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# Thurgoona Country Club – Motel Construction Contract

**Liverpool Catholic Club Limited**  
**ACN 000 874 073**

**##**  
**ACN ##**

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**Fielding Robinson**

ABN 51 610 754 580  
Level 4, 75 Miller Street  
NORTH SYDNEY NSW 2060  
(02) 8970 7666

**FORMAL AGREEMENT**

**DETAILS**

**Date:**

**Parties**

**Liverpool Catholic Club Limited (Owner)**

ACN	<b>000 874 073</b>
Address	446 Hoxton Park Road, Liverpool, NSW 2170

**## (Contractor)**

ACN	<b>##</b>
Address	<b>##</b>

**1 Parties' obligations**

The Owner and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract.

**2 Prior works**

The Contract applies to the Contractor's Activities whether performed before, on or after the date of the Contract.

**[Drafting Note: If an LOI is issued, this clause will be replaced with a more detailed clause that terminates the LOI and retrospectively applies the Contract to the LOI works/services.]**

**SIGNED** as a deed.

**EXECUTED by Liverpool Catholic Club )**  
**Limited ACN 000 874 073 in accordance with )**  
section 127 of the *Corporations Act 2001* (Cth) )

.....  
Signature of Director

.....  
Signature Director/Secretary

.....  
Director

.....  
Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

**EXECUTED** by ## ACN ## in accordance with )  
section 127 of the *Corporations Act 2001* (Cth) )  
)

.....  
Signature of authorised person

.....  
Signature of authorised person

.....  
Office held

.....  
Office held

.....  
Name of authorised person

.....  
Name of authorised person

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## **CONDITIONS OF CONTRACT**

### **1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS**

#### **1.1 Glossary of Terms**

Unless the context otherwise indicates, whenever used in this Contract, each word or phrase in the headings in this clause 1.1 has the meaning given to it under the relevant heading.

##### **Act of Prevention**

Means any one of a breach of the Contract by the Owner, any other act or omission of the Owner, the Contract Administrator or an Other Contractor engaged by the Owner or a Variation the subject of a Direction by the Contract Administrator.

##### **Adjoining Land**

Means the land described in the Contract Particulars.

##### **Approval**

Means any licence, permit, consent, approval, determination, certificate or other requirement of any authority, body or other organisation having any jurisdiction in connection with the Works or the carrying out of the Contractor's Activities or under any other applicable Statutory Requirement, which must be obtained or satisfied to carry out the Contractor's Activities or occupy, maintain and use the completed Works or a completed Stage.

##### **Approved Security**

An unconditional bank guarantee in the form of Schedule 2, given by an authorised deposit taking institution licensed by the Australian Prudential Regulation Authority (e.g. an Australian bank) approved by the Owner (in its absolute discretion) and payable at an office of the issuer in Sydney.

##### **Business Day**

Means:

- (a) any day other than a Saturday, Sunday or public holiday in New South Wales; and
- (b) for the purpose of issuing a payment schedule or making a payment under clause 12, also excludes 27, 28, 29, 30 or 31 December.

##### **Claim**

Includes any claim for an increase in the Contract Price, for payment of money (including damages) or for an extension of time.

##### **Completion**

The stage when in respect of the Works or a Stage:

- (a) the Works are, or the Stage is, complete except for minor Defects which do not prevent the Works or the Stage from being reasonably capable of being used for the intended purpose of the Works or the Stage, which the Contract Administrator determines the Contractor has reasonable grounds for not promptly rectifying and which can be corrected without prejudicing the convenient use of the Works or the Stage;
- (b) those tests which are required by the Contract to be carried out and passed before the Works or the Stage achieve Completion have been carried out and passed;
- (c) all documents and other information referred to in the Contract, including all Approvals, have been supplied to the Contract Administrator; and
- (d) the Contractor has done everything that the Contract requires it to do as a condition precedent to Completion, including those things described in the Contract Particulars.



**Contamination**

Has the meaning given in section 5(1) of the *Contaminated Land Management Act 1997* (NSW).

**Contract**

The contractual relationship between the parties constituted by the Formal Agreement, these Conditions of Contract, the Contract Particulars, the Works Description and the other documents (if any) referred to in the Contract Particulars.

