



New South Wales Government

GC21 (Edition 2)

General Conditions of Contract

Sydney Modern Project

Preface

GC21 (Edition 2) General Conditions of Contract (modified)

- **Contract framework**
- **Carrying out the Works**
- **Claim and Issue resolution**
- **Termination**
- **Meanings**

Contract Agreement

Contract Information

Schedules

Attachments

GC21 (Edition 2) General Conditions of Contract (modified)

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- Department of Finance & Services
- Land and Housing Corporation
- Roads and Maritime Services
- Health Infrastructure
- Sydney Water Corporation

Government Codes and Guidelines

Copies of the Codes and Guidelines referred to in the GC21 (Edition 2) General Conditions of Contract may be obtained from the ProcurePoint website. These are as follows:

- NSW Government *Code of Practice for Procurement*
www.procurepoint.nsw.gov.au
- Work Health and Safety Management Systems and Auditing Guidelines (Edition 5)
- Quality Management Systems Guidelines for Construction
- Environmental Management Systems Guidelines (Edition 3)
- Training Management Guidelines
- Policy on Aboriginal Participation in Construction
- NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines)
www.industrialrelations.nsw.gov.au

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Preface

The GC21 Edition 2 General Conditions of Contract

The GC21 Edition 2 General Conditions of Contract build on the experience and project success delivered with Edition 1 which had a highly effective emphasis on co-operative contracting and enhanced communication between the parties.

Edition 2 focuses on streamlining, updating and improving the operation of the contract to reflect experience and practice.

The requirement for Contractors to use the GC21 Subcontract has been discontinued in Edition 2, and replaced with a short list of mandatory requirements to give the Contractor and subcontractors flexibility in their commercial arrangements.

Using this document

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- work in connection with the Contract
- Works

Attachments 1, 2, and 3 do not form part of the Contract.

Contract framework

Roles and relationships

1 General responsibilities

- .1 The Contractor must:
 - .1 remediate the Site as required by the Contract;
 - .2 design and construct the Works in accordance with the Contract; and
 - .3 perform and observe all its other obligations under the Contract.
- .2 The Principal must:
 - .1 pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract; and
 - .2 perform and observe all its other obligations under the Contract.
- .3 The Principal may give a direction to the Contractor concerning the Works and anything connected with the work in connection with the Contract, and unless the direction relates to a change in the order and sequence of the Works (in which event the Contractor is entitled to claim an extension of time under clause 50.1 as an *Excusable Delay Event* and delay costs under clause 51.1) the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

1A Authorities

- .1 This Contract will not in any way unlawfully restrict or affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any *Statutory Requirements*.
- .2 The Contractor acknowledges and agrees that, without limiting clause 1A.1, anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any *Statutory Requirements* will be deemed not to be an act or omission by the Principal under this Contract and will not entitle the Contractor to make any *Claim* against the Principal.
- .3 The Contractor acknowledges and agrees that:
 - .1 there are many authorities (other than the Principal) with jurisdiction over aspects of the work in connection with the Contract, parts of the Site and areas affected by the work in connection with the Contract;
 - .2 such authorities may from time to time exercise their functions and powers (whether statutory or otherwise) in such a way as to disrupt, interfere with or otherwise affect the work in connection with the Contract; and
 - .3 except as provided for in clause 12.6, it bears the full risk of all occurrences of the kind referred to in clause 1A.3.2 and any associated delay, disruption or interference and will have no *Claim* against the Principal arising out of or in any way in connection with such occurrences (including in circumstances where the Principal may have become involved in matters relating to the work in connection with the Contract with a relevant authority).

2 Authorised persons

Contractor's Authorised Person

- .1 The Contractor must ensure that, at all times, there is a person appointed to act as the *Contractor's Authorised Person*. The *Contractor's Authorised Person* acts with the Contractor's full authority in all matters relating to the Contract. The Contractor must promptly notify the Principal of the name and contact details of the *Contractor's Authorised Person* and of any change in those details. If the Principal reasonably objects to the *Contractor's Authorised Person* at any time, the Contractor must replace that person.

Principal's Authorised Person

- .2 The Principal must ensure that, at all times, there is a person appointed to act as the *Principal's Authorised Person*. The Principal must promptly notify the Contractor of the name and contact details of the *Principal's Authorised Person* and of any change in those details.
- .3 The *Principal's Authorised Person* does not act as an independent certifier, assessor or valuer. The *Principal's Authorised Person* acts only as an agent of the Principal and, to the extent expressly required by this Contract, must act reasonably.
- .4 The *Principal's Authorised Person* may delegate any of its contractual functions and powers to others by written notice to the Contractor. Delegation of any functions or powers of the *Principal's Authorised Person* does not prevent the *Principal's Authorised Person* from exercising those functions or powers.

2A Independent Certifier

- .1 The *Independent Certifier* will be engaged by the Principal, the Contractor, *AGNSW*, *RMS* and *ED Operator* on the terms set out in the *Independent Certifier Deed of Appointment*, at the cost of *AGNSW*.
- .2 The engagement of the *Independent Certifier* must be made prior to commencement of the *ED Works* and by a date early enough for the *Independent Certifier* to have sufficient time to perform the *Independent Certifier Services*.
- .3 If the *Independent Certifier Deed of Appointment* is terminated before its scheduled expiry, or if any incumbent *Independent Certifier* ceases to act as *Independent Certifier* for the purposes of the work in connection with the Contract, the Principal, the Contractor, *AGNSW*, *ED Operator* and *RMS* must, prior to the termination or cessation if practicable, or in any event within 10 Business Days after the termination of the *Independent Certifier Deed of Appointment* or cessation (as applicable) appoint another person to act as *Independent Certifier* in accordance with the process set out in clause 5.1 of the *ED Interface Deed*.

2B Independent Certifier Services

- .1 The Principal and the Contractor acknowledge and agree that the *Independent Certifier* is to act independently of the Principal, the Contractor, *AGNSW*, *ED Operator* and *RMS* and any of their respective contractors.
- .2 The Contractor must provide the *Independent Certifier* with all necessary information and documents reasonably required by the *Independent Certifier* and allow the *Independent Certifier*:
 - .1 to perform the *Independent Certifier's Services*;
 - .2 to attend any meetings in connection with the *ED Works*;
 - .3 access to any place upon which the work in connection with the Contract is being carried out (subject to compliance with the Site Access Conditions); and
 - .4 to inspect any records of the Contractor which the *Independent Certifier* considers are required for the performance of the *Independent Certifier's Services*.
- .3 All notices and documents provided by a party to the *Independent Certifier* must be copied to the other parties.

2C Determinations of the Independent Certifier

- .1 Determinations of the *Independent Certifier* are immediately binding on the parties in the absence of manifest error of fact or law or a breach of the *Independent Certifier Deed of Appointment*. If a party, acting reasonably, believes a manifest error of fact or law has occurred in relation to a determination of the *Independent Certifier*, or the *Independent Certifier* has breached the *Independent Certifier Deed of Appointment*, that party may dispute the determination of the *Independent Certifier* in accordance with the terms of the *Independent Certifier Deed of Appointment*.
- .2 The Contractor may proceed at its own risk pending a decision of the *Independent Certifier* or determination of a dispute under the *Independent Certifier Deed of Appointment*.

- .3 The parties must give effect to determinations of the *Independent Certifier* unless and until they are revised pursuant to the dispute resolution process in the *Independent Certifier Deed of Appointment*.
- .4 In the absence of manifest error of fact or law or a breach of the *Independent Certifier Deed of Appointment*, the *Independent Certifier's* certification regarding *ED Works Completion* is final and binding on the parties for the purposes only of establishing that *ED Works Completion* has occurred.

3 Co-operation

- .1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

4 Duty not to hinder performance

- .1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

5 Early warning

- .1 Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for *Completion*, the cost or quality of the Works, cause loss of or damage to property or the *Environment* or affect the health and safety of any person. The parties must then investigate how to avoid or minimise any adverse effect on the Works, *Scheduled Progress*, property, *Environment* or the health and safety of any person.
- .2 Compliance with clause 5.1 does not excuse the Contractor from compliance with any other provision of this Contract which requires the Contractor to be given any notice to the Principal or the *Principal's Authorised Person*.

6 Evaluation and monitoring

Reports

- .1 From the *Date of Contract* until the *Actual Completion Date*, the Contractor must give the Principal:
 - .1 weekly progress reports on the work in connection with the Contract covering such matters as the Principal shall require; and
 - .2 monthly progress reports on the work in connection with the Contract covering such matters as the Principal shall require.
- .2 The Contractor must provide:
 - .1 the weekly progress report under clause 6.1.1 at least 2 *Business Days* before each weekly site meeting under clause 6.5.2; and
 - .2 the monthly progress report under clause 6.1.2 within 5 *Business Days* after the end of each month.
- .3 From the *Actual Completion Date* until the end of the *Defects Liability Period*, the Contractor must give the Principal regular reports on the rectification of *Defects* and the completion of outstanding work in connection with the Contract.
- .4 The Contractor must undertake a dilapidation survey and produce a dilapidation report in accordance with the requirements of section 4.6 of the *Preliminaries*.

Meetings

- .5 The parties must meet:
 - .1 monthly, at a location agreed by the parties (or at the Site if the parties fail to agree); and
 - .2 weekly at the Site,
 to evaluate and monitor performance of the Contract.
- .6 The Principal shall notify the Contractor who must participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, stakeholders, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.

- .7 Nothing concerning or in connection with completed evaluation forms changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
- .8 Participants in the evaluation and monitoring of meetings must meet their own costs for attendance.

Contractor's records

- .9 During the performance of the works in connection with the Contract, the Contractor must ensure that a complete set of:
 - .1 the Contract;
 - .2 the *Contractor's Documents*, including the *Design Documentation*;
 - .3 the *IFC Design Documentation*;
 - .4 the *Contractor's Project Plans*;
 - .5 *Approvals* obtained for the work in connection with the Contract; and
 - .6 all other written information supplied by or produced by the Principal and the Contractor in connection with the Contract,
 is kept at the Site and is available at all times for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.
- .10 During the manufacture or assembly of any *Materials* off Site, a set of the information and documents referred to in clause 6.9 relevant to that part of the work in connection with the Contract must:
 - .1 be kept at the place of manufacture or assembly; and
 - .2 be available for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.
- .11 The Contractor must, and must ensure all Subcontractors, Suppliers and Consultants keep and maintain complete and detailed records in respect of the Contract ("**Records**"). Such *Records* must be kept in accordance with generally accepted accounting principles.
- .12 The Contractor must provide the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them with access to the *Records*, allow them to take copies of the *Records* and allow them to extract *Records* from data stored on computer files to enable the Principal to verify, to its reasonable satisfaction:
 - .1 the proper performance of the work in connection with the Contract; and
 - .2 the Contractor's compliance with its obligations under the Contract,
 provided however that the Contractor will not be obliged to produce *Records* that are subject to legal professional privilege or which disclose Subcontractor, Supplier or Consultant pricing information.
- .13 The Contractor must allow the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them access to the *Contractor's Personnel* and provide reasonable assistance to the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them in accessing and reviewing the *Records*.
- .14 The Contractor must preserve the *Records* until 7 years after the expiry of the last *Defect Liability Period*.

6A Contractor's obligations unaffected

- .1 The Contractor's warranties and obligations under the Contract, including to perform the work in connection with the Contract in accordance with the Contract, remain unaffected notwithstanding:
 - .1 any receipt, review, comment, approval or silence by or on behalf of the Principal or the *Principal's Authorised Person* in relation to:
 - .1 the documents prepared or provided by the Contractor or the *Contractor's Personnel*, including the *Contractor's Documents*, the *Design Documentation* or the *Contractor's Project Plans*;
 - .2 the design, *Materials*, construction equipment and methods of working used by the Contractor;

- .3 the Subcontractors, Suppliers and Consultants engaged by the Contractor;
- .4 any work in connection with the Contract performed or the way any work in connection with the Contract is performed; or
- .5 the Principal's consent to subcontract under clause 29;
- .2 any test or inspection witnessed by or carried out by or on behalf of the Principal or the *Principal's Authorised Person* or any failure to witness by the Principal or the *Principal's Authorised Person*; or
- .3 the Contractor's use of the *Principal's Design* or any information, design, *Materials*, construction equipment or work methods prepared, provided or suggested by or on behalf of the Principal or the *Principal's Authorised Person*.

The Contract

7 Separable Portions

- .1 The interpretation and application of:
 - .1 *Completion*;
 - .2 *Contractual Completion Date*; and
 - .3 *Actual Completion Date*,
 and clauses 50, 51, 64, 65 and 67 apply separately to each *Separable Portion* and references to the Works and the work in connection with the Contract means those parts of the Works or the work in connection with the Contract comprised in the relevant *Separable Portion*.
- .2 Additional *Separable Portions* may be directed by the *Principal's Authorised Person* from time to time who will clearly identify (acting reasonably), for each *Separable Portion*, the:
 - .1 scope of Works;
 - .2 *Contractual Completion Date*; and
 - .3 rate of liquidated damages.

8 Scope of the Works, Temporary Work and work methods

- .1 The Works and the work in connection with the Contract are described in brief in Contract Information item 3 and in more detail in the *Contract Documents*, and include:
 - .1 all work specifically referred to in or contemplated by the Contract; and
 - .2 all work and items necessary to achieve the effective and efficient use and operation of the Works.
- .2 The work in connection with the Contract includes:
 - .1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
 - .2 all work and items necessary to carry out and complete the Works properly; and
 - .3 all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract.
- .3 The Contractor acknowledges that:
 - .1 it is both experienced and expert in work of the type, complexity and scale of the Works;
 - .2 it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and
 - .3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.
- .4 The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works or the work in connection with the Contract.

- .5 Unless the Contract specifies that the Contractor use a particular work method or perform particular *Temporary Work*, the Contractor is solely responsible for determining the work methods and the requirements for all *Temporary Work*.
- .6 The Contractor must:
 - .1 provide all *Temporary Works* required to perform its obligations under the Contract;
 - .2 ensure that all *Temporary Works* are of suitable quality and maintained in excellent condition; and
 - .3 ensure the *Temporary Works* are established at locations and positions on the *Site* that minimise the impact on the Works, the *Site* and adjoining properties.
- .7 Notwithstanding clauses 8.1 to 8.6, the Principal acknowledges that the Contractor has not provided for and the work in connection with the Contract does not include:
 - .1 making good existing *Utilities*, increasing the capacity of existing *Utilities*, *Utility* headworks, bringing *Utilities* to the *Site* and the provision of *Utilities* on or to the *Site*; or
 - .2 fees and charges associated with the items referred to in clause 8.7.1
 except to the extent set out in the Contract Documents and to the extent that such are to be carried out, the Principal must instruct those works as a Variation in accordance with clause 48.

9 Assignment and Change in Control

No assignment by Contractor

- .1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's written consent (which may be withheld in the Principal's absolute discretion).
- .2 Subject to clause 9.3, the Contractor must ensure that no *Change in Control* occurs in respect of it or the *Guarantor* without the Principal's prior written consent (which may be withheld in the Principal's absolute discretion). For the purposes of this clause, the Principal will not unreasonably withhold its consent where the *Change in Control* is constituted solely by a corporate restructure where there is no material adverse change to the ability of the Contractor to perform its obligations under the Contract and the Contractor remains a subsidiary of the *Guarantor*.
- .3 The consent referred to in clause 9.2 is not required for a *Change in Control* resulting from a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange.

Transfer by the Principal

- .4 The Contractor acknowledges and agrees that following the *Actual Completion Date*, the Principal may elect to transfer, assign or novate this Contract, and any of its rights, benefits, interests or obligations under or in connection with the Contract to:
 - .1 *AGNSW*; or
 - .2 any entity which is owned or controlled by the State of New South Wales or to any agency of the State of New South Wales that will be the owner and operator of the Works.
- .5 If the Principal elects to transfer, assign or novate this Contract pursuant to clause 9.4, the Contractor:
 - .1 consents to any such transfer, assignment or novation; and
 - .2 acknowledges that such transfer, assignment or novation may be effected by way of:
 - .1 vesting orders;
 - .2 a deed of assignment between the Principal and the relevant assignee; or
 - .3 entry by the parties and the relevant transferee or novatee into a *Novation Deed*.

- .6 Where the Principal proposes to transfer or novate its rights and obligations under this Contract by way of *Novation Deed*, the Contractor must promptly following notice from the Principal, execute a *Novation Deed*.

9A Contractor Warranty Deed

- .1 Within 10 *Business Days* of the Date of Contract, the Contractor must provide the Principal with a *Contractor Warranty Deed* in favour of *AGNSW*, duly executed by the Contractor.

10 Governing law of the Contract

- .1 The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

11 Notices and instructions

- .1 Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11 or 52, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.
- .3 Notices are taken to be received:
- .1 if sent by post, 3 days after posting; or
 - .2 if sent by email:
 - .1 when the sender receives an automated message confirming delivery; or
 - .2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,
- whichever happens first.

11A Benefit of indemnities

- .1 The Principal holds the benefit of any indemnity given by the Contractor in favour of an *Indemnified Party* (including the right to recover any *Loss*) for itself and on trust for each *Indemnified Party* and is entitled to enforce this Contract (including any indemnity), whether by way of equitable, legal or statutory relief, for itself and on behalf of any *Indemnified Party*.

11B Information Documents

- .1 The parties acknowledge that:
- .1 at the Date of Contract, the Principal has provided in good faith the *Information Documents*;
 - .2 the *Information Documents* do not form part of the Contract;
 - .3 the Principal does not guarantee or warrant the accuracy, quality or completeness of the *Information Documents*;
 - .4 the Principal has no duty of care in connection with the *Information Documents*, or with having provided them; and
 - .5 The Principal makes no representation, gives no warranty and assumes no duty of care, in respect of:
 - .1 the Site, the *Site Conditions*, the *Existing Improvements* or the *Information Documents*; or
 - .2 the adequacy or suitability of the Site, *Site Conditions*, the *Existing Improvements* or the *Information Documents* for the performance of the work in connection with the Contract.
- .2 The Contractor warrants that it:
- .1 has made its own inquiries concerning the Site, *Site Conditions*, the *Existing Improvements* and the *Information Documents*, including the *Information Documents*;

- .2 has examined the Site and the *Existing Improvements* and their surrounds and satisfied itself through its own investigation as to the *Site Conditions* which might reasonably be expected;
 - .3 has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the *Contract Price*;
 - .4 did not, and will not, rely on the accuracy, quality or completeness of the *Information Documents*; and
 - .5 has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal,
- provided however that the Contractor shall not be required to undertake any testing of the Site or the *Existing Improvements*.
- .3 The Contractor is not entitled to any *Claim* arising out of or in connection with:
 - .1 the inaccuracy, incompleteness or inadequacy of, or the reliance by the Contractor upon, any *Information Documents*; or
 - .2 the condition of the *Existing Improvements* (other than the *ED Motorway* and any *Utilities*).
 - .4 The Contractor acknowledges that the Principal has entered into the Contract in reliance on the acknowledgments and warranties given by the Contractor in clause 11B.2.

Statutory and Government Requirements

12 Statutory Requirements and Approvals

- .1 The Principal must ensure that the *Approvals* listed in Contract Information item 14 are obtained and paid for.
- .2 The Contractor is responsible for:
 - .1 compliance with all *Statutory Requirements*, including all *Approvals* and the conditions of all *Approvals*;
 - .2 giving all notices necessary to comply with *Statutory Requirements*;
 - .3 obtaining all other *Approvals* necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and
 - .4 the payment of all necessary fees and charges, other than those listed in Contract Information item 14.
- .3 The Contractor must:
 - .1 carry out the work in connection with the Contract in accordance with, and ensure the Works comply with, all *Statutory Requirements* and *Approvals*, including the conditions and requirements attached to any *Approval*; and
 - .2 comply with and discharge the conditions and requirements of all *Approvals* (whether obtained by the Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the *Approvals* to comply with, carry out and discharge, other than those conditions listed in Contract Information item 14A.
- .4 The Contractor must:
 - .1 give the Principal copies of all notices, reports and submissions it gives to authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, authorities; and
 - .2 give the Principal copies of all documents (including *Approvals* and other notices) that authorities issue to it.
- .5 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all *Approvals* and other documents issued by or to authorities or providers of services in connection with the Works or the Site.

- .6 Where:
- .1 a legal challenge occurs to the Principal's *Approvals*;
 - .2 the Principal fails to obtain a Principal's *Approval* by the date stated in Schedule 8 for the Principal to obtain that *Approval*;
 - .3 an authority fails to issue a Contractor's *Approval* referred to in Part B of Schedule 8 by the date stated in Schedule 8 for the issue of that *Approval*, provided that the Contractor has done all things reasonably required by the applicable authority or any *Statutory Requirements* for the issue of that *Approval*; or
 - .4 any conditions are imposed in a Principal's *Approval* obtained after the *Date of Contract* with which the Contractor must comply that are materially disadvantageous to the Contractor or which are different to conditions that should reasonably have been expected by a competent and experienced contractor that had done all of the things which the Contractor is obliged to do under the Contract,
- the Contractor will be entitled to claim:
- .5 an extension of time under clause 50.1 as an *Excusable Delay Event*; and
 - .6 in respect of clause 12.6.4 only, an increase to the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the events referred to in that clause,
- but only where the such events or circumstances did not arise as a result of an act, default or omission of the Contractor or the *Contractor's Personnel* or any design change proposed and implemented by the Contractor.
- .7 Notwithstanding any provision of the Contract to the contrary, the Principal acknowledges and agrees that the Contractor was requested to, and has only allowed for compliance with the Building Code of Australia 2016 in the *Contract Price*, and must comply with the Building Code of Australia 2016. If the Contractor is obliged to comply with the Building Code of Australia 2019, then to the extent that the Contractor is required to undertake additional work or incur additional cost as a result of compliance with the Building Code 2019, such difference will be valued under clause 47 and the Contractor is entitled to claim an extension of time under clause 50.1 as an *Excusable Delay Event* and delay costs under clause 51.1.

13 Codes of Practice and Implementation Guidelines

Terminology

- .1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- .2 The Contractor must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- .3 The Contractor must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .4 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- .5 The Contractor must not appoint or engage another party in relation to the Contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- .6 The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.
- .7 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;
 - .2 inspect any work, material, machinery, appliance, article or facility;
 - .3 access information and documents;
 - .4 inspect and copy any record relevant to the project;
 - .5 have access to personnel; and
 - .6 interview any person,
 as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.
- .8 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- .9 The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- .10 If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- .11 Where a sanction is imposed:
 - .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - .1 record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

- .12 The Contractor bears the cost of ensuring its compliance with the NSW Code and 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 NSW for such costs.
- .13 Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and 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 Code and NSW Guidelines.
- .14 Where a change in the Contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - .1 the circumstances of the proposed change;
 - .2 the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and

- .3 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 (WHS) Management Plan); and the Principal will direct the Contractor as to the course it must adopt within 10 *Business Days* of receiving notice.

Commonwealth Building Code 2016

- .15 If required by Contract Information item 16A, the Contractor must comply with the requirements of the Building Code and Schedule 12 (Compliance with Building Code 2016) applies.

14 No collusive arrangements

- .1 The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract.
- .2 Without limiting any other right or remedy, the Principal may recover from the Contractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association in breach of the warranty in clause 14.1.

15 Compliance with NSW Government Requirements

- .1 The Contractor must implement and maintain the systems, strategies and procedures required to comply with the following NSW Government Policy and Guidelines, and meet other obligations as specified in Contract Information item 15:
- .1 NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines);
 - .2 the Work Health and Safety Management Systems and Auditing Guidelines;
 - .3 the Quality Management Systems Guidelines for Construction (including any requirements set out in section 4.1 of the *Preliminaries*);
 - .4 the Environmental Management Systems Guidelines;
 - .5 the NSW Government Procurement Guideline *Skills and Training in the Construction Industry* (including any requirements set out in section 4.3 of the *Preliminaries*); and
 - .6 the NSW Government Policy on Aboriginal Participation in Construction (including any requirements set out in section 4.2 of the *Preliminaries*).
- .2 The requirements of relevant NSW Government Guidelines are additional to any other requirements of the Contract and *Statutory Requirements*.
- .3 The *Contractor's Project Plans* must comply with all requirements of the relevant NSW Government Guidelines and the Contract, including sections 4.1, 6 and 9 of the *Preliminaries*.
- .4 The Contractor must:
- .1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, and procedures required under clause 15.1 and the *Contractor's Project Plans*;
 - .2 review and update its systems, procedures and the *Contractor's Project Plans* to ensure ongoing compliance with the Contract;
 - .3 control non-conformances and undertake corrective and preventive action as and when necessary; and
 - .4 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including *Contractor's Personnel*) and all other things necessary to allow the Principal to carry out reviews and audit of the *Contractor's Project Plans*, systems and procedures and confirm compliance with the Contract.

