknowledges and agrees that the *Early Works* form part of the *WUC*;
  - (ii) acknowledges and agrees that the performance of the *Early Works* will be deemed to be governed by the terms of the *Contract*, and the *Contractor* warrants to the *Principal* that the *Early Works* were carried out in accordance with the requirements of the *Contract*;
  - (iii) confirms that the warranties and undertakings set out in the *Contract* apply to the *Early Works* as part of the *WUC* (without limiting or otherwise affecting the generality of such warranties and undertakings); and
  - (iv) acknowledges and agrees that the payments totalling the amount stated in *Item 10B* made to the *Contractor* in connection with the *Early Works* (and any other amount paid by the *Principal* to the *Contractor* in connection with the *Early Works*) will be deemed to have been a payment by the *Principal* to the *Contractor* under the *Contract* on account of the *contract sum*.

## 2.5 Dilapidation Report

This subclause 2.5 (other than this paragraph) applies only where provided in *Item 11*.

Without limiting or otherwise affecting the *Contractor's* obligations under other provisions of the *Contract*:

- (a) the *Contractor* shall, by the earlier of:
  - (i) the commencement of *WUC* on or in the vicinity of the *site*; and
  - (ii) the date that is 14 days after the *Contract Date*,
 submit to the *Superintendent* for its approval (in its absolute discretion), a dilapidation survey in respect of the *site*, the *extra land*, any and all property, adjoining, surrounding or in close proximity to the *site*, including boundary walls, property and buildings, roads, pavements and services, surrounding, adjoining or in close proximity to the *site*, commissioned by or on behalf of the *Contractor* and prepared by a person approved in writing by the *Superintendent* in its absolute discretion;
- (b) the *Superintendent* shall, within 14 days of receipt of the dilapidation survey required by subclause 2.5(a), or the resubmitted dilapidation survey required by subclause 2.5(c), approve or reject (in its absolute discretion) the dilapidation survey or resubmitted dilapidation survey (as applicable);
- (c) if any dilapidation survey is rejected by the *Superintendent*, the *Contractor* shall submit an amended dilapidation survey (taking into account any comments made by the *Superintendent*) to the *Superintendent* for its approval (in its absolute discretion);
- (d) the *Contractor* shall not commence *WUC* on or in the vicinity of the *site*, unless the *Superintendent* has approved the dilapidation survey in accordance with subclause 2.5(b);
- (e) as a condition precedent to *practical completion*, the *Contractor* shall:
  - (i) provide the *Superintendent* with an updated dilapidation survey in respect of the *site*, the *extra land*, any and all property adjoining, surrounding or in close proximity to the *site*, including boundary walls, property, buildings, roads, pavements and services adjoining, surrounding or in close proximity to the *site* and including all property that was the subject of the *Initial Dilapidation Report*

prepared to the satisfaction of the *Superintendent* (in its absolute discretion), no earlier than 5 days before the *date of practical completion*; and

- (ii) without limiting clauses 9A, 12, 30 and 35 and subclauses 15.1, 24.4, 24.5, 29.3, 29.4, and 29.5, repair, rectify and otherwise make good any damage caused by or arising out of or in connection with *WUC* or any other act or omission of the *Contractor* to the *extra land*, any and all property surrounding or in close proximity to the *site*, including boundary walls, property, buildings, roads, pavements and services surrounding or in close proximity to the *site*, identified in the *Final Dilapidation Report*, to the satisfaction of the *Principal* (in its absolute discretion) so that the condition of such property and *extra land* at the *date of practical completion* is identical to the condition of the corresponding property and *extra land* set out in the *Initial Dilapidation Report*; and
- (f) the *Contractor* shall provide to the *Superintendent* such updated dilapidation surveys as are necessary or required by the *Superintendent* to demonstrate to the satisfaction of the *Superintendent* (in its absolute discretion) the *Contractor's* compliance with its obligations under subclause 2.5(e)(ii).

## **2.6 Project Meetings**

- (a) The *Contractor* shall ensure that its personnel (including any personnel directed or nominated by the *Principal* or the *Superintendent*), and representatives of its *subcontractors* (including any representatives directed or nominated by the *Principal* or the *Superintendent*), attend project meetings as directed by the *Principal* or the *Superintendent* from time to time. The *Contractor* acknowledges that such project meetings may take place at the *site* or at any other place nominated by the *Principal* or the *Superintendent*. The *Principal* or the *Superintendent* (as is applicable) will attempt to give advance notice of project meetings where it is practicable to do so. The *Contractor* shall, if directed by the *Principal* or the *Superintendent* (as is applicable), report on any matters relevant to *WUC* at project meetings as directed, including ensuring that *subcontractors* report on any matters the subject of such *direction* from the *Principal* or the *Superintendent*.
- (b) Without limiting the preceding paragraph, the *Contractor* shall prepare all project meeting reports and prepare and distribute such reports and minutes of all such meetings in the manner and form, and within the time period, required by the *Superintendent*.
- (c) Nothing which occurs during a project meeting will relieve the *Contractor* of its obligations, or constitute a waiver of any of the *Principal's* rights, under the *Contract*.

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## **3. Provisional sums**

### **3.1 General**

The *Contractor* acknowledges and agrees that *provisional sum work* forms part of *WUC*.

Notwithstanding the preceding paragraph, the *Contractor* shall not commence an item of *provisional sum work* until the *Superintendent* gives the *Contractor* a *direction* to proceed with the relevant item of *provisional sum work*. For each item of *provisional sum work*, the *Superintendent* will give the *Contractor* a *direction* either deleting the relevant item of *provisional sum work* from the *Contract* or requiring the *Contractor* to proceed with the relevant item of *provisional sum work*. Without limiting the *Contractor's* entitlements under this clause 3, the *Contractor* acknowledges and agrees that a *direction* deleting an item of *provisional sum work*, or a *direction* to proceed with an item of *provisional sum work*, is not a *direction* to carry out a *variation*.

Where the *Superintendent* gives the *Contractor* a *direction* to proceed with an item of *provisional sum work*, that *provisional sum work* shall, unless otherwise directed by the *Superintendent*, be carried out under subcontracts entered into by the *Contractor* in accordance with subclause 3.4.

### 3.2 Deletion

If any item of *provisional sum work* is deleted from *WUC*:

- (a) the *contract sum* will be reduced by the relevant *provisional sum*;
- (b) the *Principal* may itself carry out or engage another contractor to carry out the relevant work or item the subject of the deleted *provisional sum work*; and
- (c) the *Contractor* is not entitled to *claim* and the *Principal* will not be liable upon any *claim* by the *Contractor* arising out of, or in any way in connection with, the deletion of the *provisional sum work*.

### 3.3 Valuation of provisional sum work

Where the *Superintendent* directs the *Contractor* to proceed with an item of *provisional sum work*, the relevant item of *provisional sum work* shall be valued by the *Superintendent* as follows:

- (a) to the extent the relevant item of *provisional sum work* is performed or supplied directly by the *Contractor*, the relevant item of *provisional sum work* shall be valued under subclause 36.4; and
- (b) to the extent that the relevant item of *provisional sum work* is performed or supplied by an *approved subcontractor*, the value of the relevant item of *provisional sum work* shall be the amount properly, reasonably and actually incurred and paid by the *Contractor* to the relevant *approved subcontractor* for the performance of the relevant item of *provisional sum work*, plus the percentage thereof stated in *Item 12* for profit, excluding:
  - (i) any amounts (including damages) paid or payable by the *Contractor* to the relevant *approved subcontractor* by reason of any breach of contract or other wrongful act or omission by the *Contractor*, except to the extent that breach of contract or wrongful act or omission was directly caused by any breach of the *Contract* by the *Principal*; and
  - (ii) any other amount or cost which the *Contract* provides is to be borne by the *Contractor* (or which is in respect of any work, event or circumstance in respect of which the *Contract* provides that the *Contractor* shall not be entitled to make a *claim* or which the *Contract* provides is to be at the *Contractor's* cost) or is to be a debt due or payable from the *Contractor* to the *Principal*.

Where the value of an item of *provisional sum work* (other than *variations* to that item of *provisional sum work*) determined in accordance with this subclause 3.3 (the '**provisional sum work value**') is:

- (c) equal to the *provisional sum* for that item of *provisional sum work*, the *contract sum* shall remain unchanged;
- (d) greater than the *provisional sum* for that item of *provisional sum work*, the *contract sum* shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be increased by the amount equal to the difference between the relevant *provisional sum work value* and the *provisional sum* for that item of *provisional sum work*; and

- (e) less than the *provisional sum* for that item of *provisional sum work*, the *contract sum* shall be reduced by the amount equal to the difference between the relevant *provisional sum work value* and the *provisional sum* for that item of *provisional sum work*.

### **3.4 Tendering provisional sum work**

Where an item of *provisional sum work* is to be carried out under subcontracts, the *Contractor* shall:

- (a) unless the *Superintendent* has otherwise *directed* under subclause 3.1, invite tenders for the performance of the relevant item of *provisional sum work*:
  - (i) from at least the number of tenderers required by the *Superintendent* and including and excluding any specific tenderers nominated by the *Superintendent*; and
  - (ii) on terms of a subcontract approved by the *Superintendent*;
- (b) unless the *Superintendent* has otherwise *directed* under subclause 3.1, give the *Superintendent* such details of each tender and each tenderer as the *Superintendent* may require;
- (c) unless the *Superintendent* has otherwise *directed* under subclause 3.1, recommend to the *Superintendent* which tenderer it considers should be accepted with reasons for such recommendation; and
- (d) where the *Superintendent* directs the *Contractor* to proceed with the relevant item of *provisional sum work* in accordance with subclause 3.1, enter into a subcontract on terms approved by the *Superintendent* for the performance of the relevant item of *provisional sum work* with the relevant tenderer as *directed* by the *Superintendent*, or (where the *Superintendent* has directed under subclause 3.1 that the process in subclauses 3.4(a) to (c) not be followed) a *subcontractor* approved by the *Superintendent*.

### **3.5 Open book**

The *Contractor* shall make available to the *Principal*, the *Superintendent* and their nominees:

- (a) all records, books and costings of the *Contractor* and its *subcontractors*; and
- (b) any other information reasonably required by the *Principal*,

to verify the amounts referred to in subclause 3.3 or otherwise to ensure the *Contractor's* compliance with subclauses 3.3 and 3.4.

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## **4. Separable portions**

### **4.1 Separable portions**

The interpretations of:

- (a) *date for practical completion*;
- (b) *date of practical completion*; and
- (c) *practical completion*,

and clauses 9A, 14, 27, 28, 29, 32, 34 and 35 and subclauses 2.5, 9.6 and 24.4 shall apply separately to each *separable portion* and references therein to *the Works* and to *WUC* shall mean so much of *the Works* and *WUC* as is comprised in the relevant *separable portion*.

#### **4.2 Additional separable portions**

*Separable portions*, in addition to those identified in the *Contract* (if any), 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 liquidated damages (calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

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### **5. Security**

#### **5.1 Provision**

*Security* shall be provided by the *Contractor* to the *Principal* in accordance with *Items* 13(a), 13(b) and 13(d).

#### **5.2 Recourse**

The *Principal* may call on and otherwise have recourse to *security* (and the proceeds of *security*) at any time, including in respect of:

- (a) any debt or other moneys due from the *Contractor* to the *Principal*; or
- (b) any *claim* to money which the *Principal* has, or may have, against the *Contractor* whether for damages (liquidated or unliquidated) or otherwise,

whether under the *Contract* or otherwise in connection with *the Works* or the *WUC*.

#### **5.3 Change of security**

At any time, the *Contractor* may substitute the *security* provided under this clause 5 for another form of *security*, provided that the *Principal* has given its prior written approval, which may be given or withheld in its absolute discretion.

#### **5.4 Reduction and release**

The *Principal's* entitlement to *security* in *Item* 13(e) shall cease 14 days after incorporation into *the Works* of the plant and material for which that *security* was provided.

Upon the issue of the *last certificate of practical completion*, the *Principal's* entitlement to the *security* (other than that referred to in *Item* 13(e)) in excess of the amount in *Item* 13(f) shall cease, and the *Principal* shall release and return to the *Contractor* all *security* that is then held in excess of the amount in *Item* 13(f) (other than *security* in *Item* 13(e)) within 14 days.

The *Principal's* entitlement otherwise to *security* shall cease 14 days after the issuance of the *final certificate*, except where a *dispute* has been notified in accordance with clause 42.

To the extent that the *Principal's* entitlement to *security* ceases in accordance with the preceding paragraph, the *Principal* shall release and return forthwith the *security* in excess of its entitlement to the *Contractor*.

## 5.5 Trusts and interest

The *Principal*:

- (a) shall not be obliged to pay the *Contractor* interest on:
  - (i) *security* (including retention moneys); or
  - (ii) the proceeds of *security* if it is not cash and is converted to cash; and
- (b) does not hold the proceeds or money referred to in subclause 5.5(a) on trust for the *Contractor*.

## 5.6 Deed of guarantee, undertaking and substitution

Where stated in *Item 14A*, the *Contractor* shall, on the *Contract Date*, provide to the *Principal* a duly completed, executed and enforceable *deed of guarantee, undertaking and substitution* provided by the entity stated in *Item 14A*.

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## 6. Working Method and Documentation

### 6.1 Contractor's Responsibility

The *Contractor*:

- (a) acknowledges that the *Project Requirements* do not prescribe any method of working for the *WUC* (***work method***);
- (b) is solely responsible for developing a *work method* in respect of *WUC*; and
- (c) shall ensure that the *work method* it uses will ensure it complies with its obligations under the *Contract*.

### 6.2 Work Method

The *Contractor* bears all the risks and costs involved in the selection of the *work method*.

The *work method* is not part of the *Contract* and the *Contractor* (subject to compliance with the *Contract*) is free to use any *work method*, notwithstanding that before or after the *Contract Date*, the *Contractor* may have made known to the *Principal* or the *Superintendent* the *Contractor's* proposed *work method*, including if the *Principal* or the *Superintendent* was given a copy of it.

The fact that the proposed *work method* is impractical or impossible or the *Contractor*, with or without the approval of the *Superintendent*, uses another *work method* will not:

- (a) entitle the *Contractor* to make any *claim* against the *Principal*;
- (b) without limiting subclause 6.2(a), be a *qualifying cause of delay*, a *compensable cause* or otherwise give rise to any entitlement to an *EOT* under clause 34 or any entitlement under subclause 34.9; or
- (c) cause the *Contract* to be frustrated.

### 6.3 Contractor's Warranties

Without limiting subclause 2.2, the *Contractor* warrants that the *work method* it uses for *WUC* will:



- (a) be fit for its intended purpose;
- (b) ensure the highest standards of safety in the execution of the *WUC*; and
- (c) enable the operation, maintenance and any future decommissioning of the *Works* according to the highest standards of safety.

#### **6.4 No Obligation to Review**

Neither the *Principal* nor the *Superintendent* assumes or owes any duty of care or other responsibility to the *Contractor* in relation to any *work method* or any other documents or materials prepared, proposed or used by the *Contractor* in connection with *WUC* or the *Contract* (including under this clause 6), and shall not be required to check such *work method* or any such other documents or materials for suitability, errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*.

No review of, comment upon or approval or rejection of, or failure to review, comment upon, approve or reject, any *work method* or any other documents or materials prepared or used by the *Contractor* in connection with *WUC* or the *Contract* or any other *direction* (including approval) by or on behalf of the *Superintendent* or the *Principal* about such *work method*, other documents or materials shall:

- (a) relieve the *Contractor* from, or otherwise limit, alter or affect, the *Contractor's* liabilities or responsibilities under the *Contract* or otherwise at law or in equity; or
- (b) prejudice the *Principal's* rights against the *Contractor* whether under the *Contract* or otherwise at law or in equity.

Nothing in this subclause 6.4 limits or otherwise affects subclause 8.3.

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### **6A. Demolished material**

#### **6A.1 Property in Demolished Material**

The *Contractor* acknowledges and agrees that:

- (a) subject to subclause 6A.1(b) and 6A.1(c), on the *date of practical completion*, or earlier termination, property in all refuse and debris (other than those forming part of the *Works*) produced during the execution of the *WUC* will vest in the *Contractor*;
- (b) the items described in *Item 14B* remain the property of the *Principal* and the *Contractor* shall, whilst carrying out the *WUC*, protect those items and, as a condition precedent to *practical completion*, deliver them to the place directed by the *Superintendent*; and
- (c) the *Principal* does not warrant, guarantee or make any representation about the value of the refuse and debris referred to in subclause 6A.1(a), or any other item salvaged by the *Contractor* as part of the *WUC*, and the *Contractor* will not be entitled to make, nor will the *Principal* be liable upon, any *claim* in circumstances where such things have no value or a value less than anticipated by the *Contractor* prior to the *Contract Date*.

#### **6A.2 Requirements for Demolished Material**

Without limiting or otherwise affecting the *Contractor's* obligations under subclause 11.1, the *Contractor* shall comply with all *legislative requirements*, and such other requirements as may be notified by the *Principal* or the *Superintendent* from time to time, for the recycling of materials to be removed from the *site* under the *Contract*.

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## 7. Service of notices

Any notice, demand, consent or other communication given or made under the *Contract* which is in writing:

- (a) shall be delivered to the intended recipient by prepaid post, by hand, by fax (except that any notice pursuant to the *Security of Payment Act* may not be served by fax), or by email, to the address, fax number or email address last notified by the intended recipient to the sender; and
- (b) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by:
    - (A) regular prepaid post or registered post, 6 *business days* after the date of posting;
    - (B) priority prepaid post or priority registered post, 4 *business days* after the date of posting; and
    - (C) using express post, 2 *business days* after posting;
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching fax machine showing the relevant number of pages, the correct destination fax machine number and the result of the transmission as "OK"; and
  - (iv) in the case of sending via email, immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient's email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed, in which case the notice is not taken to have been effected,

but if the result is that a notice would be taken to be given or made on a day which is not a *business day* in the place to which the notice is sent, or (except in the case of a *payment schedule* or *final certificate*) is received later than 4:00 pm (local time) at the place to which the notice is sent, it will be taken to have been duly given or made at the commencement of business on the next *business day* in that place.

The *Principal*, the *Contractor* and the *Superintendent* shall each notify the others in writing of a change of address.

Without limiting the generality of "notice", it includes a document.

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## 8. Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in circumstances of a discrepancy in or between the documents constituting the *Contract*. Otherwise, if the *Contractor* discovers any error, inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, including any document forming part of the *Contract*, the *Contractor* 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.

Without limiting subclauses 2.3 and 2.4, the *Contractor* shall bear the cost of compliance with a *direction* under this subclause 8.1.

## **8.2 Principal-supplied documents**

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 15*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied or reproduced for any purpose other than the *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 *Item 15A*.

If the *Contractor* submits documents to the *Superintendent* or the *Principal*, then:

- (a) neither the *Principal* nor the *Superintendent* assumes or owes any duty of care or other responsibility to the *Contractor*, and shall not be required to check such document or information for its suitability, or for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*; and
- (b) no review of, comment upon or approval or rejection of, or failure to review, comment upon, approve or reject, any documents supplied by the *Contractor* or any other *direction* (including approval) by or on behalf of the *Superintendent* or the *Principal* about such documents or information shall:
  - (i) relieve the *Contractor* from, or otherwise limit, alter or affect, the *Contractor's* liabilities or responsibilities under the *Contract* or otherwise at law or in equity; or
  - (ii) prejudice the *Principal's* rights against the *Contractor* whether under the *Contract* or otherwise at law or in equity; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about such documents, the *Superintendent* shall give, within the time stated in *Item 16*, the appropriate *direction*, including reasons if the documents are not suitable.

Copies of documents supplied by the *Contractor* under or in connection with the *Contract* shall be the *Principal's* property.

## **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 ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by the *Principal*, the *Contractor* shall enter into a separate agreement or deed (in such form as may be required by the *Principal*) not to disclose to anyone else any confidential matter even after the issue of the *final certificate* or earlier termination of the *Contract*.

The *Contractor* shall treat the *Contract* and any documents or other information relating to the *Contract*, the *Works* or *WUC* as confidential and shall not disclose any of these without the prior written consent of the *Principal*, except to the extent that such disclosure is required for the *Contractor* to carry out its obligations under the *Contract*.

The *Contractor* acknowledges that the *Principal* may disclose the *Contract* (and information concerning the terms of the *Contract*) under or in accordance with any *legislative requirement*, including the *Government Information (Public Access) Act 2009 (NSW)*.

## 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 *WUC*, the *Works* or the *Contract*.

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## 9. Assignment and subcontracting

### 9.1 Assignment

The *Contractor* shall not, without the *Principal's* prior written approval (including approval in relation to terms), assign the *Contract* or any payment or any other right, benefit or interest thereunder or undergo a *Change in Control*. The *Contractor* must ensure that the entity stated in *Item 14A* does not, without the *Principal's* prior written approval (including approval in relation to terms), undergo a *Change in Control*.

The *Principal* may at any time freely assign or novate all or any part of its rights and/or obligations under the *Contract* to any other person without the need to obtain the consent of the *Contractor*. The *Contractor* agrees, on the request of the *Principal*, to do everything necessary to give effect to any such assignment or novation, including the execution of a deed of novation in a form required by the *Principal*.

### 9.2 Subcontracting generally

The *Contractor* shall engage and retain the *subcontractors* (if any) identified in *Item 16A*.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract, or allow a *subcontractor* to subcontract, any *work* described in *Item 17* except to the relevant *subcontractor* named in *Item 17*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of that part of the *WUC* 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.

Within 10 *business 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.

Approval may be conditional upon the subcontract including:

- (c) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (d) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*; and
- (e) provision that if the *Contract* is terminated, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part D (or such other form as the *Principal* may require).

### **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**

If directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall within 7 days of the date of receipt by the *Contractor* of the *direction*, execute and deliver to the *Principal* a deed of novation in the form contained in Annexure Part E, or such other form required by the *Principal*, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or *selected subcontractor* stated in *Item 18*.

Failure by the *Contractor* to comply with this subclause 9.4 shall be a substantial breach of the *Contract*.

Without limiting or otherwise affecting subclause 9.5, the *Contractor* shall not terminate or substantially decrease the scope of engagement of any *subcontractor* or *selected subcontractor* novated to the *Contractor* without the prior written consent of the *Principal*.

### **9.5 Contractor's responsibility**

The *Contractor* shall be liable to the *Principal* for the acts, defaults, omissions and negligence of its *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if it was the act, default, omission or negligence (as applicable) of the *Contractor*.

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

### **9.6 Warranties and certificates**

The *Contractor* shall, as a condition precedent to *practical completion*, ensure that each *subcontractor* of a category described in *Item 18A* provides a warranty in the form prescribed by Annexure Part H (or if no form of warranty is prescribed in Annexure Part H,

on terms reasonably commercially available having regard to the relevant *subcontractor* and the nature of the work carried out by that *subcontractor*), and covering the relevant period set out in *Item 18A* from the *date of practical completion*.