**Contract Administrator**

The person nominated in the Contract Particulars or any other person nominated by the Owner from time to time to replace that person.

**Contract Particulars**

The particulars annexed to these Conditions of Contract as Schedule 1 and entitled "Contract Particulars".

**Contract Price**

The amount specified in the Contract Particulars, as adjusted under the Contract.

**Contract Price Breakdown**

The Contract Price breakdown in Schedule 4.

**Contractor Documentation**

Means the documents described in the Contract Particulars.

**Contractor's Activities**

Means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations.

**Contractor's Representative**

The person named in the Contract Particulars or any other person from time to time appointed as Contractor's Representative in accordance with clause 3.2.

**COVID-19**

Means the infectious disease known as "Coronavirus disease 2019" and any variations or mutations thereof.

**COVID-19 Change in Statutory Requirement**

Means a change in a Statutory Requirement after the date of the Contract that specifically relates to COVID-19.

**COVID-19 Statutory Requirement**

Means a Statutory Requirement expressly related to COVID-19.

**Critical Path Activity**

Means those activities in the Contractor's Activities which are on the critical path and which will, if delayed, cause a delay to the achievement of Completion.

**Critical Path Method**

Means a method of programming based upon a mathematically based algorithm developed by the Du Pont Corporation and others that determines the critical activities in a project by the duration and dependencies of those activities in comparison to all activities of work.

**Critical Path Program**

Means a sub-program that shows only those activities that are critical to the completion of the project in the shortest possible time as determined by the Critical Path Method.

**Date for Completion**

In respect of the Works or a Stage, the date, or the expiration date of the period of time, specified in the Contract Particulars, as adjusted under the Contract.

**Date of Completion**

Means the date of Completion set out in a Notice of Completion.

**Defects**

Means any defect, shrinkage, fault or omission in the Contractor's Activities or the Works and includes any aspect of the Contractor's Activities or the Works that is not in accordance with the requirements of this Contract.

**Defects Liability Period**

The period which commences on the Date of Completion of the Works or a Stage, and which continues for the period set out in the Contract Particulars.

**Design Documentation**

Means drawings, specifications, models, samples and calculations in computer readable and written forms.

**Direction**

Means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

**Final Dilapidation Report**

Means the report commissioned by the Contractor pursuant to clause 2.4(e).

**Formal Agreement**

The formal agreement to which these Conditions of Contract are attached.

**GST**

Means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended).

**Guarantee**

Means a deed of guarantee in the form set out in Schedule 11.

**House Rules**

The requirements stated in or reasonable inferred from section 6.2 of the Works Description.

**Information Documents**

Means the following documents and other information in any format or medium including any electronic form:

- (a) the documents specified in the Contract Particulars;
- (b) all other documents, provided to the Contractor prior to the date of the Contract that were expressly stated to be "Information Documents"; and
- (c) any document or other information that is referred to or incorporated by reference in a document referred to in paragraphs (a) or (b), unless such document or other information is otherwise expressly stated to form part of the Contract.

### **Initial Dilapidation Report**

Means the dilapidation report referred to in with clause 2.4(a).

### **Insolvency Event**

Means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against a person by a creditor;
- (c) in relation to an individual person or a partnership including an individual person, the person commits an act of bankruptcy, has a bankruptcy petition presented against him or her or presents his or her own petition, is made bankrupt, makes a proposal for a scheme of arrangement or a composition, or has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a corporation, notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement, the corporation entering a deed of company arrangement with creditors, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation, an application is made to a court for the winding up of the corporation and not stayed within 14 days, a winding up order is made in respect of the corporation, the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up) or a mortgagee of any property of the corporation takes possession of that property.

### **Latent Conditions**

Any physical conditions (excluding weather conditions) at the Site that differ materially from those that should have been anticipated by a prudent, competent and experienced contractor if it had done those things that the Contractor is deemed to have done under clause 7.1.

### **Latent Conditions Claim**

A claim which complies with the requirements of clause 7.7(a).

### **Latent Conditions Notice**

A notice which complies with the requirements of clause 7.6(a).

### **Notice of Completion**

A notice given under clause 13.1 by the Contract Administrator stating that Completion of the Works or a Stage has been achieved.

### **Other Contractor**

Any contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors.