15A Interface arrangements - Eastern Distributor

ED Interface Deed Obligations

- .1 The Contractor acknowledges that:
 - .1 *ED Operator* operates, maintains and tolls the *ED Motorway* pursuant to the *ED Project Deed*;
 - .2 the *ED Operator*, *AGNSW* and *RMS* have entered into the *ED Interface Deed*;
 - .3 under the *ED Interface Deed*:
 - .1 *AGNSW* owes certain obligations to *ED Operator* as owner and operator of the *ED Motorway*; and
 - .2 *AGNSW* must procure that the Contractor complies with the terms of the *ED Interface Deed* that require compliance by the “Building Contractor” as defined in the *ED Interface Deed*,
except as permitted by the *Site Access Conditions*;

and

 - .4 *ED Operator* and *RMS* may take such action as is necessary to:
 - .1 comply with all *Statutory Requirements* that effect the *ED Land*;
 - .2 comply with obligations or to exercise rights in relation to the operation and maintenance of *Zone 2B* and *Zone 3* and other property (including infrastructure) on or in relation to those areas; and
 - .3 exercise rights under the *ED Interface Deed*,
notwithstanding the fact that the scope, manner and timing of those actions have not been notified to the Contractor.
- .2 The Contractor must carry out the work in connection with the Contract:
 - .1 in accordance with the terms of the *ED Interface Deed*;
 - .2 in a manner which prevents:
 - .1 any interference with the operation and use of *Zone 2B* and *Zone 3* and other property (including infrastructure) on those areas; and
 - .2 any traffic adjustment on *Zone 3* or impact on the *Zone 2B* and *Zone 3* and other property (including infrastructure) on those areas;
 - .3 using good workmanship and materials to ensure that the structure and integrity of *Zone 2B* and *Zone 3* and other property (including infrastructure) on those areas is intact at all times;
 - .4 so as not to prevent *ED Operator* and *RMS* from complying with their obligations under Law;
 - .5 so as not to prevent *ED Operator* and *RMS* from complying with their respective obligations under the *ED Project Deed*;
 - .6 ensure that the *ED Works* are constructed in accordance with the *ED Works Design Documentation* and *IFC Design Documentation* which have been certified by the *Independent Certifier*; and
 - .7 so as to do all things necessary to prevent objects falling from the Site or the Works or from vehicles or machinery used in connection with the Works onto *Zone 2B* or *Zone 3* or other property (including infrastructure) on those areas.

ED Emergencies

- .3 In the case of an *ED Emergency*, the Contractor:
 - .1 acknowledges that *AGNSW* must, and *ED Operator* and *RMS* may, undertake all actions necessary to manage the *ED Emergency* notwithstanding the fact that the scope, manner and timing of those actions have not been notified to the other party; and
 - .2 must comply with all directions of the Principal in order to permit *AGNSW* to comply with its obligations under the *ED Interface Deed* in respect of that *ED Emergency*.

- .4 Except where the event giving rise to an *ED Emergency* was caused or contributed to by any act, default or omission of the Contractor or the *Contractor's Personnel*, the Contractor will be entitled to claim:
- .1 an extension of time under clause 50.1 in respect of an *Excusable Delay Event*; and
 - .2 delay costs under clause 51.1,
- in respect of any action taken by *AGNSW*, the *ED Operator* or *RMS*, or compliance with any direction of the Principal under clause 15A.3.2, in respect of that *ED Emergency*.
- .5 Subject to clause 26.13, the Contractor indemnifies *AGNSW* and the Principal against any *Claim* or *Loss* arising from any liability of *AGNSW* to:
- .1 the *ED Operator* under the *ED Interface Deed* in relation to any action undertaken by *ED Operator*; or
 - .2 *RMS* in relation to any action undertaken by *RMS*,
- pursuant to the *ED Interface Deed* in respect of an *ED Emergency* to the extent that the *Claim* or *Loss* is caused or contributed to by act, default or omission of the Contractor or the *Contractor's Personnel*.

16 Workplace Health and Safety

Compliance and Co-operation

- .1 The Contractor warrants to the Principal that it is familiar with and has the capability and resources to comply with all applicable *WHS Legislation*.
- .2 The Contractor must:
 - .1 comply with, and ensure that any and all of the *Contractor's Personnel* comply with:
 - .1 all applicable *WHS Legislation*;
 - .2 the provisions of this clause 16;
 - .3 the workplace health and safety requirements set out in section 9 of the *Preliminaries*; and
 - .4 the *WHS Plan*;
 - .2 upon reasonable request by, or on behalf of, the Principal, demonstrate such compliance including by providing written evidence of measures taken to achieve such compliance;
 - .3 allow the Principal, the *Principal's Authorised Person* or a person nominated by the Principal to audit the Contractor's compliance with this clause 16;
 - .4 if the Principal exercises its right to audit compliance pursuant to clause 16.2.3, promptly provide reasonable assistance and access to information to enable the Principal or a person nominated by the Principal to carry out such audit;
 - .5 cooperate with *Separate Contractors* as necessary to ensure (where reasonably practicable) safety practices at the *Site* are consistent;
 - .6 cooperate with the Principal to enable the Principal to comply with its obligations under applicable *WHS Legislation*;
 - .7 immediately advise the Principal in writing of any act, fact or circumstances relevant to the ability of the Contractor to carry out the its obligations under the Contract without risk to health or safety;
 - .8 supply all items necessary to ensure the work in connection with the Contract is being performed without risk to health or safety; and
 - .9 ensure that all items supplied by it, including *Materials*, are maintained in a safe condition and without risk to any person including providing written evidence of measures taken to achieve compliance with this clause 16.

WHS Plan

- .3 The Contractor's high level draft *WHS Plan* at the Date of Contract is included in Schedule 22.

- .4 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 40 *Business Days* before first mobilising to the Site, prepare and submit a *WHS Plan* to the Principal under clause 32A.3.
- .5 The *WHS Plan* must:
- .1 be consistent with the high level draft *WHS Plan* in Schedule 22;
 - .2 set out in detail how the Contractor proposes to comply with its obligations under the *WHS Legislation* and the Contract;
 - .3 detail the interface arrangements between the Principal, *Separate Contractors* and the Contractor for health and safety, including emergency response, incident reporting and security, including assigned responsibilities;
 - .4 comply with:
 - .1 the Contract, including the *Project Brief* and the workplace health and safety requirements set out in section 9 of the *Preliminaries*;
 - .2 all applicable *Statutory Requirements*; and
 - .3 all relevant NSW Government Guidelines; and
 - .5 include any other information required by the Contract, any applicable *Statutory Requirements* or the Principal.
- .6 The Contractor acknowledges that:
- .1 the *WHS Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *WHS Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .7 The Contractor must not commence any works on Site unless and until the *WHS Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4.

Contractor's responsibilities

- .8 The Contractor must:
- .1 before commencement of the work in connection with the Contract, undertake an assessment of the risks associated with the Site and the work in connection with the Contract and identify and implement appropriate measures to control all such risks;
 - .2 provide details of the risk assessment and evidence of implementation of adequate risk control measures to the Principal in accordance with any reasonable request by, or on behalf of, the Principal;
 - .3 immediately notify the Principal and any relevant authority in accordance with applicable *WHS Legislation* and the *WHS Plan* (and, in any case, within 24 hours) of any accident, notifiable incident (being an incident which is notifiable under applicable *WHS Legislation*), injury, property or environmental damage which:
 - .1 occurs during the performance of the Contractor's obligations;
 - .2 is associated with the Site or the work in connection with the Contract; or
 - .3 is otherwise required by *WHS Legislation* to be notified;
 - .4 within 24 hours of any such accident, notifiable incident, injury, property or environmental damage, provide the Principal with a written report giving details of the accident, notifiable incident, injury, property or environmental damage and evidence that the requirements of the *WHS Legislation* have been met;
 - .5 promptly provide investigation reports and details of root causes, action and remedial work to be undertaken in connection with any such accident, notifiable incident, injury, property or environmental damage; and
 - .6 appoint statutory position holders for the purposes of applicable *WHS Legislation* as requested by the Principal or the *Principal's Authorised Person*.

- .9 Without limiting any other provision of this clause 16, the Contractor must ensure, so far as is reasonably practicable:
- .1 the health and safety of workers carrying out the work in connection with the Contract;
 - .2 that the workers under its control and supervision take reasonable care while carrying out the work in connection with the Contract;
 - .3 the provision and maintenance of safe systems of work;
 - .4 that workers:
 - .1 receive the necessary information, training, instruction and supervision in order to comply with the *WHS Legislation* and the *Additional WHS Requirements* and any rules, regulations, policies and guidelines issued from time to time by the Contractor; and
 - .2 are aware of, and comply with, all requirements and directives relating to work health and safety which is issued by the Contractor from time to time; and
 - .5 the health and safety of other persons is not put at risk from activities in connection with the Works.
- .10 The Principal may request the Contractor to:
- .1 immediately cease or modify any activity that does not materially comply with the *WHS Plan* or the *WHS Legislation*; and
 - .2 provide evidence of action taken to meet the Contractor's obligations under this clause 16.10.
- .11 If the Contractor receives a direction or instruction from the Principal or the *Principal's Authorised Person* that it considers will:
- .1 require it to breach this clause 16 or any applicable *WHS Legislation*; or
 - .2 give rise to circumstances which present actual or potential risk to life or serious injury,
- the Contractor shall, as soon as is reasonably practicable, and in any event prior to complying with such direction or instruction, notify the *Principal's Authorised Person* in writing.
- .12 The Contractor acknowledges and agrees that:
- .1 the audits referred to in clause 16.2.3 do not relieve, limit or otherwise affect the Contractor's responsibilities under *WHS Legislation* and the Contract; and
 - .2 any corrective work or action which the audit identifies as necessary to rectify any departure from the Contractor's responsibilities under *WHS Legislation* and the Contract must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the departure.
- .13 Where the Contractor or the *Contractor's Personnel* are required to visit or work on any site that is not part of the Site or is not otherwise controlled by the Contractor, the Contractor must, and must ensure that the *Contractor's Personnel*, comply with all directions, procedures and policies of the person that has control or management of that site.
- .14 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 16.

16A Appointment of principal contractor for WHS

- .1 Unless otherwise stated in the Contract, the Contractor:
 - .1 is engaged as principal contractor for the construction project in accordance with Regulation 293 of the *Work Health and Safety (WHS) Regulation 2017 (NSW)*;
 - .2 is authorised to have management and control of the workplace as necessary to enable it to discharge the duties of a principal contractor and of a person having management or control of a workplace;

- .3 must perform the duties of:
 - .1 a principal contractor, as specified in the *WHS Regulation 2017 (NSW)*; and
 - .2 a person with management or control of a workplace as specified in the *Work Health and Safety Act 2011 (NSW)* and the *WHS Regulation 2017 (NSW)*; and
- .4 must notify the Principal promptly of any matter affecting workplace health and safety where consultation with the Principal is necessary.
- .2 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 16A.

17 Commonwealth WHS Accreditation

- .1 If required by Contract Information item 16B, the Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005 (Cwlth)* (BCII Act) while building work (as defined in section 5 of the BCII Act) is carried out. The Contractor must comply with all conditions of Scheme accreditation.

18 Working hours and working days

- .1 The Contractor must observe:
 - .1 *Statutory Requirements* which regulate working hours and working days; and
 - .2 any requirements in Contract Information item 18.

19 Authorisation to release and use information

- .1 The Contractor authorises the Principal to:
 - .1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor's performance, to other Commonwealth, State or local government agencies at any time or for any reason; and
 - .2 take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.
- .2 The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005 (NSW)* in making information available to others as contemplated by clause 19.1.1.
- .3 The Contractor releases and indemnifies the *Indemnified Parties* from and against any claim, action, loss, damage, expense or liability the *Indemnified Parties* may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.

20 Long service levy

- .1 Before starting construction work, the Contractor must:
 - .1 pay to the Building and Construction Industry Long Service Corporation or the Corporation's agent the amount of the long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986 (NSW)* in respect of the building and/or construction work; and
 - .2 give the Principal documentary evidence of payment of the levy.

21 Registration and licences

- .1 All vehicles and plant used in carrying out work in connection with the Contract must be registered as required by law.
- .2 All drivers who operate vehicles or plant in carrying out work in connection with the Contract must be licensed to operate those vehicles or plant as required by law.

- .3 Whenever requested, the Contractor must promptly provide documentary evidence of compliance with clause 21.

21A PPSA

PPSA further steps

- .1 If either party (“Party A”) determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, the other party (“Party B”) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Party A asks and considers necessary for the purposes of:
- .1 ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
 - .2 enabling Party A to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Party A; or
 - .3 enabling Party A to exercise rights in connection with the security interest.

Costs of further steps and undertaking

- .2 The parties will bear their own costs in complying with, and performing, their respective obligations under this clause 21A.

Negative pledge for the purposes of the PPSA

- .3 For the purposes of this clause 21A.3, “Personal Property” means all personal property of the Principal or the Contractor (as applicable) the subject of a security interest granted in favour of the other party under the Contract.
- .4 Each party agrees:
- .1 not to create any security interest or lien over any of the other party’s Personal Property;
 - .2 not to sell, lease or dispose of its interest in the other party’s Personal Property;
 - .3 not to give possession of the other party’s Personal Property to another person except where the other party expressly authorises it to do so;
 - .4 not to permit any of the other party’s Personal Property to become an accession to or commingled with any asset that is not part of the Works;
 - .5 to give the other party details about any “motor vehicle”, “watercraft”, “aircraft” or “intellectual property” (each as defined in the *PPSA* or the *PPSA* Regulations (as applicable)) used for the purpose of carrying out the Works comprising part of the other party’s Personal Property that has a value of more than A\$500,000;
 - .6 to notify the other party at least 14 days before:
 - .1 it changes its name, principal place of business or place of registration or incorporation;
 - .2 any ABN, ARBN or ARSN allocated to it changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or one is allocated, or otherwise starts to apply, to it); and
 - .3 it becomes trustee of a trust, or a partner in a partnership.

Exclusion of PPSA provisions

- .5 If the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, each party agrees that to the extent the law permits them to be excluded:
- .1 sections 142 and 143 of the *PPSA* are excluded and the relevant secured party need not comply with the following provisions of the *PPSA*: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the *PPSA* notified to the grantor by the relevant secured party after the Date of Contract; and
 - .2 the Principal need give any notice required under any provision of the *PPSA* (except section 135).
- .6 This clause applies despite any other clause in the Contract.

Management duties

22 Time management

Contract Program

- .1 The Contractor must submit a *Contract Program* to the Principal within 14 days after the Date of Contract. The program set out in Schedule 16 is the *Contract Program* until the Contractor submits a *Contract Program* under this clause 22.1.
- .2 The *Contract Program* must:
 - .1 in respect of the *Contract Program* submitted under clause 22.1, be consistent with the *Contract Program* set out in Schedule 16;
 - .2 show the *Contractual Completion Date* for the whole of the Works;
 - .3 show, and be consistent with, all constraints on access, performance and coordination;
 - .4 show the start and finish dates or, in the case of future activities, the intended start and finish dates, of all design and construction activities and other significant events;
 - .5 show the logical relationship between activities and events, the sequence of activities which constitute the critical path or paths, time leads and lags, and resource and other constraints;
 - .6 show the dates when the Contractor will require information, documents, instructions or materials from the Principal and the dates when the Contractor will provide information or documents to the Principal; these dates must be consistent with dates which the Principal could reasonably have anticipated at the Date of Contract;
 - .7 be accurate, comprehensive and complete;
 - .8 comply with any other specific requirements of the Contract, including any specified format or software; and
 - .9 comply with any requirements of the *Preliminaries* and any reasonable requirements of the Principal.
- .3 The Contractor must update the *Contract Program* at the following times:
 - .1 whenever there is any delay to the Works or a significant change in scheduling;
 - .2 within 7 days after receiving an instruction from the Principal to do so;
 - .3 when required to comply with clause 50.4; and
 - .4 following the granting of an extension of time under clause 50.
- .4 Updated *Contract Programs* must take account of the Contractor's actual progress to the date of the update and must be submitted promptly to the Principal.
- .5 The Principal need not respond to the Contractor about a *Contract Program*, but if the Principal advises the Contractor that the *Contract Program* submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the *Contract Program* so that it complies with the requirements of the Contract and the instructions of the Principal, and must submit the revised *Contract Program* to the Principal within 7 days after receiving the Principal's advice or instructions.

Scheduled Progress

- .6 The Contractor must carry out all work in connection with the Contract so as to achieve *Scheduled Progress*.
- .7 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.
- .8 If the Contractor does not demonstrate to the Principal that it is achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress* at its own cost. An instruction under this clause is not an *Acceleration Notice*.

Minimisation of delay

- .9 When there is any change in work in connection with the Contract, or the program or sequence of the work, the Contractor must take all reasonable steps to:
 - .1 carry out any additional work concurrently with other work; and
 - .2 otherwise minimise any effects on the time for *Completion*.

23 Intellectual property**Project IP**

- .1 All *Project IP* vests in the Principal upon its creation.
- .2 To the extent clause 23.1 does not vest ownership of the *Project IP* in the Principal, the Contractor assigns or otherwise transfers the *Project IP*, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Project IP* in the Principal.
- .3 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Project IP* is assigned or otherwise transferred to the Principal upon its creation.
- .4 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Project IP* solely for the purposes of performing the Contractor's obligations under the Contract.

Contractor Background IP

- .5 The Contractor grants to the Principal and *AGNSW* a perpetual, world-wide royalty-free, non-exclusive, transferable, irrevocable licence to use, copy, reproduce, modify and adapt the *Contractor Background IP* for any purpose relating to the work in connection with the Contract and the Works, including the operation, maintenance and use of the Works.
- .6 The licence granted pursuant to clause 23.5 shall be capable of sub-licence and will be assignable by the Principal.
- .7 Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Contractor Background IP* has not then been created) from the date the *Contractor Background IP* is created.
- .8 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.

Indemnity for IP infringement

- .9 The Contractor indemnifies the *Indemnified Parties* against any claims (including *Claims*) or actions made or brought against the *Indemnified Parties* or any *Loss* suffered or incurred by the *Indemnified Parties*, arising out of or in connection with any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to the *Project IP*, *Contractor Background IP* or the Works.
- .10 The Contractor warrants that *Project IP*, the *Contractor Background IP*, the Works or the *Indemnified Parties'* use of the *Project IP*, the *Contractor Background IP* or the Works will not infringe any *Intellectual Property Rights*.
- .11 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract.

Moral Rights

- .12 The Contractor will procure and provide to the Principal the agreement of each author that the Principal, *AGNSW* and any other person authorised by the Principal:
 - .1 need not identify the Contractor or any author as the author(s) of any *Project IP* or *Contractor Background IP*; and
 - .2 may:
 - .1 materially distort, destroy, mutilate, alter or in any other way change;
 - .2 add to, delete from, retitle; and
 - .3 reproduce, publish, copy, adapt,

the *Project IP* or *Contractor Background IP* (or a substantial part of or adaptation of it) in any way it sees fit in any medium and in any context and with or without other text,

data or images and may in any manner engage in conduct that would, absent the consent, infringe on author's moral rights in the *Project IP* or *Contractor Background IP*.

24 Confidentiality and Privacy

- .1 The Contractor must maintain all *Confidential Information* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Confidential Information* which is generally available to the public or which is required to be disclosed by law.
- .2 If under this Contract the Contractor is required to disclose *Personal Information*, the Contractor must:
 - .1 if the disclosure is not authorised under the *Privacy Act*, obtain the consent of the natural person to whom that *Personal Information* relates in relation to the Principal's collection and use of that *Personal Information* for the purposes of this Contract or the purposes authorised by this Contract;
 - .2 ensure that the *Personal Information* disclosed is accurate; and
 - .3 inform that natural person:
 - .1 that the *Personal Information* has been collected by or on behalf of Principal; and
 - .2 of any other matters required by the *Privacy Act*.

25 Media releases and enquiries

- .1 The Contractor must obtain the Principal's prior written consent to:
 - .1 any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
 - .2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media or other enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media or other enquiry without the Principal's prior written consent.
- .3 The Contractor must ensure that all *Contractor's Personnel* comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- .4 The Principal may give or refuse its consent, in its absolute discretion.

25A Stakeholder Management and Community Relations

Stakeholder Management and Community Engagement

- .1 The Contractor:
 - .1 acknowledges that:
 - .1 the Works and the areas where the work in connection with the Contract are being carried out are of great importance to many people, including *AGNSW*, local residents and businesses; and
 - .2 there are numerous stakeholders who have an interest in the successful delivery and ongoing operation of the Works; and
 - .2 must manage and participate in all stakeholder management and community relations meetings, programs and activities as:
 - .1 required by the Contract;
 - .2 contained in the *Stakeholder Management and Community Engagement Plan*; or
 - .3 directed by the Principal from time to time.

Complaints and notifications

- .2 The Contractor must immediately notify the Principal in writing if any:
 - .1 complaint is made or any proceedings are instituted or threatened;
 - .2 letter of demand is issued; or

- .3 order or direction is made,
by anyone (including any authority or any landowner, lessee or licensee near the Site) against the Contractor or any of the *Contractor's Personnel* in connection with the Works or the carrying out of the work in connection with the Contract including:
 - .4 *Contamination* arising out of, or in any way in connection with, the work in connection with the Contract;
 - .5 the Contractor's non-compliance with any *Approval* (or condition or requirement thereunder) or any *Environmental Statutory Requirement*;
 - .6 the Contractor's use or occupation of the Site or the Works; or
 - .7 loss of or damage to the Site, the Works or any adjacent property or the injury to or death of any person.
- .3 The Contractor must (at its own cost):
 - .1 other than where clause 25A.4 applies, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 25A.2 in accordance with all *Statutory Requirements*;
 - .2 other than where clause 25A.4 applies, take all measures to resolve those matters as soon as possible (including defending any proceedings); and
 - .3 keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 25A.2, which:
 - .1 is in a form or uses a system approved by the Principal;
 - .2 contains full details of:
 - .1 each complaint, proceedings, letter of demand, order and direction; and
 - .2 the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - .3 is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - .4 may be inspected by the *Principal's Authorised Person* whenever the *Principal's Authorised Person* reasonably requires.
 - .4 The Principal will (at its own cost) be responsible for handling all complaints, proceedings, demands, orders or directions that:
 - .1 relate to the Principal's authority to carry out the Sydney Modern Project; or
 - .2 provided the Contractor has complied with this Contract, arise under the *EPBC Act*.

The Contractor must provide all reasonable assistance to the Principal in respect of such complaints, proceedings, demands, orders or directions.
 - .5 The Contractor must notify anyone who may be adversely affected by the work in connection with the Contract before the relevant work is carried out including notification of:
 - .1 the likely duration of that work; and
 - .2 the name and contact details of the Contractor's community relations manager in case any person wishes to make a complaint.

26 Care of people, property and the environment, indemnities and limitations

Obligations of care

- .1 Until the earlier of *Completion* or the termination of the Contract, and in respect of any part of the Works in respect of which the Contractor is performing work during the *Defects Liability Period*, the Contractor is responsible for all of the following:
 - .1 preventing personal injury or death;
 - .2 preventing loss or damage to the *Existing Improvements*, the Site and the Works;

- .3 preventing loss or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract;
 - .4 locating and caring for existing services;
 - .5 repairing or making good loss or damage to the *Existing Improvements*, the Works and the Site; and
 - .6 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract.
- .2 If, in the opinion of the Principal, urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Principal's cost (subject to clause 26.5), and the Principal's costs of doing so will be recoverable (subject to clause 26.5) as a deduction from the *Contract Price*.

Indemnities for property, personal injury or death

- .3 The Contractor indemnifies the *Indemnified Parties* against loss or damage to:
- .1 the Works, from the date the Contractor begins carrying out the work in connection with the Contract; and
 - .2 the Site and the *Existing Improvements* and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site,
- until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases to apply to that part when that part is occupied or taken into use and the indemnity in clause 26.4 then applies to that part of the Works as if the *Actual Completion Date* had been achieved with respect to that part.
- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the *Indemnified Parties* against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
- .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
 - .2 which occurred while the Contractor indemnified the *Indemnified Parties* under clause 26.3.
- .5 The Contractor's liability for loss or damage under clauses 26.3 and 26.4, and the Contractor's responsibility under clause 26.1 is reduced to the extent that the death, injury, loss or damage is contributed to or caused by:
- .1 any act, default or omission of *AGNSW*, the Principal or its agents or employees or consultants or *Separate Contractors* their employees, consultants, contractors or agents, other than an act or omission permitted or authorised under the Contract, or any use or occupation of the Works prior to *Completion* under clause 64;
 - .2 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
 - .3 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 any of its Subcontractors, Consultants or Suppliers;
 - .4 acts and omissions of users of the *ED Motorway* and the Art Gallery of New South Wales; or
 - .5 an Uninsurable Force Majeure Event.
- .6 The Contractor indemnifies the *Indemnified Parties* against the following where they arise in connection with carrying out the Works or the work in connection with the Contract:
- .1 all damage to property other than property covered under clause 26.3.1;

- .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3.1; and
 - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, or death.
- .7 The Contractor's liability to indemnify the *Indemnified Parties* under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by:
- .1 any act, default or omission of the *AGNSW*, Principal or its agents or employees or consultants or *Separate Contractors* their employees, consultants, contractors or agents, other than an act or omission permitted or authorised under the Contract, or any use or occupation of the Works prior to *Completion* under clause 64;
 - .2 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
 - .3 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 any of its Subcontractors, Consultants or Suppliers;
 - .4 acts and omissions of users of the *ED Motorway* and the Art Gallery of New South Wales; or
 - .5 an Uninsurable Force Majeure Event; or
 - .6 a wrongful or negligent act or omission by the *Indemnified Parties* or their employees, consultants, contractors or agents.