The *Contractor* shall ensure that all such warranties and certificates are either expressly for the benefit of the *Principal* and its successors and assigns or are capable of being assigned to the *Principal* and its successors and assigns.

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**9A. Separate contractors generally**

- (a) The *Principal* will be entitled to arrange for *separate contractors* to carry out *separate contractor works* on or adjacent to the *site* or *the Works* concurrently with the execution by the *Contractor* of *WUC*.
- (b) The *Principal* or the *Superintendent* shall notify the *Contractor* in writing of the identity of *separate contractors*.
- (c) The *Contractor*:
  - (i) shall cooperate with all *separate contractors* and the *Principal* working on, adjacent to or in proximity of the *site*, and use reasonable endeavours to facilitate the proper execution and integration of their work;
  - (ii) acknowledges that it will not be provided with possession of, or sole access to, the *site*;
  - (iii) shall permit the execution of *separate contractor works* by *separate contractors*;
  - (iv) shall, without limiting subclauses 24.2 and 34.1, carry out *WUC* in such a way as to ensure that *separate contractors* may have access to *the Works* and the *site* prior to *practical completion* in order to carry out and complete *separate contractor works* simultaneously with the execution of *WUC*;
  - (v) shall, subject to compliance with the *Contractor's* reasonable requirements in relation to *site* safety, *site* safety induction and the provision and use of required personal protective equipment, but without limiting subclause 24.2, allow each *separate contractor* and any person authorised by a *separate contractor*, at no cost, access to, and use of:
    - (A) the relevant part of *the Works* and the *site* necessary for the purpose of the relevant *separate contractor works*;
    - (B) any part of the *site* (including delivery areas) as may be necessary for the relevant *separate contractor* to have access to or egress from that part of the *site* on which the relevant *separate contractor works* are being carried out;
    - (C) the *Contractor's* materials handling facilities (if any) to enable the handling of materials between delivery areas, the relevant part of the *site* on which the *separate contractor works* are being carried out and waste disposal areas (but only at such times when the *Contractor* is on *site* carrying out *WUC* and (without limiting the *Contractor's* other obligations under this clause 9A) subject to reasonable scheduling and organisation of such materials handling);
    - (D) the *Contractor's* waste disposal facilities on or in the vicinity of the *site*;

- (E) the *Contractor's* first aid staff and first aid area; and
- (F) power, water and other utilities reasonably proximate to the *site*;
- (vi) without limiting subclause 15.1, shall not damage *separate contractor works* and shall take reasonable precautions to protect *WUC* and *the Works* from damage by the carrying out of *separate contractor works*;
- (vii) shall comply with all reasonable *directions* by the *Superintendent* in connection with the execution by each *separate contractor* of *separate contractor works*;
- (viii) shall attend meetings as directed by the *Superintendent* from time to time during or otherwise in relation to the execution of *separate contractor works*;
- (ix) shall carefully co-ordinate its own work with *separate contractor works*;
- (x) without limiting the *Contractor's* obligations under subclauses 32.1 and 34.1, shall take such steps as are reasonably necessary or required for the expeditious completion of *WUC*, including as directed by the *Superintendent*; and
- (xi) without limiting subclauses 24.2 and 34.1, use reasonable endeavours to avoid interfering with, disrupting or delaying *separate contractors* or the performance of *separate contractor works*.
- (d) Subject to, and without limiting subclause 9A(h), the *Principal* will use reasonable endeavours to:
  - (i) minimise delay and disruption to the execution of *WUC* caused by the work of *separate contractors*; and
  - (ii) facilitate the co-ordination of the execution of *separate contractor works* with the execution of *WUC*.
- (e) The *Principal* and *separate contractors* may, with the consent of the *Contractor* (which consent shall not be unreasonably withheld), store goods, materials, machinery, plant and equipment on or about the *site* or *the Works*, and have access to those goods, materials, machinery, plant and equipment.
- (f) The *Contractor* shall provide all reasonable assistance to the *Principal* and *separate contractors* in connection with any applications to statutory authorities in relation to *separate contractor works*.
- (g) The *Contractor* acknowledges and agrees that delay or disruption to the execution of *WUC* caused by *separate contractors* will not constitute a breach of the *Contract* by the *Principal* but may (subject to the other terms of the *Contract*) constitute a *qualifying cause of delay* and a *compensable cause*.
- (h) The *Contractor* releases the *Principal* from and against all *claims*, other than in respect of any right which the *Contractor* may have to claim an *EOT* and delay damages under subclauses 34.3 and 34.9, which it now or in the future may have against the *Principal* arising out of, or in any way in connection with, any delay or disruption which a *separate contractor* may cause to the execution of *WUC*.
- (i) The *Contractor* acknowledges and agrees that:
  - (i) its obligations under this clause 9A apply irrespective of:

- (A) whether the workforce who purport to use any facilities are engaged by the *Principal*, a *separate contractor* or their respective *subcontractors*; and
  - (B) any requirement of any applicable award relating to the provision of any such facilities; and
- (ii) neither the *Principal* nor the *Superintendent* assumes any duty of care or other responsibility to the *Contractor* in relation to the execution of the *separate contractor works* other than as expressly provided in this clause 9A.
- (j) This clause 9A does not limit or otherwise affect any other obligation or liability of the *Contractor* under the *Contract*.

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## 10. Intellectual property rights

### 10.1 Warranties and indemnities

- (a) The *Principal* warrants that, unless otherwise provided in the *Contract* and except to the extent prepared by or on behalf of the *Contractor*, including prior to the *Contract Date*, 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*.
- (b) The *Contractor* warrants that any other design, materials, documents and methods of working, each provided, prepared or used by the *Contractor*, shall not infringe any *intellectual property right*.
- (c) The *Contractor* indemnifies the *Principal* against any *claims* against, or costs, losses, expenses or damages suffered or incurred by the *Principal* arising out of, or in any way in connection with, any breach by the *Contractor* of the warranty in subclause 10.1(b).

### 10.2 Ownership and licence

- (a) Ownership of *intellectual property rights* (other than third party *intellectual property rights*):
  - (i) associated with *the Works* or developed in the course of performing *WUC*; or
  - (ii) in any documentation provided by the *Contractor* under the *Contract* (including as built documents and operation and maintenance manuals),
 shall vest in the *Principal*.
- (b) The *Contractor* shall, if requested to do so by the *Principal*, do all such things and execute or procure the execution of, all such documents as may reasonably be required in order to give effect to paragraph (a).
- (c) The *Principal* grants the *Contractor* a royalty free, non-exclusive, perpetual licence to use any *intellectual property rights* created by the *Contractor* in the course of performing *WUC*, or in any documents provided by the *Principal* in connection with the *Contract* (including the *Project Requirements*), solely for the purpose of carrying out *WUC*.
- (d) The *Contractor* grants to the *Principal* an irrevocable, royalty free, non-exclusive, transferable, perpetual licence (with a right to sub-licence) to use all third party *intellectual property rights* associated with *the Works* and any documentation



provided by the *Contractor* under the *Contract* for the installation, use, support, repair, maintenance or alteration of *the Works* or any addition to *the Works* by or on behalf of the *Principal*. That licence shall arise immediately upon the creation or incorporation of the relevant material in *the Works* and survive the termination of the *Contract*.

### **10.3 Moral rights**

The *Contractor*:

- (a) shall ensure that it does not, and its *subcontractors* do not, infringe any moral right in any *artistic work* in carrying out *WUC*;
- (b) shall ensure that it obtains irrevocable consents, including for the benefit of the *Principal* and the *Principal's* licensees and successors in title, from all authors of any *artistic work* to be incorporated into, or used during the design and construction of, *the Works*, including any necessary consents from *subcontractors* and their employees, to:
  - (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 Works*; and
- (c) 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 breach by the *Contractor* of its obligations under this subclause 10.3.

This subclause 10.3 shall survive the termination of the *Contract* and the completion of *the Works*.

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## **11. Legislative requirements**

### **11.1 Compliance**

The *Contractor* shall:

- (a) apply for and obtain all *approvals* except those in *Item 19(c)* or directed by the *Superintendent* to be applied for and obtained by or on behalf of the *Principal*; and
- (b) satisfy all *legislative requirements* except those in *Item 19(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor* shall promptly give the *Superintendent* copies of all documents (including *approvals* and other notices) that any *authority* issues to the *Contractor*.

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

### **11.2 Changes**

If a *legislative requirement*:

- (a) necessitates a change:
  - (i) to *the Works*;

- (ii) to so much of *WUC* as is identified in *Item 19(b)*;
- (iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
- (iv) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the *Contract Date* and could not reasonably then have been anticipated by a reasonably competent and experienced contractor at that date; and
- (c) causes the *Contractor* to:
  - (i) directly and reasonably incur more cost than otherwise would have been incurred, such additional costs shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be assessed by the *Superintendent* and added to the *contract sum*; or
  - (ii) incur less cost than otherwise would have been incurred, the decrease in costs shall be assessed by the *Superintendent* and deducted from the *contract sum*.

### **11.3 Work Health and Safety**

- (a) Without limiting or otherwise affecting the obligations of the *Contractor* under any other provision of the *Contract*, the parties acknowledge and agree that:
  - (i) the *Principal* has engaged the *Contractor* as principal contractor for *WUC, the Works* and the *site*;
  - (ii) the *Principal* authorises the *Contractor* to:
    - (A) have management and control of *WUC, the Works* and the *site*; and
    - (B) discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the *WHS Regulation* in connection with *WUC, the Works* and the *site*;
  - (iii) the *Contractor* accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the *WHS Act* and *WHS Regulation*; and
  - (iv) to the extent that the *Contractor* is, for any reason, taken or otherwise found not to be the principal contractor for *WUC, the Works* or the *site*, the *Contractor* shall discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of *WUC, the Works* and the *site* as if the *Contractor* was the principal contractor for *WUC, the Works* and the *site*.
- (b) Without limiting or otherwise affecting the obligations of the *Contractor* under any other provision of the *Contract*, the *Contractor* shall comply with, and ensure that all *subcontractors* comply with, the *WHS Act* and the *WHS Regulation*, including to the extent that the *Contractor*, or a *subcontractor*, is a person conducting a business or undertaking (including to whom any of sections 22, 23, 24, 25 or 26 of the *WHS Act* applies).
- (c) The *Contractor* shall:
  - (i) ensure that all *subcontractors* comply with their respective obligations under the *WHS Act* and the *WHS Regulation* in connection with *WUC*;

- (ii) ensure that it carries out *WUC* in a manner which ensures that, and otherwise provide all required assistance to the *Principal* to ensure that, the *Principal* satisfies its obligations under the *WHS Act* and the *WHS Regulation* in connection with *WUC*, the *Works* and the *site*, the areas identified in *Item 22A* and any *extra land*;
- (iii) consult with the designer or designers of the whole or any part of any structure relating to *WUC* (including the *Works* and any *temporary works*) about how to ensure that risks to health and safety arising from the design during the performance of *WUC* are:
  - (A) eliminated, so far as is reasonably practicable; or
  - (B) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable;
- (iv) without limiting subclause 11.3(c)(iii), give each designer referred to in subclause 11.3(c)(iii) any information that the *Contractor* has in relation to the hazards and risks at any place where *WUC* is to be carried out (including the *site*, the areas identified in *Item 22A* and any *extra land*);
- (v) manage risks associated with the carrying out of *WUC* in accordance with Part 3.1 of the *WHS Regulation* and (where applicable) clause 305 of the *WHS Regulation*;
- (vi) ensure, so far as is reasonably practicable, that the *site*, and any other workplace relevant to *WUC* (including the areas identified in *Item 22A* and *extra land*), is secured from unauthorised access;
- (vii) ensure that:
  - (A) to the extent required by the *WHS Regulation*, a safe work method statement for *WUC* (or relevant parts of *WUC*) complying with the requirements set out in the *WHS Regulation* is prepared;
  - (B) a copy of each safe work method statement referred to in subclause 11.3(c)(vii)(A) is provided to the *Principal* and the *Superintendent* prior to the commencement of the relevant part of *WUC*;
  - (C) each part of *WUC* is carried out in accordance with the relevant safe work method statement referred to in subclause 11.3(c)(vii)(A);
  - (D) without limiting or otherwise affecting any of the *Contractor's* other obligations or liabilities under the *Contract*, if any part of *WUC* is not carried out in accordance with the relevant safe work method statement referred to in subclause 11.3(c)(vii)(A), the relevant part of *WUC* is:
    - (1) stopped immediately or as soon as it is safe to do so; and
    - (2) resumed only in accordance with the relevant safe work method statement;
  - (E) each safe work method statement referred to in subclause 11.3(c)(vii)(A) is reviewed and, as necessary, revised if relevant control measures are revised under clause 38 of the *WHS Regulation*; and
  - (F) it keeps a copy of each safe work method statement referred to in subclause 11.3(c)(vii)(A) as required by the *WHS Regulation*;

- (viii) ensure that:
  - (A) all reasonable steps are taken to obtain current underground essential services information about the *site*, the areas identified in *Item 22A, extra land* and surrounding areas before directing or allowing excavation work (if any) to commence as part of *WUC*;
  - (B) all information referred to in subclause 11.3(c)(viii)(A) is provided to any person or *subcontractor* engaged by the *Contractor* to carry out excavation work (if any) as part of *WUC*;
  - (C) the *Contractor*, and any person who is given information referred to in subclause 11.3(c)(viii)(A), has regard to the information referred to in subclause 11.3(c)(viii)(A) in carrying out or directing or allowing the carrying out of excavation work (if any) as part of *WUC*; and
  - (D) the information referred to in subclause 11.3(c)(viii)(A) is available for inspection as required by clause 304 of the *WHS Regulation*;
- (ix) manage risks to health and safety associated with excavation work (if any) forming part of *WUC* in accordance with Part 3.1 of the *WHS Regulation* and clause 305 of the *WHS Regulation*;
- (x) secure relevant work areas from unauthorised access;
- (xi) ensure that general construction induction training is provided to any worker engaged in the carrying out of *WUC*, if that worker:
  - (A) has not successfully completed general construction induction training; or
  - (B) successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years;
- (xii) ensure that no worker engaged in relation to *WUC* carries out, or is directed or allowed to carry out, construction work as part of *WUC* unless:
  - (A) the worker has successfully completed general construction induction training; and
  - (B) if the worker completed the training more than 2 years previously – the worker has carried out construction work in the preceding 2 years;
- (xiii) ensure that each worker referred to in subclause 11.3(c)(xii):
  - (A) holds a general construction induction training card; or
  - (B) if the worker has applied for but not yet been issued with a general construction induction training card, holds a general construction induction training certification, issued within the preceding 60 days;
- (xiv) without limiting or otherwise restricting any other provision of the *Contract*, ensure that at all times any work or other things done in respect of *WUC* by the *Contractor* or any *subcontractor* does not knowingly infringe the work health, safety or rehabilitation obligations of the *Principal*, the *Superintendent*, any *separate contractor*, or any other person who may enter upon the *site*;

- (xv) ensure that there is no unreasonable risk to health, safety and welfare of any persons employed in connection with *WUC* (whether by the *Contractor*, *subcontractors* or otherwise);
  - (xvi) without limiting subclause 11.3(c)(xv), ensure that no person is exposed to a risk to his or her safety or health arising out of, or in any way in connection with, the carrying out of *WUC*;
  - (xvii) without limiting subclause 11.3(c)(xv) or 11.3(c)(xvi), ensure, so far as it is reasonably practicable:
    - (A) the health and safety of any persons on the *site*, the areas identified in *Item 22A* and any *extra land*, including its workers and those engaged in *separate contractor works*; and
    - (B) the *site*, the means of entering and exiting the *site*, and anything arising from the *site* insofar as the *site* comprises a place of work, are without risks to the health and safety of any person;
  - (xviii) comply with any *directions*, manuals, policies or rules formulated from time to time by the *Principal* in relation to safety insofar as they relate to the *site* and are notified to the *Contractor*;
  - (xix) without limiting any provisions of this subclause 11.3, have in place systems to assess and eliminate risks to health and safety at the *site*, the areas identified in *Item 22A* and any *extra land*, which are consistent with the requirements of the *WHS Act* and the *WHS Regulation*;
  - (xx) monitor any measures it implements under subclauses 11.3(c)(iii) and 11.3(c)(xix);
  - (xxi) provide appropriate information, training, instruction and supervision to all persons who may be affected by the performance of *WUC*, including workers employed or engaged by it or its *subcontractors*, or who otherwise undertake work for its benefit, or at its *direction*, at the *site*, the areas identified in *Item 22A* and any *extra land*;
  - (xxii) ensure that *the Works* are safe and without risks to health and safety; and
  - (xxiii) so far as is reasonably practicable, consult, co-operate and co-ordinate with the *Principal* and the *Superintendent* to the extent that the *Principal* and the *Contractor*, may have obligations in respect of the same matter under *WHS Act*.
- (d) The *Contractor* acknowledges and warrants that the *Principal* has given the *Contractor* all relevant information in relation to hazards and risks at or in the vicinity of each workplace where *WUC* is to be carried out (including the *site*).
- (e) The *Contractor* shall provide the *Principal*, monthly or as reasonably requested by the *Principal*, with a copy of all registers, records and documents that the *Contractor* is required to prepare or maintain as a principal contractor under the *WHS Regulation*.
- (f) The *Contractor* shall:
- (i) notify the *Superintendent* immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, *WUC*;

- (ii) institute systems to obtain regular written assurances from all *subcontractors* about their ongoing compliance with the *WHS Act* and *WHS Regulation* including the due diligence obligation contained therein;
- (iii) provide the written assurances obtained under subclause 11.3(f)(ii), together with written assurance(s) from the *Contractor* about the *Contractor's* ongoing compliance with the *WHS Act* and *WHS Regulation*, to the *Superintendent*;
- (iv) upon request, provide the *Superintendent* with a written report on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this subclause 11.3), or any other relevant matters as the *Superintendent* may require from time to time, including a summary of the *Contractor's* compliance with the *WHS Act* and *WHS Regulation*;
- (v) ensure that, if any *legislative requirement* requires that:
  - (A) a person:
    - (1) be authorised, registered or licensed (including in accordance with the *WHS Act* and *WHS Regulation*) to carry out any work, that person is so authorised, registered or licensed, and complies with any conditions of such authorisation, registration or licence; or
    - (2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (including as defined in the *WHS Act* or *WHS Regulation*), that person has the required qualifications or experience or is so supervised; or
  - (B) a workplace, plant, substance, design, or work (or class of work) be authorised, registered or licensed, that workplace, plant, substance, design, or work is so authorised, registered or licensed;
- (vi) not direct or allow a person to carry out or use plant or substances at a workplace unless the requirements of subclause 11.3(f)(v) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (vii) if requested by the *Superintendent* or required by the *WHS Act* or *WHS Regulation*, produce evidence of any *approvals*, certificates, authorisations, licences, registration, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the *Superintendent* before the *Contractor* or *subcontractor* (as the case may be) commences such work.
- (g) The *Contractor* indemnifies the *Principal* against all losses, expenses, damages and liabilities of any nature, suffered or incurred by the *Principal* arising out of, or in any way in connection with, any failure by the *Contractor* to comply with its obligations or any breach of warranty under this subclause 11.3.
- (h) Except as otherwise provided in subclause 1.1, all terms used in this subclause 11.3 have the meanings given to them in the *WHS Act* and the *WHS Regulation*.

#### **11.4 The environment**

Without limiting clause 12 or subclauses 11.3 or 15.1, the *Contractor* shall:

- (a) ensure that in carrying out *WUC* it complies with all *legislative requirements* relating to the protection of the *environment*, including any *legislative requirement* in respect of

*contamination* caused or contributed to by the *Contractor* or its employees, agents or *subcontractors*;

- (b) ensure that there is no risk to the *environment* arising out of, or in any way in connection with, the performance of *WUC*;
- (c) remediate any *pollution, contamination* or damage to the *environment* arising out of, or in any way in any connection with, the carrying out of *WUC*;
- (d) without limiting subclauses 11.4(a), 11.4(b) and 11.4(c) ensure that:
  - (i) it does not pollute, *contaminate* or damage the *environment* or the *site*, the areas identified in *Item 22A* or any *extra land*; and
  - (ii) its *subcontractors* comply with the requirements of this subclause 11.4; and
- (e) indemnify the *Principal* against all damage, expense, loss or liability of any nature 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 11.4.

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## **12. Protection of people and property**

### **12.1 Contractor's obligations**

Without limiting the obligations of the *Contractor* under any other provision of the *Contract*, 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, including to:
  - (i) the *Principal* and users or occupiers of the *site*, the areas identified in *Item 22A* or *extra land* in their occupation or use of, or attendance upon, any part of the *site*, the areas identified in *Item 22A* or *extra land*;
  - (ii) others having a right of access to the *site*, the areas identified in *Item 22A* or *extra land*; and
  - (iii) the users, occupiers, visitors and tenants of any land adjoining or adjacent to the *site*, the areas identified in *Item 22A* or *extra land*.

Without limiting subclause 15.1, if the *Contractor*, any *subcontractor* or the employees or agents of the *Contractor* or any *subcontractor* damages property, including the *Works*, public utilities or services or property on or adjacent to the *site*, the areas identified in *Item 22A* or *extra land*, 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 subclause 12.1, 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 by the *Principal* shall be certified by the *Superintendent* and shall be a debt due from the *Contractor* to the *Principal*.

## 12.2 Injunctions

If an injunction or order is issued from any court or tribunal restraining the continuance of *WUC* either absolutely or conditionally upon the application of a third party:

- (a) the party to the *Contract* receiving notice of the injunction or order shall immediately inform the other party and the *Superintendent*;
- (b) without limiting any rights the *Contractor* may have under subclause 33.4, upon receiving notice of the injunction or order, the *Contractor* shall immediately comply with the terms and conditions of such injunction or order;
- (c) the *Principal* will thereupon be entitled by notice in writing to the *Contractor* to suspend the carrying out of *WUC* under subclause 33.1 or, whether or not such a *direction* to suspend has been issued, to terminate the *Contract* under subclause 39.14; and
- (d) if the *Contract* has not been terminated under subclause 39.14, the *Superintendent* may, at any time after the removal of the injunction or order, instruct the *Contractor* to continue with the carrying out of *WUC*.

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## 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 by the *Principal* which shall be a debt due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action in accordance with this clause 13.

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## 14. Care of the work and reinstatement of damage

### 14.1 Care of *WUC* and the Works

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

- (a) the whole of the *Works* and *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the date of issue of the *certificate of practical completion*, at which time responsibility for the care of the *Works* and *WUC* (except to the extent provided in subclause 14.1(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 issue of the *certificate of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of subclause 14.1(a), the *Contractor* shall be responsible for the care of items (including any unfixed plant and materials) accounted for in a *payment schedule* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by the *Contractor* or *subcontractors* for carrying out *WUC* (including *construction plant*).