### **Owner's Risks**

Means any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its subcontractors or either's employees or agents;
- (c) terrorism (except to the extent that the Contractor is indemnified against any loss or damage as a consequence of the *Terrorism Insurance Act 2003* (Cth)); or

(d) any other event so described in the Contract Particulars.

**PPS Act**

Means the *Personal Property Securities Act 2009* (Cth).

**PPS Law**

Means:

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

**Pre-Priced Variation**

A Variation described in Schedule 13.

**Pre-Priced Variation Date**

Means, in respect of a Pre-Priced Variation, the relevant date set out in Schedule 13.

**Pre-Priced Variation Price**

Means, in respect of a Pre-Priced Variation, the relevant amount set on in Schedule 13.

**Principal Contractor**

Means 'principal contractor' with the meaning of the relevant WHS Regulation.

**Professional Indemnity Insurance**

Means a policy of insurance to cover claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its subcontractors in carrying out the Contractor's Activities.

**Proportionate Liability Acts**

Means the *Civil Liability Act 2002* (NSW):.

**Provisional Sum Work**

The work or goods so described in the Contract Particulars for which the sum of money referred to in the Contract Particulars is included in the Contract Price.

**Public Liability Insurance**

Means a policy of public liability insurance in the joint names of the Owner, Contractor, Contract Administrator, subcontractors and any person named in the Contract Particulars to cover their respective rights and interests and liabilities to third parties and liability to each other for loss or damage to property (other than property required to be insured by Works Insurance) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy), arising out of, or in any way in connection with, the Contractor's Activities.

**Schedule of Rates**

The document (if any) so described in the Contract Particulars.

**Security of Payment Act**

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

**Service**

Includes any service or item of public or private infrastructure, including railway systems, pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service.

**Site**

The site for the Works described in the Contract Particulars.

**Site Condition**

Any physical conditions encountered in the execution of the Contractor's Activities above, upon, under, or over the surface, or in the vicinity, of the Site or any Adjoining Land, and includes:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below the Site or any Adjoining Land, including buildings, improvements, partially completed structures, in-ground works (including foundations), retaining walls, services (including the location of services), utilities (including the location of utilities) and other structures whether or not installed by or on behalf of the Owner;
- (c) topography of the Site or any Adjoining Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or any Adjoining Land;
- (d) climatic and other weather conditions including rain, surface water run-off and drainage, water seepage, wind blown dust, sand and seasons;
- (e) conditions at the Site or any Adjoining Land, that are a consequence of climatic and other weather conditions referred to in sub-paragraph (d);
- (f) all existing utility systems and services (including water, waste water, storm water, electrical, gas, data and telecommunications), above, on or below ground level and the location of all facilities with which such utility systems and services are connected; and
- (g) any Contamination and rubbish.

**Stage**

A stage of the Works described in the Contract Particulars or directed by the Contract Administrator.

**Statutory Requirements**

Means any law applicable to the Works or the carrying out of the Contractor's Activities, including Acts, ordinances, regulations, by-laws and other subordinate legislation and Approvals (including any condition or requirement under them).

**Variation**

Unless otherwise stated in the Contract, means any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

**WHS Act**

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

**WHS Regulation**

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

**Works**

The physical works that the Contractor must complete and hand over to the Owner, a brief description of which appears in the Contract Particulars.

**Works Description**

The documents referred to in the Contract Particulars.

**Works Insurance**

Means a policy of insurance:

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- (a) in the joint names of the Owner, Contractor, all subcontractors and any person named in the Contract Particulars for their respective rights, interests and liabilities; and
- (b) insuring all the things referred to in clause 5.1 for which the Contractor bears the risk against loss or damage resulting from any insurable event.

### **Workers Compensation Insurance**

Means a policy of insurance to insure against liability for death of or injury to persons employed by the Contractor, including liability by statute and at common law.

### **1.2 Interpretation**

In this Contract unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of this Contract;
- (d) references to any party to this Contract include its successors or permitted assigns;
- (e) references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (g) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (h) a reference to "\$" is to Australian currency;
- (i) where under the Contract a Direction is required to be given or must be complied with or payment of money must be made, within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (j) for the purposes of clauses 10.7, 10.8, and 10.9 any extension of time stated in days or any reference to "day", will exclude public holidays and include only those days which are stated in the Contractor's approved program under clause 10.2 as working days;
- (k) other than as set out in paragraphs (i) and (j) references to "day" are references to calendar days;
- (l) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (m) the word "subcontractor" will include suppliers and consultants;
- (n) where a clause contains two options, the option specified in the Contract Particulars will apply; and
- (o) this Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### **1.3 Miscellaneous**

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory in which the Site is located.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless both parties agree in writing.