Liability under the ED Interface Deed

- .8 Subject to clause 26.9, the Contractor indemnifies *AGNSW* from and against any liability which the Principal or *AGNSW* has to *ED Operator* or *RMS* under the *ED Interface Deed*, arising out of or in relation to:
- .1 any injury to, or disease or illness (including mental illness) or death of, persons;
 - .2 the loss of (whether total or partial) or destruction or damage to, any real or personal property of any person (including *ED Operator* and *RMS*);
 - .3 the loss of use (whether total or partial) of any real or personal property of any person (including *ED Operator* and *RMS*), excluding:
 - .1 the loss of use during a *Planned ED Lane Occupancy Period* of any lane or part of *Zone 3* which is the subject of a *Planned ED Lane Occupancy Period*; and
 - .2 the loss of use of any lane or part of *Zone 3* outside of a *Planned ED Lane Occupancy Period* arising out of or in relation to the work in connection with the Contract;
 - .4 (where *ED Operator* is the *Indemnified Party*) *ED Operator* or *RMS* being unable to comply with its obligations under any Law;
 - .5 (where *ED Operator* is the *Indemnified Party*) *ED Operator* or *RMS* being unable to comply with or being in breach of the *ED Project Deed*; or
 - .6 costs incurred by *ED Operator* or *RMS* in paying any fine, penalty or sanction imposed by a court or other authority,
- to the extent caused by or contributed to, arising out of or in relation to:
- .7 the work in connection with the Contract not being carried out in accordance with the Contract;
 - .8 any breach of the Contract by the Contractor;
 - .9 the negligent, fraudulent or wilful misconduct of the Contractor or the *Contractor's Personnel*; or

- .10 any breach of the *ED Interface Deed* to the extent caused by the acts or omissions of the Contractor or the *Contractor's Personnel* (including the negligence, fraud or wilful misconduct of those parties).
- .9 The Contractor's liability pursuant to the indemnity in clause 26.8 will be reduced proportionally to the extent that the liability arises from an act default or omission of the Principal, *AGNSW*, a *Separate Contractor*, the *ED Operator*, *users of the ED Motorway* or *RMS* or their respective agents employees of consultants, except where the act or omission is permitted or authorised under the Contract .
- .10 Clause 26.8 survives the termination or expiry of the Contract and the *ED Interface Deed* for any reason.

Limitation of liability

- .11 Subject to clause 26.12, the Contractor's aggregate liability to the Principal and the *Indemnified Parties* in connection with loss or liability arising in connection with the Contract (other than for personal injury or death) is limited to the amount stated in Contract Information item 19.
- .12 Clause 26.11 does not limit or affect any liability of the Contractor in respect of claims, actions, costs, losses, damages or liability in connection with:
 - .1 liability which cannot be limited at law;
 - .2 intellectual property and indemnities given by the Contractor in connection with intellectual property;
 - .3 conduct of the Contractor which is carried out with wilful or reckless disregard for the consequences to the Principal, the public or the *Environment*;
 - .4 fraudulent or criminal conduct;
 - .5 the Contractor's abandonment of its obligations under the Contract;
 - .6 the Contractor's liability under the indemnities contained in clauses 26.3, 26.4, 26.6 and 26.8;
 - .7 the Contractor's failure to comply with clauses 26A.23 or 26A.24 or the disposal of *Contamination* other than in accordance with the Contract and all applicable *Statutory Requirements*;
 - .8 amounts recoverable under an insurance policy required under the Contract; or
 - .9 amounts which would have been recoverable under an insurance policy required to be effected and maintained under the Contract but for:
 - .1 the Contractor failing to take out and maintain any insurance it is required to take out and maintain pursuant to the Contract;
 - .2 the Contractor vitiating or prejudicing any insurance policy;
 - .3 the Contractor failing to make a claim under an insurance policy;
 - .4 the insurer becoming insolvent; or
 - .5 the inclusion of clause 26.11 or clause 26.13 in the Contract,

and any liability of the Contractor in respect of the matters referred to in clause 26.12.1 to clause 26.12.9 (inclusive) shall not be taken into account in determining whether the Contractor's liability limit has been reached.

Consequential loss

- .13 Neither party is liable to the other party for any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers other than:
 - .1 loss in connection with any of the matters referred to in clause 26.12;
 - .2 loss suffered by the Principal in connection with any failure by the Contractor to comply with its obligations under clause 15A; or
 - .3 the Contractor's obligation to pay liquidated damages under the Contract or, where clause 51.14 applies, the Contractor's liability for general damages.

Exclusion of proportionate liability

- .14 To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

Contractor jointly and severally liable

- .15 Where the Contractor comprises two or more entities, each of them is jointly and severally liable for all of the Contractor's liabilities and obligations under the Contract.

26A Environmental Liability**Compliance**

- .1 The Contractor must carry out the work in connection with the Contract:
- .1 in an environmentally responsible manner so as to protect the *Environment*; and
 - .2 in accordance with the *Environmental Management Plan* and all *Environmental Statutory Requirements*.
- .2 The Contractor must comply with, and ensure the *Contractor's Personnel* comply with, all *Environmental Statutory Requirements* and the environmental requirements set out in section 6 of the *Preliminaries*.
- .3 The Contractor must immediately notify the *Principal's Authorised Person* in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any *Approval* or any *Environmental Statutory Requirement* in the carrying out of the work in connection with the Contract.
- .4 If there is a legal challenge in relation to the assessment or determination of the Works under the:
- .1 the *Environmental Planning and Assessment Act 1979* (NSW);
 - .2 the *EPBC Act*; or
 - .3 any other *Statutory Requirement*,
- the Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, it is otherwise:
- .4 ordered by a court; or
 - .5 directed by the Principal.

Environmental Management Plan

- .5 The Contractor's high level draft *Environmental Management Plan* at the Date of Contract is included in Schedule 21.
- .6 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 40 *Business Days* before first mobilising to the Site, prepare and submit an *Environmental Management Plan* to the Principal under clause 32A.3.
- .7 The *Environmental Management Plan* must:
- .1 be consistent with the high level draft *Environmental Management Plan* in Schedule 21;
 - .2 set out in detail how the Contractor proposes to comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract;
 - .3 comply with:
 - .1 the Contract and the environmental requirements set out in section 6 of the *Preliminaries*; and
 - .2 the *Project Brief*;
 - .4 include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.

- .8 The Contractor acknowledges that:
- .1 the *Environmental Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Environmental Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .9 The Contractor must not commence any work on the Site unless and until the *Environmental Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4.

Remediation Action Plan

- .10 Where the Contractor is required to remediate any *Contamination* in carrying out its obligations under the Contract, the Contractor must, at least 40 *Business Days* before first carrying out any remediation works on the Site, prepare and submit a *Remediation Action Plan* to the Principal under clause 32A.3.
- .11 The *Remediation Action Plan* must:
- .1 comply with and include all conditions required by any *Approval*;
 - .2 set out in detail how the Contractor proposes to:
 - .1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to *Contamination*;
 - .2 remediate and dispose (if applicable) of all *Contamination* as required by this Contract; and
 - .3 comply with and include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.
- .12 The Contractor acknowledges that:
- .1 the *Remediation Action Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Remediation Action Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .13 The Contractor must ensure that the *Remediation Action Plan* is approved by the *Site Auditor* prior to the Contractor submitting the *Remediation Action Plan* to the Principal in accordance with clause 26A.10.
- .14 Subject to clause 26A.19, the Contractor must not commence any work on the Site unless and until:
- .1 the *Remediation Action Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4; and
 - .2 the *Remediation Action Plan* has been approved by the *Site Auditor*.

Asbestos Management Plan

- .15 The Contractor must, within 10 *Business Days* after the *Date of Contract* and at least 10 *Business Days* before first mobilising to the Site, prepare and submit an *Asbestos Management Plan* to the Principal under clause 32A.3.
- .16 The *Asbestos Management Plan* must:
- .1 comply with and include all conditions required by any *Statutory Requirement*;
 - .2 set out in detail how the Contractor proposes to:
 - .1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to asbestos management and disposal (if applicable); and
 - .2 remediate and dispose (if applicable) of all asbestos as required by this Contract; and

- .3 comply with and include any other information required by the Contract.
- .17 The Contractor acknowledges that:
 - .1 the *Asbestos Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Asbestos Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .18 The Contractor must not commence any work on the Site unless and until the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4.
- .19 Provided that:
 - .1 the pre-conditions to Site access under clause 34.2 have been satisfied;
 - .2 the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4;
 - .3 the Contractor is permitted to commence demolition works on Site in accordance with all applicable *Statutory Requirements* prior to finalising its *Remediation Action Plan*; and
 - .4 the Contractor has complied with any other obligation under the Contract relating to Site access,

the Contractor is entitled to commence demolition works on the Site prior to the Contractor having finalised its *Remediation Action Plan*.

Environment Audits

- .20 The Contractor must, in accordance with the *Environmental Management Plan* and any applicable *Statutory Requirements*:
 - .1 regularly conduct *Environment* audits of its (and the *Contractor's Personnel's*) systems, procedures and work methods;
 - .2 retain copies of such audits; and
 - .3 provide the Principal and its auditors with written copies of all such audits.
- .21 The Principal may:
 - .1 direct the Contractor to carry out *Environment* audits of the Contractor's (or the *Contractor's Personnel's*) systems, procedures and work methods; or
 - .2 on giving notice to the Contractor, itself (or instruct a third party to on its behalf) carry out such audits of the Contractor's (and the *Contractor's Personnel's*) systems, procedures and work methods,

at the Site or any premise (including the Contractor's premises) for the purposes of determining whether the Contractor is complying with as obligations under this clause 26A.
- .22 The Contractor must procure a *Site Audit Statement* is prepared and provided to, and for the benefit of, the Principal and *AGNSW* as a condition to *Completion*.

Contamination

- .23 The Contractor must remediate the Site and all *Contamination*:
 - .1 caused, contributed to by, or exacerbated by, the Contractor;
 - .2 disturbed by the performance of the work in connection with the Contract;
 - .3 on, in or under the Site (regardless of whether such *Contamination* is caused or contributed to by the Contractor or the *Contractor's Personnel*);
 - .4 that migrates off the Site as a result of the performance of the work in connection with the Contract; and
 - .5 that migrates on to or under the Site from outside the Site,

in accordance with:

- .6 the requirements of the Contract, including the *Project Brief* and the *Preliminaries*;
 - .7 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
 - .8 all applicable *Statutory Requirements* and *Approvals*.
- .24 Without limiting the Contractor's obligations under this clause 26A.24, if the Contractor is required by:
- .1 the *Asbestos Management Plan*, the *Remediation Action Plan* or the *Environmental Management Plan*; or
 - .2 any applicable *Statutory Requirements* or *Approvals*,
- to remove and dispose of any *Contamination* referred to in this clause 26A.24, the Contractor must remove and dispose of such *Contamination* in accordance with:
- .3 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
 - .4 all applicable *Statutory Requirements* and *Approvals*.
- .25 In performing its obligations in connection with this Contract, the Contractor must:
- .1 prevent any *Contamination* or the release, discharge or escape of any *Contamination* into the *Environment* by the Contractor or the *Contractor's Personnel*;
 - .2 prevent any *Contamination* or the release, discharge or escape of any *Contamination* on to the *ED Motorway*; and
 - .3 implement all necessary safety measures to avoid any such *Contamination*.
- .26 Without limiting clauses 26A.24 and 26A.25, the Contractor must only dispose of *Contamination* at sites where such disposal is permitted by *Statutory Requirements*.
- .27 The Contractor must:
- .1 immediately give notice to the Principal upon the discovery or release of any *Contamination*;
 - .2 take any urgent action required to protect people, property and the *Environment*.
- .28 The Contractor must procure that any *Contamination* report provided by a Consultant or Subcontractor in connection with the Works or the Site is provided for the benefit of the Principal and *AGNSW*.
- .29 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 26A, including any liability of the *Indemnified Parties* under the *ED Interface Deed* with respect to *Contamination*. The Contractor's liability to indemnify the *Indemnified Parties* under this clause is reduced to the extent that the claim (including *Claims*) is contributed to or caused by:
- .1 an act or omission by the Principal, its employees, consultants, agents or *Separate Contractors*; or
 - .2 a wrongful or negligent act or omission by the *Indemnified Parties* or their employees, consultants, contractors or agents.
- .30 If any *Contamination* referred to in clause 26A.23 constitutes a *Latent Condition*, the Contractor will be entitled to claim relief in accordance with clause 37G.

Oil tanks

- .31 The *Contractor* agrees that the work in connection with the Contract includes the removal and remediation or, where specified in the *Project Brief*, the refit of the oil tanks located on the Site and described in the *Project Brief* ("**Oil Tank Works**").
- .32 The Contractor must carry out the Oil Tank Works strictly in accordance with the requirements of the Contract.
- .33 If the Contractor encounters or is required to remediate any *Contamination* in respect of the Oil Tank Works the Contractor must remove or remediate such *Contamination* in

accordance with the requirements of clauses 26A.23 to 26A.28 and clauses 26A.34 to 26A.38 will apply.

- .34 If during the execution of the Oil Tank Works, the Contractor encounters or is required to remediate any *Contamination*, the Contractor must:
- .1 notify the *Principal's Authorised Person* in writing of the existence and possible scope of the *Contamination* as soon as practicable and in any event within 5 Business Days after becoming aware of the *Contamination*; and
 - .2 within 5 Business Days of so becoming aware, provide a notice entitled "Contamination Notice" to the *Principal's Authorised Person*.
- .35 A "Contamination Notice" is a notice in writing which includes:
- .1 detailed particulars of the relevant *Contamination*;
 - .2 the measures that the Contractor considers are necessary and practicable to deal with the *Contamination*, including a preliminary estimate of the extent to which each such alternative has a resourcing, cost, disruption or delay impact; and
 - .3 any other information that the Contractor considers is relevant in the circumstances.
- .36 Following receipt of a Contamination Notice, the *Principal's Authorised Person* may request any additional information it reasonably requires from the Contractor to assess the Contamination Notice.
- .37 If the Contractor is required to remediate any *Contamination* referred to in the Contamination Notice constitutes, then subject to clause 26A.38, the Contractor will be entitled to a *Variation* in respect of such remediation work, and:
- .1 the provisions of clause 47 will apply; and
 - .2 the Contractor will be entitled to claim an extension of time under clause 50.1 as an *Excusable Delay Event* and delay costs under clause 51.
- .38 Notwithstanding clause 26A.37, no regard will be had to the value of, and the Contractor waives any entitlement in respect of, any work carried out, constructional plant used or costs incurred in respect of the *Contamination* before the date on which the Contractor gives the Contamination Notice.
- .39 The entitlements referred to in clause 26A.37 will be the Contractor's sole remedy, and the Contractor will have no entitlement to and the *Principal* will not be liable for any other Claim arising out of or in connection with such *Contamination*.

27 Insurance

- .1 If Contract Information item 21 or 22 states that the *Principal* is responsible to effect insurance covering the Works or public liability, the *Principal* must, not later than the Date of Contract, effect that insurance in accordance with the Contract Information item, on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by the *Principal* before the Date of Contract. The *Principal* must provide or make available to the Contractor a copy of the relevant insurance policy.
- .2 If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
 - .1 a Works policy of insurance to cover loss or damage to the Works; and
 - .2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.
- .3 Before starting work in connection with the Contract, the Contractor must:
 - .1 effect any insurance required in accordance with Contract Information items 23, 24 and 25 as follows:
 - .1 workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) and where possible, extended to indemnify the *Principal* against statutory liability to persons employed by the Contractor;

- .2 if stated in Contract Information item 24, a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;
- .3 if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 25;
- .4 insurance for loss of or damage to equipment used by the Contractor in the performance of its obligations under the Contract, as specified in in Contract Information item 25A;
- .5 comprehensive motor vehicle insurance covering compulsory third party bodily injury and third party property damage, as specified in in Contract Information item 25B; and
- .2 procure that the applicable licensed Subcontractor effects asbestos liability insurance to cover the risks associated with asbestos decontamination work, as specified in in Contract Information item 25C.
- .4 The Contractor must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
- .5 The Contractor must ensure that every Subcontractor, Supplier, Consultant and all *Contractor's Personnel* are insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987 (NSW)* at all times.
- .6 Unless otherwise instructed by the Principal, the Contractor must:
 - .1 make and manage all insurance claims; and
 - .2 notify the Principal at the same time as the Contractor receives or gives any notice concerning a policy (save for policies of professional indemnity or workers compensation insurance), and at least 7 days before any notified cancellation of a policy.
- .7 The Contractor must meet the costs of all excesses or deductibles to the extent that the Contractor is responsible for the risk under this Contract or otherwise.
- .8 All policies must:
 - .1 other than in respect of professional indemnity policy of insurance or workers compensation insurance, provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured, except if, despite the Contractor's reasonable endeavours, it is not reasonably practicable to satisfy those requirements in respect of the asbestos liability insurance in clause 27.3.2; and
 - .2 be placed with an insurer with a Required Rating or such other insurer as is approved by the Principal in its absolute discretion.
- .9 Each policy referred to in clauses 27.2, 27.3.1.3 and 27.3.2 must:
 - .1 name or otherwise identify the Principal, *AGNSW* and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends;
 - .2 include a cross-liability clause under which the insurer agrees that the term "insured" applies to each of the persons covered as if a separate policy of insurance had been issued to each of them, and a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action against any of the persons covered,

except if, despite the Contractor's reasonable endeavours, it is not reasonably practicable to satisfy those requirements in respect of the asbestos liability insurance in clause 27.3.2.

- .10 The Contractor must:
- .1 ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 27 by the Contractor or any Subcontractor, Supplier or Consultant, it:
 - .1 does not do anything which prejudices any insurance;
 - .2 if necessary, rectifies anything which might prejudice any insurance;
 - .3 reinstates an insurance policy if it lapses;
 - .4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
 - .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
 - .6 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; and
 - .2 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - .3 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.
- .11 The Contractor must give the Principal a certificate of currency evidencing that that all insurance policies required to be effected by the Contractor under the Contract are current:
- .1 before starting work in connection with the Contract; and
 - .2 whenever requested in writing by the Principal.
- .12 The Contractor must allow the Principal (or its broker) to review copies of all insurance policies it is required to effect and maintain (but excluding any policy of professional indemnity insurance) whenever requested in writing by the Principal.
- .13 If the Principal has a reasonable objection to any conditions of an insurance policy, and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five *Business Days* after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.
- .14 If the Contractor fails to comply with clauses 27.11, 27.12 or 27.13, the Principal may effect and maintain the relevant insurance policy and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due from the Contractor to the Principal.
- .15 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event related to this Contract that may give rise to a claim under a policy of insurance effected as required by the Contract (other than in respect of a professional indemnity policy or a workers compensation policy), the and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. However, the Contractor shall not be required to comply with this clause 27.15 in respect of any claims which the Principal may have against the Contractor.
- .16 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
- .1 all settlement amounts must be paid by the insurer directly to the Principal;
 - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract;
 - .3 the Contractor must reinstate the Works if instructed to by the Principal and, except as provided in clause 27.16.4.2 may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement;
 - .4 if the Principal elects to have the Works reinstated:
 - .1 to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor

shall be entitled to receive from the settlement moneys received, payment in respect of the reinstatement Works carried out by the Contractor; and

- .2 if the cause of the damage to or destruction of the Works was a cause listed in clause 26.5, the Principal shall pay to the Contractor the cost of the reinstatement work.

Contractor's Personnel

28 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must include in every Subcontract:
 - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
 - .2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
 - .3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 74.13.3; and
 - .4 when possible, a right of termination for convenience.
- .4 In addition, the Contractor must include:
 - .1 in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 29, written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements); and
 - .2 in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.

29 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 Subject to clause 29.3, the Contractor must not engage any Subcontractor in relation to the work in connection with the Contract without the prior written approval of the Principal. If the Principal objects to any proposed Subcontractor within 10 Business Days of the Contractor providing the Principal with details of the proposed Subcontractor, the Contractor must propose another Subcontractor.
- .3 The Contractor is entitled to engage:
 - .1 the *Approved Subcontractors* for their respective scope of work set out in Contract Information item 12A; and
 - .2 Subcontractors whose Subcontract has a value of less than [REDACTED] (provided such Subcontract is not with a design consultant),
without requesting the Principal's further consent.
- .4 The Principal will effect, and the Contractor must accept, novations of the contracts of the Principal's consultants specified in Contract Information Item 32B generally on the terms of the *Novation Deed*.
- .5 The Contractor must ensure that each Subcontractor that will be responsible for handling and disposing of asbestos, holds all necessary qualifications, certificates, tickets and licences required to carry out such work.

30 Subcontractor warranties

- .1 For each trade, item or area of work listed in Contract Information item 32, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).
- .2 If the Contractor, acting reasonably, considers that the form of warranty contained in Schedule 1 is not appropriate in respect of any particular Subcontractor having regard to that Subcontractor's scope of work, the Contractor may propose an alternative form of warranty for the Principal's approval, which approval may be given or withheld in the Principal's absolute discretion,
- .3 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

31 Consultant and Supplier relationships

- .1 Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.
- .3 Where a Consultant is to carry out design work, the Contractor must, within 5 *Business Days* of the engagement of the Consultant provide the Principal with a deed of covenant (duly stamped) executed by the Consultant in the form of Schedule 37 (except if, despite the Contractor's reasonable endeavours, it is not reasonably practicable to procure such documents by reason of the terms of an existing Consultant's contract that is to be novated by the Principal to the Contractor).

31A Key Personnel

- .1 The Contractor must engage and maintain the *Key Personnel* throughout the performance of the work in connection with the Contract in the positions and in respect of the duties set out in Contract Information item 12.
- .2 The Contractor must not remove or replace any members of the *Key Personnel* (unless such person dies, retires or resigns) without the prior written approval of the Principal.
- .3 Any substitute personnel nominated by the Contractor must be at least equally qualified for the duties of the position as the persons for whom they are substituted.
- .4 The Contractor must provide an uninterrupted transition between the *Key Personnel* and their replacements.

31B Contractor's Personnel**Personnel**

- .1 The Contractor must provide and engage the personnel necessary for the proper and timely performance of the work in connection with the Contract.
- .2 The Contractor must ensure that all *Contractor's Personnel* engaged in the performance of the Works:
 - .1 have the competence, skill, qualifications and experience required for the work to be performed by them;
 - .2 hold all necessary qualifications, certificates, tickets and licences required by any applicable *Statutory Requirement* to:
 - .1 undertake the work to be performed by them; and
 - .2 operate any construction equipment they are required to operate;
 - .3 comply with the Contract.
- .3 The Contractor is responsible for ensuring that the *Contractor's Personnel* are adequately trained and have satisfactorily completed all inductions prior to commencing the any work in connection with the Contract.
- .4 The Contractor is responsible for providing all the recruitment, transportation, accommodation, site amenities, catering and payment of all *Contractor's Personnel* required for the performance of the Contractor's obligations under the Contract.
- .5 The *Contractor's Personnel* will not under any circumstance be considered employees or agents of the Principal. The Principal has no responsibility to the Contractor or any

Contractor's Personnel with respect to remuneration, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any *Statutory Requirement*.

Replacement of Personnel

- .6 The *Principal's Authorised Person* may by notice to the Contractor direct the removal of any *Contractor's Personnel* (including *Key Personnel*) who:
 - .1 is guilty of misconduct or fraud or has engaged in illegal conduct;
 - .2 breaches the *WHS Plan* or any applicable *Statutory Requirement*;
 - .3 does not satisfy the standards required by clauses 31B.2 or 31B.3; or
 - .4 is incompetent, negligent or a risk to health and safety.
- .7 Upon receipt of a notice pursuant to clause 31B.6, the Contractor must:
 - .1 remove that person from the Works and the Site;
 - .2 must not employ that person on the Site or in activities connected with the Works without the *Principal's* prior written approval; and
 - .3 promptly appoint a suitably qualified replacement.

Industrial Relations

- .8 The Contractor:
 - .1 has sole responsibility for and must manage all aspects of workplace relations in connection with the Works and the Site; and
 - .2 must keep the *Principal's Authorised Person* fully and promptly informed of workplace relations problems or issues which affect or are likely to affect the performance of the Contractor's obligations under the Contract.

Carrying out the Works

Starting

32 Start-up workshop

- .1 The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.
- .2 The parties must attend the start-up workshop and must jointly decide who else will attend. Each party must bear its own costs associated with attending the workshop.
- .3 The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

32A Contractor's Project Plans

Requirements

- .1 The Contractor must ensure that the *Contractor's Project Plans* and the deliverables described in them comply, will enable the Contractor to comply and are consistent with the Contract, including the *Preliminaries* and the *Project Brief*.

Compliance

- .2 The Contractor must perform the work in connection with the Contract in accordance with the latest revisions of the *Contractor's Project Plans* submitted to the *Principal's Authorised Person* under clause 32A.3, 32A.5 or 32A.6, incorporating any changes required by clause 32A.5.

Submission

- .3 The Contractor must prepare and submit updated drafts of the *Contractor's Project Plans* to the *Principal's Authorised Person* for comment:
 - .1 progressively, at a steady rate and in an appropriate sequence so that the *Principal's Authorised Person* has a reasonable opportunity to complete its review within the time required by clause 32A.4; and
 - .2 in any event, by the time required by the *Preliminaries* or, if no time is specified, at least 20 *Business Days* before the Contractor uses the *Contractor's Project Plans*.
- .4 The Contractor must allow for the period permitted under clause 32A.5 for the *Principal's Authorised Person's* review of the updated *Contractor's Project Plans* in the *Contract Program*.

Comments

- .5 The *Principal's Authorised Person* may, within 10 *Business Days* after an updated *Contractor's Project Plan* is submitted under clause 32A.3, 32A.5 or 32A.6 (or such other period as is expressly permitted by the Contract), give the Contractor written comments on the *Contractor's Project Plan*.
- .6 The Contractor must promptly provide any further information reasonably requested by the *Principal's Authorised Person* for the purposes of reviewing a *Contractor's Project Plans*.
- .7 The *Principal's Authorised Person* is not required to check any document submitted by the Contractor for errors, omission, inconsistencies, ambiguities, discrepancies or compliance with the Contract.

Resubmission

- .8 If the *Principal's Authorised Person* comments under clause 32A.5 on an aspect of an updated *Contractor's Project Plan* that does not comply with the Contract, the Contractor must promptly:
 - .1 revise the *Contractor's Project Plan* to rectify the non-compliance; and

- .2 if requested by the *Principal's Authorised Person*, submit the revised *Contractor's Project Plan* to the *Principal's Authorised Person* for comment and clause 32A.5 will reapply.