## **14.2 Reinstatement**

If loss or damage, other than that caused by an *excepted risk*, occurs to *the Works* or *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 contribution of the *excepted risks* to the loss or damage.

## **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) not used;
- (c) terrorism (except to the extent that insurance coverage for a terrorist act is available to the *Contractor* as a consequence of the *Terrorism Insurance Act 2003* (Cth)), 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;
- (e) use or occupation of any part of *the Works* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) except to the extent such use or occupation arises out of, or in any way in connection with, the testing or commissioning of the *Works* by or on behalf of the *Principal* in accordance with the *Contract*; and
- (f) *defects* in the design of *the Works*, other than design provided by or on behalf of the *Contractor*, or any of its employees, agents or *subcontractors*.

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## **15. Damage to persons and property other than WUC**

### **15.1 Indemnity by Contractor**

Insofar as this subclause applies to property, it applies to property other than *WUC* or *the Works*.

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* or any other act, default or omission of the *Contractor*, its *subcontractors* or their respective employees and agents in connection with *WUC* or *the Works*, but the indemnity shall be reduced proportionally to the

extent that an act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (c) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (d) exclude any other right or remedy, whether under the *Contract*, at common law or otherwise of the *Principal* to be indemnified by the *Contractor*;
- (e) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (f) claims in respect of the *Principal's* right to have *WUC* carried out.

## 15.2 Not used

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## 16. Insurance of the Works

The Alternative in *Item 20(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 design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) not used;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or *contamination* by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from the *excepted risks* referred to in subclause 14.3(c).

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

- (g) *contract sum*;
- (h) amount in *Item 20(b)* to provide for costs of demolition and removal of debris;
- (i) amount in *Item 20(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (j) value in *Item 20(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and

- (k) additional amount or percentage in *Item 20(e)* of the total of the items referred to in subclauses 16(g) to 16(j).

Insurance shall be in the joint names of the parties, shall cover the parties and all *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**

On or before the *Contract Date*, the *Principal* shall insure *WUC* on the terms of the policy referred to in *Item 20*. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and the *Contractor* shall:

- (a) satisfy itself of the nature and extent of the *Principal's* insurance;
- (b) if necessary, take out insurance to:
  - (i) insure any risk not insured by the *Principal's* insurance; or
  - (ii) cover any such exclusions, conditions or excesses in that insurance,which a prudent contractor would insure against or cover; and
- (c) where it is responsible for the care of things under subclause 14.1, bear the cost of any excesses in the *Principal's* insurance.

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**16A. Construction plant and motor vehicle insurance**

Before commencing *WUC*, the *Contractor* shall effect an insurance policy which provides cover for:

- (a) loss or destruction of, or damage to, *construction plant* and motor vehicles owned by or (subject to subclause 16A(b)) held on trust by or in the custody or control of the *Contractor*, for an amount not less than the market value of the *construction plant* and motor vehicles;
- (b) loss or destruction of, or damage to, *construction plant* entrusted by the *Principal* to the *Contractor* or a *subcontractor* for the purpose of carrying out *WUC*, for an amount of not less than the replacement value of the *construction plant*; and
- (c) liability to third parties in respect of:
  - (i) death of or injury to any person, as required to comply with any relevant *legislative requirement* relating to compulsory third party liability insurance; and
  - (ii) loss or destruction of, or damage to, property, including property owned or held on trust by or in the custody or control of the *Principal*, for an amount not less than that stated in *Item 20A*, arising out of the ownership, or use of, *construction plant* or motor vehicles.

The *Contractor* shall maintain the insurance until the *final certificate* is issued.

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**16B. Asbestos Insurance**

- (a) This clause 16B (other than this subclause 16B(a)) applies only where provided in *Item 20B*.
- (b) The *Contractor* shall effect and maintain, and shall ensure that all *subcontractors* who will be carrying out work on *site* involving asbestos effect and maintain, *Asbestos Insurance* for the amount referred to in *Item 20B* and in compliance with all *legislative requirements*, on terms satisfactory to the *Superintendent*.

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**16C. Professional indemnity insurance**

- (a) This clause 16C (other than this subclause 16C(a)) applies only where provided in *Item 20C(a)*.
- (b) Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 20C(b)*.
- (c) The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 20C(c)*.
- (d) The *Contractor* shall ensure that every *subcontractor* involved in the performance of design or consultancy services, if within a category stated in *Item 20C(d)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 20C(d)* applicable to that category.
- (e) The *Contractor* shall ensure that each such *subcontractor's* professional indemnity insurance is maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 20C(e)*.

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**17. Public liability insurance**

The Alternative in *Item 21(a)* applies.

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

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The *public liability 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* 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 16) 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 21(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 by the *Contractor* until the later of:
  - (i) the expiry of the last *defects liability period* to expire; or
  - (ii) the date upon which all *defects* have been rectified in accordance with the *Contract*.

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

On or before the *Contract Date*, the *Principal* shall effect in relation to *WUC*, a policy of insurance in the terms of the policy referred to in *Item 21(c)*. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and the *Contractor* shall:

- (a) satisfy itself of the nature and extent of the *Principal's* insurance;
- (b) if necessary, take out insurance to:
  - (i) insure any risks not insured by the *Principal's* insurance; or
  - (ii) cover any such exclusions, conditions or excesses in that insurance,
 which the *Contractor* wants to or ought prudently to insure against or cover; and
- (c) where it is required to indemnify the *Principal* under subclause 15.1, bear the cost of any excesses in the *Principal's* insurance.

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**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 *subcontractors* have similarly insured their employees.

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## **19. Inspection and provisions of insurance policies**

### **19.1 Proof of insurance**

Before the *Contractor* commences *WUC* and whenever requested in writing by the *Superintendent*, the *Contractor* shall provide satisfactory evidence of compliance with its obligations in relation to insurance, including by providing copies of the relevant insurance policies (except for the insurance policy required by clause 18) and certificates of currency.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

### **19.2 Failure to produce proof of insurance**

If after being so requested under subclause 19.1, the *Contractor* fails promptly to provide evidence of satisfactory compliance with its obligations in relation to insurance, then without prejudice to other rights or remedies, the *Principal* may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the *Contractor* to the *Principal*. The *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### **19.3 Notices from or to insurer**

Without limiting subclause 19.7, the *Contractor* shall ensure that each insurance policy it is required to effect under clauses 16 and 17 contains provisions acceptable to the *Principal* which:

- (a) require the insurer to inform both parties, whenever the insurer gives the *Contractor* or a *subcontractor* a notice in connection with the policy and provide a copy of that notice to the *Principal*;
- (b) provide that:
  - (i) a notice of the occurrence of an event or circumstance which has or will cause loss or damage, or incur a liability; or
  - (ii) a notice of claim given to the insurer by either party, the *Superintendent* or a *subcontractor*,shall be accepted by the insurer as a notice of that occurrence or claim given by both parties, the *Superintendent* and the *subcontractor*;
- (c) require the insurer, whenever the *Contractor* fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy;
- (d) require the insurer to give the *Principal* 30 days prior written notice of the cancellation or lapsing of the policy; and
- (e) provide that any breach of the policy conditions by any party comprising the insured will not in any way prejudice or diminish any rights which any other party comprising the insured would have had under the policy but for the breach of policy conditions.

### **19.4 Notices of potential claims**

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

## **19.5 Settlement of claims**

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

- (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 reasonable 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**

The *Contractor* shall ensure that any insurance required by the *Contract* to be effected by the *Contractor* 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).

## **19.7 Insurance generally**

The *Contractor* shall ensure that each insurance policy required to be effected by the *Contractor* is effected with a licensed insurer, and (except in respect of an insurance policy required by clause 18) on terms, both approved by the *Principal* before the commencement of the *WUC*.

The *Contractor* shall ensure that it:

- (a) does not do anything which prejudices any insurance in relation to *WUC* or the *Works*, or which the *Contractor* or the *Principal* is otherwise required by the *Contract* to effect and maintain;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel or vary any insurance policy, or allow an insurance policy to lapse, without the prior written consent of the *Principal*;
- (e) immediately notifies the *Principal* of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

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## **20. Superintendent**

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

The *Contractor* acknowledges and agrees that the *Superintendent* may be an employee of the *Principal*. Subject to subclause 37.8, the *Superintendent* will give *directions* and carry out all its other functions under the *Contract* as agent of the *Principal* (and not as independent certifier, assessor or valuer).

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.

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## **21. Superintendent's Representative**

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

- (a) delegation shall not prevent the *Superintendent* exercising any function; and
- (b) 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.

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## **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 from the *Superintendent*) 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.

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## **23. Contractor's employees and subcontractors**

### **23.1 Removal of personnel**

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*:

- (a) who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct or who is otherwise causing the *Contractor* not to comply with the *Contract*; or
- (b) against whom the *Principal* otherwise makes reasonable objection.

### **23.2 Key personnel**

The *Contractor* shall:

- (a) employ those people specified in *Item 21A*, including the *Contractor's* representative, in the positions specified in *Item 21A*;



- (b) subject to subclause 23.2(c), not replace the people referred to in subclause 23.2(a) without the *Superintendent's* prior written approval; and
- (c) if any of the people referred to in subclause 23.2(a) dies, becomes seriously ill or resigns from the employment of the *Contractor*, replace them with persons approved by the *Superintendent* of at least equivalent experience, ability and expertise.

### **23.3 Industrial relations**

The *Contractor* shall in carrying out *WUC*:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant *legislative requirements*, are always observed in full; and
- (c) keep the *Superintendent* fully and promptly informed of industrial relations problems or issues which affect or are likely to affect *WUC*,

to the extent such matters relate to the *Contractor's* or its *subcontractors'* employees or contractors.

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## **24. Site**

### **24.1 Access to site**

Provided the *Contractor* has complied with subclause 19.1 and any pre-conditions to access set out in *Item 22(b)*, the *Principal* shall before the expiry of the time in *Item 22(a)*, give the *Contractor* 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* in accordance with the *Contract*. Subject to subclause 39.7, delay by the *Principal* in giving access to the *site* shall not be a breach of the *Contract*, but such failure may (subject to the other terms of the *Contract*) constitute a *qualifying cause of delay*.

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**

Without limiting clause 9A or subclause 34.10, the *Contractor* acknowledges and agrees that the *Principal* and the *Principal's* employees, consultants, contractors, nominees and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site*, or any other place where *work*, materials, equipment or plant is being carried out, manufactured, prepared or stored, for any purpose, including for the purpose of inspecting the *WUC*.

Without limiting clause 9A, the *Contractor* shall:

- (a) permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC*;
- (b) cooperate with them and co-ordinate and interface *WUC* with the *work* being carried out by such other persons; and

- (c) use reasonable endeavours to avoid interfering with, disrupting or delaying such other persons.

The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged by the *Principal* if requested by the *Contractor*.

Without limiting clause 12 or subclauses 15.1 or 24.1, the *Contractor* shall:

- (d) at all reasonable times give the *Superintendent* access to *WUC*; and
- (e) provide the *Principal* and the *Superintendent* with every facility reasonably necessary for the supervision and examination of *WUC*.

Without limiting subclause 9A(d), the *Principal* will use reasonable endeavours to minimise delay and disruption to the execution of *WUC* caused by persons referred to in this subclause 24.2. Without limiting subclause 9A(h), a failure by the *Principal* under this paragraph shall not be a breach of the *Contract*.

#### **24.3 Minerals, fossils and relics**

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

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery,

and the *Contractor* shall comply with any *direction* of the *Superintendent* in relation to this subclause 24.3.

The additional reasonable costs so incurred by the *Contractor* in complying with the *Superintendent's direction* shall be assessed by the *Superintendent* and added to the *contract sum*.

#### **24.4 Extra land required by the Contractor**

*Item 22A* sets out the details of any area of land, in addition to the *site*, which the *Principal* has procured access to enable the *Contractor* to carry out *WUC*.

The *Contractor* shall:

- (a) comply with all obligations of the *Principal* under any agreement with a person having an interest in land set out in *Item 22A* (but only to the extent the terms of such agreement are provided to the *Contractor* before the *Contract Date*);
- (b) procure for itself at its cost the occupation or use of, or relevant rights over any *extra land*;
- (c) indemnify the *Principal* against any *claim* against the *Principal* by any owner or occupier of, or any other person having an interest in:
  - (i) any land set out in *Item 22A*, to the extent such *claim* is caused or contributed to by any:
    - (A) breach by the *Contractor* of its obligations under subclause 24.4(a); or
    - (B) any act or omission of the *Contractor* or its *subcontractors*; and

- (ii) any *extra land*; and
- (d) as a condition precedent to *practical completion* provide the *Superintendent* with an executed release on terms satisfactory to the *Principal* (acting reasonably) from all claims from each owner or occupier of, and any other persons having an interest in, any *extra land*.

## **24.5 Signage**

The *Contractor* shall:

- (a) not erect or display any signs, advertisements or displays on or adjacent to the *site* without the prior written consent of the *Principal*, which consent may be withheld at the sole discretion of the *Principal*; and
- (b) comply with any *direction* of the *Superintendent* or the *Principal* relating to the appearance or aesthetics of the *site* or the *Works* (including but not limited to *temporary works*), to the extent that it is reasonably practicable to do so.

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## **25. Site conditions**

### **25.1 Site investigation**

Without limiting or otherwise affecting subclauses 25.2, 25A.1 and 25A.2, but subject to the *Contractor's* entitlements under subclauses 25.4 and 34.3 in respect of *latent conditions*, the *Contractor* warrants that prior to the *Contract Date*, it:

- (a) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all documents and other information relevant to the risks, contingencies and other circumstances having an effect on the *contract sum*, the *date for practical completion* and its obligations under the *Contract* and which were obtainable by the making of reasonable enquiries and investigations; and
- (b) was given the opportunity prior to the *Contract Date* to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of the *information documents* and *site conditions* and for this purpose was given access to such parts of the *site*, the *extra land* and the areas identified in *Item 22A* as it required.

### **25.2 Acceptance of Site Conditions**

Without limiting or otherwise affecting subclauses 25.1, 25A.1 and 25A.2, but subject to the *Contractor's* entitlements under subclause 25.4 and clause 34 in respect of *latent conditions*:

- (a) the *Principal* makes no representation and gives no warranty to the *Contractor* in respect of *site conditions* likely to be encountered, or which may be encountered, during the execution of *WUC* or otherwise in respect of the condition of:
  - (i) the *site*, the areas identified in *Item 22A* or any *extra land*; or
  - (ii) any structure or other thing on, under or adjacent to, or otherwise in the vicinity of, the *site*, the areas identified in *Item 22A* or any *extra land*;
- (b) the *Contractor* shall accept:
  - (i) the *site*;

- (ii) the areas identified in *Item 22A* and any *extra land*;
  - (iii) any structure or other thing on, under or adjacent to, or otherwise in the vicinity of, the *site*, the areas identified in *Item 22A* and any *extra land*, and any *site conditions*; and
  - (iv) the means of accessing the *site* and any *extra land*,
- in their existing condition (including when encountered) subject to all defects; and
- (c) the *Contractor* agrees that it is responsible for, and assumes the risk of, and (except as provided for in subclauses 25.4 and 34.3 in respect of *latent conditions*) will not be entitled to make any *claim* arising out of, or in any way in connection with, any additional *work*, increased costs and any damage, expense, loss, liability or delay (including any delay in achieving *practical completion*) it suffers or incurs arising out of, or in any way in connection with:
    - (i) the *site conditions* actually encountered during the execution of *WUC*;
    - (ii) any *extra land*; and
    - (iii) the *environment* associated with the *site*, the areas identified in *Item 22A* or any *extra land* or their surroundings,

including:

    - (iv) the existence of any *contamination* or any decontamination or remediation required to carry out *WUC* or otherwise use and occupy *the Works*; and
    - (v) the suitability or otherwise of the *site*, the areas identified in *Item 22A* and any *extra land* for *WUC*.

### 25.3 Notification

The *Contractor*, upon becoming aware of a *latent condition*, shall immediately, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

Without limiting or otherwise affecting the generality of the foregoing, or the *Contractor's* obligations under subclauses 34.2, 34.3 and 41.1, the *Contractor* shall, as a condition precedent to any entitlement under subclause 25.4 and clause 34 in respect of the relevant *latent condition*, as soon as reasonably practicable after issuing a notice under the preceding paragraph, but in any event within 7 days of the *Contractor* first becoming aware of the relevant *latent condition*, give the *Superintendent* a written notice, which notice shall include:

- (a) details of the *latent condition* encountered (including detailed reasons why it constitutes a *latent condition*);
- (b) details of any additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) any other details reasonably required by the *Superintendent*.

## **25.4 Cost of latent conditions**

If a *latent condition* in respect of which the *Contractor* has satisfied the condition precedent under subclause 25.3 causes the *Contractor* to:

- (a) carry out more or less *work*; or
- (b) directly and reasonably incur more or less cost,

the difference in reasonable costs directly incurred by the *Contractor* shall (in the case of more cost, subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be assessed by the *Superintendent* and added to or deducted from the *contract sum* (as applicable).

The *Contractor* releases the *Principal* from any *claim* arising out of, or in any way in connection with, the relevant *latent condition* except where the condition precedent under subclause 25.3 and the requirements of this subclause 25.4 have been satisfied.

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## **25A Information documents**

### **25A.1 No warranty by Principal**

Without limiting or otherwise affecting the *Contractor's* entitlements under subclause 25.4 and clause 34 in respect of *latent conditions*, the *Principal* does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the *Contractor* with respect to the suitability, completeness, accuracy or adequacy of any *information document*.

### **25A.2 Warranty by Contractor**

Without limiting or otherwise affecting the *Contractor's* entitlements under subclause 25.4 and clause 34 in respect of *latent conditions*, the *Contractor*:

- (a) warrants that:
  - (i) it has not relied upon and will not rely upon the suitability, completeness, accuracy or adequacy of any *information document*; and
  - (ii) it entered into the *Contract* based on its own investigations, interpretations, deductions, information and determinations; and
- (b) acknowledges that it is aware that:
  - (i) the *Principal* has entered into the *Contract* relying upon the warranties in this subclause 25A.2; and
  - (ii) the *Principal* would not have entered into the *Contract* but for those warranties.

### **25A.3 Principal not liable**

Except to the extent expressly provided in subclause 25.4 and clause 34 in respect of *latent conditions*, the *Principal* shall not be liable upon any *claim* by the *Contractor* arising out of, or in any way in connection with:

- (a) any error in or omission from any *information document*;
- (b) any use of or reliance upon any *information document* by the *Contractor*;

- (c) any other fact, matter or thing arising out of, or in any way in connection with, any *information document*; or
- (d) any failure by the *Principal* to make available to the *Contractor* any other document or information for the purposes of *the Works*, *WUC* or the *Contract*, including in relation to conditions on, in or under or in the vicinity of the *site*, the areas identified in *Item 22A* or any *extra land*.

#### **25A.4 Risk accepted by Contractor**

Except to the extent expressly provided in subclause 25.4 and clause 34 in respect of *latent conditions*, the *Contractor* accepts all risk arising out of its use of or reliance upon any *information document*.

#### **25A.5 Information documents not part of the Contract**

The *Contractor* acknowledges and agrees that the *information documents* were provided to the *Contractor* for the information only of the *Contractor* and do not form part of the *Contract*.

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### **26. Setting out the Works**

#### **26.1 Setting out**

The *Contractor* shall procure the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, other than 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 days directs otherwise.

If the error was caused by *survey marks* specified in the *Contract*, the reasonable cost directly incurred by the *Contractor* in rectifying the error shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) 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 days directs otherwise.

If the disturbance was caused by a person referred to in clause 9A or subclause 24.2 other than the *Contractor* or its *subcontractors*, the reasonable cost directly incurred by the *Contractor* in reinstating the *survey mark* shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be assessed by the *Superintendent* and added to the *contract sum*.

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### **27. Cleaning up**

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

As a condition precedent to *practical completion*, the *Contractor* shall remove all *temporary works* and *construction plant*. The *Superintendent* may (in its absolute discretion) 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 by the *Principal* which shall be a debt due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

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## **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 *Contractor* shall not remove materials or *construction plant* from the *site* without the *Superintendent's* prior written approval, except for the purpose of achieving *practical completion*.

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## **29. Quality**

### **29.1 Quality of material and work**

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

### **29.2 Quality assurance**

The *Contractor* shall:

- (a) plan, establish and maintain a quality system which conforms with the requirements set out in *Item 22B* and which otherwise conforms with the requirements of the *Contract*; and
- (b) ensure that the *Superintendent* has access to the quality system of each of the *Contractor* 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*.

The *Contractor* shall not be relieved from compliance with any of its obligations under the *Contract* or from any of its liabilities under the *Contract* or otherwise at law or in equity as a result of:

- (c) the implementation of, or compliance with, the quality system requirements of the *Contract*;
- (d) any *direction* by the *Superintendent* concerning the *Contractor's* quality system or its compliance or non-compliance with that system; or
- (e) any audit or other monitoring by the *Superintendent* of the *Contractor's* compliance with the quality system.

### **29.3 Defective work**

If the *Superintendent* becomes aware of a *defect*, the *Superintendent* may give the *Contractor* written details thereof together with a *direction* to 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 the *Contractor* fails to comply with such a *direction* (including in respect of timing requirements),

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred by the *Principal* which shall be a debt due from the *Contractor* to the *Principal*.

### **29.4 Variation of defective work**

Instead of a *direction* under subclause 29.3, the *Superintendent* may direct a *variation* under subclause 36.1.

Where:

- (a) the *Contractor* is not responsible for the *defect* (or relevant part), the *variation* shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be valued under subclause 36.4 and the *Contractor* will be entitled to an *EOT* where it is otherwise so entitled under clause 34; or
- (b) the *Contractor* is responsible for the *defect* (or the relevant part):
  - (i) the *Superintendent* will determine:
    - (A) the value of the *variation* in accordance with subclause 36.4; and
    - (B) the cost of correcting the *defect* (or the relevant part) as if the *Superintendent* had given a *direction* under subclause 29.3;



- (ii) the *contract sum* will be adjusted by the difference between the valuations under subclause 29.4(b)(i) as follows:
  - (A) if the value under subclause 29.4(b)(i)(A) is greater than the cost under subclause 29.4(b)(i)(B), the *contract sum* will be increased; or
  - (B) if the value under subclause 29.4(b)(i)(B) is greater than the cost under subclause 29.4(b)(i)(A), the *contract sum* will be decreased; and
- (iii) despite clause 34, the *Contractor* shall not be entitled to any *EOT*.