- (c) The Contractor cannot assign its rights or liabilities under the Contract without the prior written consent of the Owner.
- (d) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite any prior agreement in conflict or at variance with the Contract or any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the date of the Contract and which are not included in the Contract.
- (e) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (f) Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (g) This Contract and any documents or information relating to the Contract, the Works or the Contractor's Activities are confidential and the Contractor must not disclose any of these without the prior written consent of the Owner except to the extent that the disclosure is required for the Contractor to carry out its obligations under the Contract.
- (h) All obligations to indemnify under this Contract survive termination of the Contract.

## **2. COMMENCEMENT**

### **2.1 Contractor's Obligations**

The Contractor must:

- (a) immediately commence to carry out the Contractor's Activities;
- (b) subject to clause 2.2(a), commence construction of the Works on the Site by no later than the date specified in the Contract Particulars; and
- (c) unless otherwise stated, carry out the Contractor's Activities at its cost.

### **2.2 Owner's Obligations**

Subject to the next paragraph, the Owner must:

- (a) give the Contractor sufficient access to the Site to commence and carry out the Contractor's Activities on the later of:
  - (i) satisfaction of the conditions in the Contract Particulars; and
  - (ii) the date specified in the Contract Particulars; and
- (b) subject to the other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities.

### **2.3 Adjoining Land**

The Owner will procure access to the Adjoining Land for the benefit of the Contractor to the extent necessary to carry out the Contractor's Activities.

The Contractor must:

- (a) procure for itself the occupation or use of or relevant rights over any land in addition to the Site or the Adjoining Land, which the Contractor may require for carrying out the Contractor's Activities or otherwise for the purposes of the Contract;
- (b) indemnify the Owner against any claim against the Owner by the owner or occupier of, or any other persons having an interest in, the Adjoining Land and any other land referred to in paragraph (a); and
- (c) as a condition precedent to Completion of the Works, provide the Contract Administrator with an executed release on terms satisfactory to the Owner from all claims from the owner or occupier of, and any other persons having an interest in, the Adjoining Land and all other land referred to in paragraph (a).

## **2.4 Dilapidation Report**

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

- (a) the parties acknowledge that, before the date of the Contract, the Contractor prepared and provided to the Owner a dilapidation survey in respect of the Site and all immediately surrounding property (including any Adjoining Land), including relevant boundary walls, adjoining property and buildings, roads, pavements and services;
- (b) as a condition precedent to Completion of the Works or the final Stage, the Contractor shall:
  - (i) provide an updated dilapidation survey (**Final Dilapidation Report**) in respect of the Site and all immediately surrounding property (including any Adjoining Land), including relevant boundary walls, adjoining property and buildings, roads, pavements and services and including all property that was the subject of the Initial Dilapidation Report prepared no earlier than 5 days before the Date of Completion;
  - (ii) at the same as providing the Final Dilapidation Report, provide to the Contract Administrator, a document describing the material differences between the Initial Dilapidation Report and the Final Dilapidation Report; and
  - (iii) repair, rectify and otherwise make good any damage caused to the Site and surrounding property (including any Adjoining Land), including boundary walls, adjoining property and buildings, roads, pavements and services, identified in the Final Dilapidation Report, to the satisfaction of the Contract Administrator so that the condition of such surrounding property at the Date of Completion of the Works is identical to the condition of the corresponding surrounding property set out in the Initial Dilapidation Report; and
- (c) the Contractor shall provide such updated dilapidation surveys as are required by the Owner to demonstrate the Contractor's compliance with its obligations under clause 2.4(b)(iii).

## **3. PERSONNEL**

### **3.1 Contract Administrator**

The Contract Administrator will give Directions and carry out all its other functions under the Contract as the agent of the Owner (and not as an independent certifier, assessor or valuer).

The Contractor must comply with any Direction by the Contract Administrator given under a provision of this Contract.