Revisions

- .9 If the Contractor wishes to revise a *Contractor's Project Plan*, the Contractor must submit the revised *Contractor's Project Plan* to the *Principal's Authorised Person* and clause 32A.5 will reapply to that *Contractor Project Plan*.

33 Security

Provision of Undertakings

- .1 Within 10 *Business Days* after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form, and issued by the financial institution, specified in Schedule 2 (*Undertaking*).
- .2 All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) the *Undertakings* shall be paid by the Contractor.
- .3 If the Contractor does not comply with clause 33.1 the Principal may withhold from any payment to the Contractor an amount up to the total amount of the *Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Undertakings* to the Principal or the Principal is required to return the *Undertakings*, whichever is earlier.

Expiry of Undertakings

- .4 If a *Undertaking* contains an expiry date which is earlier than the date it is required to be returned pursuant to clause 33.16, the Contractor must, not less than 20 *Business Days* before the expiry date, provide a replacement *Undertaking*:
- .1 in the same form as the original *Undertaking*; and
- .2 for the uncalled amount of the original *Undertaking*.
- .5 If the Contractor fails to provide the replacement *Undertaking* in accordance with clause 33.4, then the Principal may make a demand upon the original *Undertaking* and the Principal will hold the proceeds arising from such demand absolutely. The Principal may apply amounts held in accordance with clause 33.10.
- .6 Upon receipt of a replacement *Undertaking* which complies with clause 33.4, the Principal must pay the remaining balance from any demand pursuant to clause 33.5 without interest to the Contractor.

Replacement events

- .7 Within five *Business Days* of a *Undertaking Replacement Event* occurring, the Contractor must replace the *Undertaking* effected by the *Undertaking Replacement Event* with a replacement *Undertaking* which is:
- .1 in the same form and for the same amount as the *Undertaking* being replaced; and
- .2 effective from the date of receipt by the Principal.
- .8 The Principal must, as soon as reasonably practicable after receipt of a replacement *Undertaking* provided in accordance with clause 33.7, return the original *Undertaking* to the Contractor.

Recourse to Undertakings

- .9 The parties acknowledge and agree that the *Undertakings* are provided by the Contractor both as security for the Contractor's performance of its obligations under the Contract and for the purpose of apportioning the risk of disputes under or in relation to the Contract.
- .10 Regardless of whether a dispute exists regarding the circumstances in which a demand on the *Undertakings* can be made, the Principal may make demand upon any *Undertaking* provided pursuant to the Contract and use the proceeds of such demand:
- .1 to recover any *Loss* suffered or incurred by the Principal, or which the Principal reasonably considers it will suffer or incur, under or in connection with the

- Contract for which the Contractor is, or will be, liable under or in connection with the Contract;
- .2 to recover any moneys or debt due from the Contractor to the Principal;
 - .3 in respect of any bona fide claim made by the Principal against the Contractor under or in connection with the Contract;
 - .4 where the Contract is terminated by the Principal in accordance with clause 74.12; or
 - .5 where the Contractor or the *Guarantor* is insolvent.
- .11 Regardless of whether a dispute exists regarding the circumstances in which a demand on an *Undertaking* can be made, the Contractor must not take any steps to restrain:
- .1 the Principal from making any demand on the *Undertakings*;
 - .2 the issuer of an *Undertaking* from making payment under the *Undertaking*; or
 - .3 the Principal using the proceeds of any demand on an *Undertaking*.
- .12 Where the Principal has converted an *Undertaking* into money, any interest earned on such monies shall be retained by the Principal.
- .13 The Principal is not obliged to hold amounts realised on the calling of an *Undertaking* in any definable account.
- .14 The Principal does not hold retention monies or amounts realised on the calling of an *Undertaking* on trust for the Contractor and the Contractor does not have ownership of, or any proprietary interest in, such amounts.
- .15 Where the Principal makes a demand upon an *Undertaking* that is not in accordance with the Contract, the Principal's sole liability arising from or in connection with such demand is limited to the repayment of any proceeds received by the Principal in excess of its entitlement and interest on such proceeds calculated in accordance with clause 62.

Return of Undertakings

- .16 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
- .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
 - .2 the *Post-Completion Undertaking* at the time stated in Contract Information item 35 provided that at that time:
 - .1 there are no outstanding *Defects* or unresolved *Issues*; and
 - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal or claimed by the Principal to be payable.
- .17 When any of the circumstances in clause 33.16.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.

Parent Company Guarantee

- .18 Within 10 Business Days after the Date of Contract (and before starting work on the Site), the Contractor must provide to the Principal an original of a parent company guarantee:
- .1 in the form set out in Schedule 4; and
 - .2 duly executed by the Guarantor.
- .19 If either the Contractor or the Guarantor is a foreign entity, the Contractor must, on or prior to the Date of Contract, provide the Principal with a legal opinion from the Contractor's external lawyers, in a form acceptable to the Principal, with respect to the Contractor's and Guarantor's entry into, performance of, and the enforceability of, the Contract, the Parent Company Guarantee, and the Contractor Warranty Deed.

Cash Security - Subcontracts

- .20 If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.

- .21 If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.
- .22 The Contractor must deposit all money it receives in trust, as described in clauses 33.20 and 33.21, into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:
 - .1 the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;
 - .2 the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and
 - .3 any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.
- .23 Clauses 33.20, 33.21 and 33.22 do not apply to security of the type referred to in clause 33.12 and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2008* (NSW) applies instead.

34 Site access

- .1 Subject to clause 34.2, the Principal must give the Contractor access to the Site in accordance with the Schedule 20.
- .2 The Principal shall not be obliged to provide the Contractor with access to the Site until all of the following conditions have been satisfied by the Contractor:
 - .1 the date on which each of the following conditions have been satisfied:
 - .1 the Contractor's *WHS Plan* and *Environmental Management Plan* have been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clauses 32A.4 and 32A.5;
 - .2 the Contractor has provided reasonable evidence to the Principal that it has procured the insurances it is required to take out and maintain pursuant to the Contract;
 - .3 the Contractor has obtained all *Approvals* required to be obtained by the Contractor that required to access the Site and commence Works;
 - .4 all *Contractor's Personnel* that require access to the Site have completed site inductions; and
 - .5 the Contractor has provided the *Contract Program* in accordance with clause 22.1 and the *Principal's Authorised Person* has not provided any comments on that *Contract Program* pursuant to clauses 32A.4 and 32A.5; and
 - .2 the relevant *Site Access Date*.
- .3 If the Principal does not give the Contractor access to the Site as required by clause 34.1, the Contractor has no remedy or entitlement other than:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51; and
 - .2 when an entitlement arises under clause 76, to terminate the Contract.
- .4 The Contractor must permit the Principal, including its authorised invitees, employees and agents, to have access to the Site and to the premises of the Contractor at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. The Principal may require access for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.
- .5 The Contractor must, and must ensure that the *Contractor's Personnel*, comply with all *Site Access Conditions* when carrying out any work in connection with the Contract on the Site.
- .6 The Contractor must:
 - .1 construct all temporary access required to access the Site;

- .2 control and manage the use of, and access to and through, the Site (but nothing in this clause 34.6.2 affects or limits the Principal's rights under the Contract);
- .3 only authorise vehicles and persons directly connected with the Works to enter the Site;
- .4 keep and maintain comprehensive details of all visitors authorised to enter the Site (including full name, employer and purpose of entering the Site) and, upon request by the *Principal's Authorised Person*, provide such details to the *Principal's Authorised Person*; and
- .5 provide for the continuous safe passage of the public, service providers and road users on existing roads and access ways affected by the work in connection with the Contract in accordance with this Contract, which passage must, unless otherwise consented to in writing by the *Principal's Authorised Person*, be provided at a standard not less than that provided to the public, service providers and road users prior to the commencement of the work in connection with the Contract.

34A Access to ED Land

- .1 At all times that the Contractor has access to *Zone 1* and *Zone 2A*, the Contractor must control access to, and ensure public safety on, *Zone 1* and *Zone 2A*.
- .2 The Contractor must:
 - .1 liaise with *ED Operator* in relation to the carrying out of the *ED Works* during any period that the Contractor has access to the *ED Land*; and
 - .2 provide *ED Operator* and *RMS* with access to the *ED Land* to the extent necessary to:
 - .1 exercise its rights under the *ED Interface Deed*;
 - .2 respond to an *ED Emergency*;
 - .3 comply with all *Statutory Requirements*; and
 - .4 undertake operation and maintenance activities in respect of *Zone 2B* (including the installation and maintenance of throw screens on the *ED Land* bridge), subject to *ED Operator*:
 - .1 complying with the Contractor's safety and security management procedures; and aa
 - .2 coordinating its access to *Zone 1* and *Zone 2A* with the Contractor's programme of works in order to limit any delay to the *ED Works*.
- .3 If any action by the *ED Operator* or *RMS* under clause 34A.8 hinders or delays the Contractor in the performance of the work in connection with the Contract, then the Contractor will be entitled to claim:
 - .1 an extension of time under clause 50.1 in respect of an *Excusable Delay Event*; and
 - .2 delay costs under clause 51.1,
 save to the extent that such action was required as a result of any act, default, omission or negligence of the Contractor or the *Contractor's Personnel*.

34B Access to Zone 2B

- .1 The Contractor acknowledges that (subject to clause 34B.2), under the *ED Interface Deed*, *RMS* and *ED Operator* must:
 - .1 give, or ensure that *AGNSW*, the Principal, the Contractor and its Subcontractors have access to *Zone 2B* on and from the date and time determined in accordance with Schedule 20; and
 - .2 thereafter continue to allow, or ensure that *AGNSW*, the Principal, the Contractor and its Subcontractors continue to be allowed access to *Zone 2B* in accordance with the *Site Access Conditions*.
- .2 The Contractor must:
 - .1 comply with the *Site Access Conditions* applicable to *Zone 2B* at all times it has access to *Zone 2B*;

- .2 ensure that it liaises with *ED Operator* in relation to the carrying out of work in connection with the Contract in respect of the *ED Works* during any period it has access to *Zone 2B*; and
- .3 provide *ED Operator* and *RMS* with access to *Zone 2* to the extent necessary to:
 - .1 exercise its rights under the *ED Interface Deed*;
 - .2 respond to an *ED Emergency*; or
 - .3 comply with all *Statutory Requirements*.

34C Access to Zone 3 during Planned ED Lane Occupancy Period

- .1 The Contractor acknowledges and agrees that access to *Zone 3* in order to carry out the work in connection with the Contract will only be available during a *Planned ED Lane Occupancy Period*.
- .2 Subject to clause 34C.3, *ED Operator* will give the Contractor a *Planned ED Lane Occupancy Period* which provides the Contractor with sufficient access to *Zone 3* to carry out the work in connection with the Contract upon the dates and times determined in accordance with the *Site Access Conditions*.
- .3 The Contractor must:
 - .1 comply with the *Site Access Conditions* applicable to *Zone 3* at all times it has access to *Zone 3*;
 - .2 subject to clause 34C.4, reimburse *AGNSW* for any *Planned ED Lane Occupancy Fee* for that *Planned ED Lane Occupancy Period* payable by *AGNSW* to *ED Operator*;
 - .3 ensure that it liaises with *ED Operator* in relation to the carrying out of the work in connection with the Contract during any period it has access to *Zone 3*; and
 - .4 provide *ED Operator* and *RMS* with access to *Zone 3* to the extent necessary to:
 - .1 exercise its rights under the *ED Interface Deed*;
 - .2 respond to an *ED Emergency*; and
 - .3 comply with all *Statutory Requirements*.
- .4 If, as a result of an event contemplated by clause 34C.3.4 or clause 34E.1, the Contractor is unable to access all or part of *Zone 3* for a period in which the Contractor would otherwise be liable to reimburse *AGNSW* for a *Planned ED Lane Occupancy Fee*, other than to the extent caused or contributed to by the Contractor or any *Contractor's Personnel*, the *Planned ED Lane Occupancy Fee* for that area and for that period will be reduced to the extent necessary to reflect the duration of the period for which the Contractor is unable to access *Zone 3* and the Contractor will not be entitled to any other *Claim* or remedy in respect of such lack of access.
- .5 Subject to clause 34C.6 but notwithstanding any other provision of this Contract, payment of the *Planned ED Lane Occupancy Fee* is *ED Operator's* sole remedy for the *ED Operator's* loss of use of *Zone 3* during a *Planned ED Lane Occupancy Period*.
- .6 If clause 7.3 of the *ED Interface Deed* is found for any reason to be void, invalid or otherwise inoperative so as to disentitle *ED Operator* from recovering any of the *Planned ED Lane Occupancy Fees* which would otherwise be payable under clause 7.3 of the *ED Interface Deed*, then the Contractor acknowledges that *ED Operator* is entitled to recover damages at law from *AGNSW* for the loss of use of *Zone 3* as contemplated in the *ED Interface Deed* and (limited to the amount of the *Planned ED Lane Occupancy Fees* to which *ED Operator* would otherwise have been entitled had clause 7.3 of the *ED Interface Deed* not been void, invalid or otherwise inoperative), the Contractor indemnifies *AGNSW* in respect of all such liability.

34D Unplanned impacts on ED Motorway

- .1 The Contractor acknowledges that:
 - .1 under clause 11.1 of the *ED Interface Deed*, to the extent that the work in connection with the Contract causes any traffic impact or loss of use of *Zone 3* outside of a *Planned ED Lane Occupancy Period*, *AGNSW* is liable to pay the *ED Operator* the *Unplanned ED Lane Occupancy Fee* as *ED Operator's* sole remedy for loss of use of *Zone 3* and any other consequential loss incurred or suffered as

a result of loss of use of Zone 3 outside of a *Planned ED Lane Occupancy Period*;
and

- .2 if clause 11.1 of the *ED Interface Deed* (or any part) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle *ED Operator* from recovering any of the *Unplanned ED Lane Occupancy Fees* which would otherwise be payable under that clause, then *ED Operator* is entitled to recover damages at law from *AGNSW* for the loss of use of Zone 3 as contemplated in the *ED Interface Deed*, provided that the *ED Operator's* entitlement to recover damages at law will be limited to the amount of the *Unplanned ED Lane Occupancy Fees* to which it would otherwise have been entitled had clause 11.1 not been void, invalid or otherwise inoperative,

and the Contractor indemnifies *AGNSW* in respect of all such liability provided that the Contractor's liability under this indemnity will be reduced proportionally to the extent that liability for a *Unplanned ED Lane Occupancy Fee* arises from a act, default or omission of *AGNSW* or the Principal or one of their employees, agents or *Separate Contractors*.

34E ED Operator Step-In

- .1 In the event that:
- .1 any vehicle or machinery used by the Contractor in connection with the work in connection with the Contract is left unattended and unsecured in or on the *ED Land* or any part of the work in connection with the Contract (including building material or equipment) is left unattended and unsecured on any part of the *ED Land* and, in the reasonable opinion of *ED Operator*, is causing or may cause:
- .1 a risk or threat to health or safety of persons in or on *Zone 2B* or *Zone 3*; or
- .2 any damage or destruction of any part of *Zone 2B* or *Zone 3* or other property (including infrastructure) on or in relation to those areas; or
- .2 *ED Operator* or *RMS* suffers any *Loss* or any damage or destruction of any part of *Zone 2B* or *Zone 3* or other property (including infrastructure) on or in relation to those areas occurs from or arising out of the work in connection with the Contract, (each, for the purposes of this clause 34E.1, a "*Step-In Event*"):
- .3 in the case of a *Step-In Event* set out in clause 34E.1.1, if the Contractor fails to remove the vehicle or machinery, or secure the work in connection with the Contract within 24 hours of being notified of the *Step-In Event* by the Principal or *AGNSW*, the Contractor must permit *ED Operator* to take steps to eliminate the risk or threat to health or safety in or on *Zone 2B* or *Zone 3* (as applicable), including removing such vehicle or machinery to a secure location or securing the work in connection with the Contract, provided that in doing so, *ED Operator* does not breach, or cause the Contractor to breach, any *Statutory Requirements* or *Approvals*;
- .4 in the case of a *Step-In Event* set out in clause 34E.1.2, the Contractor must, having been notified by the Principal or *AGNSW* of the occurrence of that *Step-In Event*, permit *ED Operator* to:
- .1 take immediate steps to clear any debris and begin initial repair work;
- .2 carry out such steps as are necessary to minimise any *Loss* to *ED Operator* or *RMS* and ensure:
- .1 the prompt repair or replacement of any damage to or destruction of *Zone 2B* or *Zone 3* or other property (including infrastructure) on or in relation to those areas so that it complies with the *ED Project Deed* and there is minimal disruption to the operation and maintenance of *Zone 2B* or *Zone 3* and/or tolling of the *ED Motorway*; and
- .2 that, to the greatest extent possible, *ED Operator* and *RMS* are able to continue to comply with their obligations under the *ED Project Deed*;

and

- .3 manage all repair and replacement activities so as to minimise the impact on *Zone 2B* or *Zone 3* or other property (including infrastructure) on or in relation to those areas.
- .2 The Contractor:
 - .1 will have no *Claim*; and
 - .2 indemnifies *AGNSW* and the Principal from any liability incurred or suffered by them under the *ED Interface Deed*, arising out of or in relation to any steps taken by *ED Operator* as described in clause 34E.1, save to the extent that the steps taken by the *ED Operator* were not caused by or were required as a result of, any act, default or omission of the Contractor, in which event the Contractor will be entitled to claim as its sole remedy:
 - .3 an extension of time under clause 50.1 in respect of an *Excusable Delay Event*; and
 - .4 delay costs under clause 51.1.
 - .3 The Contractor's liability under clause 34E.2 will be reduced proportionally to the extent that the *Claim* or *Loss* arises from a negligent act or negligent omission of the Principal or *AGNSW* as the case may be.
 - .4 Clause 34E.2 survives the termination or expiry of this Contract for any reason.

35 Not Used

The Site

36 Not Used

37 Site Conditions

- .1 Subject to clauses 26.31, 26.32 and 37G, the Contractor assumes all risk associated with, and is not entitled to any *Claim* against the Principal arising out of or in connection with:
 - .1 the Site or the *Site Conditions*;
 - .2 the *Existing Improvements*; or
 - .3 the Contractor encountering Site conditions which differ from those conditions:
 - .1 shown or indicated in any information or document relating to the *Site Conditions* that has been provided by or on behalf of the Principal, including the *Information Documents*; or
 - .2 that the Contractor assumed to exist.
- .2 The Contractor is solely responsible for dealing with any *Site Conditions* and the condition of the *Existing Improvements*:
 - .1 so as to minimise delay;
 - .2 so as to minimise increased costs; and
 - .3 without awaiting any instruction from the Principal, but must comply with any instruction given by the Principal.

37A Interface with Separate Contractors

- .1 The Contractor acknowledges that *Separate Contractors* will be performing works on, or in the vicinity of, the Site at the same time as the Contractor is carrying out the work in connection with the Contract.
- .2 The Contractor must:
 - .1 permit *Separate Contractors*, and provide *Separate Contractors* with sufficient access to the Site, to execute their works;
 - .2 fully cooperate and liaise with *Separate Contractors*;
 - .3 carefully plan, coordinate, program and integrate the work in connection with the Contract with the work carried out or to be carried out by *Separate Contractors*;
 - .4 not delay the work being performed by *Separate Contractors*;

- .5 monitor the progress of work being performed by *Separate Contractors* and notify the *Principal's Authorised Person* of any interference or sequence activities which may affect the commencement, progress or completion of the work in connection with the Contract;
 - .6 attend all co-ordination meetings with *Separate Contractors* as required by the *Principal's Authorised Person*;
 - .7 take all necessary action to avoid loss or damage to the Works by *Separate Contractors*;
 - .8 not damage the works being carried out by the *Separate Contractors*; and
 - .9 advise the *Principal's Authorised Person* if the Contractor becomes aware of any matter arising out of a *Separate Contractor's* activities that may have an adverse effect on the work in connection with the Contract, the works of a *Separate Contractor* or the safety of any persons.
- .3 The Contractor:
- .1 is not entitled to any *Claim* as a result of compliance with this clause 37A; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to comply with this clause 37A,
- however to the extent that any act or omission of a *Separate Contractor* causes delay or disruption to the work in connection with the Contract, the Contractor will be entitled to claim as its sole remedy:
- .3 an extension of time under clause 50.1 in respect of an *Excusable Delay Event*; and
 - .4 delay costs under clause 51.1.

37B Interface with Site Infrastructure

- .1 The Contractor must ensure that the Works integrate with the *Site Infrastructure*.
- .2 The Contractor acknowledges and agrees that:
 - .1 the Contractor will be performing works on, in, or around, *Site Infrastructure*;
 - .2 the Contractor is solely responsible for liaising with the relevant authority, owner or operator of the *Site Infrastructure* and obtaining any access to the *Site Infrastructure* required to perform its obligations under the Contract;
 - .3 the relevant authority may be operating the *Site Infrastructure* at the same time as the Contractor's performance of the work in connection with the Contract on or around the *Site Infrastructure*; and
 - .4 any shutdown of the *Site Infrastructure* outside of the agreed shutdown must only be undertaken with the prior written consent of the relevant authority.
- .3 The Contractor must:
 - .1 coordinate, cooperate and liaise with the relevant authority and the *Principal's Authorised Person* with respect to any potential interface required with the *Site Infrastructure*;
 - .2 not interfere with the relevant authority's operation of the *Site Infrastructure*;
 - .3 only carry out works that interface with the *Site Infrastructure* during the agreed shutdown periods;
 - .4 take all necessary actions to avoid loss or damage to the *Site Infrastructure*;
 - .5 comply at all times with the relevant authority's safety standards and policies; and
 - .6 immediately notify the *Principal's Authorised Person* and the relevant authority if it considers a change is or will be required to the agreed shutdown schedule.
- .4 The Contractor must not, in performing the work in connection with the Contract, interfere with or damage the *Site Infrastructure*. The Contractor must promptly report to the *Principal's Authorised Person* and the relevant authority any interference with or damage to the *Site Infrastructure* and promptly remedy any damage to the *Site Infrastructure* caused by the Contractor.

- .5 The Contractor:
 - .1 is not entitled to any *Claim* as a result of compliance with this clause 37B; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with any interference with, loss of or damage to the *Site Infrastructure* that is caused or contributed to by the Contractor or the *Contractor's Personnel*.
- .6 If the Contractor considers that the condition of any *Site Infrastructure* located in *Zone 2B* is such that:
 - .1 the *Site Infrastructure* will not be able to support the *ED Works* as depicted in the *ED Works Current Design Documentation*; or
 - .2 a modification needs to be carried out in respect of that *Site Infrastructure* to permit the *ED Works* to be constructed in accordance with the *ED Works Current Design Documentation*; or
 - .3 the *ED Works Current Design Documentation* requires amendment to cater for the condition of that *Site Infrastructure*,

the Contractor must provide to the Principal a *Variation Proposal* under clause 48.4 as soon as practicable (and in any event within 10 Business Days of discovery of the condition of the *Site Infrastructure*) in respect of the matters which the Contractor considers are necessary to deal with the condition of that *Site Infrastructure*.
- .7 Following receipt of a *Variation Proposal* under clause 37B.6, if the *Principal's Authorised Person* agrees (acting reasonably) that a *Variation* is necessary to deal with the condition of that *Site Infrastructure*, the *Principal's Authorised Person* must, within 10 Business Days, issue a *Variation Order*.

37C Artefacts

- .1 All *Artefacts* found on the Site will, as between the parties, belong to the Principal.
- .2 The Contractor must:
 - .1 notify the Principal promptly if it discovers an *Artefact* on the Site;
 - .2 take every reasonable precaution to prevent the *Artefact* from being damaged, lost or removed until appropriate arrangements for dealing with, or removing, the *Artefact* have been made;
 - .3 continue to perform its obligations in accordance with the Contract, except to the extent otherwise:
 - .1 directed by the Principal;
 - .2 ordered by a court or tribunal; or
 - .3 required by a *Statutory Requirement*; and
 - .4 comply with any directions of the Principal in respect of the *Artefact*.
- .3 To the extent that compliance with its obligations under this clause 37C:
 - .1 requires the Contractor to carry out additional works, the costs associated with such additional works must be valued in accordance with clause 47 and added to the *Contract Price*; or
 - .2 causes delay to the Contractor in completing the Works, the Contractor is entitled to claim an extension of time under clause 50 as an *Excusable Delay Event* and delay costs under clause 51.

37D Site Security, Lighting and Fencing

- .1 The Contractor must provide and maintain all lighting, fencing and security when and where necessary for the proper performance and the protection of the Works and the safety of the *Contractor's Personnel*, the Principal, occupiers of adjacent property and the public.

37E Site Clean-up

- .1 The Contractor must keep the Site free from all unnecessary obstruction and must store or promptly remove any surplus materials, clear away from the Site any wreckage, rubbish or temporary works for which it is responsible.
- .2 Prior to *Completion*, the Contractor must:
 - .1 clear away and remove from the Site any temporary Site facilities, wreckage, rubbish and debris of any kind;
 - .2 leave the Site and the Works in a clean and safe condition; and
 - .3 unless otherwise directed by the Principal, disconnect all services that were only required for the Works.