## **29.5 Acceptance of defective work**

Instead of a *direction* in accordance with subclause 29.3 or subclause 29.4, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject work, whereupon there shall be a deemed *variation* which shall be valued under subclause 36.4. In valuing the *variation*, the *Superintendent* shall have regard to the resulting decrease in value to the *Principal of the Works* and any other loss or damage suffered by the *Principal*.

## **29.6 Timing**

The *Superintendent* may give a *direction* in accordance with this clause 29 at any time before the expiry of the last *defects liability period* to expire.

## **29.7 Common law rights preserved**

Nothing in this clause 29 or in any other provision of the *Contract* limits or otherwise affects the *Principal's* common law rights against the *Contractor* arising out of, or in any way in connection with, the failure of the *Contractor* to carry out work in accordance with the requirements of the *Contract*.

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# **30. Examination and testing**

## **30.1 Tests**

Without limiting the *Contractor's* other testing obligations under the *Contract*, at any time before the expiry of the last *defects liability period* to expire, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of the *Works* or *WUC* as may be directed by the *Superintendent*, including such parts of the *Works* or *WUC* as may be carried out at the premises of the *Contractor* or of any of its *subcontractors*.

## **30.2 Covering up**

The *Superintendent* may direct that any part of the *Works* or *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**

Subject to compliance by the *Contractor* with subclauses 41.2 and 41.3, the reasonable costs directly incurred by the *Contractor* in connection with testing under this clause 30 will be assessed by the *Superintendent* and added to the *contract sum* unless:

- (a) the *Contract* provides that the *Contractor* shall bear the costs, or the *test* is one which the *Contractor* was required to conduct under the *Contract* (other than a *test* directed under subclause 30.1);
- (b) the *test* shows that the material or *work* is not in accordance with the *Contract*, or otherwise identifies a *defect*;
- (c) the *test* is in respect of the *Works* or *WUC* covered up or made inaccessible contrary to a *direction* under subclause 30.2; or
- (d) the *test* is otherwise consequent upon, or reveals, a failure of the *Contractor* to comply with a requirement of the *Contract*.

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## **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 *Superintendent* to the *Contractor* before commencement of *WUC* on *site*. 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.

Except as otherwise provided in the *Contract*, the *Contractor* agrees to assume the risk of the working hours and working days on the *site* differing from those set out in the *Contract* or notified by the *Superintendent* under the preceding paragraph.

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## **32. Programming**

### **32.1 General**

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs 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 *Contract Date*.

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 within 5 *business days* after receiving the *direction*, otherwise the *Contractor* will be deemed to be able to comply with the *direction*.

The *Contractor* shall not, without reasonable cause, depart from the *approved program*.

If compliance with any such *directions* under this subclause 32.1, except those arising out of 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 (in the case of more cost, subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be assessed by the *Superintendent* and added to or deducted from the *contract sum* (as applicable).

### **32.2 Effect of a construction program**

The *Contractor* shall:

- (a) within 14 days of the *Contract Date*, prepare and submit to the *Superintendent* a *construction program* (in such a native, fully editable electronic form as required by the *Superintendent* together with a hard copy form) which:
  - (i) shows all of the *Contractor's* bona fide planned work activities and sequences for bringing *WUC* to *practical completion* by the *date for practical completion* (including identifying the activities forming part of the critical path and the amount of contingency in each activity);
  - (ii) is consistent with the *Contractor's construction program* submitted to the *Principal* immediately before the *Contract Date* including the milestones shown in that *construction program*;
  - (iii) clearly specifies all working days; and
  - (iv) is in a form and contains such other details as the *Contract* requires or the *Superintendent* may require; and
- (b) update the *construction program* and submit it to the *Superintendent* periodically (at least at intervals of no less than the period specified in *Item 22D*) to take account of:
  - (i) the *Contractor's* proposed changes to the timing, sequencing or duration of the activities forming part of *WUC*; or
  - (ii) delays which may have occurred, including any for which the *Contractor* has been granted an *EOT* under subclause 34.5.

If the actual progress of *WUC* falls significantly behind or otherwise departs significantly from that shown in the *approved program*, or if *directed* to do so by the *Superintendent*, the *Contractor* shall promptly submit to the *Superintendent* for approval a revised *construction program* complying with this subclause 32.2.

The *Superintendent* may reject a *construction program* or revised *construction program* submitted by the *Contractor* under this subclause 32.2 within 14 days of receipt. If the *Superintendent* rejects a *construction program* or revised *construction program* submitted by the *Contractor* under this subclause 32.2, the *Contractor* shall promptly amend the *construction program* and resubmit it to the *Superintendent* for approval and this paragraph shall re-apply.

No changes shall be made to the *approved program* without the prior written approval of the *Superintendent*. The *approved program* does not form part of the *Contract* but may be used

by the *Superintendent* to monitor the progress of *WUC* and to assess claims by the *Contractor* for an *EOT* and entitlements under subclause 34.9.

No review of, comment upon, approval or rejection of, or failure to review, comment upon, approve or reject, a program (including the *approved program*) shall:

- (c) relieve the *Contractor* from any of its liabilities or obligations, including the obligation to achieve *practical completion* by the *date for practical completion*;
- (d) evidence or constitute a *direction* by the *Superintendent* to accelerate, disrupt, prolong or vary any or all of *WUC* or granting an *EOT*; or
- (e) affect the time for performance of the *Principal's* or the *Superintendent's* obligations or functions.

### **32.3 Acceleration by Contractor**

The *Superintendent*, the *Principal*, *separate contractors* and their respective *consultants*, *contractors* (other than the *Contractor*) and agents are not obliged to do or refrain from doing anything to enable the *Contractor* to reach *practical completion* before the *date for practical completion*.

The time for performance of the *Principal's* or the *Superintendent's* obligations is not affected by the *Contractor's* desire or attempts to reach *practical completion* before the *date for practical completion*.

### **32.4 Acceleration**

Where the *Contractor* is entitled to an *EOT* under clause 34, the *Superintendent* may, instead of granting a reasonable *EOT* under subclause 34.5, direct the *Contractor* in writing to accelerate the performance of *WUC* so as to overcome the whole or part of the delay which gave rise to the entitlement to an *EOT* and the *Contractor* shall comply with that *direction*.

If the *Superintendent* directs the *Contractor* under this subclause 32.4 to accelerate the performance of *WUC* so as to overcome the whole of the delay in question, the *Contractor* shall no longer be entitled to any *EOT* for that delay.

If the *Superintendent* directs the *Contractor* under this subclause 32.4 to accelerate the performance of *WUC* so as to overcome part only of the delay in question, the *Contractor* shall no longer be entitled to any *EOT* for that part of the delay, but the *Superintendent* shall grant a reasonable *EOT* under subclause 34.5 for the balance of the delay.

No *direction* by the *Superintendent* shall constitute a *direction* under this subclause 32.4 unless it is in writing and expressly states that it is a *direction* under subclause 32.4.

If compliance with a *direction* to accelerate given under this subclause 32.4 causes the *Contractor* to:

- (a) directly and reasonably incur more cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, such additional costs shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3 and except to the extent the *direction* was caused by any breach of the *contract* or other act or omission of the *Contractor*) be assessed by the *Superintendent* and added to the *contract sum*; or
- (b) incur less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the decrease in costs shall be assessed by the *Superintendent* and deducted from the *contract sum*.

### **32.5 Corrective Action**

If, at any time, the progress of *WUC* has fallen behind that shown in the *approved program* or is otherwise is not in accordance with the *Contract* (including where *practical completion* is not achieved by the *date for practical completion*), or in the opinion of the *Superintendent* *practical completion* is not likely to be achieved by the *date for practical completion*, the *Contractor* shall take the necessary corrective action so as to ensure that progress is maintained in accordance with the *Contract* (including so as to achieve *practical completion* by the *date for practical completion*). Subject to subclause 11.1 and clause 31, such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the *work* and the adjustment and rescheduling of activities. The *Superintendent* may, from time to time, direct the *Contractor* to provide details of the corrective action it plans to take, or is taking, under this subclause 32.5.

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## **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 its employees, consultants, separate contractors or agents (not being employed by the *Contractor*); or
  - (ii) the *Contractor*, a *subcontractor* or the employees or agents of either of them;
- (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 in accordance with subclause 39.9 or pursuant to a right under a *legislative requirement* (including the *Security of Payment Act*), the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may in its absolute discretion approve or reject the request for 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 in accordance with subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

### **33.4 Costs**

The *Contractor* shall bear the cost of suspension in accordance with subclause 33.1(a)(ii) and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of *work* necessary, the *Contractor* shall bear the cost of suspension in accordance with subclause 33.1(b) or 33.1(c). If the *Contractor* otherwise:

- (a) directly and reasonably incurs more cost than otherwise would have been incurred, such additional costs shall (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be assessed by the *Superintendent* and added to the *contract sum*; or
- (b) incur less cost than otherwise would have been incurred, the decrease in costs shall be assessed by the *Superintendent* and deducted from the *contract sum*.

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### **33A Passing of title**

Without limiting subclause 37.3 or the *Principal's* rights at law, unencumbered title in the plant, equipment and materials forming part of or to form part of *the Works* shall pass to the *Principal*, and the *Contractor* shall do all things necessary to ensure that such unencumbered title passes to *the Principal*, upon the earlier of:

- (a) payment being made by or on behalf of the *Principal* to the *Contractor* (or, in the case of a direct payment to a third party in accordance with subclause 38.3, upon receipt of payment by that party) of that part of the *contract sum* relating to such plant, equipment and materials; and
- (b) delivery of such plant, equipment and materials to the *site*.

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## **34. Time and progress**

### **34.1 Progress**

The *Contractor* shall proceed with WUC with due expedition and without delay and ensure that *practical completion* is achieved by the *date for practical completion*.

### **34.2 Notice of delay**

If the *Contractor* becomes aware of anything which may cause delay to WUC, the *Contractor* shall promptly (and in any event within 5 *business days* of becoming so aware) give the *Superintendent* and the *Principal* written notice of that cause and the estimated delay.

### **34.3 Claim**

Subject to subclause 32.4, the *Contractor* shall be entitled to such extension of time to the *date for practical completion* as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed:
  - (i) prior to the *date for practical completion*, by a *qualifying cause of delay* in a manner that will prevent it from achieving *practical completion* by the *date for practical completion*; or
  - (ii) on or after the *date for practical completion*, by an event referred to in paragraph (a) of the definition of *qualifying cause of delay* in subclause 1.1 in a manner that will delay it in achieving *practical completion*; and
- (b) the *Contractor* gives the *Superintendent*, within 21 days of the first occurrence of the *qualifying cause of delay*, a written *claim* for an *EOT* evidencing the facts of causation and of the delay (including extent) to *practical completion*.

If a *qualifying cause of delay* evidenced in a *claim* under subclause 34.3(b) causes delay beyond the date that is 21 days after the first occurrence of the *qualifying cause of delay*, the *Contractor* shall give the *Superintendent* a further written *claim* for an *EOT* evidencing

the facts of that delay (including extent) to *practical completion* every 7 days until the relevant delay ceases.

It is a condition precedent to the *Contractor's* entitlement to an *EOT* that the *Contractor* submits the notices required by subclause 34.2 and this subclause 34.3, strictly in accordance with the requirements set out in those subclauses (including in relation to timing). The *Contractor* releases the *Principal* from any *claim* (including for an *EOT*) arising out of, or in any way in connection with, a *qualifying cause of delay* where the *Contractor* has failed to submit the notices required by subclause 34.2 and this subclause 34.3 strictly in accordance with the requirements set out in those subclauses (including in relation to timing).

#### **34.4 Assessment**

When:

- (a) prior to the *date for practical completion*, both delay caused by a cause of delay that is a *qualifying cause of delay* and delay caused by a cause of delay that is not a *qualifying cause of delay* overlap; or
- (b) on or after the *date for practical completion*, both delay caused by a *qualifying cause of delay* referred to in subclause 34.3(a)(ii) and delay caused by a cause of delay not referred to in subclause 34.3(a)(ii) overlap,

the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall reduce any *EOT* it would have otherwise assessed to the extent that the *Contractor* or its employees, agents or *subcontractors*:

- (c) caused or contributed to the *qualifying cause of delay* or any subsequent delay; or
- (d) failed to take all reasonable steps (including re-sequencing and re-scheduling *WUC*) to prevent or mitigate the delay.

#### **34.5 Extension of time**

Within 28 days after receiving the *Contractor's* claim for an *EOT* (including each further claim for an *EOT* referred to in the second last paragraph of subclause 34.3), the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the reasonable *EOT* so assessed. Failure or delay by the *Superintendent* to assess a reasonable *EOT* shall not cause the *date for practical completion* to be set at large.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may in its absolute discretion and for any reason, at any time and from time to time before issuing the *final certificate* direct an *EOT*. The *Superintendent* is not required to exercise its discretion under this paragraph reasonably or for the benefit of the *Contractor*.

#### **34.6 Practical completion**

The *Contractor* shall give the *Superintendent* at least 14 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 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either:

- (a) a certificate specifying the date on which *practical completion* was reached (which may be earlier than the date of the certificate); or
- (b) written reasons for not doing so.

A *certificate of practical completion* will not constitute approval by the *Principal* of the *Contractor's* performance of its *Contract* obligations, be taken as an admission or evidence that *the Works* comply with the *Contract* or prejudice any rights or powers of the *Principal* or the *Superintendent*.

Upon the issue of a *certificate of practical completion*:

- (c) the *Contractor* shall hand over *the Works* to the *Principal*; and
- (d) the *Contractor* shall correct all defects existing at *practical completion* as soon as possible after the *date of practical completion*, or as directed by the *Superintendent*.

#### **34.6A Unilateral Certificate of Practical Completion**

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a certificate specifying the date on which *practical completion* was reached (which may be earlier than the date of the certificate) even though no request has been made.

#### **34.7 Liquidated damages**

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Contractor* shall be indebted to the *Principal* for, and shall pay to the *Principal* as a debt due, liquidated damages at the rate in *Item 24* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor* under subclause 39.4(a).

The parties acknowledge and agree that the amount of liquidated damages in *Item 24* is an agreed genuine pre-estimate of the *Principal's* likely damages and in proportion to the *Principal's* legitimate interests if the *date of practical completion* does not occur by the *date for practical completion*.

The amount payable under this subclause 34.7 will be a debt due from the *Contractor* to the *Principal*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

If this subclause 34.7 (or any part of this subclause 34.7) is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the *Principal* from recovering liquidated damages for the *Contractor's* failure to achieve *practical completion* by the *date for practical completion*, the *Principal* shall be entitled to claim and recover damages from the *Contractor* for such failure under general law.

Nothing in this subclause 34.7 limits or otherwise affects the *Principal's* rights, or the *Contractor's* liabilities and obligations, under clause 39.

#### **34.8 Not used**

#### **34.9 Delay damages**

For every day:



- (a) shown in the *approved program* as a day on which *WUC* is to be carried out;
- (b) which is the subject of an *EOT* to a *date for practical completion* directed under the first paragraph of subclause 34.5 for a *compensable cause*; and
- (c) for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclauses 41.2 and 41.3,

the *Principal* shall pay to the *Contractor* such extra costs and expenses, if any, as are reasonably and necessarily incurred by the *Contractor* as a direct consequence of that delay, as determined by the *Superintendent*, up to and including the maximum daily amount set out in *Item 25*.

To the extent that the *Contractor* is entitled to costs and expenses under this subclause 34.9 for a *variation* directed under subclause 36.1, the *Contractor* is only entitled to such costs and expenses under this subclause 34.9 to the extent that they were not otherwise included in the pricing of the *variation* under subclause 36.4. The amount that the *Contractor* is entitled to under this subclause 34.9 (and any entitlement to an *EOT* under this clause 34) shall be a limitation upon the *Principal's* liability to the *Contractor* arising out of, or in any way in connection with, any delay or disruption encountered by the *Contractor* in carrying out *WUC* (however caused) and the *Contractor* shall not be entitled to make any *claim* against the *Principal* arising out of, or in any way in connection with, any such delay or disruption, other than for the amount payable under this subclause 34.9 (or an *EOT* under this clause 34).

#### **34.10 Use or occupation before practical completion**

Without limiting clause 9A or subclause 24.2, the *Principal* may, after giving written notice to the *Contractor*, occupy or use any part of *the Works* although *the Works* have not reached *practical completion*.

If any such notice is given by the *Principal*:

- (a) the *Principal* shall allow the *Contractor* reasonable access to the part of *the Works* referred to in the notice and being occupied or used by the *Principal* to enable the *Contractor* to bring *the Works* to *practical completion*;
- (b) the *Principal's* use or occupation will not limit or otherwise affect the *Contractor's* obligations under the *Contract*, including the *Contractor's* obligation to ensure *practical completion* is achieved by the *date for practical completion*; and
- (c) if the *Contractor* is delayed in carrying out *WUC* as a consequence of the *Principal's* use or occupation in accordance with this subclause then this will entitle the *Contractor* to make a claim for an *EOT* to the *date for practical completion* where it is otherwise so entitled under this clause 34.

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### **35. Defects liability**

The *defects liability period* shall commence on the *date of practical completion* at 4:00 pm and expire:

- (a) where there are no *separable portions*, at 4:00 pm on the date that is 12 months after the *date of practical completion*; or
- (b) where there are *separable portions*, at 4:00 pm on the date that is 12 months after the *date of practical completion* of the last *separable portion* to achieve *practical completion*.

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.

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

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (c) shall identify the *defect* and the date for completion of its rectification; and
- (d) may state a date for commencement of the rectification.

Where the *Superintendent* issues a *direction* to rectify a *defect*, unless the *Superintendent* directs otherwise, there shall be a separate *defects liability period* therefor, commencing at 4:00 pm on the date the rectification is commenced and expiring at 4:00 pm on the date that is the later of:

- (e) 12 months after the rectification is complete; and
- (f) the expiry of the *defects liability period* that would otherwise have been applicable to the *Works* or *WUC* the subject of the *defect*.

If the rectification is not commenced or completed by the stated dates and times, 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 by the *Principal* shall be certified by the *Superintendent* and be a debt due and payable by the *Contractor* to the *Principal*.

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## **36. Variations**

### **36.1 Directing variations**

The *Contractor* shall not vary *WUC* except as directed in writing by the *Superintendent* under this subclause 36.1.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to carry out or perform a *variation*, which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2).

No *direction* by the *Superintendent* shall constitute a *direction* under this subclause 36.1 unless it is in writing and expressly states that it is a *direction* under subclause 36.1. The power to omit *work* includes the power to omit *work* so that it may be done by the *Principal* or by others engaged by the *Principal* including at the same time as the *Contractor* is carrying out *WUC*.

No *variation* (including any *variation* involving a decrease, deletion or omission of any part of the *Works* or *WUC*) shall:

- (a) invalidate the *Contract*; or
- (b) constitute a breach or repudiation of the *Contract* by the *Principal*.

### **36.2 Proposed variations**

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall, as soon as practicable 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 *approved program* (including the *date for practical completion*); and
- (b) cost (including 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.

### **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 not be entitled to extra time or extra money.

The *Superintendent* is not required to exercise its discretion under this subclause 36.3 reasonably or for the benefit of the *Contractor*.

### **36.4 Pricing**

Subject to subclause 36.2:

- (a) the *Superintendent* shall, as soon as reasonably practicable following receipt of the relevant *claim* issued by the *Contractor* in accordance with subclause 41.1(d)(iii) or subclause 41.2(b) (as applicable), value (as contemplated by subclause 41.5) each *variation* which the *Contractor* is required to carry out under a *direction* of the *Superintendent* under subclause 36.1 or any other event or circumstance which another provision of the *Contract* (other than subclause 41.1(d)(ii)(B)) provides is a deemed *variation* or shall be valued under this subclause 36.4; and
- (b) each *variation* referred to in subclause 41.1(d)(ii)(B) shall be valued, using the following order of precedence:
  - (c) prior agreement;
  - (d) applicable rates or prices in the *Contract* or the *schedule of rates* (if any);
  - (e) not used; and
  - (f) reasonable rates or prices, to which shall be added:
    - (i) in respect of a valuation referred to in subclause 3.3(a), the percentage thereof stated in *Item 12* for profit; and
    - (ii) in all other cases, the percentage thereof stated in *Item 27A* for profit and overheads.

Any deductions shall include the percentage for profit stated in *Item 27B* but not overheads.

That valuation shall be added to or deducted from the *contract sum* (as applicable).

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## **37. Payment**

### **37.1 Payment claims**

The *Contractor* shall submit *claims* for payment (each a '*payment claim*');

- (a) on each relevant *progressive payment claim date* for *WUC* completed up to the date specified in *Item 7C*;
- (b) on the *practical completion payment claim date*; and
- (c) on the *final payment claim date* in accordance with subclause 37.4.

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

- (d) details of the value of *WUC* done;
- (e) details of other moneys then due to the *Contractor* in accordance with the provisions of the *Contract*;
- (f) the documents referred to in subclause 38.1;
- (g) where subclause 37.12(e) applies, the statement and the evidence (if any) required to be provided by the *Contractor* under that paragraph; and
- (h) such other details (including supporting documentation) as may be reasonably required by the *Superintendent*.

## **37.2 Payment schedules and payment**

The *Superintendent* shall, within 10 *business days* after receiving such a *payment claim* (or when otherwise contemplated by this subclause 37.2), issue to the *Principal* and the *Contractor* a payment schedule setting out:

- (a) the *payment claim* to which it relates;
- (b) the *Superintendent's* determination of the amount which the *Principal* is entitled to retain, deduct, withhold or set-off under the *Contract* or otherwise (including *security* in the form of retention moneys under subclause 5.1);
- (c) the *Superintendent's* determination of:
  - (i) the moneys due from the *Principal* to the *Contractor* which the *Principal* proposes to pay; and
  - (ii) if the *Superintendent* determines that no moneys are due from the *Principal* to the *Contractor*, the moneys due from the *Contractor* to the *Principal*; and
- (d) if the amount referred to in subclause 37.2(c)(i) is less than the amount claimed in the relevant *payment claim*, the reasons for the difference and, if it is less because of the withholding, retention, deduction or setting-off of payment for any reason, the reasons for withholding, retaining, deducting or setting-off payment,

(a '*payment schedule*').

The *Superintendent* may, whether or not the *Contractor* submits (or is entitled to submit) a *payment claim* in accordance with subclause 37.1, issue a *payment schedule*.

If the *Superintendent*, in a *payment schedule* (other than the *final certificate*):

- (e) determines that moneys are due from the *Principal* to the *Contractor*, the *Principal* shall (subject to subclauses 37.6 and 38.2), within 15 *business days* of the *payment claim* (or if the *Contractor* does not make a *payment claim* and the *Superintendent* nevertheless issues a *payment schedule*, within 20 *business days* of the *payment*

*schedule*) pay to the *Contractor* the amount set out in the *payment schedule* as due from the *Principal* to the *Contractor*; or

- (f) determines that moneys are due from the *Contractor* to the *Principal*, the *Contractor* shall, within 15 *business days* of the *payment claim* (or if the *Contractor* does not make a *payment claim* and the *Superintendent* nevertheless issues a *payment schedule*, within 20 *business days* of the *payment schedule*) pay to the *Principal* the amount set out in the *payment schedule* as due from the *Contractor* to the *Principal*.