37F Extra Land

- .1 The Contractor must:
 - .1 at its own cost:
 - .1 identify any land in addition to the Site which is necessary or which it may deem requisite or necessary for the execution of the work in connection with the Contract ("**Extra Land**"); and
 - .2 procure for itself the occupation or use of or relevant rights over any *Extra Land*;
 - .2 prior to the occupation or use of, or exercise of relevant rights over, any *Extra Land*, give to the *Principal's Authorised Person* a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the *Extra Land*; and
 - .3 as a condition precedent to *Completion*, provide the Principal with:
 - .1 a properly executed release on terms satisfactory to the Principal (the form set out in Part D of Schedule 34 is satisfactory) from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the *Extra Land* that includes confirmation that the *Extra Land* has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the *Extra Land*; or
 - .2 if the Contractor demonstrates to the satisfaction of the *Principal's Authorised Person*, acting reasonably, that the Contractor is unable to obtain a release under clause 37F.1.3.1 despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the *Extra Land* has failed or refused to execute such a release within 25 *Business Days* of it being provided by the Contractor to the owner, occupier or other person having an interest in the *Extra Land* following the proper completion of the work on that *Extra Land*.
- .2 The Contractor must ensure that the use and rehabilitation of *Extra Land* is to the satisfaction of the owner, lessee or occupier (as applicable) of the *Extra Land* and all relevant authorities.
- .3 The Contractor acknowledges that the Principal will not be liable for any *Claim* by the Contractor arising out of or in any way in connection with:
 - .1 identifying and obtaining access to *Extra Land*; or
 - .2 any delay, additional costs or other effects on the work in connection with the Contract related to the ability of the Contractor to obtain access to *Extra Land*.

37G Latent Conditions

- .1 To the extent that the Contractor encounters a *Latent Condition* while performing the work in connection with the Contract, the Contractor must notify the Principal as soon as practicable (and in any event within 5 *Business Days* of discovery of the *Latent Condition*) ("**Latent Condition Notice**").

- .2 A *Latent Condition Notice* must be in writing and detail:
 - .1 the *Latent Condition* encountered together with evidence to establish that the condition constitutes a *Latent Condition*;
 - .2 any *Variation* that the Contractor considers is required to deal with the *Latent Condition*;
 - .3 the Contractor's estimate of any increase or decrease in the *Contract Price* as a result of dealing with the *Latent Condition*, calculated (where applicable) in accordance with the rates contained in the *Schedule of Rates and Prices*;
 - .4 any impact on the *Contract Program* (including any adjustment to the *Contractual Completion Date*) that will result from encountering and dealing with the *Latent Condition*; and
 - .5 any other information which the *Principal's Authorised Person* reasonably requires.
- .3 Following receipt of a *Latent Condition Notice*, the *Principal's Authorised Person* must (acting reasonably), notify the Contractor within 10 Business Days whether or not it agrees that the Contractor has encountered a *Latent Condition*.
- .4 Subject to clause 37G.5, to the extent that the *Latent Condition* necessitates the Contractor carrying out additional works, the costs associated with such additional works must be valued by the *Principal's Authorised Person* (acting reasonably) and, where applicable, in accordance with the rates contained in the *Schedule of Rates and Prices* and the *Contract Price* will be adjusted accordingly.
- .5 The Contractor is not entitled to any *Claim* in respect of the discovery of a *Latent Condition* unless:
 - .1 the Contractor has given the Principal a *Latent Condition Notice* in accordance with clauses 37G.1 and 37G.2; and
 - .2 either:
 - .1 the Principal has issued a notice under clause 37G.3 confirming that the Contractor has encountered a *Latent Condition*; or
 - .2 it has been determined pursuant to clauses 69 to 71 that the Contractor has encountered a *Latent Condition*;
 - .3 in respect of any claim for a *Latent Condition* that is not in respect of *Contamination, Utilities* or *Site Infrastructure*:
 - .1 the actual cost incurred by the Contractor in dealing with that individual *Latent Condition* exceeds [REDACTED] or
 - .2 the Contractor has previously encountered and is entitled to claim for 3 individual and separate *Latent Condition* events which meet the requirements of clause 37G.5.3.1;
 - .4 in respect of any claim for additional costs, the Contractor has provided a fully substantiated written claim within 15 Business Days becoming aware of the *Latent Condition*;
 - .5 in respect of a claim for an extension of the *Contractual Completion Date*, the Contractor has complied with clause 50; and
 - .6 in respect of a claim for delay costs, the Contractor has complied with clause 51.2.

Design

38 Faults in Contractor's Documents

- .1 The Contractor is responsible for, and must correct, any *Faults* or errors in or between the *Contractor's Documents* irrespective of whether those documents have been reviewed, approved or commented on by the *Principal's Authorised Person*.
- .2 The Contractor is not entitled to any *Claim* arising out of or in connection with any *Fault* or error in or between the *Contractor's Documents*

39 Design by Contractor and Contractor's Documents

Design responsibilities

- .1 The Contractor must carry out all design necessary in connection with the Works.
- .2 The Contractor must carry out its design responsibilities so that the Works comply with the requirements of the Contract.
- .3 Design or design development does not give rise to a *Variation* or reduce the Contractor's design responsibilities under clause 39.
- .4 The Contractor warrants to the Principal that:
 - .1 the Contractor has checked and carefully considered the *Project Brief*, the *Approvals* and the other *Contract Documents* (but not the *Principal's Design* or the *ED Works Current Design Documentation*) and that:
 - .1 it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the *Project Brief*, any *Approvals* and the other *Contract Documents* (other than the *Principal's Design* or the *ED Works Current Design Documentation*); and
 - .2 the design, engineering and construction of the Works in accordance with such documents will enable the Contractor to carry out the work in connection with the Contract and to comply with the requirements of the Contract;
 - .2 subject to clauses 2.4 and 2.5 of the Formal Instrument of Agreement, the *IFC Design Documentation* will:
 - .1 comply with the *Principal's Design*, the *Project Brief*, the *ED Interface Deed* and the other requirements of this Contract including:
 - .1 *Statutory Requirements*;
 - .2 the Principal's instructions;
 - .3 the Building Code of Australia 2016 (if stated in Contract Information item 38) and relevant Australian Standards; and
 - .4 if no other standard is specified in the Contract, good industry standards applicable to the Works,
 subject to such changes as may be necessary to ensure compliance with this Contract;
 - .2 enable the Contractor to complete the Works such that the Works will comply with this Contract and the *ED Interface Deed*;
 - .3 be prepared by appropriately accredited and experienced personnel;
 - .4 be completed in accordance with the requirements of this Contract; and
 - .5 integrate all the design elements;
 - .3 construction in accordance with the *IFC Design Documentation* will satisfy the requirements of the *Project Brief*, the *ED Interface Deed* and the other requirements of this Contract;
 - .4 the Works will be completed in accordance with, and satisfy the requirements of, this Contract and the *ED Interface Deed*; and
 - .5 at and after the *Actual Completion Date*, the design life of each part of the Works will meet or exceed and continue to meet or exceed the design life standards specified in the *Project Brief*.
- .5 The Contractor agrees that its obligations under, and the warranties given in, this clause 39 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Works and notwithstanding:
 - .1 the *ED Works Current Design Documentation* and any other design work carried out by others, prior to the date of this Contract and incorporated in this Contract;
 - .2 any certification or approval issued by the *Principal's Authorised Person* or the *Independent Certifier*; or
 - .3 any *Variation* the subject of a direction by the Principal, except to the extent that the Contractor has advised the Principal in writing prior to carrying out a *Variation*

- that performance of the *Variation* would place the Contractor in breach of the Contract or a warranty required to be given under it),
- and that the development of the *IFC Design Documentation* in accordance with clause 39 does not amount to a *Variation*.
- .6 Subject to clause 37B.6 and clause 37B.7 and clauses 2.4 and 2.5 of the Formal Instrument of Agreement, the Contractor is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor, third parties or anyone claiming through the Contractor may suffer or incur arising out of or in connection with the design of the Works in accordance with the *Project Brief* and the construction of the Works in accordance with the *IFC Design Documentation*, including costing more or taking longer than anticipated and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 39.4 to 39.5.

Design review

- .7 The Contractor must develop and complete the *Design Documentation* and prepare and submit:
- .1 the draft *IFC Design Documentation*; and
 - .2 the documents which the *Document Submission Schedule* requires the Contractor to submit to the *Principal's Authorised Person* for review,
- to the *Principal's Authorised Person* for review:
- .3 as soon as practicable after the document is complete;
 - .4 before the Contractor commences any part of the work in connection with the Contract which is dependent on that document; and
 - .5 where the Contract or the *Document Submission Schedule* sets out a date for submission, on or before that date.
- .8 The Contractor must deliver to the *Principal's Authorised Person*:
- .1 one electronic copy in the form specified in the *Document Submission Schedule*; and
 - .2 three hard copies,
- of each document required to be submitted under clause 39.7.
- .9 Any draft *IFC Design Documentation* submitted for review must be prepared to a level of detail sufficient to permit the *Principal's Authorised Person* to determine if the draft *IFC Design Documentation* complies with the Contract.
- .10 Each document submitted by the Contractor pursuant to clause 39.7 must be accompanied by a certificate:
- .1 provided by the Consultant responsible for preparing the relevant document;
 - .2 that certifies that the design and engineering contained in such documents complies with the Contract (including the *Project Brief* and the *Principal's Design*) and is appropriate for construction; and
 - .3 in the form set out in Part A of Schedule 34.
- .11 The *Principal's Authorised Person* may request additional information to assist it in reviewing any draft *IFC Design Documentation*. The Contractor must promptly provide such information.
- .12 The *Principal's Authorised Person* may review each document submitted in accordance with clause 39.7 within the later of:
- .1 21 *Business Days* after receipt by the *Principal's Authorised Person* of any such document; or
 - .2 21 *Business Days* after receipt by the *Principal's Authorised Person* of the additional information requested under clause 39.11,
- (the "**Design Review Period**").
- .13 If any such document does not comply with the Contract or is not complete, the *Principal's Authorised Person* may, within the *Design Review Period*, give the

- Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.
- .14 Within 5 *Business Days* of receipt of the *Principal's Authorised Person's* notice under clause 39.13, the Contractor must modify the document to take the *Principal's Authorised Person's* comments under clause 39.13 into account and re-submit the document to the *Principal's Authorised Person*. Clauses 39.12, 39.13 and 39.14 shall apply to the resubmitted document.
- .15 If, having been provided with draft *IFC Design Documentation* under clause 39.7, the *Principal's Authorised Person* does not object to the draft *IFC Design Documentation* within the *Design Review Period*, the draft *IFC Design Documentation* will become part of the *IFC Design Documentation*.
- .16 The Contractor must not use for construction purposes any *Design Documentation* unless that *Design Documentation* has become part of the *IFC Design Documentation* in accordance with clauses 39.7 to 39.15.
- .17 The Contractor must not depart from any *IFC Design Documentation* unless the Contractor has first submitted to the *Principal's Authorised Person* an amended document, the process in clause 39.12 has been followed and no non-compliance notice has been given under clause 39.13 in respect of that amended document.
- .18 The Contractor:
- .1 is solely responsible for obtaining approval from all relevant authorities in respect of any *Design Documentation* that relates to *Utilities* or infrastructure that are owned or operated by that authority;
 - .2 must make appropriate allowance in the *Contract Program* for any review of the *Design Documentation* required by an authority; and
 - .3 except to the extent that clause 12.6 applies, is not entitled to any *Claim* against the *Principal* arising out of or in connection with any review of the *Design Documentation* by a relevant authority, including in respect of the time taken by an authority to review the *Design Documentation*.

ED Works Current Design Documentation

- .19 In addition to the obligations in clauses 39.7 to 39.18, the Contractor must provide to the *Independent Certifier*, *ED Operator* and *RMS* a copy of:
- .1 the *ED IFC Design Documentation*; and
 - .2 if applicable, any *ED Works Design Documentation Amendment*,
- for each stage of construction of the *ED Works* in a self-contained package which contains:
- .3 a sufficient level of detail in respect of the stage of construction;
 - .4 any information reasonably required for the review of the *ED IFC Design Documentation* and, if applicable, the *ED Works Design Documentation Amendment*, to enable interpretation by each of *ED Operator* and *RMS* without reference to any other external materials; and
 - .5 a comments register pursuant to which *ED Operator* and *RMS* may provide comments to address non-compliances with any *Statutory Requirements* or the *ED Interface Deed*, or safety concerns, in accordance clause 39.20,
- (each an “**ED Design Package**”).
- .20 The Contractor acknowledges that, under the *ED Interface Deed*, *ED Operator* and *RMS* may, within the *ED Review Period*, review the *ED IFC Design Documentation* submitted by the Contractor and, if applicable, the *ED Works Design Documentation Amendment* and by notice to *AGNSW* and the *Independent Certifier* either:
- .1 reject the design if the *ED Design Package* does not comply with the *ED Interface Deed* or any *Statutory Requirements* (including if the *ED IFC Design Documentation* is not consistent with the *ED Works Design Documentation*) or raises legitimate safety concerns in respect of *Zone 2* or *Zone 3* or other property (including infrastructure) on those areas, and provide its reasons for doing so including details of the non-compliance or safety concerns;

- .2 notify *AGNSW* of any changes it considers necessary to the *ED IFC Design Documentation* and/or *ED Works Design Documentation Amendment* to address non-compliances from the *ED Interface Deed* or any *Statutory Requirements* or safety concerns;
 - .3 request more information in relation to the *ED IFC Design Documentation* and/or *ED Works Design Documentation Amendment*; or
 - .4 confirm that it has no comments on the *ED IFC Design Documentation* and/or *ED Works Design Documentation Amendment*.
- .21 Where *ED Operator* or *RMS* rejects the design under clause 39.20.1 or notifies *AGNSW* of any changes under clause 39.20.2:
- .1 the Contractor must resubmit the amended parts of the *ED IFC Design Documentation* and/or the *ED Works Design Documentation Amendment* and any other materials making up the associated *ED Design Package*; and
 - .2 unless *ED Operator* or *RMS* (as applicable) considers (acting reasonably) that its comments can be addressed in the next design stage, clause 39.20 will reapply.
- .22 Where *ED Operator* or *RMS* (or their design consultants) requests further information under clause 39.20.3, the Contractor must promptly provide this information to *ED Operator* and *RMS* (or their design consultants). Upon receipt of this additional information, the requirements under clause 39.20 will apply again.
- .23 The Principal will use reasonable endeavours to procure that *ED Operator* and *RMS* will consult with the Contractor and its design and engineering consultants so as to discuss *ED Operator's* and *RMS's* concerns with any design submitted.
- .24 Clauses 39.19 to 39.23 will reapply to any *ED IFC Design Documentation* and *Design Documentation* subsequently amended after *ED Operator* and *RMS* have confirmed that they have no comments on the relevant *ED IFC Design Documentation* and/or *Design Documentation* under clause 39.20.4.
- .25 In respect of the *ED Works Current Design Documentation*, the Contractor warrants and represents that (subject always to clause 2.5 of the Formal Instrument of Agreement) such *ED Works Current Design Documentation* does not produce a design that is in breach of the *ED Interface Deed* or any *Statutory Requirements*, or that causes safety issues on *Zone 1*, *Zone 2* or *Zone 3* or in relation to other property (including infrastructure) on or in relation to those areas.

Construction Plan and Traffic Management and Safety Plan

- .26 Prior to commencement of construction of the *ED Works*, the Contractor will provide to *ED Operator* and *RMS*:
- .1 the Construction Management Plan for each stage of construction of the *ED Works* detailing the proposed work methods for the *ED Works*, including the applicable monitoring regime; and
 - .2 the Construction Traffic Management Plan for each stage of construction of the Works detailing the proposed management of the impact of the *ED Works* on the operation of *Zone 2B* and *Zone 3* and other property (including infrastructure) on or in relation to those areas,
- to the extent that they relate to the *ED Works* and accompanied with any other information reasonably required for the review of those plans.
- .27 The parties agree that clauses 39.20, 39.21 and 39.22 will apply to the Construction Management Plan and Construction Traffic Management Plan.

40 Innovation

- .1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:
 - .1 the proposed change to the Works and the proposed change in the *Contract Price*;
 - .2 potential risks to the Principal and the Contractor if the proposal is accepted;
 - .3 any changes required to *Contractual Completion Dates*;

- .4 projected changes in operating and maintenance costs;
 - .5 projected changes in whole-of-life costs;
 - .6 any other benefit the Principal will receive; and
 - .7 any benefit the Contractor will receive.
- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.
 - .3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
 - .4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the proposal, subject to any conditions imposed by the Principal, in writing.
 - .5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in Contract Information item 39 unless the parties otherwise agree.

41 Principal's Documents

- .1 The Principal must give the Contractor the number of copies of the *Principal's Documents* stated in Contract Information item 27.

Construction

42 Setting out the Works and survey

- .1 The Contractor must set out the Works in accordance with the Contract.
- .2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 21 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
 - .1 the Contractor must notify the Principal; and
 - .2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.
- .4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.
- .5 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

43 Construction

- .1 The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
 - .1 the Contract;
 - .2 the *Contractor's Documents* (including the *IFC Design Documentation* and the *Contractor's Project Plans*);
 - .3 *Statutory Requirements*;
 - .4 the Principal's instructions;
 - .5 the Building Code of Australia 2016 (if stated in Contract Information item 38) and relevant Australian Standards; and
 - .6 best industry practice.

Utilities and consumables

- .2 The Contractor must provide all *Utilities*, services and consumables required to carry out the work in connection with the Contract.

Materials

- .3 The Contractor must provide all *Materials* and any anything else necessary for the performance of the work in connection with the Contract and the Contractor's other obligations under the Contract.
- .4 The Contractor must transport all *Materials* to the Site.
- .5 The Contractor must:
- .1 use good quality, new and undamaged *Materials* for the Works; and
 - .2 ensure the *Materials* for the works are of merchantable quality and fit for their intended purpose.
- .6 The Contractor must inspect the loading and unloading of all *Materials* to ensure that all *Materials* are adequately and securely stored during transit.

Construction warranties

- .7 The Contractor warrants to the Principal that:
- .1 it has the skill, experience, expertise, resources and qualifications to design and construct the Works and carry out the work in connection with the Contract;
 - .2 it has all relevant licences and registrations necessary to perform the work in connection with the Contract;
 - .3 it will, at all times, employ suitably qualified and experienced *Contractor's Personnel* in the performance of the work in connection with the Contract;
 - .4 the work in connection with the Contract will be performed:
 - .1 in accordance with the Contract and all *Statutory Requirements*;
 - .2 diligently, effectively and to a high professional standard; and
 - .3 in a proper and workmanlike manner;
 - .5 construction will be carried out and completed in accordance with the *IFC Design Documentation*;
 - .6 the Works will:
 - .1 be safe;
 - .2 comply with the Contract, all *Statutory Requirements*, applicable Australian Standards and best industry practice; and
 - .3 at the *Actual Completion Date* and at all times thereafter, meet or exceed the design life standards specified in the *Project Brief* for each part of the Works; and
 - .7 the *Materials* incorporated into the Works will be:
 - .1 new and unused;
 - .2 fit for their intended purpose; and
 - .3 free from *Defects* and of a merchantable quality.

44 Testing

- .1 The Contractor must *Test* all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
- .3 If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim* for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test*. Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.

- 4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
 - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
 - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
- .5 If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:
 - .1 promptly notify the Principal; and
 - .2 carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.

46 Acceptance with Defects not made good

- .1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
- .2 Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.
- .3 If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.
- .4 If the Contractor agrees with the proposed terms but not with the proposed deductions then the Principal is to assess the value of the adjustment in accordance with clause 47 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 69.
- .5 If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the specified *Defects*.
- .6 The Contractor remains liable for all *Defects* (whether known or not known) other than the specific *Defects* identified in a written agreement made under clause 46 as not to be made good.

Changes to work and time

47 Valuation of changes

- .1 If the Contractor submits a *Claim* complying with clause 68 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price*, then the parties must endeavour to reach agreement on the adjustments. If agreement cannot be reached then within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.
- .2 The Principal is not required to assess a *Claim* until the Contractor provides all the information specified in clause 68.3.
- .3 Not used.

- .4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

Valuation principles

- .5 When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the valuation of any adjustment to the *Contract Price* will be agreed between the parties or, failing agreement within 10 *Business Days*, be determined by the *Principal's Authorised Person* in accordance with clause 47.6.
- .6 Where the Contract provides that a valuation is to be made under clause 47, the adjustment to the *Contract Price* will, subject to clause 47.7, be determined by the *Principal's Authorised Person* as follows:
- .1 to the extent that the Contract prescribes specific rates or prices to be applied in determining the value, including the rates in the *Schedule of Rates and Prices*, using those rates and prices;
 - .2 to the extent that clause 47.6.1 does not apply, using reasonable rates and prices;
 - .3 if the rates and prices referred to in clauses 47.6.1 and 47.6.2 do not include an amount for profit and on-Site and off-Site overhead, an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 will be added for the Contractor's profit and overhead;
 - .4 for work or services which are omitted from the Contract, or for a Variation which results in a saving to the Contractor, the deduction must include a reasonable deduction for an amount for on-Site and off-Site overheads and profit; and
 - .5 if the valuation relates to extra costs incurred by the Contractor for delay and disruption, the valuation shall include a reasonable amount for on-Site overheads but shall not include off-Site overheads or profit.
- .7 A valuation under clause 47.6 must not include:
- .1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
 - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
 - .3 any amount that the Contractor is not entitled to claim under clauses 49.6 or 68.2.
- .8 A valuation under clause 46 must take into account the specific matters required by that clause.

Application of adjustments

- .9 The *Contract Price* must be adjusted as agreed, assessed or determined under clause 47.

48 Variations

Instructing and commencing Variations

- .1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) by issuing a notice identified as a "Variation Order" (**Variation Order**). The Contractor must comply with all *Variation Orders*.
- .2 The Contractor must not carry out a *Variation* unless directed by the Principal by a *Variation Order*.
- .3 Without limiting clause 48.1, the Principal may request the Contractor to provide a proposal with respect to a proposed *Variation* (**Variation Request**).
- .4 Within 15 *Business Days* after receipt of a *Variation Request*, the Contractor must provide the Principal with a written proposal (**Variation Proposal**) setting out:
- .1 the proposed increase or decrease in the *Contract Price* to carry out the proposed *Variation*, including details of how such amounts have been calculated;
 - .2 the anticipated effect of the proposed *Variation* on the *Contract Program* and the Contractor achieving *Completion*, including any proposed extension of time claim the Contractor would make to carry out the proposed *Variation*; and
 - .3 a statement that the proposed *Variation*:

- .1 does not conflict with or change the requirements of the *Project Brief* or the *Principal's Design* or involve changes other than those described in the *Variation Request*; or
- .2 changes the requirements of the *Project Brief* or the *Principal's Design* or involves changes other than those described in the *Variation Request*, in which case the Contractor must explain all the changes and effects, including providing information on the:
 - .1 scope and limits of the work changes;
 - .2 design criteria and how they are to be addressed;
 - .3 effect on relevant reports, drawings and studies;
 - .4 assumptions;
 - .5 any required changes to *Approvals* and any *Third Party Agreements* affected; and
 - .6 any impact on the *Environment* or the community; and
- .4 the effect of the proposed *Variation* on any other matter specified by the Principal.
- .5 The Principal is under no obligation to issue a *Variation Order* after receiving a *Variation Proposal* from the Contractor.
- .6 If the parties have agreed in writing on the effects of a proposed *Variation*, and the Principal instructs the Contractor to carry out the *Variation*, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
- .7 If the Principal has issued a *Variation Order* and the parties have not agreed in writing on the effects of a proposed *Variation*, the Contractor must carry out the *Variation* in accordance with the *Variation Order* and may make a *Claim* for:
 - .1 an extension of time under clause 50, or the Principal may assess a reduction in time in accordance with clause 50; and
 - .2 an adjustment to the *Contract Price* to be valued in accordance with clause 47, or the Principal may assess a deduction from the *Contract Price* to be valued in accordance with clause 47.
- .8 A *Variation* may involve the omission of any part or parts of the Works. The Principal may engage others to perform that or parts of the Works which have been omitted.
- .9 No omission will constitute a basis to allege that the Principal has repudiated the Contract regardless of the subject matter, the extent or timing of the omission.

Variations proposed by the Contractor

- .10 The Contractor may make a written proposal for a *Variation* for the Contractor's convenience ("**Contractor's Variation Proposal**").
- .11 A *Contractor's Variation Proposal* must set out:
 - .1 a full description of the proposed *Variation*;
 - .2 the matters required by clause 48.4;
 - .3 a full description of the proposed *Variation*;
 - .4 the proposal for sharing any cost savings or increases with the Principal, including the amount;
 - .5 any benefits that would flow to the Principal; and
 - .6 the expected effect upon the future cost of operating and maintaining the Works.
- .12 The Principal may accept or reject the *Contractor's Variation Proposal* in its absolute discretion. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the *Contractor's Variation Proposal*, the Principal must instruct a *Variation* by way of *Variation Order*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
- .13 If the Contractor considers that the Principal has issued a direction which constitutes a *Variation* but has not been instructed by way of a *Variation Order*, the Contractor must notify the Principal within 2 days after the Contractor receives such direction, and in any

event before the Contractor complies with the direction, that the Contractor considers the direction to be a *Variation*.

- .14 Within five *Business Days* after receipt of the Contractor's notice pursuant to clause 48.13, the *Principal's Authorised Person* must advise whether the direction is in its view a *Variation* and:
- .1 if the *Principal's Authorised Person* agrees with the Contractor, the *Principal's Authorised Person* may:
 - .1 issue a *Variation Order*;
 - .2 issue a *Variation Request*; or
 - .3 withdraw the direction; or
 - .2 if the *Principal's Authorised Person* does not agree with the Contractor, the *Principal* will notify the Contractor and the Contractor must comply with the direction. The Contractor may dispute the decision of the *Principal's Authorised Person* in accordance with clause 69.
- .15 The Contractor must not carry out any work in relation to the direction notified to the *Principal* under clause 48.13 until the earlier of:
- .1 a *Variation Order* is issued by the *Principal's Authorised Person*; or notification under clause 48.14.2.
- .16 The Contractor is not entitled to any *Claim* in respect of such direction unless the Contractor has provided the notice required by clause 48.13 within the required time period and:
- .1 the *Principal's Authorised Person* has issued a *Variation Order*; or
 - .2 it has been determined pursuant to clause 69 that such direction amounts to a *Variation*.
- .17 The Contractor acknowledges that development of the design by the Contractor does not constitute a *Variation*.