Any failure by the *Principal* or the *Superintendent* to set off against the amount that would otherwise be payable under a *payment schedule* any amount under subclause 37.6 will not limit or otherwise affect the *Principal's* right to subsequently set off the amount under subclause 37.6.

Neither a *payment claim*, a *payment schedule* (including the *final certificate*) nor a payment of moneys shall be evidence of the value of *work* or an admission of liability or evidence that the subject *WUC* has been carried out satisfactorily. Payment shall be payment on account only.

The *Superintendent* may, in any *payment schedule*, correct any error in, or otherwise modify, any previous *payment schedule*.

### **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 29* and:

- (a) the *Contractor* provides the additional *security* in *Item 13(e)*;
- (b) the *Contractor* satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored, protected, insured, and labelled the property of the *Principal* and will upon payment by the *Principal* be the unencumbered property of the *Principal*; and
- (c) if the *PPS Law* applies, the *Principal* has registered a *Security Interest* in the unfixed plant or materials in accordance with clause 46.

Upon payment to the *Contractor*, the subject plant and materials shall be the unencumbered property of the *Principal*.

### **37.4 Final payment claim and certificate**

On the *final payment claim date*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed '*Final Payment Claim*' being a *payment claim* together with all other *claims* whatsoever arising out of, or in any way in connection with, the subject matter of the *Contract*.

Within 10 *business days* following receipt of the *final payment claim*, the *Superintendent* shall issue to the *Contractor* a *final certificate* in the form of a *payment schedule* which, in addition to the requirements of subclause 37.2, certifies the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever arising out of, or in any way in connection with, the subject matter of the *Contract*.

On and from the date that is 30 *business days* after the expiry of the last *defects liability period* to expire, the *Superintendent* may, whether or not the *Contractor* submits (or is entitled to submit) a *final payment claim* in accordance with this subclause 37.4, issue a *final certificate*.

Subject to subclauses 37.6 and 38.2, if the *Superintendent* in the *final certificate* determines that moneys are due from the *Principal* to the *Contractor*, the *Principal* shall pay the amount

set out in the *final certificate* as due from the *Principal* to the *Contractor* within 15 *business days* after receipt of the *final payment claim*.

If moneys are set out in the *final certificate* as due from the *Contractor* to the *Principal*, the *Contractor* shall pay the amount set out in the *final certificate* as due from the *Contractor* to the *Principal* within 5 *business days* after the issue of the *final certificate*.

On the date that is 25 *business days* after the expiry of the last *defects liability period* to expire, the *Contractor* releases the *Principal* from any *claim* in respect of any fact, matter or thing arising out of, or in any way in connection with, *WUC* or the *Contract* which occurred prior to the expiry of the last *defects liability period* to expire, except for any *claim* included in the *final payment claim* which is given to the *Superintendent* in accordance with the terms of this subclause 37.4 and on or before the date that is 25 *business days* after the expiry of the last *defects liability period* to expire.

### **37.5 Interest**

Simple interest in *Item 30* shall be due and payable after the date of default in payment.

### **37.6 Set off**

The *Principal* may:

- (a) deduct from moneys otherwise due to the *Contractor*:
  - (i) any debt or other moneys due from the *Contractor* to the *Principal*; or
  - (ii) any *claim* to money which the *Principal* may have against the *Contractor* whether for damages (liquidated or unliquidated) or otherwise (including, if retention moneys is nominated in *Item 13(a)*, *security* in the form of retention moneys under subclause 5.1),  
  
whether under the *Contract* or on any other legal or equitable basis;
- (b) without limiting subclause 37.6(a), deduct from moneys otherwise due to the *Contractor* any amount that the *Principal* is obliged to withhold from payment to the *Contractor* under the *Security of Payment Act*;
- (c) deduct from moneys otherwise due to the *Contractor* in circumstances where the *Contractor* has not complied with subclause 38.1, the full amount that would otherwise have been payable by the *Principal* to the *Contractor* in respect of a *payment claim*;
- (d) deduct from moneys otherwise due to the *Contractor* any amount the *Principal* is entitled to withhold in accordance with any *legislative requirement*, including section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).

Nothing in this subclause 37.6 affects the right of the *Principal* to recover from the *Contractor* the whole of the debt or *claim* or any balance that remains owing.

This subclause 37.6 will survive any termination of the *Contract*.

### **37.7 Service of notices under the Security of Payment Act**

The *Contractor* shall:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the *Principal* of whatever nature in relation to the *Security of Payment Act* (including,

without limitation, *payment claims* under the *Security of Payment Act*), is provided to the *Superintendent* at the same time; and

- (b) if the *Contractor* becomes aware that a *subcontractor* is entitled to suspend work under the *Security of Payment Act*, promptly and without delay give the *Principal* and the *Superintendent* a copy of any written communication of whatever nature in relation to the *Security of Payment Act* which the *Contractor* receives from a *subcontractor*.

### **37.8 Role of the Superintendent**

In issuing *payment schedules* under the *Security of Payment Act* (but not in receiving *payment claims* under the *Security of Payment Act*), the *Superintendent* acts as the agent of the *Principal*.

### **37.9 Payment schedules**

The amount (if any) set out in a *payment schedule* (including the *final certificate*) as the amount of payment which the *Principal* proposes to make to the *Contractor* is, for the purposes of sections 8, 9, 10 and 11 of the *Security of Payment Act*, the amount of the "progress payment" (as defined in the *Security of Payment Act*) calculated in accordance with the *Contract* which the *Contractor* is entitled to be paid under the *Contract*.

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

### **37.10 Subcontractor suspension**

If the *Principal* becomes aware that a *subcontractor* is entitled to suspend work under the *Security of Payment Act*, the *Principal* may (in its absolute discretion) pay the *subcontractor* such money that is or may be owing to the *subcontractor* in respect of that work, and any amount paid by the *Principal* shall be a debt due from the *Contractor* to the *Principal*.

### **37.11 Indemnity**

The *Contractor* shall indemnify the *Principal* against all damage, expense, loss or liability of any nature suffered or incurred by the *Principal* arising out of, or in any way in connection with:

- (a) a suspension under the *Security of Payment Act* by a *subcontractor* of work which forms part of *WUC*; or
- (b) a failure by the *Contractor* to comply with subclause 37.7.

### **37.12 Payment withholding requests**

- (a) Without limiting subclause 37.6, the *Principal* may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*.
- (b) If the *Principal* withholds from money otherwise due to the *Contractor* any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*, then:

- (i) the *Principal* may plead and rely upon Division 2A of Part 3 of the *Security of Payment Act* as a defence to any claim for the money by the *Contractor* from the *Principal*; and
- (ii) the period during which the *Principal* retains money due to the *Contractor* under an obligation under Division 2A of Part 3 of the *Security of Payment Act* will not be taken into account for the purpose of determining:
  - (A) any period for which money owed by the *Principal* to the *Contractor* has been unpaid; and
  - (B) the date by which payment of money owed by the *Principal* to the *Contractor* shall be made.
- (c) The *Contractor* agrees not to commence proceedings to recover any amount withheld by the *Principal* under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*.
- (d) Any amount paid by the *Principal* under section 26C of the *Security of Payment Act* will be a debt due from the *Contractor* to the *Principal*.
- (e) If the *Principal* withholds money under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act* and the *Contractor*:
  - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding request relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding request relates has been withdrawn,
 then the *Contractor* shall so notify the *Principal* and the *Superintendent* within 5 days of the occurrence of the event in subclause 37.12(e)(i) or 37.12(e)(ii) above (as applicable) by providing to the *Principal* and the *Superintendent* a statement in writing in the form of a statutory declaration together with such other evidence as the *Principal* or *Superintendent* may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

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## **38. Payment of workers and subcontractors**

### **38.1 Supporting documentation**

The *Contractor* shall submit the *supporting documentation* to the *Principal* and the *Superintendent*:

- (a) on the date specified in *Item 7B* until the issue of the *last certificate of practical completion*;
- (b) within 5 *business days* after the date on which the *last certificate of practical completion* is issued;
- (c) within 25 *business days* after the expiry of the last *defects liability period* to expire; and
- (d) when otherwise requested by the *Principal*.

*Supporting documentation* shall be dated, and completed to, the date of submission of the relevant *supporting documentation* (which shall not be earlier than the relevant times



prescribed by this subclause 38.1). The *Contractor* shall not submit *supporting documentation* earlier than the relevant times prescribed by this subclause 38.1.

### **38.2 Entitlement to payment**

Without limiting subclause 37.6 or any claim, right or entitlement the *Principal* may have against the *Contractor*, the parties acknowledge and agree that the *Contractor's* entitlement to payment shall be \$0, except to the extent that the *Contractor* has:

- (a) in respect of all *payment claims* referred to in subclause 37.1(a):
  - (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(a); and
  - (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment, on the date of submission of the *payment claim*;
- (b) in respect of the *payment claim* referred to in subclause 37.1(b):
  - (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(b); and
  - (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment, on the date of submission of the *payment claim*; and
- (c) in respect of the *payment claim* referred to in subclause 37.1(c):
  - (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(c); and
  - (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment, on the date of submission of the *payment claim*.

### **38.3 Direct payment**

Before paying any amount payable by the *Principal* in respect of any *payment claim* (including the *final payment claim*), the *Principal*, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cth)) may pay any unpaid moneys due and payable directly to the relevant worker or *subcontractor* where:

- (a) permitted by law;
- (b) given a court order in favour of the worker or *subcontractor*, or
- (c) requested in writing by the *Contractor*.

Such payment and a 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 in accordance with subclause 37.2 or subclause 37.4, as the case may be.

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## **39. Default or insolvency**

### **39.1 Preservation of other rights**

If a party breaches (including repudiates) the *Contract*, nothing in this clause 39 shall prejudice the right of the other party to recover damages or exercise any other right or remedy, except if the *Contract* is terminated under subclause 39.9, in which case the parties' rights are as set out in subclause 39.10.

### **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 under this subclause 39.2.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide *security* under subclause 5.1;
  - (ii) provide evidence of compliance with obligations in relation to insurance under subclause 19.1;
  - (iii) comply with a *direction* of the *Superintendent* in accordance with subclause 29.3 or subclause 29.4;
  - (iv) use the materials or standards of *work* required by the *Contract*; or
  - (v) comply with subclause 9.4;
- (b) wrongful suspension of *work*;
- (c) substantial departure from an *approved program* without reasonable cause or the *Superintendent's* approval;
- (d) failing to proceed with due expedition and without delay;
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement;
- (f) failing to comply with subclause 5.6;
- (g) failing to comply with subclause 11.1; and
- (h) failing to comply with subclause 11.3.

### **39.3 Principal's notice under subclause 39.2**

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 *Principal* requires the *Contractor* to remedy the substantial breach; and
- (d) the date and time by which the *Contractor* shall remedy the substantial breach (which shall not be less than 7 days after the notice is received by the *Contractor*).

#### **39.4 Principal's rights**

If the *Contractor* fails to remedy the substantial breach 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 *WUC* remaining to be completed and suspend payment until it becomes due and payable under or in accordance with subclause 39.6; or
- (b) terminate the *Contract*.

#### **39.5 Take out**

The *Principal* may complete *WUC* taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e) or 39.11A) 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* (including documents, information, materials and the like produced or provided by the *Contractor*); and
  - (ii) contract with such of the *subcontractors* or require the *Contractor* to novate to the *Principal* or its nominee any or all subcontracts between the *Contractor* and its *subcontractors*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out or *WUC* remaining; and

- (c) direct the *Contractor* to take any other action which the *Principal* requires concerning *WUC* taken out or *WUC* remaining.

If the *Principal* takes possession of *construction plant* or other things under subclause 39.5(b), the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *WUC* taken out or *WUC* remaining, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *WUC* taken out or *WUC* remaining.

#### **39.6 Adjustment on completion of WUC taken out**

When *WUC* is taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e) or 39.11A), the *Superintendent* shall assess the cost thereby incurred, or which may be incurred, by the *Principal* in completing the relevant *WUC* and shall certify:

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

If the cost incurred, or which may be incurred, by the *Principal* (as certified by the *Superintendent* above) is greater than the amount which would have been paid under the *Contract* to the *Contractor* if the relevant *WUC* had been completed by the *Contractor*

(without limiting subclause 39.10), the difference shall be a debt due from the *Contractor* to the *Principal*.

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 the *Contractor* fails to pay the debt, the *Principal* may (in addition to any other rights and entitlements it may have) 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 (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) 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 registered post, give the *Principal* a written notice under this subclause 39.7.

Substantial breaches are limited to:

- (a) failing to:
  - (i) not used;
  - (ii) not used;
  - (iii) rectify inadequate *Contractor's* access to the *site* for the commencement of *WUC* on the *site* if that failure continues for longer than the time stated in *Item 31*; or
  - (iv) not used; and
- (b) not used.

### **39.8 Contractor's notice under subclause 39.7**

A notice given under subclause 39.7 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* requires the *Principal* to remedy the substantial breach; and
- (d) the date and time by which the *Principal* shall remedy the substantial breach (which shall not be less than 21 days after the notice is received by the *Principal*).

### **39.9 Contractor's rights**

If the *Principal* fails to remedy the substantial breach 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 (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) 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 in accordance with subclause 39.4(b) (including in accordance with subclause 39.11(e) or 39.11A) or subclause 39.9 or the whole of *WUC* is taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e) or 39.11A), 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 (or the party in respect of which the circumstances in subclause 39.11 or 39.11A arose) repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and elected to recover damages.

Additionally, if the *Contract* is terminated under subclause 39.4(b) or the whole of *WUC* remaining to be completed is taken out of the hands of the *Contractor* under subclause 39.4(a) (including in accordance with subclause 39.11(e) or 39.11A):

- (a) the *Principal*:
  - (i) will be entitled to take possession of, and use, or require the *Contractor* to remove from the *site*, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor* (including documents, information, materials and the like produced by the *Contractor*);
  - (ii) will be entitled to require the *Contractor* to novate (on the terms set out in Annexure Part D or such other terms as the *Principal* may reasonably require) to the *Principal* or its nominee any or all subcontracts between the *Contractor* and its *subcontractors* as required by the *Principal*;
  - (iii) will not be obliged to make any further payments to the *Contractor*, including any money the subject of a *payment claim* or a *payment schedule*;
  - (iv) may direct the *Contractor* to take any other action which the *Principal* requires concerning *WUC* taken out or *WUC* remaining; and
- (b) the *Contractor* shall immediately hand over to the *Principal* all copies of documents provided by the *Principal* or the *Superintendent* to the *Contractor*.

### **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 (Cth) 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 into a deed of company arrangement;
  - (ii) it enters into 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 is not stayed within 14 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:

- (e) the *Principal*, the *Principal* may, without giving a notice under subclause 39.2, exercise the right under subclause 39.4(a); or
- (f) the *Contractor*, the *Contractor* may, without giving a notice under subclause 39.7, exercise the right under subclause 39.9.

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 the *Contract*.

### **39.11A Change in Control**

If a *Change in Control* occurs in respect of the *Contractor* or the entity stated in *Item 14A* without the written approval of the *Principal* in breach of subclause 9.1, the *Principal* may, without giving a notice under subclause 39.2, exercise the right under subclause 39.4(a) or 39.4(b).

### **39.12 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 or no reason, by written notice to the *Contractor* terminate the *Contract* effective from the time and date stated in the *Principal's* notice, or if no time and date is stated, at the time the notice is received by the *Contractor*, and
- (b) thereafter, in its absolute discretion, complete the uncompleted part of *the Works* by itself or engage other contractors to carry out any uncompleted part of *the Works* or *WUC*.

### 39.13 Consequence of termination for convenience

If the *Principal* terminates the *Contract* under subclause 39.12, the *Contractor*:

- (a) will, subject to subclause 39.13(b) and subject to compliance by the *Contractor* with subclauses 41.2 and 41.3, be entitled to payment of the following amounts as determined by the *Superintendent*:
  - (i) for *WUC* carried out prior to the date of termination, the amount that would have been payable to the *Contractor* under the *Contract* if the *Contract* had not been terminated and the *Contractor* had been entitled to issue, and had issued, a *payment claim* for that *WUC*;
  - (ii) the cost of goods and 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 and materials is not included in the amount payable under subclause 39.13(a)(i); and
    - (B) unencumbered title in the goods and materials will vest in the *Principal* upon payment;
  - (iii) the reasonable cost of removing from the *site* all labour, *construction plant*, *temporary works* and other things used in carrying out *WUC*; and
  - (iv) the amount set out in *Item 31A*; and
- (b) shall:
  - (i) take all reasonable steps to mitigate the costs referred to in subclauses 39.13(a)(ii) and 39.13(a)(iii); and
  - (ii) as a condition precedent to any entitlement to payment subclause 39.13(a), hand over to the *Principal*, the originals of:
    - (A) any documents provided by the *Principal* or the *Superintendent*; and
    - (B) any documents prepared by the *Contractor* or its *subcontractors* for the purposes of the *WUC* or the *Works* to the date of termination of the *Contract* (whether complete or not).

The amount that the *Contractor* is entitled to under this subclause 39.13 shall be a limitation upon the *Principal's* liability to the *Contractor* arising out of, or in any way in connection with, the termination of the *Contract* by the *Principal* under subclause 39.12(a) and the *Contractor* shall not make any *claim* against the *Principal* arising out of, or in any way in connection with, such termination of the *Contract*, other than for the amount payable under this subclause 39.13.

This subclause 39.13 shall survive termination of the *Contract* under subclause 39.12.

### 39.14 Termination for injunctions

Where the circumstances in subclause 12.2 arise, the *Principal* may terminate the *Contract* by written notice to the *Contractor*.

If the *Principal* terminates the *Contract* under this subclause 39.14, the *Contractor* will (subject to compliance by the *Contractor* with subclauses 41.2 and 41.3) be entitled to payment of the following amounts as determined by the *Superintendent*:

- (a) the unpaid contract value of all *work* completed in accordance with the *Contract* prior to the date of termination; and
- (b) the reasonable cost of removing from the *site* all *construction plant* and other things used in *WUC*.

The *Contractor* shall take all steps possible to mitigate the costs referred to in subclause 39.14(b).

The amount to which the *Contractor* is entitled under this subclause 39.14 will be full compensation for the termination and the *Contractor* may not make any *claim* against the *Principal* arising out of, or in any way in connection with, such termination, other than for the amount payable under this subclause 39.14.

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

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *payment schedule* 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 issue, and had issued, a *payment claim* on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*.
  - (i) the amount due to the *Contractor* evidenced by all unpaid *payment schedules*;
  - (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*, 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) the *Principal* shall promptly release and return all *security* provided by the *Contractor*.

The amount that the *Contractor* is entitled to under this clause 40 shall be a limitation upon the *Principal's* liability to the *Contractor* arising out of, or in any way in connection with, the frustration of the *Contract* and the *Contractor* shall not make any *claim* against the *Principal* arising out of, or in any way in connection with, such frustration of the *Contract*, other than for the amount payable under this clause 40.

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#### **41. Notification of claims**

##### **41.1 Communication of informal variation claims**

- (a) Where the *Contractor* considers that a *direction* by the *Superintendent* is a *direction* requiring the *Contractor* to carry out a *variation*, but the *Superintendent* has not expressly identified it in writing as a *direction* under subclause 36.1, then the



*Contractor* shall, if it wishes to make a *claim* (other than an *excluded claim*) arising out of or in connection with the alleged *variation*, prior to commencing to comply with the *direction* and in any event within 7 days of the date of the *direction* (whichever is earlier), notify the *Superintendent* in writing that the *Contractor* considers it to be a *direction* requiring the *Contractor* to carry out a *variation*.

- (b) Within 21 days of receiving the *Contractor's* notice under subclause 41.1(a), the *Superintendent* may:
  - (i) notify the *Contractor* that it withdraws the *direction*;
  - (ii) notify the *Contractor* that the *Superintendent* is of the view that the *direction* does not require the *Contractor* to carry out a *variation*; or
  - (iii) confirm that the *direction* is a *direction* under subclause 36.1 to carry out a *variation*.
- (c) If, within 21 days of receiving the *Contractor's* notice under subclause 41.1(a), the *Superintendent* does not take action referred to in subclauses 41.1(b)(i), 41.1(b)(ii) or 41.1(b)(iii), the *Superintendent* shall be deemed to have issued a notice under subclause 41.1(b)(ii).
- (d) Where the *Superintendent*:
  - (i) issues a notice under subclause 41.1(b)(i), the *Contractor* shall not comply with, or shall cease to comply with, the *direction*;
  - (ii) issues a notice, or is deemed to have issued a notice, under subclause 41.1(b)(ii), the *Contractor*:
    - (A) shall comply with, or continue to comply with, the *direction*; and
    - (B) may, within a further 21 days of the *Superintendent* having issued, or being deemed to have issued, the notice under subclause 41.1(b)(ii), submit a notice of *dispute* under subclause 42.1, in which case, to the extent it is subsequently agreed or determined under clause 42 that the relevant *direction* did require the *Contractor* to carry out a *variation*, the *Contractor* shall be entitled to an adjustment to the *contract sum* in respect of that *variation*, determined in accordance with subclause 36.4; or
  - (iii) issues a notice under subclause 41.1(b)(iii), the *Contractor* may, within 7 days of the *Superintendent's* notice under subclause 41.1(b)(iii), submit a written *claim* to the *Superintendent*, in which case subclause 36.4 shall apply.

#### **41.2 Notice of other Claims**

If the *Contractor* wishes to make any *claim* (other than an *excluded claim*) against the *Principal* in respect of or relating to any *direction* of the *Superintendent* (other than a *direction* referred to in subclause 41.1) or any other fact, matter or thing (including a breach of the *Contract* by the *Principal*) under, arising out of, or in connection with, the *Contract*, *WUC* or the *Works*, the *Contractor* shall:

- (a) within 7 days after receiving the *direction* or the first day on which the *Contractor* could reasonably have been aware of the fact, matter or thing upon which the *claim* is or will be based (as applicable), give the *Superintendent* a notice complying with subclause 41.3(a); and
- (b) within 7 days after giving the written notice under subclause 41.2(a), submit a written *claim* to the *Superintendent*.

### **41.3 Prescribed notices and claims**

- (a) Any written notice referred to in subclause 41.2(a) shall expressly specify:
  - (i) that the *Contractor* proposes to make a *claim*; and
  - (ii) the *direction*, fact, matter, or thing which gave rise to the alleged entitlement to make the *claim*.
- (b) Any written *claim* referred to in subclause 41.1(d)(iii) or subclause 41.2(b) shall include:
  - (i) detailed particulars, including the date or dates, of the *direction*, fact, matter or thing upon which the *claim* is based;
  - (ii) the provisions of the *Contract* or other legal basis upon which the *claim* is based; and
  - (iii) details of the amount claimed and how it has been calculated.

### **41.4 Liability for failure to communicate**

If the *Contractor* fails to strictly comply with subclauses 41.1, 41.2 or 41.3 (as applicable):

- (a) the *Contractor* shall not be entitled to make, and the *Principal* shall not be liable upon, any *claim* (other than an *excluded claim*) by the *Contractor*; and
- (b) the *Contractor* releases the *Principal* from any *claim* (other than an *excluded claim*),

arising out of, or in any way in connection with, the relevant act, default, omission, *direction*, fact, matter or thing (as the case may be) to which subclause 41.1 or 41.2 (as applicable) applies.

Nothing in this clause 41 shall limit or otherwise affect the operation or effect of any other provision of the *Contract* which requires the *Contractor* to give notice to the *Superintendent* in order to preserve an entitlement to make a *claim* against the *Principal*.

### **41.5 Superintendent's decision**

Within 56 (or such other period referred to in subclause 36.4) days after receipt of a *claim* under subclause 41.1(d)(iii) or subclause 41.2(b), the *Superintendent* shall assess the *claim* and notify the parties in writing of the decision. Unless a party within a further 28 days after such notification gives a notice of *dispute* under subclause 42.1, the *Superintendent's* assessment shall be final and binding.

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## **42. Dispute resolution**

### **42.1 Notice of dispute**

If a difference or *dispute* between the parties arises out of, or is in any way in connection with, the subject matter of the *Contract*, including a difference or *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a *claim*,

(a '*dispute*'), then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clause 39 and subclause 42.13 continue to perform the *Contract*.

#### **42.2 Conference**

Within 14 days after receiving a notice of *dispute* under subclause 42.1, the *dispute* is to be referred to the persons described in *Item* 31B (or such other representative of each party who has authority to agree to a resolution) who shall meet and undertake genuine and good faith negotiations with a view to resolving the *dispute*.

All aspects of every such conference except the fact of occurrence shall be privileged.

#### **42.3 Expert determination**

The *dispute* shall, if it is not resolved within 14 days (or such longer period as may be agreed in writing by the parties prior to the expiration of that 14 day period) following referral of the *dispute* to negotiation in accordance with subclause 42.2 (whether or not the parties conferred in accordance with subclause 42.2) be submitted to expert determination.

#### **42.4 The expert**

The expert determination under subclause 42.3 is to be conducted by:

- (a) the independent industry expert specified in *Item* 33; or
- (b) where:
  - (i) no such person is specified; or
  - (ii) the independent industry expert specified in *Item* 33 or an independent industry expert otherwise appointed under this subclause 42.4:
    - (A) is unavailable;
    - (B) declines to act;
    - (C) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
    - (D) does not make a determination within the time required by subclause 42.9,

an independent industry expert appointed by the person specified in *Item* 34.

#### **42.5 Not arbitration**

An expert determination conducted under this clause 42 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

#### **42.6 Procedure for determination**

The expert will:

- (a) act as an expert and not as an arbitrator;

- (b) proceed in any manner he or she thinks fit but shall observe the rules of natural justice;
- (c) conduct any investigation which he or she considers necessary to resolve the *dispute*;
- (d) examine such documents, and interview such persons, as he or she may require;
- (e) notwithstanding anything else, to the extent permissible by law, have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW); and
- (f) make such directions for the conduct of the determination as he or she considers necessary.

#### **42.7 Disclosure of interest**

The expert shall:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

#### **42.8 Costs**

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) unless determined otherwise by the expert, pay one-half of the expert's costs.

#### **42.9 Conclusion of expert determination**

Unless otherwise agreed between the parties, the expert shall notify the parties of his or her decision upon an expert determination conducted under this clause 42 within 28 days from the acceptance by the expert of his or her appointment.

#### **42.10 Liability of expert**

The expert will not be liable to the parties arising out of, or in connection with, the expert determination process, except in the case of fraud.

The parties shall enter into an agreement with the appointed expert on the terms prescribed in *Item 35* or such other terms as the parties and the expert may agree.

#### **42.11 Determination of expert**

The determination of the expert:

- (a) shall be in writing;
- (b) will be:
  - (i) substituted for the relevant *direction* of the *Superintendent*; and
  - (ii) final and binding,

unless a party gives notice of appeal to the other party within 21 days of the determination; and

- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following subclauses.

#### **42.12 Litigation**

If the *dispute* is submitted to expert determination in accordance with subclause 42.3 and a notice of appeal is given under subclause 42.11, then either party may commence proceedings in relation to the *dispute*.

Subject to subclause 42.13, the parties shall follow the *dispute* resolution procedures set out in this clause 42 before either commences litigation or takes similar action.

#### **42.13 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.

#### **42.14 Survive termination**

This clause 42 will survive the termination of the *Contract*.

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### **43. Waiver, variation or amendment 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, amended, waived, discharged or released, unless agreed to in writing and signed by the parties.

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### **44. GST**

#### **44.1 Definitions**

In this clause 44:

- (a) words and expressions that are not defined in the *Contract* but which have a defined meaning in the *GST Law* have the same meaning as in the *GST Law*; and
- (b) *GST Law* has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### **44.2 GST exclusive**

Except as otherwise provided under the *Contract*, all consideration payable under the *Contract* in relation to any supply is exclusive of GST.

#### **44.3 Increase in Consideration**

If GST is payable in respect of any supply made by a supplier under the *Contract* (***GST Amount***), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

#### **44.4 Payment of GST**

Subject to subclause 44.5, the recipient will pay the *GST Amount* at the same time and in the same manner as the consideration for the supply is to be provided under the *Contract*.

#### **44.5 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the *GST Amount* under subclause 44.4.

#### **44.6 Reimbursements**

If the *Contract* requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **44.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under the *Contract*:

- (a) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- (b) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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### **45. Principal may act**

Without limiting any other provision of the *Contract*, the *Principal* may, either itself or by a third party, carry out an obligation under the *Contract* which the *Contractor* was obliged to carry out but which it failed to carry out within the time required in accordance with the *Contract* (or, where no time for performance is prescribed in the *Contract*, within a reasonable time). The costs, expenses and damages suffered or incurred by the *Principal* in so carrying out such a *Contract* obligation shall be a debt due and payable from the *Contractor* to the *Principal*.

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### **46. Personal Property Securities Act**

#### **46.1 Further Assurances**

By signing the *Contract*, the *Contractor* acknowledges and agrees that if the *Contract* and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the *PPS Law* (***Security Interest***), the *Contractor* shall do anything (including amending the *Contract* or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the *Principal* considers necessary under or as a result of the *PPS Law* for the purposes of:

- (a) ensuring that the *Security Interest* is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;
- (b) enabling the *Principal* to apply for any registration, or give any notification, in connection with the *Security Interest*, including the registration of a financing statement or financing change statement; or
- (c) enabling the *Principal* to exercise rights in connection with the *Security Interest* and the *Contract*.

#### **46.2 Contracting out of PPS Act**

If Chapter 4 of the *PPS Act* applies to the enforcement of the *Security Interest*, the *Contractor* agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the *Security Interest*.

#### **46.3 Acknowledgments and undertakings**

The *Contractor*.

- (a) acknowledges that the *Security Interests* created under the *Contract* relate to collateral and all proceeds in respect of that collateral (until the *Principal* is paid in full for the collateral);
- (b) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the *PPS Law* in respect of the *Security Interest*, and
- (c) undertakes it will not register a financing change statement without the prior written consent of the *Principal*.

#### **46.4 Requests for information**

The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the *PPS Law*.

The *Contractor* agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

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### **47. Civil Liability Act**

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under, out of or in any way in connection with, the *Contract*, the *Works* or *WUC* whether such rights, obligations or liabilities are sought to be enforced in contract, in tort (including negligence) or otherwise.

The *Contractor* further agrees that in any subcontract or consultancy agreement which it enters into in connection with the carrying out of *WUC* it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities which are sought to be enforced in contract, in tort (including negligence) or otherwise.

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### **48. No Fetter**

The *Contract* shall not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the *Principal* to exercise any of its functions and powers under any legislative requirement and no exercise of any such functions or powers shall entitle the *Contractor* to make any claim against the *Principal*.

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### **49. Disclosure**

The *Contractor* acknowledges and agrees that the *Principal* may disclose the *Contract* (and information concerning the terms of the *Contract*) and other information under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009* (NSW);
- (b) the *Ombudsman Act 1974* (NSW);
- (c) the *Freedom of Information Act 1982* (Cth);
- (d) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
- (e) any other *legislative requirement*.

Where the *Principal* has received a request for access to a document created by, or in the possession of, the *Contractor* or any subcontractor that relates to the *Contract*, the *Principal* may at any time by written notice require the *Contractor* to provide, or to procure the relevant subcontractor to procure, the document to the *Principal* and the *Contractor* shall, at no cost to the *Principal*, promptly comply with the notice.

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## 50. GIPA

- (a) Notwithstanding any other provisions of this *Contract*, the *Contractor* acknowledges and agrees that under the *Government Information (Public Access) Act 2009* (NSW) the *Principal* may be required to publicly disclose information about this *Contract*. As at the *Contract Date*, none of the disclosure obligations require the disclosure of:
  - (i) the commercial-in-confidence provisions of a contract;
  - (ii) any matter that could reasonably be expected to affect public safety or security; or
  - (iii) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009* (NSW).
- (b) The *Contractor* may at any time nominate any items that it considers are confidential and why, so as to assist the *Principal* in determining what items to disclose.
- (c) Subject to clause (d), in accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the *Contractor* agrees to allow the *Principal* immediate access to the following information contained in records held by the *Contractor*:
  - (i) information that relates directly to the carrying out of *WUC* by the *Contractor*;
  - (ii) information collected by the *Contractor* from members of the public to whom the *Contractor* provides, or offers to provide, *the Works*; and
  - (iii) information received by the *Contractor* from the *Principal* to enable the *Contractor* to carry out and complete *WUC*.
- (d) Nothing in clause (c) requires the *Contractor* to allow the *Principal* immediate access to:
  - (i) information that discloses or would tend to disclose the *Contractor's* financing arrangements, financial modelling, cost structure or profit margins;
  - (ii) information that the *Contractor* is prohibited from disclosing to the *Principal* by provision made by or under any Act (of New South Wales or another State or of the Commonwealth); or



- (iii) 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.

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**51. Building Code**

- (a) This clause 51 (other than this subclause 51(a)) only applies where specified in *Item 36*.
- (b) Except to the extent otherwise expressly provided in subclause 1.1, in this clause 51:
  - (i) **ABCC** means the body referred to in subsection 29(2) of the *Act*;
  - (ii) **ABC Commissioner** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Act*;
  - (iii) **Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
  - (iv) **Building Work** has the same meaning as in subsection 3(4) of the *Building Code*; and
  - (v) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the *Building Code*.
- (c) The *Contractor* declares as at the date of commencement of this *Contract* in relation to the *Works* that it and its *subcontractors* are not subject to an *Exclusion Sanction*.
- (d) The *Contractor*:
  - (i) declares as at the date of commencement of this *Contract* in relation to the *Works*; and
  - (ii) must ensure during the term of this *Contract* in relation to the *Works*,  
that it and its *subcontractors* will comply with the *Building Code*.
- (e) Compliance with the *Building Code* does not relieve the *Contractor* from responsibility to perform this *Contract*, or from liability for any *defect* in the *Works* arising from compliance with the *Building Code*.
- (f) The *Contractor* must notify the ABCC of any breach or suspected breach of the *Building Code* as soon as practicable but no later than 2 *business days* after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (g) The *Contractor* acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Act* and the *Building Code* and will ensure that it and its *subcontractors* comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the *Act*, requests to interview any person under section 74 of the *Act*, requests to produce records or documents under sections 74 and 77 of the *Act* and responding to requests for information concerning matters relating to the *Building Code* under subsection 7(c) of the *Building Code*.
- (h) The *Contractor* must only enter into a subcontract for any of the *Works* where:

- (i) the *subcontractor* is not covered by, and does not have related entities covered by, an enterprise agreement that does not meet the requirements of section 11 of the *Building Code*; and
  - (ii) the *subcontractor* is not subject to an *Exclusion Sanction* or is excluded from undertaking work funded by a state or territory government unless approval to do so is provided by the *ABC Commissioner*.
- (i) The *Contractor* must ensure as far as is reasonably practicable that subcontractors that are engaged by the *Contractor* in respect of *the Works* take remedial action to rectify non-compliant behaviour.
  - (j) The *Contractor* must only enter into a subcontract for any of *the Works* where:
    - (i) the *subcontractor* has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the *Building Code* (located in Part 4 in the document titled Model Clauses Type B-Indirectly Funded available on the *ABCC* website ([www.abcc.gov.au](http://www.abcc.gov.au))); and
    - (ii) the subcontract with the *subcontractor* contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the *Building Code* (located in Part 5 in the document titled Model Clauses Type B-Indirectly Funded available on the *ABCC* website ([www.abcc.gov.au](http://www.abcc.gov.au))).
  - (k) The *Contractor* must only use products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
  - (l) The *Contractor* must ensure that any agreement entered into in relation to *the Works* with a Subcontractor requires the *subcontractor* to only use products in relation to *the Works* that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

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## 52. NSW Guidelines

### 52.1 Definitions and application

This clause 52 (other than this paragraph) only applies where specified in *Item 37*.

In this clause 52, **NSW Guidelines** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement, and words and expressions that are defined in the *NSW Guidelines* have, unless the context otherwise indicates, the same meaning as in the *NSW Guidelines*. The *NSW Guidelines* are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 52.2 Primary obligation

The *Contractor* shall at all times comply with, and meet any obligations imposed by, the *NSW Guidelines*.

The *Contractor* shall notify the Construction Compliance Unit and the *Principal* of any alleged breaches of the *NSW Guidelines* and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. Where the *Contractor* is authorised to engage a subcontractor, and it does so, the *Contractor* shall ensure that any subcontract imposes on the subcontractor equivalent obligations to those in this clause 52 (under a heading "NSW Guidelines"), including that the subcontractor must comply with, and meet

any obligations imposed by, the *NSW Guidelines*. The *Contractor* shall not appoint or engage another party in relation to *the Works* where that appointment or engagement would breach a sanction imposed on the other party in relation to the *NSW Guidelines*.

### **52.3 Access and information**

The *Contractor* shall:

- (a) maintain adequate records of compliance with the *NSW Guidelines* by it, its subcontractors and their respective related entities; and
- (b) allow, and take reasonable steps to facilitate, New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) to:
  - (i) enter and have access to sites and premises controlled by the *Contractor*, including the site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to *the Works*;
  - (v) have access to personnel; and
  - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the *NSW Guidelines*, by the *Contractor*, its subcontractors and their respective related entities.

The *Contractor*, and its related entities, shall agree to, and comply with, a request from New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### **52.4 Sanctions**

The *Contractor* warrants that at the time of entering into the *Contract*, neither it, nor any of its related entities, are subject to a sanction in connection with the *NSW Guidelines* that would have precluded it from tendering for work to which the *NSW Guidelines* apply. If the *Contractor* does not comply with, or fails to meet any obligation imposed by, the *NSW Guidelines*, a sanction may be imposed against it in connection with the *NSW Guidelines*.

Where a sanction is imposed:

- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (b) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to:
  - (i) record and disclose details of non-compliance with the *NSW Guidelines* and the sanction; and
  - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the *Contractor*, or its related entities, in respect of work to which the *NSW Guidelines* apply.

## 52.5 Compliance

The *Contractor* bears the cost of ensuring its compliance with the *NSW Guidelines*, including in respect of any positive steps it is obliged to take to meet its obligations under the *NSW Guidelines*. The *Contractor* is not entitled to make a *claim* for reimbursement or an extension of time from the *Principal* or the State of New South Wales, and otherwise is not entitled to make any *claim*, for such costs or extension of time. Compliance with the *NSW Guidelines* does not relieve the *Contractor* from responsibility to perform *WUC*, *the Works* or any other obligation under the *Contract*, or from liability for any *defect* in *the Works* or from any other legal liability, whether or not arising from its compliance with the *NSW Guidelines*.

Where a change in the *Contract* or *the Works* is proposed, and that change would, or would be likely to, affect compliance with the *NSW Guidelines*, the *Contractor* shall immediately notify the *Principal* of the change, or likely change and specify:

- (a) the circumstances of the proposed change;
  - (b) the extent to which compliance with the *NSW Guidelines* will, or is likely to be, affected by the change; and
  - (c) what steps the *Contractor* proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan),
  - (d) and the *Principal* will direct the *Contractor* as to the course it must adopt within 10 *business days* after receiving notice.
-

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## Annexure Part A

### Annexure to The Australian Standard General Conditions of *Contract AS4000 – 1997*

*Item*

1.	<i>Principal</i> (subclause 1.1)	Waverley Council  ABN 12 502 583 608
2.	<i>Principal's address</i>	55 Spring Street, Bondi Junction NSW 2022
3.	<i>Contractor</i> (subclause 1.1)	Quality Management & Constructions Pty Ltd  ACN 067 829 323
4.	<i>Contractor's address</i>	Suite 208, 29-31 Lexington Drive, Bella Vista NSW 2153
5.	<i>Superintendent</i> (subclause 1.1)	Waverley Council Project Manager
6.	<i>Superintendent's address</i>	55 Spring Street, Bondi Junction NSW 2022
6A.	<i>Other Contract documents</i> (subclause 1.1)	Nil
6B.	<i>Contract sum</i> (subclause 1.1)	\$6,621,131.16 (excluding GST)
7.	(a) <i>Date for practical completion</i> (subclause 1.1)  OR  (b) <del><i>Period of time for practical completion</i></del> (subclause 1.1)	5 October 2020  .....
7A.	<i>Information documents</i> (subclause 1.1)	Geotechnical Report 1 of 2 Geotechnical Report 2 of 2 Contamination Report Proposed Construction Staging Plan
7B.	<i>Progressive payment claim date</i> (subclause 1.1)	The last <i>business day</i> of the month.

7C.	Date to which <i>WUC</i> is to be included in <i>payment claim</i> (subclause 37.1(a))	The last <i>business day</i> of the relevant month.										
8.	Governing law (paragraph (f) and (h) of subclause 1.2)	New South Wales										
9.	(a) Currency (paragraph (g) of subclause 1.2)	Australian dollars										
	(b) Place for payments (paragraph (g) of subclause 1.2)	<i>Principal's</i> address										
	(c) Place of business of bank (subclause 1.1)	Sydney										
9A.	<i>Practical completion – conditions precedent to practical completion</i> (subclause 1.1)	<p>1. The <i>Contractor</i> has submitted to the <i>Superintendent</i> a certificate signed by a licensed surveyor stating that:</p> <p>(a) the whole of the <i>Works</i> are within any particular boundaries stipulated in the <i>Contract</i> except only for parts of the <i>Works</i> required by the <i>Contract</i> to be outside those boundaries; and</p> <p>(b) where so required by the <i>Principal's project requirements</i>, structural elements of the <i>Works</i> are within the tolerances specified.</p> <p>2. The <i>Contractor</i> has submitted to the <i>Superintendent</i> all:</p> <p>(a) as built documents; and</p> <p>(b) Operation and maintenance manuals (including the standard operational procedure manual).</p> <p>3. The <i>Contractor</i> has provided training as required by the <i>Contract</i>.</p>										
9B.	<i>Site</i> (subclause 1.1)	As defined by all stages within Proposed Construction Staging Plan										
9C.	<i>Provisional sum and provisional sum work</i> (subclause 1.1)	<table><tr><th><i>Provisional sum work</i></th><th><i>Provisional sum</i></th></tr><tr><td>1 Nil</td><td></td></tr><tr><td>2 .....</td><td></td></tr><tr><td>3 .....</td><td></td></tr><tr><td>4 .....</td><td></td></tr></table>	<i>Provisional sum work</i>	<i>Provisional sum</i>	1 Nil		2 .....		3 .....		4 .....	
<i>Provisional sum work</i>	<i>Provisional sum</i>											
1 Nil												
2 .....												
3 .....												
4 .....												

10.	<i>Early works</i> (subclause 2.4)	Subclause 2.4 does not apply. (If no option selected, subclause 2.4 does not apply.)
10A.	<i>Early Works Agreement</i> (subclause 1.1)	<i>Early Works Agreement</i> means the agreement between the <i>Principal</i> and the <i>Contractor</i> dated.
10B.	Total payments made in connection with <i>Early Works</i> (subclause 2.4(d))	Nil
11.	Dilapidation report (subclause 2.5)	Subclause 2.5 does apply. (If no option selected, subclause 2.5 does not apply.)
12.	<i>Provisional sum</i> , percentage for profit (subclauses 3.3(b) and 36.4(f)(i))	10%
13.	<sup>†</sup> <i>Contractor's security</i>	
	(a) Form (clause 5)	Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the <i>Principal</i> , with no expiry date), given by a bank or other financial institution approved in writing by the <i>Principal</i> , each for 50% of the amount identified in <i>Item 13(b)</i> .
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	5% of the <i>contract sum</i>
	(c) Not used	
	(d) Time for provision (clause 5)	The <i>Contract Date</i> .
	(e) Form of additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	An unconditional undertaking in the form set out in Annexure Part C (or such other form as may be approved in writing by the <i>Principal</i> , with no expiry date), given by a bank or other financial institution approved in writing by the <i>Principal</i> , for the full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and material.
	(f) <i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>last certificate of practical completion</i> (subclause 5.4)	50% of amount identified in <i>Item 13(b)</i>
14.	<sup>†</sup> Not used	

14A	<i>Deed of guarantee, undertaking and substitution required:</i> (subclause 5.6)	Required	
	Entity to provide deed (if required) (subclause 5.6)	Not applicable	
14B	Demolished material to remain the property of the <i>Principal</i> (subclause 6A.1(b))	Nil	
15.	<i>Principal</i> -supplied documents (subclause 8.2)	Document	No. of copies
15A	Documents, number of copies, and the times or stages at which they are to be supplied by the <i>Contractor</i> (subclause 8.3)	1. Specifications listed in Annexure I – 1 electronic copy 2. Drawings listed in Annexure I – 1 electronic copy	
	Document	No. of copies	Time/stage
	1 Staged ITP & Hold Points Documentation	1 electronic copy	Completion of each stage of works
	2		.....
	3		.....
	4		.....
	5		.....
16.	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	10 business days	
16A	<i>Subcontractors</i> (subclause 9.2)	MGI – Piling Works Jaydub Electrical – Electrical Works Sydney Brick Paving – Installation of pavers Newgrw – Installation of Plants AANI – ASP1 Works Fleetwood Urban – Installation of Shade Structure Leda Security – Supply and Installation of Bollards Complete Line marking – Line Marking Works TSS Engineering – Metal Works	

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† If applicable, delete and instead complete equivalent *Item* in the Separable Portions section of the Annexure Part A



17.	Subcontract <i>work</i> requiring approval (subclause 9.2)	<i>Work</i>	<i>Subcontractor</i>
		All <i>WUC</i> .....	.....
		.....	.....
		.....	.....
		.....	.....
18.	Novation (subclause 9.4)	Subcontractor	
		Nil	
18A.	<i>Subcontractor</i> warranties (subclause 9.6)	Category of <i>subcontractor</i>	Warranty period
	Categories of <i>subcontractors</i> required to provide warranties and corresponding warranty periods following the <i>date of practical completion</i>	All <i>WUC</i> – 12 months after practical completion	
19.	<i>Legislative requirements</i>		
	(a) Excepted <i>legislative requirements</i> (subclause 11.1)	The Contractor shall provide all required assistance to the Principal in relation to applying for and obtaining those excepted legislative requirements.	
	(b) Identified <i>WUC</i> (subclause 11.2(a)(ii))	Nil.	
	(c) Excepted <i>approvals</i> (subclause 11.1)	The Contractor shall provide all required assistance to the Principal in relation to applying for and obtaining those excepted approvals.	
20.	Insurance of <i>the Works</i> (clause 16)		
	(a) Alternative applying If Alternative 1 applies	Alternative 1.	
	(b) Amount for demolition and removal of debris	15% of the <i>contract sum</i> .	
	(c) Amount for consultants' fees	10% of the <i>contract sum</i> .	