48A Not used

48B Deemed Variations

- .1 The parties acknowledge and agree that notwithstanding any other provision of this Contract to the contrary, the Contractor:
 - .1 has only allowed in the *Contract Price* for piling and/or footings specified in or required by the *Principal's Design* at the Date of Contract; and
-
- .2 The parties acknowledge and agree that, notwithstanding any provision of this Contract to the contrary, if the Contractor is required to undertake any piling, construct footings (including in the event that the class of sandstone on the Site is not sufficient to support the specified or required building loads) or perform any shotcreting or rock anchoring not allowed for in clause 48B.1, the Contractor will have the same entitlements under clause 48.7 as if the *Principal* issued a *Variation Order*.

49 Changes to Statutory Requirements

- .1 If the Contractor becomes aware of a *Change in Statutory Requirements* that requires a change to the Works, the Contractor must notify the *Principal* in writing as soon as possible and in any event within 7 days after becoming aware of the *Change in Statutory Requirements*. The notification must include details of:
 - .1 the *Change in Statutory Requirements*;
 - .2 why the *Change in Statutory Requirements* should not reasonably have been expected by the Contractor at the Date of Contract;
 - .3 the changes to the Works that the Contractor considers necessary to comply with the *Change in Statutory Requirements*;
 - .4 any delays in achieving *Completion* as a result of the change to the Works;

- .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price* as a result of the change to the Works; and
- .6 any other matters the Contractor considers relevant.
- .2 The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.
- .3 After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works.
- .4 If the Principal agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works and if the Contractor has given the notice required by clause 49.1 then:
 - .1 the parties may agree in writing on the effects of the *Change in Statutory Requirements* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and
 - .2 if the parties have not agreed in writing as to the effects of the *Change in Statutory Requirements* within 10 Business Days after receipt of the Contractor's notice under clause 49.1:
 - .1 if the Principal instructs a *Variation*, in connection with the *Change in Statutory Requirements*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim* for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any delay incurred by it as a result of the *Change in Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the *Change in Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or
 - .2 if no *Variation* in connection with the *Change in Statutory Requirements* is instructed, the Contractor may make a *Claim* for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the *Change in Statutory Requirements*.
- .5 If the Principal does not agree that there has been a *Change in Statutory Requirements* that requires a change to the Works, the Contractor may notify an *Issue* under clause 69.
- .6 Costs and delay incurred by the Contractor as a result of a *Change in Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

50 Changes to Contractual Completion Dates

Extensions of time

- .1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Date* if:
 - .1 the Contractor is or will be delayed in achieving *Completion* by an *Excusable Delay Event*;
 - .2 the delay is to an activity or activities on the critical path of the then current *Contract Program* as last submitted to the Principal (and not rejected by the Principal under clause 22.5) before the occurrence of the *Excusable Delay Event*;

- .3 the Contractor has given the Principal an initial notice in writing within 7 days after the first occurrence of the *Excusable Delay Event*, setting out the *Excusable Delay Event*, any relevant facts and including a copy of the *Contract Program*, current at the start of the delay, which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and
- .4 the Contractor has given the Principal a *Claim* for an extension of time which includes the other information required by clauses 50.3 and 50.4.
- .2 The Contractor must take all reasonable steps to avoid delay and its effects.
- .3 If the Contractor is delayed in achieving *Completion*, it may make a *Claim* for an extension of time in accordance with clause 50. The *Claim* must:
 - .1 identify the extension of time claimed and include other information sufficient for the Principal to assess the *Claim*; and
 - .2 be submitted within 21 days after the first occurrence of the *Excusable Delay Event*; and
 - .3 be updated every subsequent 21 days while the delay continues.
- .4 With every *Claim* made under clause 50.3 the Contractor must submit a copy of the then current *Contract Program* which shows the effects of the delay on the critical path and to the time required to achieve *Completion*.
- .5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.
- .6 Where there is any overlap between a delay to *Completion* caused by an *Excusable Delay Event*, and a delay to *Completion* caused by any other event then, to the extent of such overlap, the Contractor is not entitled to an extension of time regardless of the order in which those events or delays occurred.
- .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 49.6.
- .8 The Principal may, in its absolute discretion but without any obligation to do so, extend any *Contractual Completion Date* at any time and for any reason, whether or not the Contractor has claimed an extension of time. The Principal is not obliged to exercise this discretion for the benefit of the Contractor.
- .9 It is a condition precedent to the Contractor's entitlement to an extension of time to the *Contractual Completion Date* that:
 - .1 the Contractor has been, or will be, delayed by an *Excusable Delay Event*;
 - .2 the delay is demonstrable on the critical path for the work in connection with the Contract of the current *Contract Program*;
 - .3 the *Excusable Delay Event* was not directly or indirectly caused by an act or omission of, or a breach of the Contract by, the Contractor or the *Contractor's Personnel*;
 - .4 the Contractor has taken all reasonable steps to mitigate the effects of the delay on the progress of the work in connection with the Contract;
 - .5 the Contractor has submitted the notices strictly as required under this clause 50; and
 - .6 the *Excusable Delay Event* has delayed the Contractor in achieving *Completion*.
- .10 If any of the conditions precedent set out in clause 50.9 are not met, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant *Excusable Delay Event* or period of delay.
- .11 A delay by the Principal or the *Principal's Authorised Person* or a failure by the Principal or the *Principal's Authorised Person* to grant a reasonable extension of time in accordance with this clause 50 shall not cause the *Contractual Completion Date* to be set at large.

Reductions in time

- .12 If a *Variation* leads to less time being required for *Completion*, the Principal may assess a reasonable adjustment to the affected *Contractual Completion Date*.

Adjustment to Contractual Completion Dates

- .13 If the conditions precedent in clause 50.9 have been satisfied, the *Principal's Authorised Person* must (acting reasonably), within a reasonable time and in any event not later than 20 *Business Days* of the receipt of the Contractor's claim under clause 50.3 issue a written notice advising the Contractor of its determination as to the period, if any, by which the *Contractual Completion Dates* are to be extended.

51 Delay costs and liquidated damages

Delay costs

- .1 The Contractor is entitled to delay costs if and only if the Contractor is granted, or is entitled to be granted, an extension of time under clause 50 for:
- .1 a *Variation* (other than a *Variation* for the Contractor's convenience);
 - .2 failure to give the Contractor access to the Site in accordance with Schedule 20;
 - .3 dealing with a *Latent Condition* discovered on the Site;
 - .4 a *Change in Statutory Requirements* that necessitates a change to the Works (subject to clause 49.6);
 - .5 a suspension instruction under clause 53 except to the extent the need for the suspension arises from an act or omission of the Contractor or the *Contractor's Personnel*;
 - .6 a breach of the Contract by the Principal or a delay caused by any act or omission of the Principal, *AGNSW*, a *Separate Contractor* or the *Principal's Authorised Person* or their servants or agents which is not permitted or authorised under the Contract;
 - .7 a delay by the Principal in obtaining any *Approval* that the Principal is required by this Contract to obtain by the applicable date for obtaining that *Approval*;
 - .8 a failure by the *ED Operator* to allow the Contractor access to *Zone 1* or *Zone 2* or any disruption to the work in connection with the Contract caused by maintenance works on the *Zone 1* or *Zone 2* performed by the *ED Operator*, except in the case of an *ED Emergency*;
 - .9 any breach of the *ED Interface Deed* by the *ED Operator* or *RMS*;
 - .10 a failure by the *RBGDT* to allow the Contractor access to the Site, except as permitted under the *Development Agreement* or the *Construction Licence*;
 - .11 the discovery and required treatment of an *Artefact*;
 - .12 a direction by the Principal under clause 55.6 to perform a *Provisional Sum* which is given after the date for such direction as referred to in Contract Information Item 55;
 - .13 acceptance by the Principal of a proposal from the Contractor under clause 40 given at a time more than 60 *Business Days* after the Contractor has provided such a proposal;
 - .14 failure by the Principal to provide the Contractor with a *Novation Deed* executed by the Principal and the *Consultants* listed in Contract Information Item 32B by the date which is 7 days after the *Date of Contract*; or
 - .15 any other event or circumstance in respect of which this Contract expressly entitles the Contractor to make a claim for delay costs.
- .2 Any *Claim* for delay costs must be submitted to the *Principal's Authorised Person* at the same time as the Contractor's *Claim* for an extension of time under clause 50. The *Principal's Authorised Person* will (acting reasonably) provide its determination of the delay costs payable to the Contractor at the same time as it provides its notice under clause 50.13.
- .3 Delay costs are calculated at the applicable rate in Contract Information item 49A for the number of days by which the time for achieving *Completion* is extended because of a cause listed in clause 51.1, subject to the limitations in clause 49.6.
- .4 The rate or rates stated in Contract Information item 49A1 apply where the delay is caused by the Principal's failure to give the Contractor access to sufficient of the Site to allow

the Contractor to start work, in accordance with clause 33.23. The rate or rates stated in Contract Information Item 49A2 apply for any other delays for which the Contractor is entitled to delay costs.

- .5 Notwithstanding clause 51.2, the Contractor is not entitled to delay costs for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs.
- .6 The Contractor has no remedy or entitlement connected with delay or disruption to the work in connection with the Contract (including any delay or disruption caused by a breach of Contract by the Principal) other than:
 - .1 the amounts to be paid in accordance with clause 51; or
 - .2 an extension of time to the *Contractual Completion Date* to which it is entitled under clause 50.

Liquidated damages

- .7 If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date*.
- .8 If Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date* to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 49B, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*.
- .9 If, however, the Contract is terminated before the Contractor achieves *Completion*, any liquidated damages will apply only up to the date of termination of the Contract.
- .10 Liquidated damages for which the Contractor is liable are a debt due and immediately payable from the Contractor to the Principal. The Principal may, at any time, give the Contractor a written demand for any liquidated damages payable by the Contractor, whether or not *Completion* has been achieved. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.
- .11 The Contractor's liability for liquidated damages shall not exceed the amount set out in Contract Information item 20.
- .12 If any *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.
- .13 The Contractor and the Principal acknowledge that the rates for liquidated damages in Contract Information item 49B are a genuine pre-estimate of the Principal's loss (including in respect of liability to *AGNSW* and other users of the Works in connection with any failure by the Contractor to achieve *Completion* of the Works by the *Contractual Completion Date*) and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.
- .14 If it is determined that the Contractor's liability to pay the liquidated damages is deemed to be or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), the Principal may claim general damages for the Contractor's failure to achieve *Completion* by the *Contractual Completion Date* provided that the Principal's entitlement to, and the Contractor's obligation to pay, such general damages will not exceed the daily rate stated in Contract Information item 49B for every day after the *Contractual Completion Date* up to and including the *Actual Completion Date* or the amount set out in Contract Information item 20 in the aggregate.
- .15 The payment by the Contractor of liquidated damages does not in any way relieve the Contractor from any of its obligations to achieve *Completion* or from any other obligations and liabilities under the Contract.

52 Acceleration

- .1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to

- accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
- .2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 its price (excluding all costs of delay or disruption) for a proposed acceleration; and
 - .2 the effect of a proposed acceleration on any other matter specified by the Principal.
 - .3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.
 - .4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

53 Principal's suspension

- .1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
- .2 The Contractor must resume carrying out the Works when instructed by the Principal.
- .3 Other than a *Claim* for:
 - .1 an extension of time in accordance with clause 50; and
 - .2 delay costs in accordance with clause 51,
 the Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW), it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption.
- .2 Clause 54 is not intended to limit any rights of the Contractor under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Payment

55 The Contract Price

- .1 The *Contract Price* (at the Date of Contract) and the basis for payment are stated in Contract Information item 40.
- .2 The *Contract Price* is not subject to any adjustment for rise or fall in costs.
- .3 Except where expressly provided in the Contract, the Contractor acknowledges that it shall not be entitled to any adjustment to the *Contract Price*.
- .4 The *Contract Price* includes all labour, *Materials*, construction equipment, *Temporary Work*, consumables, fees, *Taxes* (other than GST) and anything else necessary to carry out and complete the work in connection with the Contract and the performance of the Contractor's obligations under the Contract.
- .5 The *Contract Price* is payable in Australian Dollars. The Contractor is not entitled to:
 - .1 receive payment in a currency other than Australian Dollars; or
 - .2 any adjustment to the *Contract Price* for any foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

Provisional Sums

- .6 If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:

- .1 the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
- .2 if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*; and
- .3 if the Principal instructs the Contractor to carry out the work:
 - .1 the Contractor must comply with the instruction; and
 - .2 the *Contract Price* must be adjusted by deducting the *Provisional Sum* and adding:
 - .1 the additional reasonable cost to the Contractor of the work specified against the *Provisional Sum*, being the direct costs of labour, *Materials* and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the *Provisional Sum* margin; and
 - .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 43 to the cost specified in clause 55.6.3.2.1.

56 Goods and Services Tax (GST)

- .1 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
- .2 The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.
- .3 The Principal will issue to the Contractor a Recipient Created Tax Invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- .4 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a *Payment Claim* or otherwise invoices the Principal for that supply.
- .5 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

Reimbursable expenses

- .6 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
 - .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - .2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

57 Not used

58 Payment Claims

- .1 Subject to clause 58.2, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 46A, for work carried out up to that date.
- .2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .3 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.
- .4 Every *Payment Claim* must:
 - .1 identify the work and *Materials* to which the *Payment Claim* relates;

- .2 state the value of that work and those *Materials*;
 - .3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
 - .4 state the amount of interest, if any, that the Contractor claims under clause 62; and
 - .5 state the *Claimed Amount*, after allowing for payments already made.
- .5 Every *Payment Claim* must be accompanied by:
- .1 a completed and true *Subcontractor's Statement* and *Supporting Statement*, executed on the date of the *Payment Claim*;
 - .2 all relevant calculations;
 - .3 sufficient evidence to enable the *Principal's Authorised Person* to value any work and *Materials* for which payment has been claimed in the relevant *Payment Claim*;
 - .4 all relevant *Conformance Records*; and
 - .5 any other information specified in the Contract.

Unfixed Materials

- .6 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
- .1 the *Materials* are listed in Item 47 or the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
 - .2 where the value of the unincorporated *Materials* is greater than [REDACTED] the Contractor provides before or with the *Payment Claim*:
 - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
 - .2 a statement in the terms in Schedule 11 (Statement regarding *Materials*);
 - .3 the Contractor provides evidence before or with the *Payment Claim* that:
 - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
 - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
 - .4 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
- .7 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
- .8 Upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.
- .9 If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

59 Payments

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:
 - .1 identifies the *Payment Claim* to which it relates;
 - .2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and
 - .3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld.
- .2 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.

- .3 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
- .4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement.

60 Not used

61 Final payment

- .1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. Any *Claim* not submitted before or with the *Final Payment Claim* is barred, however this clause does not prevent the Contractor from:
 - .1 raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by the Principal; or
 - .2 making any claim against the Principal arising solely from a third party claim first brought against or communicated to the Contractor after the date by which a *Final Payment Claim* is due under this clause.
- .2 Within 10 *Business Days* after receiving the *Final Payment Claim* or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after the whole of the Works reaches *Completion*, the Principal must provide a *Final Payment Schedule* to the Contractor.
- .3 If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.
- .4 Payments identified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 14 days after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 59.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *Contract Price* have been made and all entitlements of the Contractor have been met, except for those required by:
 - .1 arithmetical error; or
 - .2 resolution of:
 - .1 any *Claim* made in accordance with clause 61.1;
 - .2 any *Issue* properly notified under clause 69 prior to the *Final Payment Claim*; or
 - .3 any *Issue* arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.
- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

62 Interest on late payments

- .1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

63 Set-off

- .1 If the Principal claims a debt due from the Contractor, or any other bona fide claim against the Contractor, in connection with the Contract, the Principal may:
 - .1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and

- .2 make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

Completion

64 Early use

- .1 Before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete and then:
 - .1 the Contractor's responsibilities are not affected, except if they are reduced under clauses 26.3 or 26.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
 - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves *Completion*, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify the date on which use or occupation is required and those parts to be used or occupied.
- .3 The Contractor must assist and cooperate with those using or occupying the Works.
- .4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of *Completion* that are relevant to the parts of the Works to be used or occupied.

65 Completion

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 The Contractor must give the *Principal's Authorised Person* not less than 20 *Business Days*' written notice of the date upon which the Contractor anticipates that:
 - .1 the *ED Works* will achieve *ED Works Completion*; and
 - .2 the Works will achieve *Completion*.
- .3 When the Contractor is of the opinion that (as applicable):
 - .1 the *ED Works* have achieved *ED Works Completion*; or
 - .2 the Works have achieved *Completion*,
 the Contractor must give a written notice to the *Principal's Authorised Person* stating that, in the Contractor's opinion, the *ED Works* have reached *ED Works Completion* or the Works have reached *Completion* (as applicable).
- .4 The parties must, within a reasonable time, and in any event within 10 *Business Days*, after receipt of a Contractor's notice under clause 65.3, carry out a joint inspection of the Works (including with the *Independent Certifier* in respect of the *ED Works*).
- .5 In the case of a notice given under clause 65.3.1, within 10 *Business Days* after the joint inspection, the *Independent Certifier* must either:
 - .1 if *ED Works Completion* has been achieved, issue a *Certificate of ED Works Completion* under the *Independent Certifier Deed*:
 - .1 stating that the *ED Works* have achieved *ED Works Completion*; and
 - .2 stating the date on which *ED Works Completion* was achieved; or
 - .2 if *ED Works Completion* has not been achieved, notify the Contractor in writing that it considers that the *ED Works* have not achieved *ED Works Completion* and identifying any *Defects* or outstanding works that prevent the *ED Works* from achieving *ED Works Completion*.
- .6 If the *Independent Certifier* provides a notice to the Contractor pursuant to clause 65.5.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 65.3, 65.4 and 65.5 must be repeated until the *Independent Certifier* issues a *Certificate of ED Works Completion*.

- .7 In the case of a notice given under clause 65.3.2, within 10 *Business Days* after the joint inspection, the *Principal's Authorised Person* must either:
- .1 if *Completion* has been achieved, issue a *Certificate of Completion* in the form set out in Part B of Schedule 34:
 - .1 stating that the Works have achieved *Completion*; and
 - .2 stating the *Actual Completion Date*; or
 - .2 if *Completion* has not been achieved, notify the Contractor in writing that it considers that the Works has not achieved *Completion* and identifying any *Defects* or outstanding works that prevent the Works from achieving *Completion*.
- .8 If the *Principal's Authorised Person* provides a notice to the Contractor pursuant to clause 65.7.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 65.3, 65.4 and 65.7 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Completion*.
- .9 Notwithstanding that all the requirements of *Completion* have not been met, the *Principal's Authorised Person* may at any time, in its sole and absolute discretion, issue a *Certificate of Completion*.
- .10 The issue of a *Certificate of Completion* will not:
- .1 operate as approval by the Principal of the Contractor's performance of its obligations in connection with the Contract;
 - .2 be taken as an admission that the Works comply with the Contract; or
 - .3 prejudice any of the Principal's rights against the Contractor.

66 Close-out workshop

- .1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works.
- .2 The parties must attend the close-out workshop and must jointly decide who else will attend. Each party must bear its own costs associated with attending the workshop.

67 Defects after Completion

- .1 At any time prior to the expiry of the *Defects Liability Period*:
 - .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
 - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
 - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.
- .2 In respect of any *Defect* rectified during a *Defect Liability Period*, if directed by the Principal, a new *Defect Liability Period* for the rectified works will commence from the date of completion of the rectification of the *Defect* and continue for the longer of:
 - .1 the remainder of the original *Defects Liability Period*; or
 - .2 a period of 12 months,
 provided that the maximum duration of the *Defects Liability Period* as extended under this clause shall be 36 months from the *Actual Completion Date*.
- .3 The Principal must give the Contractor reasonable access (having regard to the operation of the Works) to the Works and the Site to enable the Contractor to perform its obligations under this clause 67.
- .4 In carrying out any rectification work pursuant to this clause 67, the Contractor must:
 - .1 do so diligently and promptly;
 - .2 do so in accordance with any directions given by the *Principal's Authorised Person*; and
 - .3 do so at the times directed by the Principal and in the manner which causes minimum interruption to the Principal or the operation of the Works.

- .5 If:
 - .1 the Principal or the operator of the Works considers that a *Defect* requires urgent rectification; and
 - .2 it is not practical or possible to provide the Contractor with an opportunity to rectify the *Defect*,
 then:
 - .3 the Principal or the operator of the Works may have the *Defects* made good by others and:
 - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
 - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .6 Nothing in clause 67 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
- .7 Clause 67 does not affect the Principal's rights under clause 46.

67A Final Completion Certificate

- .1 As soon as the Works, in the opinion of the Contractor, reaches the stage of *Final Completion*, the Contractor must give a written notice to the *Principal's Authorised Person*.
- .2 The Contractor must provide a *Deed of Release* with its notice under clause 67A.1.
- .3 The *Principal's Authorised Person* must, within a reasonable time after the later of:
 - .1 receipt of the Contractor's notice under clause 67A.1; or
 - .2 receipt of the *Deed of Release*, duly executed by the Contractor,
 either:
 - .3 issue a *Certificate of Final Completion* in the form set out in Part C of Schedule 34 stating that *Final Completion* has been achieved; or
 - .4 notify the Contractor in writing that the Works have not achieved *Final Completion* and of any *Defects* that must be remedied before *Final Completion* can be achieved.
- .4 If the *Principal's Authorised Person* notifies the Contractor of any outstanding *Defects*, the Contractor must then remedy those *Defects* and the procedures described in clauses 67A.1 and 67A.2 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Final Completion*.

Claim and Issue resolution

Claim resolution

68 Contractor's Claims

- .1 If the Contractor makes:
 - .1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
 - .2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,

the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.
- .2 If the Contractor fails to make a *Claim* within the time specified in clause 68.1, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant event giving rise to the *Claim*.
- .3 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The *Claim* must also include the effect of the event giving rise to the *Claim* on both the *Contract Price* and *Contractual Completion Date(s)*.
- .4 If a *Claim* does not comply with clause 68.3, the Principal may, but is not obliged to, give the Contractor an opportunity to make the *Claim* compliant. Clause 68.7 applies to a *Claim* that does not comply with clause 68.3.
- .5 If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to a money adjustment it must be valued in accordance with clause 47.
- .6 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .7 If a *Claim* is rejected or not agreed within 28 days after the Contractor has provided the information specified in clause 68.3 it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.
- .8 The provisions of clauses 68.2 to 68.7 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

Issue resolution

69 Notification of Issue

- .1 The Contractor may dispute an assessment or instruction of the Principal, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the Principal's senior executive named in Contract Information item 7) of an *Issue* within 28 days after notification of the assessment or instruction, or within 28 days after it becomes an *Unresolved Claim*.
- .2 Either party may give notice to the other (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the *Issue*.
- .3 Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.
- .4 If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.

- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.
- .6 The *Issue* resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

70 Resolution by senior executives

- .1 If a party gives notice of an *Issue* under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the *Issue*.
- .2 A party is not entitled to refer an *Issue* to *Expert Determination* until 28 days after giving notice of an *Issue*.
- .3 A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's senior executive) within the time stated in Contract Information item 51.
- .4 Subject to clause 69.6, an *Issue* for which notice has not been given in accordance with clause 70.3 is barred from *Expert Determination* or litigation or similar action.

71 Expert Determination

- .1 The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
- .2 If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
 - .1 an employee of the Principal or the Contractor;
 - .2 a person who has been connected with the Works or the Contract; or
 - .3 a person who the Principal and the Contractor have already considered and not been able to agree on.
- .3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
 - .1 the *Issues* referred to the *Expert* for determination;
 - .2 the *Expert's* fees;
 - .3 the procedure for *Expert Determination* in Schedule 5 (*Expert Determination Procedure*); and
 - .4 any other matters which are relevant to the engagement.
- .4 The Principal and the Contractor must share equally the *Expert's* fees and out-of-pocket expenses for the determination, and bear their own costs.
- .5 The procedure for *Expert Determination* is set out in Schedule 5 (*Expert Determination Procedure*).
- .6 In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
- .7 Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 days after receiving the determination.
- .8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
 - .1 does not involve paying a sum of money; or
 - .2 requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
 - .1 any interest that may be payable; and

- .2 any amount that has been paid pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- .9 Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

72 Parties to perform the Contract

- .1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.

73 Disputing determinations of the Independent Certifier

- .1 The parties agree that any dispute regarding the performance of the *Independent Certifier Services* or in respect of any certification, determination or decision of the *Independent Certifier* will be resolved in accordance with the provisions of the *Independent Certifier Deed of Appointment*.

Termination

73A Step-in

Right of step-in

- .1 If:
 - .1 a *Contractor Default Event* occurs;
 - .2 a *Contractor Termination Event* occurs;
 - .3 an incident occurs which poses a serious risk to the health and safety of any person or damage to any property of the *Environment*, and such incident arises in connection with an act or omission of the Contractor or the *Contractor's Personnel*,
 (“**Step-In Event**”), the Principal may elect to do any or all of the following:
 - .4 assume total or partial management and control of the whole or any part of the Works or the work in connection with the Contract;
 - .5 access those parts of the Site or any premises the Contractor has access or is entitled to occupy; and
 - .6 take such other steps as are necessary in the reasonable opinion of the Principal for it to carry out the work in connection with the Contract and minimise the effect of the relevant *Step-In Event*.
- .2 The Principal must not exercise its rights under clause 73A.1 on the occurrence of a *Contractor Default Event* for so long as the Contractor is complying with its obligations under clauses 74.2 to 74.5 in respect of that *Contractor Default Event*.