	(d) Value of materials or things to be supplied by the <i>Principal</i>	Nil
	(e) Additional amount or percentage	15% of the total of paragraphs (g) to (j) in clause 16.
	If Alternative 2 applies	
	(f) Details of <i>Principal's</i> insurance	Not applicable
20A.	<i>Construction plant</i> and motor vehicle insurance (clause 16A)	
	Levels of cover of <i>Contractor's construction plant</i> and motor vehicle insurance shall not be less than	\$20,000,000
20B.	<i>Asbestos Insurance</i> (clause 16B)	Clause 16B does not apply. (If no option selected, clause 16B does not apply.)
	Levels of cover of <i>Asbestos Insurance</i> to be held shall be not less than	Nil (If nothing stated, \$20,000,000)
20C.	(a) Professional indemnity insurance (clause 16C)	Clause 16C does not apply. (If no option selected, clause 16C does not apply.)
21.	Public liability insurance (clause 17)	
	(a) Alternative applying If Alternative 1 applies	Alternative 1
	(b) Amount per occurrence shall not be less than	\$20,000,000
	If Alternative 2 applies	
	(c) Details of <i>Principal's</i> insurance	Not applicable.

21A.	Key personnel (subclause 23.2)	Key personnel	Position
		1. Steve Commisso - Managing Director	
		2. Lyndon Toh - NSW Construction Manager	
		3. Alex Boag – Project Manager	
		4. James Lehman – Project Engineer	
		5. Anthony Sargeant – Site Manager	
22.	(a) Time for giving access (subclause 24.1)	Within 14 days of the <i>Contract Date</i> . (If nothing stated, 14 days of the <i>Contract Date</i> .)	
	(b) Additional pre-conditions to access to <i>site</i> (subclause 24.1)	Nil	
22A.	Additional land procured by the <i>Principal</i> to carry out <i>WUC</i> (subclause 1.1 and subclause 24.4)	Nil	
22B.	Quality system requirements (subclause 29.2)	If nothing stated AS/NZS ISO 9001:2015.	
22C.	<i>Tests</i> (subclause 1.1 and subclause 30.1)	<i>Tests</i>  1. As per Specifications and Drawings listed in Annexure I	
22D.	Maximum intervals between <i>construction program</i> updates by <i>Contractor</i> (subclause 32.2)	Monthly	
23.	<i>Additional qualifying causes of delay</i> Causes of delay for which <i>EOTs</i> will be granted (subclause 1.1 and subclause 34.3)	1. <i>Variations</i> directed under subclause 36.1.  2. Breach of <i>Contract</i> by the <i>Principal</i> .  3. Changes in <i>legislative requirements</i> referred to in, and otherwise satisfying the requirements of, subclause 11.2.  4. State-wide industrial action which is not confined to, or cause or contributed to by any act or omission of, the <i>Contractor</i> or its <i>subcontractors</i> and which directly prevents <i>WUC</i> from proceedings.  5. Delay or disruption to the execution of <i>WUC</i> caused by the work of <i>separate contractors</i> , in respect of which the <i>Contractor</i> has complied with clause 9A(c).  6. <i>Latent conditions</i> , in respect of which the <i>Contractor</i> has complied with subclause 25.3	

24.	Liquidated damages, rate (subclause 34.7)	\$5000 per day
25.	Maximum daily amount of delay damages (subclause 34.9)	\$16,300.00 per working day
26.	Other <i>compensable causes</i> (subclause 1.1 and subclause 34.9)	Nil.
27.	Not used	
27A.	<i>Variations</i> – percentage increase for profit and overheads (subclause 36.4(f)(ii))	10%
27B.	<i>Variations</i> – percentage deduction for profit (subclause 36.4)	5%
28.	Not used	
29.	Unfixed plant and materials for which <i>payment claims</i> may be made (subclause 37.3)	Nil
30.	Interest rate on overdue payments (subclause 37.5)	0%
31.	Time for <i>Principal</i> to rectify inadequate access to the <i>site</i> for the commencement of <i>WUC</i> (subclause 39.7)	90 days
31A.	Amount payable upon termination for convenience by <i>Principal</i> (subclause 39.13(a)(iv))	\$1
31B.	Representative for executive negotiations (subclause 42.2)	<i>Principal</i> : General Manager <i>Contractor</i> : Steve Commisso
32.	Not used	
33.	Industry expert who will conduct expert determinations (paragraph (a) of subclause 42.4)	Not nominated.

- |     |  |   |
|-----|--|---|
| 34. | Nominating authority for expert determinations<br>(paragraph (b) of subclause 42.4)            | The Chair of the Resolution Institute.  |
| 35. | Terms of agreement between expert, <i>Principal</i> and <i>Contractor</i><br>(subclause 42.10) | The form of agreement contained in Annexure Part J.                             |
| 36. | Commonwealth Building Code<br>(clause 51)  | Clause 51 does not apply.<br>(If no option selected, clause 51 does not apply.) |
| 37. | NSW Guidelines<br>(clause 52)  | Clause 52 does not apply.<br>(If no option selected, clause 52 does not apply.) |

## separable portions

This section should only be completed if the *Contract* provides for *separable portions*.

Complete a separate page for each *separable portion* which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

	<i>Separable portion</i> (subclause 1.1)	No separable portions .....
	Description of <i>separable portion</i> (subclause 1.1)	..... ..... .....
<i>Item</i>		
7.	(a) <i>Date for practical completion</i> (subclause 1.1)	.....
	OR	
	(b) <i>Period of time for practical completion</i> (subclause 1.1)	.....
24.	Liquidated damages, rate (subclause 34.7)	..... ..... per day    \$..... per day

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## **Annexure Part B**

### **Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997**

#### **DELETIONS, AMENDMENTS AND ADDITIONS**

As marked-up in the body of the General Conditions of Contract and Annexures in the document provided to the *Contractor* with the executed version of the *Contract*.

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## Annexure Part C

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Approved form of unconditional undertaking (subclause 1.1- security)

At the request of ..... (the *Contractor*) and in consideration of ..... (the *Principal*) accepting this undertaking in respect of the *Contract* for .....  
..... (the *financial institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of ..... (\$.....)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the financial institution or until payment to the *Principal* by the financial institution of the whole of the sum or such part as the *Principal* may require.

Should the *financial institution* be notified in writing, purporting to be signed by ..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the financial institution will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *financial institution* may at any time without being required so to do pay to the *Principal* the sum of ..... (\$..... )  
less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20....



---

## Annexure Part D

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Deed of novation

(subclause 9.2(e))

This Deed made the ..... day of ..... 20 ...  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Subcontractor* warrants to the *Incoming Contractor* that:
  - (a) the subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Subcontractor* indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved in accordance with to the provisions of AS 4903-2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

.....  
.....  
.....  
.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

---

## Annexure Part E

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Deed of Novation

(clause 9.4)

Deed of Novation made at

on

Parties [ ] ABN [ ] of [ ] ("Principal")  
[ ] ABN [ ] of [ ] ("Subcontractor")  
[ ] ABN [ ] of [ ] ("Contractor")

#### Recitals

- A. The Principal and the Subcontractor are parties to the Contract.
- B. The Principal, the Subcontractor and the Contractor have agreed to the novation of the Contract on the terms and conditions of this deed.

#### This deed provides

### 1. Definitions and Interpretation

#### 1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

**"Claim"** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**"Contract"** means, subject to clause 1.2(l) below, the agreement between the Principal and the Subcontractor described in Schedule 1.

**"Contract Guarantees"** means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

**"Effective Date"** means [the date of this deed].

**"GST"** means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

**"Liability"** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

**"Related Entity"** has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

**"Services"** means the services provided or to be provided under the Contract.

**"Works"** means the works or project to which the Services relate and includes the works constructed or completed or to be constructed or completed and any other work under the Contract.

## **1.2 Interpretation**

In this deed:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation;
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (l) references to the Contract mean the Contract as amended by the terms of this deed; and
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward this deed or any part of it.

## **2. Condition Precedent to Novation**

Clause 3 of this deed shall have no force and effect until the Effective Date.

## **3. Novation**

### **3.1 Assumptions of rights and obligations**

- (a) The Contractor:
  - (i) shall be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Principal under the terms of the Contract; and
  - (ii) shall assume the obligations and Liability of the Principal under the terms of the Contract,in all respects as if the Contractor had originally been named in the Contract as a party instead of the Principal.
- (b) The Subcontractor shall comply with the terms of the Contract as if the Contractor were originally named in the Contract in place of the Principal.
- (c) Any reference in the Contract to the Principal shall be read as a reference to the Contractor.

### **3.2 Release by Subcontractor**

- (a) The Subcontractor releases the Principal from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has against the Principal under or in respect of the Contract.
- (b) This release does not affect any rights the Subcontractor may have against the Contractor as a result of the assumption by the Contractor under the terms of this deed of the obligations and Liability of the Principal under the terms of the Contract.

### **3.3 Release by Principal**

The Principal releases the Subcontractor from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any Claim it has, or but for this clause would have had against the Subcontractor under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Subcontractor to the Contractor under the Contract.

### **3.4 Insurance**

As from the Effective Date:

- (a) the Contractor must replace any insurances effected and maintained by the Principal under the terms of the Contract; and
- (b) the Subcontractor must take the necessary steps to ensure that, for all insurances required to be effected by the Subcontractor under the terms of the Contract, the Contractor is named in place of the Principal as required by the Contract.

### **3.5 Replacement of Guarantees**

The Subcontractor and the Contractor must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Subcontractor, the Contractor; and
- (b) in the case of the Contractor, the Subcontractor.

### **3.6 Payments to the Subcontractor**

The parties acknowledge and agree that as at the Effective Date:

- (a) the amount which has been paid to the Subcontractor by the Principal under the Contract is specified in Schedule 1; and
- (b) the amount which remains to be paid to the Subcontractor by the Contractor under the Contract is specified in Schedule 1.

## **4. Ongoing Rights of Principal**

### **4.1 Direct Enquiries**

In addition to any other rights which the Principal may have, the Subcontractor and the Contractor each agree that the Principal may make enquiries directly of the Subcontractor for the purpose of establishing whether the Subcontractor is complying with its obligations under the Contract.

### **4.2 Report by Subcontractor**

The Subcontractor must immediately report, to both the Contractor and the Principal:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Subcontractor, is not in accordance with any provision of the Contract; and
- (b) any non-conformity of any documentation produced in accordance with the Contract, or to the documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

### **4.3 Not used**

### **4.4 Not used**

## **5. Overriding Effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Contractor.

## **6. Representations and Warranties**

### **6.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

### **6.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

### **6.3 Binding Obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

## **7. Duties, Costs and Expenses**

### **7.1 Stamp Duty**

The Contractor must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

### **7.2 Costs**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

### **7.3 GST**

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed, including by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

## **8. General**

### **8.1 Governing Law**

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in Schedule 1.

### **8.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

### **8.3 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

**8.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

**8.5 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

**8.6 Severance**

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

**8.7 Further Acts and Documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

**8.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



**Schedule 1**

<b>Contract</b> (clause 1.1)	..... ..... .....
<b>The amount which has been paid to the Subcontractor by the Principal under the Contract</b> (clause 3.6(a))	
<b>The amount which remains to be paid to the Subcontractor by the Contractor</b> (clause 3.6(b))	
<b>State or Territory</b> (clauses 8.1 and 8.2)	New South Wales

**Executed by Ross McLeod, General Manager for Waverley Council ABN 012 502 583 608 in the presence of:**

$$\left. \begin{array}{l} \text{---} \\ \text{---} \\ \text{---} \\ \text{---} \end{array} \right\} \text{---}$$

## Witness

Full name

Usual address

— — — — —

Director (or Company Secretary)

Full name

Usual address

—

Director (or Company Secretary)

Full name

Usual address

---

## Annexure Part F

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Subcontractor statement

(subclause 38.1)

#### STATUTORY DECLARATION

I \_\_\_\_\_

(authorised officer)

OF \_\_\_\_\_

do solemnly and sincerely declare that, in relation to the contract between

\_\_\_\_\_ ACN \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ ACN \_\_\_\_\_ (Contractor) for the \_\_\_\_\_ (Contract):

1. I hold the position of \_\_\_\_\_ of the Contractor.
2. I am in a position to know the facts contained herein and I am duly authorised to bind the Contractor by the terms of this declaration.
3. All subcontractors, consultants and suppliers who have at any time been engaged by the Contractor in connection with the work under the Contract have been paid all amounts which as at the date of this declaration are due and payable to them in respect of the work under, or in connection with, the Contract.
4. All workers (including employees and contractors) who have at any time been engaged by the Contractor in connection with the work under the Contract:
  - (a) have been paid all remuneration and benefits which as at the date of this declaration are due and payable to them in respect of their employment or under, or in connection with, the Contract; and
  - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment or work in respect of, or in connection with, the Contract in accordance with to any award, enterprise agreement, Act or Regulation.
5. The Contractor has been paid all that is due and payable to it under the Contract as at the date of this declaration, except for any amounts claimed in any payment claim with which this declaration is provided.
6. The Contractor has paid all relevant fees and maintains all insurance policies the Contractor is required to maintain under the Contract.
7. The Contractor is solvent and able to meet its debts as and when they fall due.
8. The Contractor has been informed (by statutory declaration in equivalent terms to this declaration) by each of its subcontractors, consultants and suppliers engaged by the Contractor in connection with the work under the Contract that all their respective employees, secondary subcontractors, suppliers and consultants have been paid all remuneration and other amounts or benefits due and payable to them in connection with the work under the Contract.
9. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
  - (a) under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation;
  - (b) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
  - (c) under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation.
10. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

11. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors, consultants and suppliers in connection with the Contract were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the *Workers Compensation Act 1987* (NSW), the *Payroll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW) ("Acts"); and
  - (b) given by the subcontractors, consultants and suppliers in their capacity as 'subcontractors' as defined in the Acts.
12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, consultants and suppliers, as referred to in this declaration.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900* (NSW).

**SUBSCRIBED AND DECLARED AT \_\_\_\_\_ in the State of New South Wales,**

**THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_**

**BEFORE ME**

(Signature) \_\_\_\_\_

(Justice of the Peace/Solicitor)

**SIGNED FOR AND ON BEHALF OF THE CONTRACTOR**

**Certificate under section 34(1)(c) of Oaths Act 1900 (NSW)**

I \_\_\_\_\_,  
[Name of the person before whom the declaration is made]

a \_\_\_\_\_,  
[Qualification of the person before whom the declaration is made]

certify the following matters concerning the making of this statutory declaration by the person who made it:

*\*Cross out any text that does not apply*

1. \*I saw the face of the person or \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2. \*I have known the person for at least 12 months or \*I have confirmed the person's identity using an identification document and the document I relied on was

\_\_\_\_\_  
[describe identification document relied on]

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

Date: \_\_\_\_\_

## **SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

### **SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: ..... ABN: .....

*(Business name)*

of .....

*(Address of subcontractor)*

has entered into a contract with ..... ABN: .....

*(Business name of principal contractor)*

**(Note 2)**

Contract number/identifier ..... **(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(Note 5)**

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature ..... Full name .....

(g) Position/Title ..... Date ...../...../.....

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

#### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.  
  
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.  
  
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'  
  
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

#### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

#### **Further Information**

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Worker Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

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## Annexure Part G

Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

Form of deed of guarantee, undertaking and substitution

(subclause 5.6)

### Deed of Guarantee, Undertaking and Substitution

Date

Parties

Name **[## Insert Guarantor's name]** ACN **[## Insert Guarantor's ACN]** ('Guarantor')

Notice details **[## Insert Guarantor's full address]**

Name Waverley Council ABN 012 502 583 608 ('Principal')

Notice details 55 Spring Street, Bondi Junction NSW 2022

Background

- A The *Contractor* has, or will enter into, the *Contract* with the *Principal*.
- B At the request of the *Principal*, the *Guarantor* has agreed to provide a guarantee in favour of the *Principal* in relation to the due and punctual performance of the *Obligations* by the *Contractor* on the terms and conditions of this deed.
- C The *Guarantor* considers that by providing this guarantee and indemnity there has been or will be a commercial benefit flowing to the *Guarantor*.



## **Agreed terms**

### **1 Defined terms & interpretation**

#### **1.1 Defined terms**

In this deed:

*'Abandonment'* means the *Contractor* wholly or substantially abandons the *WUC*.

*'business day'* has the same meaning as in the *Contract*.

*'Contract'* means the contract between the *Principal* and the *Contractor* dated on or about [##to be inserted] in relation to the *Work under the Contract*.

*'Contractor'* means [##to be inserted].

*'Corporations Act'* means the *Corporations Act 2001* (Cth).

*'Insolvency Event'* means the *Contractor* entering into any form of formal or informal insolvency administration including:

- (a) if the *Contractor* becomes insolvent;
- (b) if a liquidator, controller or administrator is appointed to it;
- (c) if proceedings or steps are brought, taken or threatened for the purpose of winding up or making such an appointment; or
- (d) the *Contractor* is unable to pay its debts as they fall due.

*'Liability'* means any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

*'Loss'* means any liability (including legal and other professional expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

*'Obligations'* means all the obligations and liabilities of the *Contractor* to the *Principal* (whether liquidated or not, whether contingent or presently accrued due and whether relating to the payment of money or the performance or omission of any act or thing) that are now in existence, or may hereafter come into existence, in accordance with the *Contract*.

*'Work under the Contract'* or *'WUC'* has the same meaning as in the *Contract*.

#### **1.2 Interpretation**

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed;

- (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (c) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, bylaws, regulations, rules and statutory instruments (however described) issued under it;
- (d) a reference to \$ or dollar is to Australian currency;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every gender;
- (f) where the day on which or by which any act, matter or thing is to be done under this deed is not a *business day*, that act, matter or thing will be done on the next following *business day*, and
- (g) includes and cognate expressions indicate what is included without limiting what may be included.

### **1.3 Guarantor's warranty as to capacity**

The *Guarantor* warrants that it enters this deed in its own right and not as a trustee or in any other representative capacity.

### **1.4 Consideration**

Each party acknowledges to each other party that it enters into this deed and incurs obligations and gives rights under it for valuable consideration from the other party.

### **1.5 Reliance**

The *Guarantor* acknowledges that:

- (a) the *Principal* has entered into the *Contract* in reliance on the representations and warranties in clause 4; and
- (b) it has not entered into this deed in reliance on any representation, warranty, promise or statement of the *Principal* or of any person on behalf of the *Principal*.

## **2 Guarantee and indemnity**

### **2.1 Guarantee**

- (a) The *Guarantor* irrevocably and unconditionally guarantees to the *Principal* the due and punctual performance by the *Contractor* of all the *Obligations*.
- (b) Subject to clause 3.2, if the *Contractor* does not perform an *Obligation*, the *Guarantor* shall:
  - (i) perform that *Obligation*; or
  - (ii) procure the performance of that *Obligation*,

on demand from the *Principal*. A demand may be made by the *Principal* at any time and from time to time after failure by the *Contractor* to perform any of its *Obligations* in accordance with the *Contract*.

## **2.2 Payment by the Guarantor**

If the *Contractor* does not pay any monetary *Obligation* when due, the *Guarantor* shall within 2 *business days* of receipt of a written demand from the *Principal* pay that amount to, or as directed by, the *Principal*.

## **2.3 Indemnity**

The *Guarantor* indemnifies the *Principal* against any *Loss* the *Principal* suffers or incurs:

- (a) if the *Contractor* does not, or is unable to, perform an *Obligation* (including the payment of a monetary *Obligation*);
- (b) if an *Obligation* (including the payment of a monetary *Obligation*) is found to be unenforceable, invalid, illegal or void;
- (c) if an obligation the *Guarantor* would otherwise have under clauses 2.1 or 2.2 is found to be unenforceable, invalid, illegal or void;
- (d) as a result of an *Insolvency Event* in respect of the *Contractor*; or
- (e) if the *Guarantor* is in breach of this deed,

in each case, for any reason and whether or not the *Principal* knew or ought to have known anything about those matters.

The *Guarantor* agrees to pay amounts under this indemnity within 2 *business days* of receipt of a written demand from the *Principal* to pay such amounts to the *Principal*.

## **3 Liability of the Guarantor**

### **3.1 No reduction or release**

The *Liability* of the *Guarantor* and the rights of the *Principal* under this deed will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the *Guarantor* from *Liability* under this deed.

Without limiting the generality of the foregoing, the *Guarantor's Liability* will not be affected by:

- (a) the granting by the *Principal* to the *Contractor* of time, waiver, indulgence or concession or the making of any composition or compromise with the *Contractor*;
- (b) the *Principal* forbearing to enforce or neglecting to exercise any right against the *Contractor*;
- (c) any laches, acquiescence or other act, neglect, default, omission or mistake by the *Principal*;
- (d) any variation of any of the *Obligations* or of the *Contract*, made either with or without the knowledge of the *Guarantor*;
- (e) the loss or release of any security or any variation in the order of priorities relating to that security;
- (f) any failure by the *Principal* to disclose to the *Guarantor* any fact, circumstance or event relating to the *Contractor* at any time before or during the currency of this deed;

- (g) the cessation of the obligations, in whole or in part, of any person under any document or agreement;
- (h) the liquidation of any person;
- (i) any arrangement, composition or compromise entered into by the *Principal* or any other person;
- (j) any document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (k) any extinguishment, failure, loss, release, discharge, *Abandonment*, impairment, compound, composition or compromise, in whole or in part of any agreement;
- (l) any security being given to the *Principal* by any person;
- (m) any moratorium or other suspension of any right of the *Principal*;
- (n) the *Principal* or any receiver or attorney exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any right of the *Principal*;
- (o) the *Principal* obtaining a judgment against any person for the payment or performance of any of the *Obligations*;
- (p) any transaction, agreement or arrangement that may take place with the *Principal* or any other person;
- (q) any payment to the *Principal*, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (r) any failure to give effective notice to any person of any default under the *Contract* or other document or agreement;
- (s) the acceptance of the repudiation of, or termination of the *Contract*; or
- (t) any assignment, novation or other dealing with, any rights or obligations under the *Contract*.

### 3.2 Reinstatement of rights

If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in satisfaction of an *Obligation* is void or voidable:

- (a) under any law relating to liquidation, administration, insolvency or the protection of creditors;  
or
- (b) for any other reason,

provided the *Guarantor* is liable under this deed in respect of the *Obligation* and the claim is upheld by a court of law, conceded or compromised, then:

- (c) the *Principal* is entitled immediately as against the *Guarantor* to the rights in respect of the *Obligation* to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and

- (d) the *Guarantor* shall immediately take all action and sign all documents reasonably required by the *Principal* to restore to the *Principal* the benefit of the *Liability* of the *Guarantor* under this deed in place immediately before the payment or transaction.

### **3.3 Continuing obligations**

- (a) The guarantee and indemnity contained in this deed are continuing obligations of the *Guarantor* and remain in full force and effect until all:
  - (i) the obligations owing to the *Principal* under this deed, contingently or otherwise, have been performed in full; and
  - (ii) the monetary obligations and all other moneys owing to the *Principal* under this deed, contingently or otherwise, have been paid in full.
- (b) The *Principal's* rights under this deed are additional to and do not merge with or affect and are not affected by any other obligation of the *Guarantor* to the *Principal*, despite any rule of law or equity or any statutory provision to the contrary.

### **3.4 Independent obligation**

The guarantee in clause 2.1, the undertaking to pay in clause 2.2 and the indemnity in clause 2.3 contained in this deed are separate and independent obligations of the *Guarantor* and neither limits the generality of the other.

### **3.5 Immediate recourse**

The *Guarantor* waives any right it may have to require the *Principal* to proceed against, or enforce any other rights or security or claim payment from, any other person before claiming from the *Guarantor* under this deed. This waiver applies irrespective of any law or any provision of the *Contract* to the contrary.

## **4 Representations and warranties**

The *Guarantor* represents and warrants that:

- (a) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (b) the execution, delivery and performance of this deed does not violate its constitution, any law applying to it or any agreement or instrument binding on it or any of its property;
- (c) it has the power, and has taken all corporate and other action required, to enter into this deed and to authorise its execution and delivery and the performance of its obligations under it;
- (d) it is a corporation as that expression is defined in the *Corporations Act* and validly existing under that Act;
- (e) it is solvent and no *Insolvency Event* has occurred in respect of it;
- (f) it has taken all necessary corporate action to authorise the entry into and performance of this deed and to carry out the transactions contemplated by it; and
- (g) all information provided to the *Principal* by or on behalf of the *Guarantor* and all representations made in this deed are true and correct in all material respects and are not, whether by omission of information or otherwise, misleading.

The *Guarantor* will be taken to have repeated the representations and warranties in this clause 4 on each day during the term of this deed.

## **5 Defences and cross claims available to the Guarantor**

Notwithstanding any other provision of this deed, the aggregate liability of the *Guarantor* under this deed will not exceed the aggregate *Liability* of the *Contractor* under the *Contract* (including any *Liability* which would have been due if the *Contract* or the *Liability* was enforceable, valid and not illegal).

## **6 Not Used**

## **7 Costs and expenses**

- (a) The *Guarantor* shall pay all taxes, duties, fees, costs and expenses in relation to the delivery, stamping, registration and discharge of this deed.
- (b) The *Guarantor* shall on demand reimburse the *Principal* for all expenses (including legal costs and disbursements on a solicitor/own client basis) incurred by the *Principal* in connection with the enforcement, attempted enforcement or preservation of any rights under this deed.
- (c) The *Guarantor* will be solely responsible for the payment of any and all taxes imposed by the government of any jurisdiction with respect to or by reason of the receipt or derivation of any and all actual or constructive payments to it under this deed, including any retrospective assessments or taxes that may be made at any time during or after the term of this deed by any duly constituted revenue authority.
- (d) All payments under this deed will be made without any deduction or withholding for or on account of any *Tax* except to the extent, if any, that such deduction or withholding is required by any applicable law, including any practical application thereof by any relevant revenue authority.
- (e) Where the *Guarantor* is so required to make such a deduction or withholding with respect to any payment to the *Principal* under this deed, the *Guarantor* will:
  - (i) notify the *Principal* of such requirement;
  - (ii) pay to the relevant revenue authority the full amount required to be deducted or withheld in accordance with the applicable law as applied; and
  - (iii) provide the *Principal* with an official receipt or certification or other documentation reasonably acceptable to the *Principal*, evidencing such payment.
- (f) In this clause 7 '*Tax*' means withholding or other tax imposed in accordance with the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Taxation Administration Act 1953* (Cth), the rating Acts and other applicable tax legislation, regulations and delegated legislation (including interest, penalties, fines or charges with respect thereto).

### **7.1 Legal advice**

The *Guarantor* acknowledges that before executing this deed the *Guarantor*:

- (a) was advised by the *Principal* to consult and receive advice as to the purport, effect and consequences of and obligations created by this deed from a solicitor or barrister independent of the *Principal*; and
- (b) was aware of and fully understood the purport, effect and consequences of and the obligations created by this deed.

## **8 Miscellaneous**

### **8.1 Severance**

Any provision of this deed which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions of this deed.

### **8.2 Notices**

All notices and other communications to a party in connection with this deed may be made by delivering or posting the notice or communication to the address of the party or sent by facsimile to the facsimile number of the party, as notified to the other party from time to time.

### **8.3 Waivers**

- (a) Waiver of any right arising from a breach of this agreement or of any power arising upon default under this deed shall be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this deed; or
  - (ii) a right, power, authority, discretion, or remedy created or arising upon default under this deed,does not result in a waiver of that right, power, authority, discretion, or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion, or remedy arising from a breach of this deed or on a default under this deed as constituting a waiver of that right, power, authority, discretion, or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion, or remedy by that other party.
- (e) This clause may not itself be waived except by writing.

### **8.4 Variation**

A variation of any provision of this deed shall be in writing and signed by the parties.

### **8.5 Further assurances**

Each party shall do all things and execute all further documents necessary to give full effect to this deed.

### **8.6 Entire agreement**

This deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

### **8.7 To the extent not excluded by law**

The rights, duties and remedies granted or imposed under this agreement operate to the extent not excluded by law.

## **8.8 Information**

The *Guarantor* agrees to, promptly after request by the *Principal*, provide any financial and other information in relation to the *Guarantor* reasonably requested by the *Principal*.

## **9 Governing law and jurisdiction**

### **9.1 Governing law**

This deed is governed by and will be construed according to the laws of New South Wales, Australia.

### **9.2 Jurisdiction**

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a) of this subclause 9.2.

## **10 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one agreement.

## **11 Assignment**

### **11.1 Assignment/novation by the Principal**

The *Principal* may novate, assign or charge its rights under this deed without the prior written consent of the *Guarantor* to any person.

### **11.2 No assignment by the Guarantor**

The *Guarantor* may not assign any of its rights under this deed without the prior written consent of the *Principal*. The *Principal* may withhold consent in its absolute discretion.



**EXECUTED as a deed**

**EXECUTED by Ross McLeod General Manager  
for Waverley Council ABN 012 502 583 608 in the  
presence of:** )  
)  
)  
)

..... Authorised Signatory

..... Full name

..... Usual address

..... Witness

..... Full name

..... Usual address

**EXECUTED by [## Insert name of Guarantor]  
ACN [## Insert Guarantor's ACN] in accordance  
with Section 127 of the Corporations Act 2001 (Cth)  
in the presence of:** )  
)  
)  
)

..... Director

..... Full name

..... Usual address

..... Director (or Company Secretary)

..... Full name

..... Usual address

---

## Annexure Part H

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Form of Subcontractor Warranties

(subclause 9.6)

This Deed is made on

#### Between

[ ] of [ ] (Principal)

and

[ ] of [ ] (Subcontractor)

#### Operative provisions

##### 1. Definitions

In this Deed:

"Contract" means the Contract dated [insert date] between the Principal and the Contractor in respect of the Works.

"Contractor" means the person stated in the Schedule.

"Subcontract Work and Products" means the works and/or products stated in the Schedule.

"Warranty Period" means the period stated in the Schedule.

"Works" means the works described in the Schedule.

##### 2. Warranty

The Subcontractor warrants that all work performed and all materials supplied by the Subcontractor as part of the Subcontract Work and Products will:

2.1 comply in all respect with the requirements of the Contract; and

2.2 to the extent that the quality of materials or standard of workmanship is not specified in the Contract, comply with the requirements of law and be of merchantable quality and be fit for the purposes for which they are required.

##### 3. Replacement or making good Subcontract Work and Products

3.1 The Subcontractor must at its cost make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work and Products which, within the Warranty Period, are found to:

3.1.1 be of a lower standard or quality than referred to in clause 2 of this Deed; or

3.1.2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.

- 3.2 The liability of the Subcontractor under this clause 3 is reduced to the extent that deterioration is caused by:
- 3.2.1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
  - 3.2.2 normal wear and tear; or
  - 3.2.3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor.

#### **4. Making good Works**

The Subcontractor must at its cost carry out any work necessary to:

- 4.1 any part of the works to satisfy its obligations under clause 3 of this Deed; and
- 4.2 restore or make good the Works after satisfying its obligations under clause 3 of this Deed.

#### **5. Indemnity**

The Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal arising out of or in connection with any breach by the Subcontractor of clauses 2 or 3 of this Deed.

#### **6. Notice of Defects**

The Principal may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

#### **7. Time to remedy**

The Subcontractor must do everything necessary to remedy all breaches notified to it by the Principal under clause 6 of this Deed within a reasonable time after the Principal's notice.

#### **8. Failure to remedy**

- 8.1 If the Subcontractor fails to carry out and complete the works specified in the Principal's notice under clause 6 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- 8.2 If the Subcontractor fails to complete the work by the date specified in the notice given in accordance with clause 8.1, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in doing so.

#### **9. Urgent action by Principal**

- 9.1 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 2 of this Deed.
- 9.2 The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.
- 9.3 The Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in taking that action.

**10. Operation of Deed**

This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

## Schedule

1. Contractor:
2. Subcontract Work and Products:
3. Warranty Period:
4. Works:

Executed as a deed.

**EXECUTED by Ross McLeod General  
Manager for Waverley Council ABN 012  
502 583 608 in the presence of:**

)  
)  
)  
)

..... Authorised signatory  
..... Full name  
..... Usual address  
..... Witness  
..... Full name  
..... Usual address

**EXECUTED by [## Insert name of  
Subcontractor] ACN [## Insert  
Subcontractor's ACN] in accordance  
with Section 127 of the Corporations Act  
2001 (Cth) in the presence of:**

)  
)  
)  
)

..... Director  
..... Full name  
..... Usual address  
..... Director (or Company Secretary)  
..... Full name  
..... Usual address

---

## **Annexure Part I**

### **Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997**

#### ***Project Requirements***

(subclause 1.1)

#### **General**

#### **Specifications**

<b>Document number</b>	<b>Document name</b>	<b>Date</b>	<b>Revision</b>
1	Landscape Design Package	06/02/2020	B
2	Civil Design Package	06/02/2020	A
3	Structural Design Package	06/02/2020	A
4	Lighting Design Package	06/02/2020	T1

#### **Drawings**

<b>Document number</b>	<b>Document name</b>	<b>Date</b>	<b>Revision</b>
5	Landscape Design Package	06/02/2020	2
6	Civil Design Package	06/02/2020	B
7	Structural Design Package	06/02/2020	B
8	Lighting Design Package	06/02/2020	T1
9	Traffic Design Package	06/02/2020	B
10	Shelter Design Package	06/02/2020	0
11	ASP3 Design Package	20/02/2020	0

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## Annexure Part J

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Terms of Agreement between the expert, the *Principal* and the *Contractor*

(subclause 42.10)

**THIS AGREEMENT** is made on the date set out in Item 1 of the Particulars.

**BETWEEN** THE PERSON DESCRIBED IN ITEM 2 OF THE PARTICULARS ('*Principal*')

**AND** THE PERSON DESCRIBED IN ITEM 3 OF THE PARTICULARS ('*Contractor*')

**AND** THE PERSON DESCRIBED IN ITEM 4 OF THE PARTICULARS ('*Expert*')

#### RECITALS

- A. The *Principal* and the *Contractor* have entered into the *Contract*.
- B. The *Principal* and the *Contractor* have agreed to refer the *Dispute* for determination by the *Expert* acting as an expert and not as an arbitrator.

#### OPERATIVE

##### 1. INTERPRETATION

Words and phrases used in this Agreement, unless the contrary intention appears or they are otherwise defined in this Agreement, have the meaning attributed to those words and phrases in the *Contract*.

##### 2. DEFINITIONS

'*Contract*' means the contract entered into between the *Principal* and the *Contractor* described in Item 5 of the Particulars.

'*Dispute*' means the dispute or difference described in Item 5A of the Particulars.

##### 3. DECIDE ON DISPUTES

The *Expert* shall:

- (a) determine the *Dispute* and not any other matter; and
- (b) in discharging his or her obligations under this Agreement, abide and be bound by the provisions of the *Contract*.

##### 4. PROCEDURES

Subject to clause 6, the *Expert* shall determine the *Dispute* in accordance with the procedures set out in Item 6 of the Particulars unless varied, amended or otherwise changed by agreement between the *Principal*, the *Contractor* and the *Expert*.

##### 5. THE EXPERT RELEASED



The *Expert* is not liable to the *Principal* and the *Contractor* jointly, or either of them separately, or to any third party for anything done or omitted by him or her under this Agreement.

The *Principal* and the *Contractor* release and indemnify the *Expert* from and against any claims:

- (a) including (without limitation) negligence; but
- (b) excluding actual fraud,

in the course of discharging his or her obligations under this Agreement.

## 6. **EXPERT'S POWERS**

The *Expert* shall in discharging his or her obligations under this Agreement:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in such manner as the *Expert* thinks fit without being bound to observe the rules of evidence but subject to the rule of natural justice;
- (c) take into consideration all documents, information and other written and oral material that the *Principal* and the *Contractor* place before the *Expert* including documents, information and material relating to the facts the subject of the *Dispute* and to arguments and submissions upon the matters the subject of the *Dispute*;
- (d) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so desires;
- (e) without giving reasons, make a decision in such form as he or she considers appropriate stating the determination of the *Dispute*; and
- (f) act with expedition with a view to making a decision within the time period specified in Item 7 of the Particulars.

## 7. **MEET WITH PARTIES**

If as part of the procedures under clause 4, the *Expert* meets with the *Principal* and the *Contractor*:

- (a) the *Principal* and the *Contractor* may be accompanied by their legal representatives if so specified in Item 8 of the Particulars; and
- (b) the *Principal* and the *Contractor* agree to be bound by such procedural directions as may be given by the *Expert* both in preparation for, and during the course of, the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

## 8. **DECISION BINDING**

Unless otherwise provided by the *Contract* or Item 9 of the Particulars, the *Expert's* determination of the *Dispute* is final and binding.

## 9. **REMUNERATION**

In consideration of the *Expert* performing his or her obligations under this Agreement the party or parties as specified in Item 10 of the Particulars shall pay to the *Expert* the amount set out in Item 11 of the Particulars or such other amount as is agreed between the *Principal*, the *Contractor* and the *Expert*.

10. **CONFIDENTIALITY**

The *Expert* shall not at any time, without the consent of both the *Principal* and the *Contractor*, disclose or suffer or permit his or her employees, consultants or agents to disclose to any person:

- (a) any details concerning the subject matter of the *Dispute*;
- (b) any of the contents of the *Contract*, this Agreement or any other collateral or supplemental agreements or any of the commercial bases or any information relating to the negotiations concerning the same; or
- (c) any other information which may have come to the *Expert's* knowledge in the course of this Agreement including (without limitation) information concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the *Principal* or the *Contractor*.

11. **NATURE OF EXPERT'S ROLE**

The *Expert*:

- (a) is to be independent from the *Principal* and the *Contractor*; and
- (b) without limitation, warrants that he or she has no conflict of interest in acting under this Agreement.

Nothing in this Agreement will be deemed to make the *Expert* an agent, employee or partner of the *Principal* or the *Contractor*.

The *Expert* shall assume full responsibility and liability for the payment of all taxes due on moneys received by him or her under this Agreement.

12. **TERMINATION**

This Agreement may be terminated by either the *Principal* or the *Contractor* in any of the following events:

- (a) the *Expert* being declared of unsound mind or mentally ill;
- (b) the *Expert* being declared bankrupt;
- (c) the *Expert* committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the *Principal* or the *Contractor*;
- (d) the *Expert* failing to observe and fulfil any of the substantive terms of this Agreement; or
- (e) the *Expert* being prevented by prolonged illness or incapacity from performing his or her obligations under this Agreement.

13. **NOTICES**

All notices to be given to the *Expert* under this Agreement will be deemed to be properly given if:

- (a) hand delivered to the *Expert*;
- (b) sent by certified or registered mail to the *Expert's* address set out in Item 12 of the Particulars or to such other address as the *Expert* may from time to time advise by notice in writing; or

- (c) forwarded by facsimile transmission to the *Expert's* facsimile number as set out in Item 13 of the Particulars or to such other facsimile number as the *Expert* may from time to time advise by notice in writing.

**14. GOVERNING LAW**

Unless specified otherwise in Item 14 of the Particulars, this Agreement is to be construed for all purposes in accordance with the laws applying to the *Contract*.

**15. INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT**

If there is any inconsistency between the terms of this Agreement and the *Contract*, then unless otherwise specified in Item 15 of the Particulars the terms of the *Contract* will prevail.

**PARTICULARS**

Item 1: Date of Agreement

Item 2: *Principal*

Item 3: *Contractor*

Item 4: *Expert*

Item 5: Details of *Contract*  
(clause 2)

Item 5A: *Dispute*  
(clause 2)

Item 6: Procedure  
(clause 4)

Item 7: Decision Time Limit  
(clause 6)

Item 8: Legal Representation  
(clause 7)

Item 9: Decision Binding  
(clause 8)

Item 10: Costs Arrangement  
(clause 9)

Item 11: *Expert's* Remuneration  
(clause 9)

Item 12: *Expert's* Address  
(clause 13)

Item 13: *Expert's Facsimile*  
(clause 13)

Item 14: Governing Law  
(clause 14)

Item 15: Inconsistency  
(clause 15)

**SIGNED by THE PRINCIPAL**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**SIGNED by THE CONTRACTOR**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**SIGNED by THE EXPERT**  
in the presence of:

)  
)

.....

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

---

## Annexure Part K

### Schedule of rates

(subclause 1.1)

For the avoidance of doubt, the following schedule of rates does not form part of the *Contract* and shall only be used for the purposes of valuing *variations* under subclause 36.4(b).

## Schedule of Rates for Dayworks

Effective from 1<sup>st</sup> April 2019 – Note these rates may increase on 1st April 2020

	Normal Time (\$ / hr)	Time Plus Half (\$ / hr)	Double Time (\$ / hr)
Supervisor			
Site Engineer			
Project Manager			
Labourers			
Includes Labourers, Operators, Formworkers, Steelfixers, & Concretors			
<u>Excavator - 1T to 6T</u>			
with rockbreaker			
with scabbler/header			
	Replacement of scabbler picks at per pick		
with rocksaw			
	Retipping of rocksaw teeth at per teeth		
Transport each way			
<u>Excavator - 8T to 15T</u>			
with rockbreaker			
Transport each way			
<u>Bobcat / Forklift</u>			
Extra for attachments		eg: Sweeper, forkjib, kibble, etc ...	
Transport each way			
Single Axle Tip Truck			
Bogie Tip Truck			
Note that truck hire excludes Tolls and Minimum Truck Hire is 4hours + 1 hr Travel			

### Other Items

Oxy/Acet Set	per day	Single Stage Scaffold	per day
Generator	per day	Scissor Lift	per hour
Compressor + equip	per day	Roller CC10	per day
Kango	per day	Jackhammer	per day
Large vehicle transport	each way	Small vehicle transport	each way
Other materials & equip	Cost + 15 %	GST - to be added	10%

### Notes:

#### 1.0 - Hourly charge schedule - minimum charge of 4 hours per man or plant item per shift

		<u>LABOUR</u>	<u>PLANT</u>
Monday to Friday	First 8 hours	Normal Time	Normal Time
	Next 2 hours	Time plus half	Time plus half
	Thereafter	Double Time	Double Time
Saturday	7am to 9am	Time plus half	Time plus half
	9am onwards	Double Time	Double Time
Sunday		Double Time	Double Time
Night Shift - Any seven days		Double Time	Double Time

#### 2.0 - Allowances in rates

Allowed allowances as per QMC's EBA  
PPE and basic tradesmans hand tools

#### 3.0 - Tools, Materials & Equipment

Tools, Materials and Equipment not listed in this schedule are to be charged at the quoted or invoiced market rates applied to QMC plus the 15% profit and overheads. Proof of cost (or rate) will be provided once only so as to determine a unit rate for repeated use.

Tools, Materials and Equipment not listed in this schedule and that are owned and supplied by QMC will be charged at market rates quoted to QMC plus 15% profit and overheads. Proof of cost (or rate) will be provided once only so as to determine a unit rate for repeated use.

## **Standards Australia**

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body.

## **Australian Standards**

Australian Standards are prepared by committees of experts from industry, governments, consumers and other relevant sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

## **International Involvement**

Standards Australia is responsible for ensuring that the Australian viewpoint is considered in the formulation of international Standards and that the latest international experience is incorporated in national Standards. This role is vital in assisting local industry to compete in international markets. Standards Australia represents Australia at both ISO (The International Organization for Standardization) and the International Electrotechnical Commission (IEC).

## **Electronic Standards**

All Australian Standards are available in electronic editions, either downloaded individually from our web site, or via On-Line and DVD subscription services. For more information phone 1300 65 46 46 or visit us at

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