Notice

- .3 The Principal may exercise its rights under clause 73A.1 without prior notice to the Contractor but the Principal must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to the Contractor that it is exercising those rights.

Consequences of the Principal exercising its rights

- .4 During the exercise of the Principal's rights under clause 73A.1, the Contractor's rights and obligations under this Contract are suspended to the extent necessary to permit the Principal to exercise those rights.
- .5 Except to the extent that the Contractor's obligations are suspended under clause 73A.4, the exercise by the Principal of its rights under clause 73A.1 will not affect any other obligation of the Contractor under this Contract.
- .6 The exercise by the Principal of its rights under clause 73A.1 (or the cessation of such exercise) will not affect any other right of the Principal under this Contract.

Contractor to assist Principal

- .7 The Contractor must:
 - .1 grant such access rights as are necessary and take all action that is necessarily required by the Principal to assist the Principal in exercising its rights under clause 73A.1;
 - .2 provide sufficient resources, including *Contractor's Personnel*, to assist the Principal in exercising its rights under clause 73A.1; and
 - .3 not do anything to hinder, disrupt or prevent the Principal in exercising its rights under clause 73A.1.

Limits on liability during step-in

- .8 When exercising its rights under clause 73A.1, the Principal must use its reasonable endeavours to carry out the work in connection with the Contract in a manner which is consistent with the Contract, but taking into account the circumstances that prompted the Principal to exercise those rights.

- .9 Where the Principal has exercised its rights under clause 73A.1 then any *Loss* suffered or incurred by the Principal in connection with the exercise by the Principal of its step-in rights will be a debt due and payable by the Contractor to the Principal.
- .10 Subject to the express terms of this Contract, the Contractor acknowledges and agrees that:
- .1 the Principal, when exercising its rights under clause 73A.1, is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the Principal exercises its rights under clause 73A.1; and
 - .2 the Contractor will not be entitled to make any *Claim* against the Principal, arising in connection with the exercise by the Principal of its rights under clause 73A.1 except to the extent caused by:
 - .1 a breach by the Principal of the Contract;
 - .2 a negligent act of the Principal in the course of it exercising its rights under clause 73A.1;
 - .3 a fraudulent or reckless act or omission of the Principal in the course of it exercising its rights under clause 73A.1.

Cessation of step-in rights

- .11 The Principal may, at any time, cease to exercise its rights in accordance with this clause 72A upon giving 5 *Business Days*' notice to the Contractor.
- .12 The Principal must cease to exercise its rights in accordance with this clause 73A where:
- .1 the *Contractor Default Event* or *Contractor Termination Event* (as the case may be) has been cured;
 - .2 where the step-in rights are exercised in respect of the event set out in clause 73A.1.3, the relevant event ceases and its consequences have been remedied.
- .13 If the Principal ceases to exercise its rights under clause 73A.1, the Contractor must immediately recommence carrying out any obligations suspended due to the exercise by the Principal of those rights and the Principal must, give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible. The assistance given by the Principal in respect of the process of transition will be at the Contractor's expense, which amount shall be a debt due and payable by the Contractor to the Principal on demand.

74 Contractor Default and Termination

Principal may issue Default Notice

- .1 If the *Contractor Default Event* occurs, the Principal may give a written notice to the Contractor ("**Default Notice**"):
 - .1 stating that it is a notice under this clause 74.1;
 - .2 specifying the nature of the *Contractor Default Event*; and
 - .3 specifying the time period by which the Principal requires the Contractor to remedy the *Contractor Default Event* ("**Cure Period**").

Cure Plan

- .2 If:
 - .1 a *Default Notice* has been given; and
 - .2 the *Contractor Default Event* is capable of being remedied,
 the Contractor must:
 - .3 remedy the *Contractor Default Event* within the *Cure Period*; or
 - .4 if the *Cure Period* is more than 15 *Business Days*, within five *Business Days* after receipt of the *Default Notice*, prepare and submit a draft cure plan to the Principal describing the actions and measures which the Contractor will diligently pursue to remedy the *Contractor Default Event* and its impacts within the *Cure Period* ("**Draft Cure Plan**"). The *Cure Period* for breaches referred to in paragraphs 1.4 and 2 of the definition of *Contractor Default Event* must be more than 15 *Business Days*.

- .3 Within 10 *Business Days* after receipt of the *Draft Cure Plan*, the Principal shall either:
 - .1 approve the *Draft Cure Plan* by notifying the Contractor; or
 - .2 reject the *Draft Cure Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .4 If the Principal approves a *Draft Cure Plan* pursuant to clause 74.3.1 (“**Approved Cure Plan**”) the Contractor shall comply with and implement the *Approved Cure Plan* and remedy the *Contractor Default Event* within the *Cure Period*.
- .5 If the Principal rejects a *Draft Cure Plan* pursuant to clause 74.3.2, the Contractor, in consultation with the Principal, shall amend the *Draft Cure Plan* to meet the Principal’s requirements and submit the amended *Draft Cure Plan* to the Principal for approval within five *Business Days* after receipt of the Principal’s notice issued under clause 74.3.2. Clauses 74.3, 74.4 and 74.5 will apply to the amended *Draft Cure Plan*. This clause 74.5 does not extend the *Cure Period*.
- .6 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Cure Plan*.

Mitigation Plan

- .7 If:
 - .1 a *Default Notice* has been given; and
 - .2 the *Contractor Default Event* is not capable of being remedied,
 the Contractor shall, within five *Business Days* after receipt of the *Default Notice*, prepare and submit to the Principal a draft plan describing the actions and measures which the Contractor will diligently pursue to mitigate or overcome the effects of the *Contractor Default Event* and prevent the *Contractor Default Event* from re-occurring (“**Draft Mitigation Plan**”).
- .8 Within 10 *Business Days* after receipt of the *Draft Mitigation Plan*, the Principal shall either:
 - .1 approve the *Draft Mitigation Plan* by notifying the Contractor; or
 - .2 reject the *Draft Mitigation Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .9 If the Principal approves a *Draft Mitigation Plan* pursuant to clause 74.8.1 (“**Approved Mitigation Plan**”), the Contractor shall comply with and implement the *Approved Mitigation Plan*.
- .10 If the Principal rejects a *Draft Mitigation Plan* pursuant to clause 74.8.2, the Contractor, in consultation with the Principal, shall amend the *Draft Mitigation Plan* to meet the Principal’s requirements and submit the amended *Draft Mitigation Plan* to the Principal for approval within five *Business Days* after receipt of the Principal’s notice issued under clause 74.8.2. Clauses 74.8, 74.9 and 74.10 will apply to the amended *Draft Mitigation Plan*.
- .11 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Mitigation Plan*.

Termination for Contractor Termination Event

- .12 If a *Contractor Termination Event* occurs, the Principal may, by written notice to the Contractor, immediately terminate the Contractor’s employment under the Contract.
- .13 If the Principal terminates the Contractor’s employment under clause 74 it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
 - .1 the Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* and *Materials* that the Principal directs it to remove;
 - .2 the Contractor must assign to the Principal the Contractor’s rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract;
 - .3 the Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the

- Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any *Undertakings* given on the Contractor's behalf; and
- .4 the Contractor must do everything and sign all documents necessary to give effect to clause 74, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
 - .14 If, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor under the Contract had the Contractor completed the Works, then the difference will be a debt due from the Contractor to the Principal.
 - .15 The Principal may make provisional assessments of the amounts payable to the Principal under clause 74.13.14 and may, without limiting any other right of recourse, demand them against the *Undertakings*.
 - .16 If the Principal terminates the Contractor's employment under clause 74, then subject to clauses 26.11, 26.12 and 26.13, the rights of the Principal will be the same as they would have been at law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.
 - .17 Termination of this Contract does not affect the rights and obligations of the parties under the Contract which accrued prior to the date of termination.

75 Termination for Principal's convenience

- .1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.
- .2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
- .3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work, Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 75.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:
 - .1 the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any *Prepayments* and any deductions, retentions or set-offs under clauses 59, 60 and 63;
 - .2 the cost of *Materials* reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated *Materials* become the property of the Principal, free of any *Encumbrance*;
 - .3 the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 75.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;
 - .4 an amount of [REDACTED] of the unpaid portion of the *Contract Price*, less the amounts payable under clauses 75.4.1 and 75.4.2; and
 - .5 the costs reasonably incurred by the Contractor prior to receiving notice of termination in the expectation of completing the Works, where those costs have not been recovered through any other payment by the Principal, but only to the extent that the Contractor complies with a strict duty to mitigate costs.
- .5 Within 10 *Business Days* after the date of termination under this clause 75, the Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 The payments referred to in clause 75.4 are full compensation for termination under clause 75 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

76 Termination for Principal's default

- .1 If the Principal fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.
- .2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 75.3 to 75.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 75.4 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

77 Termination notices

- .1 Notices under clauses 74, 75 and 76 must be in writing and be delivered by hand, registered post or equivalent,

78 Survival

- .1 Without limiting the survival of any clause by operation of law, clauses 23, 24 and 25 and all indemnities in the Contract survive termination.

Meanings

79 Interpretation

- .1 Words in the singular include the plural, and vice versa.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.
- .3 "Including" and similar words are not words of limitation.
- .4 The word "day", unless qualified, for example as "Working Day" or "Business Day", has its common English meaning according to context, namely a period of 24 hours or a calendar day.
- .5 Headings and notes are provided to guide the parties and form part of the Contract.

80 Definitions

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- | | |
|------------------------|--|
| • Contract | • Site |
| • Contract Information | • Subcontract |
| • Contractor | • Subcontractor |
| • Consultant | • Supplier |
| • Date of Contract | • work in connection with the Contract |
| • Principal | • Works |

Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 80.

Acceleration Notice

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an "*Acceleration Notice*".

Actual Completion Date

The date stated in the *Certificate of Completion* as the date on which *Completion* of the Works was achieved.

AGNSW

Means The Trustee for the Art Gallery of New South Wales Trust.

Approvals

Any authorisation, approval, authority, permit, licence, certificate, consent, direction, notice, permission, privilege or exemption, granted by the State, the Commonwealth or

any other authority relating to the Works, the Site, the *Environment*, the ED Land, the ED Motorway, the Contract or the performance of the Contractor's obligations under the Contract.

Approved Cure Plan

The cure plan approved by the Principal pursuant to clause 74.3.1.

Approved Mitigation Plan

The mitigation plan approved by the Principal pursuant to clause 74.8.1.

Approved Subcontractors

Those Subcontractors, Suppliers and Consultants set out in Contract Information item 12A.

Artefacts

Any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or value (including valuable minerals).

Asbestos Management Plan

The asbestos management plan submitted by the Contractor pursuant to clause 26A.

Building Code

The Code for Tendering and Performance of Building Work 2016 issued under the *Fair Work Act 2009* (Cth), as amended from time to time.

Business Day

Any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

Certificate of Completion

A certificate issued by the *Principal's Authorised Person* under clause 65.4.

Certificate of ED Works Completion

A "Certificate of Works Completion" issued by the *Independent Certifier* under the *ED Interface Deed*.

Certificate of Final Completion

A certificate issued by the *Principal's Authorised Person* under clause 67A.3.3.

Change in Control

A change in control occurs in respect of a party if, at any time, any person or party alone or together with any Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)), ceases to or commences to, directly or indirectly have *Control* of that party.

Change in Statutory Requirements

Means:

- .1 the enactment of any new *Statutory Requirement*; or
 - .2 the repeal, modification or re-enactment of any existing *Statutory Requirement*,
- that:
- .3 is applicable in Australia;
 - .4 comes into effect after the Date of Contract; and
 - .5 could not reasonably have been anticipated at the Date of Contract by a competent and experienced contractor in the position of the Contractor; and
 - .6 in respect of any new or changed *Statutory Requirement* that relates to planning or the *Environment*, is directly related to the Site,

but excludes:

- .7 a change in *Taxes* or any *Statutory Requirement* that relates to *Taxes*;
- .8 except as provided for in paragraph .3 of this definition, the conditions or requirements contained in, or associated with, any *Approval* that is issued or comes into effect after the Date of Contract; or

- .9 except as provided for in paragraph .3 of this definition, a change in any *Approval* that the Contractor is required to obtain and maintain in accordance with this Contract.

Claim

A claimed entitlement of the Contractor in connection with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or the payment of additional monies, or for breach of contract by the Principal.

Claimed Amount

The amount claimed by the Contractor in a *Payment Claim*.

Completion

The stage in the execution of the work in connection with the Contract, when:

- .1 the Works are fully complete with no *Defects* or omissions, except for *Defects* not known;
- .2 the *Independent Certifier* has provided a *Certificate of ED Works Completion*;
- .3 the Contractor has provided to the Principal:
 - .1 all *Subcontractor's* warranties and any Consultant's deeds of covenant required by clause 31.3;
 - .2 all operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
 - .3 all certificates, authorisations, approvals and consents (including *Approvals*) from statutory authorities and service providers;
 - .4 those certificates required for the occupation, use and maintenance of the Works;
 - .5 a *Site Audit Statement* that has been prepared and certified in accordance with all applicable Statutory Requirements;
 - .6 each Consultant certificate required under clause 39.10;
 - .7 where clause 37F.3 applies, a properly executed release which complies with clause 37F.3.1 or a statement signed by the Contractor which complies with clause 37F.3.2 (as applicable); and
 - .8 all other documents required by the Contract to be provided as a condition to *Completion*;
- .4 the Contractor has carried out and successfully completed all *Testing* required by the Contract;
- .5 the Contractor has provided all of the "work as executed" drawings as required by section 2.3 of the *Preliminaries*;
- .6 the Contractor has provided all training required by the Contract;
- .7 all debris, rubbish, building materials, temporary works and construction equipment has been removed from the Site and the Site has been cleaned; and
- .8 all other pre-conditions to achieving *Completion* set out in the Contract have been satisfied.

Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 33.

Confidential Information

Any of the following:

- .1 the terms of this Contract;
- .2 all *Data*; and
- .3 all other documents and information in any form whatsoever in the possession or knowledge of a party which:
 - .1 is disclosed to the other party; and

- .2 is identified at the time of such disclosure as being confidential or proprietary (or which the other party should reasonably have considered as being confidential or proprietary),

whether such disclosure is made on, prior to or after the *Date of Contract*.

Conformance Records

Records which show conformance by the Contractor with particular requirements of the Contract.

Construction Licence

The construction licence between the Principal and the Royal Botanical Gardens Trust for the purpose of accessing the Site and carrying out the work in connection with the Contract described in the *Development Agreement*.

Consultant

A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to the Contractor.

Contamination

- .1 Any waste, asbestos, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils.
- .2 Without limiting paragraph (1), has the meaning given to Contamination in the *Contaminated Land Management Act 1997* (NSW).

Contract

The agreement between the Contractor and the Principal constituted by the *Contract Documents*.

Contract Documents

The Contract Documents as defined in the *Formal Instrument of Agreement* or specified in item 26.

Contract Information

The document described as such in the *Contract Documents*, which sets out information for the purposes of the Contract.

Contract Price

The fixed, lump sum amount stated in the Contract Information item 40 as applicable to the Separable Portions which the Contractor is directed to carry out, subject to adjustment in accordance with the Contract.

Contract Program

The program described in clause 22.

Contractor

The party named in Contract Information item 8, including its successors and permitted assignees.

Contractor Background IP

All *Intellectual Property Rights* owned by or licensed to the Contractor or any *Contractor's Personnel* (including know-how and technical information) which:

- .1 exists prior to the Date of Contract or is developed or acquired by the Contractor or the *Contractor's Personnel* independently of the Contract; and
- .2 is used by the Contractor or the *Contractor's Personnel* in the performance of the work in connection with the Contract or otherwise made available to the Principal under or in connection with the Contract, but does not include the *Project IP*.

Contractor Default Event

Any of the following events or circumstances:

- .1 a substantial breach of the Contract by the Contractor. A substantial breach includes, but is not limited to, any of the following:
 - .1 suspending progress of the carrying out of the work in connection with the Contract in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
 - .2 the Contractor engaging in fraud, collusion or dishonest conduct in the performance of the work in connection with the Contract;
 - .3 failing to make payment to the Principal when such amount is due and payable under the Contract;
 - .4 significantly failing to achieve a rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay so that the Works will be completed by the date which is 30 days after the *Contractual Completion Date*, as determined on a date that is 6 months or more after the *Date of Contract* (and not more than once every three months after that date);
 - .5 failing to comply with an instruction in writing or confirmed in writing by the Principal;
 - .6 failing to carry out the Works with professional skill, care and competence;
 - .7 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
 - .8 failing to provide *Undertakings* as required under clause 33 or the *Contractor Warranty Deed* as required under clause 9A;
 - .9 failing to comply with any provision of this Contract or any *Statutory Requirement* relating to the *Environment* or workplace health and safety;
 - .10 the Contractor assigning a right or benefit under the Contract without first obtaining the Principal's written consent;
 - .11 the Contractor submitting a *Subcontractor's Statement* or *Supporting Statement* that is incomplete or untrue in any respect; or
 - .12 failing to effect and maintain insurance policies as required under the Contract; or
- .2 no earlier than 12 months after the *Date of Contract*, (and not more than once every three months after that date) the *Principal's Authorised Representative* determines on reasonable grounds that there is no reasonable prospect that the Contractor will achieve *Completion* by the date that is 90 days after the *Contractual Completion Date*.

Contractor Insolvency

Any of the following applying to the Contractor:

- .1 the Contractor is insolvent;
- .2 the Contractor indicates it does not have the resources to perform the Contract;
- .3 an application for winding up is made which is not stayed within 14 days;
- .4 a winding-up order is made;
- .5 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- .6 a mortgagee enters into possession of any property of the Contractor;
- .7 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- .8 any actions having a similar effect are taken.

Contractor Termination Event

Any of the following events or circumstances:

- .1 a *Default Notice* has been given under clause 74.1 and the Contractor fails to:

- .1 if the *Contractor Default Event* is capable of being remedied:
 - .1 remedy the *Contractor Default Event* within the Cure Period;
 - .2 where clause 74.2.4 applies, submit a *Draft Cure Plan* in accordance with clause 74.2.4 or a revised *Draft Cure Plan* in accordance with clause 74.5; or
 - .3 comply with and implement the *Approved Cure Plan*, and otherwise diligently pursue the remediation of the *Contractor Default Event*; or
- .2 if the *Contractor Default Event* is not capable of being remedied:
 - .1 submit a *Draft Mitigation Plan* in accordance with clause 74.7 or a revised *Draft Mitigation Plan* in accordance with clause 74.10; or
 - .2 comply with and implement the *Approved Mitigation Plan*;
- .2 the Contractor abandoning the whole or a substantial part of the work in connection with the Contract or taking steps to materially reduce its resources on Site;
- .3 a *Change in Control* of the Contractor;
- .4 *Contractor Insolvency*;
- .5 the Contractor's aggregate liability to the Principal exceeds the amount set out in Contract Information item 19 plus amounts recoverable under clauses 26.12.8 and 26.12.9;
- .6 the Contractor's liability to the Principal for liquidated damages equals the liquidated damages liability cap set out in Contract Information item 20 and the Contractor has not, prior to such cap being reached, notified the Principal that it agrees to refresh such cap and continue to pay liquidated damages up to such refreshed cap; or
- .7 the Contractor has notified the Principal that it agrees to refresh the liquidated damages liability cap set out in Contract Information item 20 prior to the liquidated damages liability cap being reached, and the Contractor's liability to the Principal for liquidated damages equals or exceeds the refreshed cap.

Contractor Warranty Deed

The Contractor warranty deed in the form set out in Schedule 35.

Contractor's Authorised Person

The person appointed to act on behalf of the Contractor under clause 2, named in Contract Information item 9 or as subsequently notified to the Principal.

Contractor's Documents

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to design and construct the Works in accordance with the Contract.

Contractor's Margin

An amount added to the costs calculated under clauses 47.6.1 and 47.6.2, to allow for profit and overhead costs, but not overhead costs relating to delay or disruption.

Contractor's Personnel

- .1 the *Contractor's Authorised Person*;
- .2 any Subcontractor, Supplier or Consultant;
- .3 any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of the Contractor, the *Contractor's Authorised Person* or a Subcontractor, Supplier or Consultant, including the *Key Personnel*; and
- .4 any other person engaged or employed by or on behalf of the Contractor in the performance of the work in connection with the Contract.

Contractor's Project Plans

The plans, systems, manuals and documents (excluding *Design Documentation*) set out in the *Preliminaries* which are required to be submitted by the Contractor to the Principal pursuant to clause 32A.

Contractual Completion Date

The day stated in Contract Information item 13, by which the Contractor must achieve *Completion* of the Works, as adjusted under the Contract.

Control

Means:

- .1 control as defined in section 50AA of the Corporations Act; or
- .2 the power (whether legally enforceable or not) to, whether directly or indirectly:
 - .1 determine the management or policies of the entity;
 - .2 control the membership of the board or other governing body of the entity; or
 - .3 control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity,
 regardless of whether the power is in writing or not, enforceable or unenforceable, expressed or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise.

Cost

Includes any costs, charges and expenses (including financing costs, those incurred in connection with advisers and any legal costs and expenses on a full indemnity basis).

Cultural Heritage Artefacts

The *Artefacts* set out in Contract Information item 37.

Cure Period

The cure period referred to in clause 74.1.3.

Data

The *Contractor's Documents* and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Contract, including the *Design Documentation*.

Date of Contract

The date stated in the *Formal Instrument of Agreement*.

Deed of Release

The deed of release in the form set out in Schedule 36.

Default Notice

A notice issued by the Principal pursuant to clause 74.1.

Defect

An error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works or any other failure of the Works to comply with the Contract.

Defect Liability Period

The period stated in Contract Information item 55, as may be extended in accordance with clause 67.

Defect Notice

A notice issued by the Principal under clause 45.2 or 67.1.

Design Documentation

All documents containing any engineering or designs created, or required by the Contract to be created, by or on behalf of the Contractor for the purposes of, or in connection with, the Works.

Design Review Period

The design review period stated in clause 39.12.

Development Agreement

Means the agreement titled “Sydney Modern Project Development Agreement” entered into between *AGNSW*, *RBGDT* and *RMS* contained in Schedule 33.

Document Submission Schedule

The document set out in Schedule 19.

Draft Cure Plan

The draft cure plan prepared by the Contractor pursuant to clause 74.2.4.

Draft Mitigation Plan

The draft mitigation plan prepared by the Contractor pursuant to clause 74.7.

ED Emergency

Means an event which arises out of or in relation to the work in connection with the Contract which poses or may pose a serious risk or threat:

- .1 of personal injury or death of any person or to the health or safety of any person on the *ED Land*;
- .2 of damage to or destruction of *Zone 2B* or *Zone 3* or other property (including infrastructure) on or in relation to *Zone 2B* or *Zone 3*; or
- .3 to users of the *ED Motorway*.

ED IFC Design Documentation

Means any *IFC Design Documentation* that relates to the *ED Works*.

ED Interface Deed

Means the document entitled “*AGNSW* Modern – Eastern Distributor Construction Interface and Access Deed” entered into between the *ED Operator*, *Art Gallery of New South Wales* and *RMS* contained in Schedule 17.

ED Land

Means the land comprising *Zone 1*, *Zone 2* and *Zone 3* which is the subject of the *ED Interface Deed*.

ED Motorway

Means the Eastern Distributor Motorway.

ED Operator

Means Airport Motorway Limited (ABN 26 057 283 093) and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607).

ED Project Deed

Means the document titled ‘Eastern Distributor Project Deed’ between Roads and Maritime Services of New South Wales (“*RMS*”), the Minister for Roads and the Minister for Ports, Public Works and Services, and *ED Operator* dated 27 June 1997 (including all schedules and exhibits) (as amended from time to time).

ED Review Period

Means:

- .1 subject to paragraph .2 of this definition, 15 Business Days of receipt of the *ED Works Design Documentation*; and
- .2 15 Business Days where clause 39.21 or 39.22 applies to resubmitted *ED Works Design Documentation*.

ED Works

Means those parts of the Works (including any temporary works) which are on or directly or indirectly affect any of the *ED Land*.

ED Works Completion

Means the stage when the Contractor has achieved “Works Completion” in respect of the *ED Works* (as defined in the *ED Interface Deed*).

ED Works Current Design Documentation

The design documentation for the *ED Works* contained in Schedule 41.

ED Works Design Documentation

Means:

- .1 the *ED Works Current Design Documentation*; and
- .2 any amendments to that documentation (including *ED Works Design Documentation Amendments*) permitted under the *ED Interface Deed*.

ED Works Design Documentation Amendment

Means any amendment to the *ED Works Current Design Documentation* of a material nature or that is likely to have an effect on the *ED Motorway*.

Encumbrance

A mortgage, charge, lien, title retention, trust, power or other encumbrance.

Environment

Means components of the earth, including:

- .1 land, air and water, and
- .2 any layer of the atmosphere, and
- .3 any organic or inorganic matter and any living organism, and
- .4 human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs 1-3 (above).

Environmental Management Plan

The environmental management plan submitted by the Contractor pursuant to clause 26A.

Environmental Statutory Requirements

Any *Statutory Requirement* relating to any aspect of the *Environment* or health or having as its objective the protection or enhancement of the *Environment*.

EPBC Act

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Excusable Delay Event

The following events or circumstances are *Excusable Delay Events*:

- .1 a breach of Contract by the Principal;
- .2 any act or omission of the Principal or the *Principal's Authorised Person* or *AGNSW*, or their employees and agents, other than an act or omission that is permitted, contemplated or required by this Contract;
- .3 an act or omission of a *Separate Contractor*;
- .4 a delay by the Principal in obtaining any *Approval* that the Principal is required by this Contract to obtain by the applicable date for obtaining that *Approval*;
- .5 a *Variation* (other than a *Variation* for the Contractor's convenience);
- .6 a suspension instruction under clause 53 except to the extent if the need for the suspension arises from the act or omission of the Contractor or the *Contractor's Personnel*;
- .7 the discovery of a *Latent Condition* on the Site;
- .8 a *Change in Statutory Requirements* that necessitates a change to the Works;
- .9 a *Force Majeure Event*;
- .10 a failure by the *ED Operator* to allow the Contractor access to *Zone 1* or *Zone 2* or any disruption to the work in connection with the Contract caused by

- maintenance works on the *Zone 1* or *Zone 2* performed by the *ED Operator*, except in the case of an *ED Emergency*;
- .11 any breach of the *ED Interface Deed* by the *ED Operator* or *RMS*;
 - .12 a failure by the *RBGDT* to allow the Contractor access to the Site, except as permitted under the *Development Agreement* or the *Construction Licence*;
 - .13 the discovery and required treatment of an *Artefact*;
 - .14 a direction by the Principal under clause 55.6 to perform a *Provisional Sum* which is given after the date for such direction as referred to in Contract Information Item 55;
 - .15 acceptance by the Principal of a proposal from the Contractor under clause 40 given at a time more than 60 Business Days after the Contractor has provided such a proposal; and
 - .16 failure by the Principal to provide the Contractor with a *Novation Deed* executed by Principal and the *Consultants* listed in Contract Information Item 32B (other than Steenson Varming) by the date which is 14 days after the *Date of Contract*; and
 - .17 any other event that the Contract nominates as an *Excusable Delay Event*, provided that such events or circumstances did not arise as a result of an act or omission of the Contractor or the *Contractor's Personnel*.

Existing Improvements

All existing improvements situated within, about, under or in the vicinity of the *Site* or its surrounds and includes any part of the Works comprising a *Separable Portion* from the time it reaches *Completion* and is handed over to the Principal under the Contract.

Expert

A person engaged to determine *Issues* under clause 71.

Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 71 and the procedure in Schedule 5 (Expert Determination Procedure).

Extra Land

Has the meaning given in clause 37F.

Fault

Ambiguity, inconsistency or discrepancy.

Final Completion

That stage in the execution of the work in connection with the Contract when the *Defect Liability Period* has expired and the Contractor has rectified all *Defects* that arose during the *Defect Liability Period*.

Final Payment Claim

A *Payment Claim* given by the Contractor to the Principal under clause 61.1.

Final Payment Schedule

A *Payment Schedule* given by the Principal to the Contractor under clause 61.2.

Force Majeure Event

The following events or circumstances:

- .1 earthquake, fire, flood, natural disaster, lightning or landslide;
- .2 a cyclone (provided it has been named by the Bureau of Meteorology);
- .3 high winds which exceed 90km/h or 24.5 m/s;
- .4 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, act of public enemies, sabotage, malicious damage, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;

- .5 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 any of its Subcontractors, Consultants or Suppliers;
- .6 strikes, industrial disputes or industrial action on a national or state-wide basis, provided such event or circumstance:
- .7 is beyond the reasonable control of the affected party;
- .8 is not caused or contributed to by a breach of the Contract, or a negligent or unlawful act or omission of, the affected party or its respective contractors, consultants, employees, directors or agents;
- .9 causes or results in default, or delay in the performance, by the affected party of any of its obligations under the Contract; and
- .10 could not reasonably have been expected to have prevented, avoided or overcome by the affected party exercising a standard of care and diligence consistent with that of a prudent and competent person in the circumstances.

Formal Instrument of Agreement

The document entitled "Formal Instrument of Agreement" between the parties to which these GC21 General Conditions of Contract are attached.

Guarantor

The entity identified at Contract Information item 12B.

HHRs Works

Means the Harbour Heat Recovery System Works more particularly described in the Project Brief.

IFC Design Documentation

The *Design Documentation* to be completed by the Contractor and used for the construction of the Works to be produced through the process more particularly described in clause 39 and the *Document Submission Schedule*.

Indemnified Parties

Infrastructure New South Wales and *AGNSW*.

Independent Certifier

The person or entity appointed as the Independent Certifier pursuant to the Independent Certifier Deed of Appointment or such other person(s) as may be engaged by the Principal, the Contractor, *AGNSW*, *RMS* and *ED Operator* in accordance with the *Independent Certifier Deed of Appointment*.

Independent Certifier Deed of Appointment

The deed titled 'Deed of Appointment of Independent Certifier' to be entered into between the Principal, *AGNSW*, *RMS*, *ED Operator*, the Building Contractor and the *Independent Certifier*, which will be substantially in the form of the document in Schedule 40.

Independent Certifier Services

The services to be performed by the *Independent Certifier* as set out in the *Independent Certifier Deed of Appointment*.

Information Documents

Any information, data or document which is:

- .1 listed or referred to in Schedule 38;
- .2 issued or made available by, or on behalf of, the Principal or the New South Wales Government to the Contractor in connection with the Call for Expressions of Interest for the Project (Call for EOI), the Request for Tender for the Project (RFT), or the Project (including, without limitation, anything issued or made available through INSW's website or a data room) and which at the time of issue (or being made available) is expressly classified or stated to be an 'Information Document';

- .3 issued or made available by, or on behalf of, the Principal or the New South Wales Government to the Contractor in connection with the Call for EOI, the RFT or the Project (including, without limitation, anything issued or made available through INSW's website or a data room), but which is not intended to form part of the Call for EOI or the RFT (as applicable), regardless of whether or not it is expressly classified or stated to be an 'Information Document'; or
- .4 referred to or incorporated by reference in an Information Document, whether issued or made available on, before or after the Date of Contract, other than any document which the Principal is obliged by the terms of the Contract to provide to the Contractor and the Contractor is expressly obliged by the terms of the Contract to rely on.

Intellectual Property Rights

Any copyright, patent right, registered design or other protected right.

Issue

Any issue, dispute or difference raised by either party under clause 69.

Key Personnel

The key personnel named in Contract Information item 12 and any replacement person appointed by the Contractor pursuant to clause 31A.

Latent Condition

Means:

- .1 any *Contamination* that migrates on to or under the Site from outside the Site, except to the extent caused or contributed to by the Contractor;
- .2 any general solid waste (non-recyclable) in excess of 700 cubic metres in total (which has been allowed for by the Contractor in the *Contract Price*);
- .3 any *Contamination* other than general solid waste (non-recyclable); and
- .4 any *Site Conditions, Utilities, or Site Infrastructure* located in, on or under the Site and which could not reasonably have been identified at the *Date of Contract* by a competent and experienced contractor in the position of the Contractor had the Contractor:
 - .1 examined all *Information Documents*;
 - .2 examined all information relevant to the risks, contingencies and other circumstances having an effect on the Works and obtainable by making reasonable enquiries; and
 - .3 inspected the Site and its surroundings.

Loss

Loss means all damage, loss, liability and *Cost* of whatever nature or description.

Materials

Includes materials, plant, equipment and other goods.

Novation Deed

A novation deed in the form set out in Schedule 13.

Oil Tank Works

Means the works described in clause 26A.30.

Payment Claim

A claim for payment made by the Contractor to the Principal under clauses 58 or 61.

Payment Schedule

A schedule containing the Principal's assessment of a *Payment Claim* and stating the amount the Principal proposes to pay, as referred to in clauses 59 and 61.

Personal Information

Personal Information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

Planned ED Lane Occupancy Fee

Has the meaning provided for in the *ED Interface Deed*.

Planned ED Lane Occupancy Period

Has the meaning provided for in the *ED Interface Deed*

Post-Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 34.

PPSA

The *Personal Property Securities Act 2011* (Cth).

Preliminaries

The document contained in Schedule 39.

Principal

The entity named in Contract Information item 4, including its successors and assignees.

Principal's Authorised Person

The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.

Principal's Design

The Principal's Design provided set out in Schedule 15.

Principal's Documents

The drawings, specifications and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works.

Privacy Act

The *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

Project Brief

The *Project Brief* for the Works set out in Schedule 14.

Project IP

All *Intellectual Property Rights* created or coming into existence as a result of, for the purpose of or in connection with the performance of the work in connection with the Contract by the Contractor or the *Contractor's Personnel* and its other obligations under the Contract.

Provisional Sum

A sum included in the *Contract Price* and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

RBGDT

Means The Trustee for the Royal Botanical Gardens and Domain Trust.

Remediation Action Plan

The remediation action plan submitted by the Contactor pursuant to clause 26A.

Required Rating

A credit rating of at least A- by Standard & Poor's (Australia) Pty Limited or A3 from Moody's Investors Services, Inc, or, if no rating is provided by Standard & Poor's (Australia) Pty Limited or Moody's Investors Services, Inc, an equivalent credit rating issued by another generally recognised international credit rating agency.

Schedule of Rates and Prices

The rates included in Schedule 7 to be used for the purpose of valuing *Variations* and the Contractor's entitlements to additional payment for *Latent Conditions*.

Scheduled Amount

The amount of payment (if any) stated in a *Payment Schedule*, that the Principal proposes to make in relation to a *Payment Claim*, as referred to in clause 59.1.2.

Scheduled Progress

The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works will be completed by the *Contractual Completion Date*.

Separable Portion

Each of the portions of the Works set out in Schedule 10 and any other portion of the Works directed by the *Principal's Authorised Person* to be a separable portion pursuant to clause 7.2.

Separate Contractor

- .1 A contractor engaged by the Principal (other than the Contractor or the *Contractor's Personnel*) to carry out work on the Site. It includes a contractor that is engaged at the Date of Contract and any contractor engaged after the Date of Contract.
- .2 A contractor (other than the Contractor or the *Contractor's Personnel*) that is engaged by a third party is performing work in the vicinity of, but not on, the Site.

Site

The land to be made available by the Principal to the Contractor for the purpose of executing the work in connection with the Contract, as described in Contract Information item 2.

Site Access Conditions

The Site access conditions set out in Part C of Schedule 20.

Site Access Date

The dates for access to the Site set out in Part B of Schedule 20.

Site Audit Statement

A site audit statement as defined in the *Contaminated Land Management Act 1997* (NSW), which certifies that the Site is suitable for use as park, recreational open space, playing field.

Site Auditor

The person identified as such in Contract Information item 12.

Site Conditions

Any physical conditions of the Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in carrying out work in connection with the Contract.

Site Infrastructure

Any infrastructure or services existing on the *Site*.

Stakeholder Management and Community Engagement Plan

The stakeholder management and community engagement plan set out in Schedule 23.

Statutory Requirements

The laws relating to the Works or the Site, or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, the environment or the Contract, or anyone or anything connected with the Works or the Site or the Contract, including any *Approvals*.

Step-in Event

A Step-in Event as defined in clause 72A.1.

Subcontract

An agreement between the Contractor and a Subcontractor or a Supplier.

Subcontractor

An entity (including one engaged in accordance with clause 29.3) engaged by the Contractor to carry out part of the Works or the *Temporary Work*, or both, other than a Consultant or a Supplier.

Subcontractor Statement

The form prepared for the purpose of 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 Relation Act 1996* (NSW) as set out in Part 2 of Schedule 6.

Supplier

An entity engaged by the Contractor to supply *Materials* in connection with the Works.

Supporting Statement

The form prepared for the purpose of section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) as set out in Part 1 of Schedule 6.

Taxes

Taxes means taxes, levies, imposts, charges and duties (including customs duties and stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Temporary Work

Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used to carry out the Works but not forming part of the Works.

Test

Examine, inspect, measure, prove and trial, including uncovering any part covered up, if necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

Third Party Agreements

The *ED Interface Deed* and the *Development Agreement* and the *Construction Licence*.

Undertaking

An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking).

Undertaking Replacement Event

- .1 the providing financial institution becomes Insolvent;
- .2 the providing financial institution suffers a drop in its long term credit rating to less than the Required Rating; or
- .3 an Undertaking becomes invalid or unenforceable.

Uninsurable Force Majeure Event

A *Force Majeure Event* in respect of which insurance is not available in the recognised international insurance market in respect of that risk generally at the time that such insurance ought to be obtained by a reasonable and prudent contractor provided that the uninsurability is not caused or contributed to (directly or indirectly) by any act, default or omission of the Contractor or its Personnel (whether negligent or otherwise) or the breach of any *Statutory Requirement* by the Contractor or its Personnel or as a result of the claims history of the Contractor under any policy of insurance.

Unplanned ED Lane Occupancy Fee

Has the meaning provided for in the *ED Interface Deed*.

Unresolved Claim

A *Claim* rejected or not agreed under clause 68.7.

Utilities

Includes any service, utility, facility or item of infrastructure for the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including pipe, open or subsoil drains),

sewerage, industrial waste disposal, lighting, CCTV and electronic communications service.

Value Completed

The value of work (including design work) carried out by the Contractor and included in a *Payment Claim*, as referred to in Schedule 3 (Payment Claim Worksheet).

Variation

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including:

- .1 such changes in respect of the development by the Contractor of the design for the Works (including development of the *IFC Design Documentation*, shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract; or
- .2 any changes to the Contractor's planned method of working or the timing or sequence of the construction of the Works.

Variation Order

A Variation Order as described in clause 48.1.

Variation Proposal

A Variation Proposal as described in clause 48.4.

Variation Request

A Variation Request as described in clause 48.3.

WHS Legislation

The *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

WHS Plan

The workplace health and safety plan submitted by the Contractor pursuant to clause 16A.

work in connection with the Contract

All the *Materials* to be supplied and the whole of the work and services to be performed by the Contractor pursuant to the Contract to design, engineer, procure, supply, construct, install, test, commission and hand over the Works in accordance with the Contract and includes:

- .1 all work stated in the *Project Brief* and the *Preliminaries*;
- .2 all work that is not specifically mentioned in the Contract but can be reasonably inferred by an experienced and competent contractor as being required for the proper performance of the Works as if such works were expressly stipulated in the Contract; and
- .3 the work associated with any *Variation*.

Works

The physical works to be designed, constructed and handed over to the Principal on *Completion* by the Contractor, including all work and items of the types referred to in clause 8.1 and *Variations*, but excluding *Temporary Work*. The term applies to the Works as a whole and also to any part of the Works unless the context requires otherwise.

Zone 1

That Part of the Site described as such in the *ED Interface Deed*, which forms part of the *ED Land*.

Zone 2

Means *Zone 2A* and *Zone 2B*.

Zone 2A

That Part of the Site described as such in the *ED Interface Deed*, comprising the surfaces of Zone 2B elements where in contact with Zone 1, which forms part of the *ED Land*.

Zone 2B

That Part of the Site described as such in the *ED Interface Deed*, being the ED land bridge structure, comprising any engineered or structural elements of the ED land bridge, including:

- .1 the protection slab below the subsoil;
- .2 the water proof membrane;
- .3 concrete slab;
- .4 girders;
- .5 suspension;
- .6 throw screens / surface level façade and walls;
- .7 the sandstone / concrete walls supporting the ED land bridge; and
- .8 balustrade on ED land bridge,

which forms part of the *ED Land*.

Zone 3

That Part of the Site described as such in the *ED Interface Deed* comprising the Eastern Distributor motorway and airspace under the ED land bridge, which forms part of the *ED Land*.

Contract Information

The Contract Information is part of the Contract. Words and phrases are defined in clause 80.

Contract

Item

1 Contract name

The Contract name is: Sydney Modern

The Contract number is: 2019091364

2 Site

Defined in clause 80

The Site is: The land shown in the plan set out in Part A of Schedule 20.

3 Description of the Works

Mentioned in clause 8

The Works are: As described in the *Project Brief*, the *Principal's Design* and the *ED Works Current Design Documentation*

Principal's details

4 Principal

Defined in clause 80

The Principal is: Infrastructure NSW

Statutory and Government requirements

14 Fees, charges and approvals

Approvals that have been obtained or will be obtained, and fees and charges that have been paid or will be paid, by the Principal are:

Mentioned in clause 12

Those Approvals that the Principal must obtain as listed in Schedule 8.

The Principal will also pay for:

- Regulatory Authority fees, charges, capital contributions or non-contestable works costs. (Supply Authority, Communications Providers, RMS, Fire Brigade
- NABERS, WELL and Green Star rating submissions

14A Conditions of Approvals

Conditions of *Approvals* that will be discharged by the Principal are:

Mentioned in clause 12

Those items attributed to the Principal in the matrix included in Schedule 8

15 Compliance with NSW Government guidelines

A - Work Health and Safety (WHS)

Mentioned in clause 15

Is the Contractor required to implement a Corporate WHS Management System acceptable to the Principal? (Yes/No) Yes

Is the Contractor required to submit a WHS Plan in accordance with the WHS Regulation 2017 (NSW)? (Yes/No) Yes

If required, the WHS Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

B - Workplace Relations

Is the Contractor required to submit a Workplace Relations Management Plan? (Yes/No)

Yes

Mentioned in clause 15

If required, the Workplace Relations Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

C - Quality Management

Is the Contractor required to implement a certified Quality Management System? (Yes/No)

Yes

Mentioned in clause 15

Is the Contractor required to submit a Quality Management Plan? (Yes/No)

Yes

If required, the Quality Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

D - Environmental Management

Is the Contractor required to implement an accredited Environmental Management System? (Yes/No)

Yes

Mentioned in clause 15

Is the Contractor required to submit an Environmental Management Plan? (Yes/No)

Yes

If required, the Environmental Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

E - Training Management

Is the Contractor required to meet and report on commitments for engaging apprentices and trainees for the Contract work? (Yes/No)

Yes

Mentioned in clause 15

F - Aboriginal Participation*Mentioned in clause 15*

The Aboriginal Participation
Project Category is: Category 3

An Aboriginal Participation Plan
must be provided: Within 60 days after the Date of
Contract.

An Aboriginal Participation Report
must be provided: When the Contract is 90% complete.

Is the Contractor required to submit
copies of the Aboriginal
Participation Plan and Participation
Report to the NSW Procurement
Board? (Yes/No) No »

16 Code Requirements**A - Building Code 2016***Mentioned in clause 13.2*

Is the Contractor required to comply
with the Building Code? Yes

B - Australian Government Building and Construction WHS Accreditation Scheme*Mentioned in clause 17*

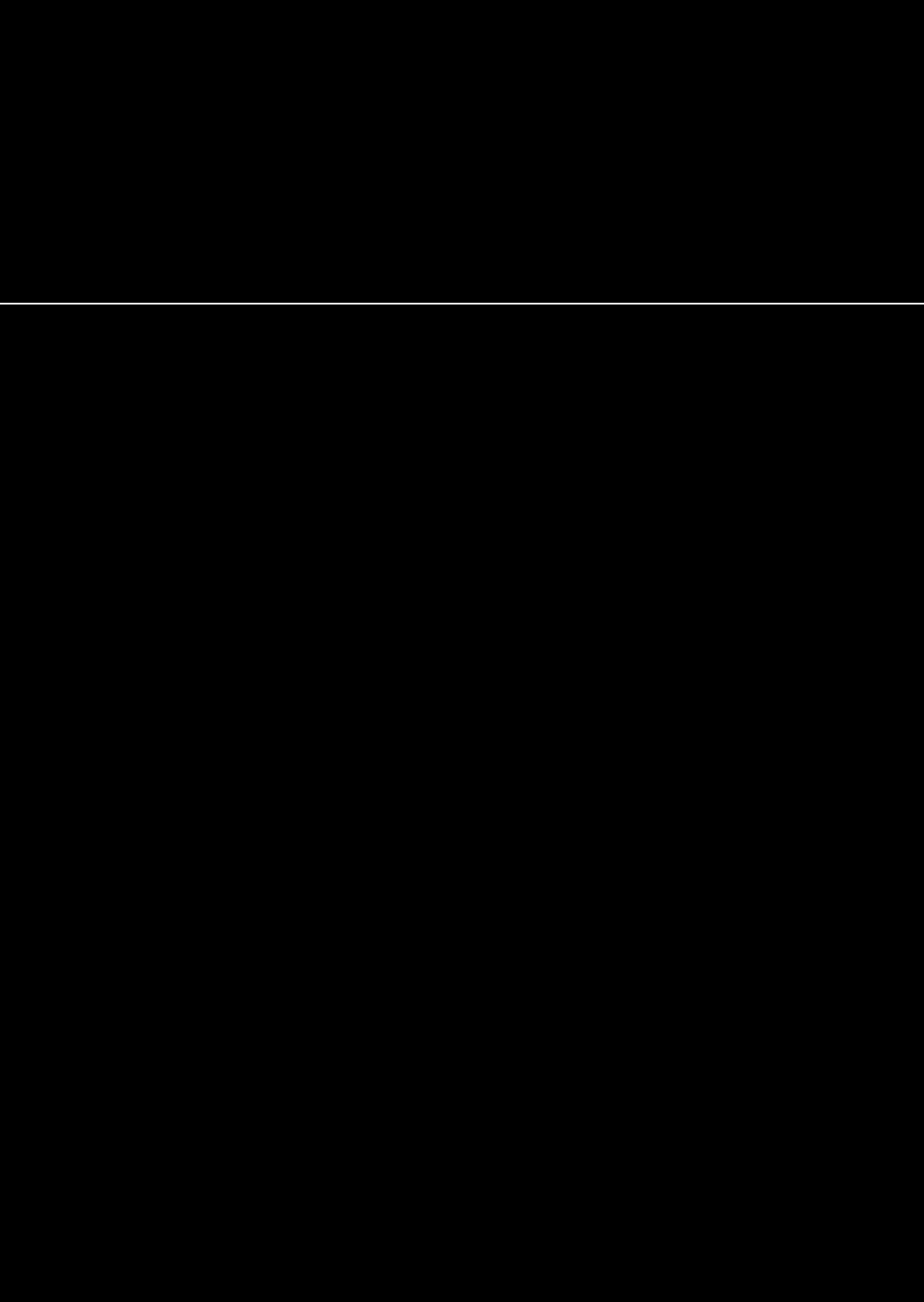
Is the Contractor required to
maintain accreditation under the
Australian Government Building
and Construction WHS
Accreditation Scheme? Yes

17 Principal contractor*Mentioned in clause 16*

Is the Contractor appointed as
principal contractor? (Yes/No) Yes

18 Working hours and working days*Mentioned in clause 18*

Working hours and working days
are: 7am – 6pm Monday to Friday
8:00am – 3:30pm Saturdays



23 Workers compensation insurance*Mentioned in clause 27.3*

Minimum cover is:

As required by law.

Extension

To be extended to cover the Principal's statutory liability to such workers, where permitted by law.

Period of cover is:

until the expiry of the *Defects Liability Period*.**25A Construction Equipment insurance***Mentioned in clause 27.3.1.4*

Insured Property

All construction equipment

Minimum cover is:

Maximum value of construction equipment at or near the Site at any given time.

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible

Not applicable

Contract Documents

26 Other Contract Documents

Mentioned in definition of Contract Documents

Other *Contract Documents* (not listed in the Formal Instrument of Agreement) are:

NIL

Principal's Documents

27 Copies of Principal's Documents

Mentioned in clause 41

The number of copies of the *Principal's Documents* to be provided to the Contractor is:

1 electronic copy.

Contractor's Documents

28 Copies of Contractor's Documents

Mentioned in clause 40.1

The number of copies of the *Contractor's Documents* to be provided to the Principal is:

1 Hard Copy, 1 soft copy (PDF or native format as otherwise required by contract)

30 Payment period for Subcontracts

Mentioned in clause 28.4.2

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 29, is:

30 Business Days.

31 Not used

32B Novated Consultants

Consultants of the Principal or *AGNSW* to be novated to the Contractor

- Architectus
- ARUP
- Steenson Varming

Undertakings

35 Return of Post-Completion Undertaking

Mentioned in clause 33.4.2

The period at the end of which the *Post-Completion Undertaking* must be returned is:

Within 10 *Business Days* after the issue of a *Final Completion Certificate*

Cultural Heritage Artefacts

36 Not Used

37 Cultural Heritage Artefacts

Mentioned in clause 37.2

The *Cultural Heritage Artefacts*
are:

Not applicable.

Design and documentation

38 Building Code of Australia

Mentioned in clauses 39 & 43

Does the Building Code of
Australia 2016 apply? (Yes/No)

Yes

41 Not used

45 Not used

46 Payment date and method

A - Date for Payment Claims

Mentioned in clause 58.1

The date in the month for making
Payment Claims is:

The last *Business Day* prior to the end
of each calendar month.

47 Off Site payments

Mentioned in clause 58.6

Off-Site *Materials* for which
payment can be claimed

- Structural Steel – steel supply and trapezoidal permanent formwork
- Façade – majority of glass, some extrusions & stainless-steel brackets / fixings
- Tiling & Wall Cladding – selected stone and tile finishes
- Electrical & Mechanical – major items of plant & equipment / selected light fittings
- Lifts – major components, fittings & finishes

Delay costs

50 Not Used

Expert Determination

51 Time to refer Issue to Expert Determination

Mentioned in clause 70

The time within which either party may refer an *Issue* to *Expert Determination* is:

28 days after becoming entitled under clause 70.2.

52 Expert Determination representative

Mentioned in clause 71

The representative of the Principal for all of the purposes in clause 71, and under Schedule 5 (Expert Determination Procedure) is:

The Principal's senior executive shown in Contract Information item 7 until the Principal notifies otherwise.

Office address:
(for delivery by hand)

As shown in Contract Information item 7.

Postal address:
(for delivery by post)

As shown in Contract Information item
7.

e-mail address:

As shown in Contract Information item
7.

53 Person to nominate an Expert

The person is:

Mentioned in clause 71
Chief Executive Officer
Australian Commercial Disputes
Centre
Level 16
1 Castlereagh Street
Sydney NSW 2000

Telephone number:

(02) 9239 0700

Facsimile number:

(02) 9223 7053