Except where the Contract otherwise provides, the Contract Administrator may give a Direction orally but will as soon as practicable confirm it in writing.

### **3.2 Contractor's Representative**

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

### **3.3 Key people**

The Contractor must:

- (a) employ those people specified in the Contract Particulars, including the Contractor's Representative, in the jobs specified in the Contract Particulars and ensure that those people specified in the Contract Particulars are available for and allocate the percentage of their time indicated in the Contract Particulars, to the undertaking of the Contractor's Activities;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.



### **3.4 Removal of persons**

The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

### **3.5 Industrial relations**

The Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full; and
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities.

## **4. SECURITY**

### **4.1 Form**

The Contractor must provide security in the form and amount set out in the Contract Particulars.

Where security is required to be provided by the Contractor in the form of Approved Security, the Contractor must provide the Owner with the Approved Security within 14 days after the date of the Contract.

### **4.2 Release**

The Owner must:

- (a) within 14 days after the issue of a Notice of Completion for the Works or the last Stage to achieve Completion, release 50% of the security required under clause 4.1; and
- (b) within 7 days of the expiration of the last Defects Liability Period (excluding any extended Defects Liability Period under clause 9.5), release such amount of the security under clause 4.1 then held, as the Contract Administrator determines to be reasonable, having regard to the work to which any extended Defects Liability Periods apply, to ensure the Owner's interests are not prejudiced; and
- (c) release the balance of the security then held when the last Defects Liability Period (including any extension under clause 9.5) has expired and the Contractor has complied with all its obligations under the Contract.

### **4.3 Interest**

The Owner is not obliged to pay the Contractor interest on the Approved Security, the proceeds of the Approved Security if it is converted into cash, or any money retained under clause 4.1 and does not hold the proceeds or money referred to in this paragraph on trust for the Contractor.

### **4.4 Recourse**

The Owner may, at any time (at its absolute discretion), make a demand under, or call upon, any security and apply the amount received under the demand or call (including any interest) to satisfy any claim which the Owner, in good

faith, believes that it has or may have against the Contractor arising out of or in connection with this Contract or the Contractor's Activities.

#### **4.5 Parent or related company guarantee**

If a person is named in the Contract Particulars, the Contractor must, on or before the date of the Contract, procure the person named in the Contract Particulars to execute and deliver to the Owner the Guarantee.

#### **4.6 Expiry date**

If any bank guarantee or undertaking provided by the Contractor under clause 4.1 has an expiry date, the expiry date must be no earlier than the date that is 15 months after the original Date for Completion, and must be replaced by the Contractor on or before the date that is three months prior to its expiry date. In the event that the bank guarantee or undertaking is not replaced by the date that is 3 months prior to its expiry date, then the Owner may draw on the bank guarantee or undertaking and hold the proceeds as security as if it were a bank guarantee or undertaking provided under clause 4.1.

#### **4.7 Not used**

### **5. RISKS AND INSURANCE**

#### **5.1 Risk of Works**

Except where it arises from an Owner's Risk, the Contractor will bear the risk of and indemnify the Owner against:

- (a) any loss of or damage to the Works or a Stage, plant, equipment and work and unfixed goods and materials (whether on or off Site), including anything provided by the Owner to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities, until:
  - (i) in the case of loss of or damage to the Works or a Stage, a Notice of Completion issues for the Works or the Stage; and
  - (ii) otherwise, a Notice of Completion issues for the Works or the last Stage to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works or a Stage, any loss of or damage to the Works or the Stage arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Works or the Stage.

#### **5.2 Other Risks**

Except where it arises from an Owner's Risk, the Contractor will indemnify the Owner against:

- (a) any loss of or damage to property of the Owner (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities provided that the Contractor's responsibility to indemnify the Owner will be reduced to the extent that an act or omission of the Owner, Contract Administrator or an Other Contractor may have contributed to the loss, damage, injury or death.

#### **5.3 Reinstatement**

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good any loss of, or repair the damage to, the Works or a Stage or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
- (b) where the loss or damage arises from an Owner's Risk, only comply with paragraph (a) to the extent directed by the Contract Administrator.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Owner's Risk, in which event this replacement, making good or repair will, to the extent the

loss or damage arises from an Owner's Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a Direction by the Contract Administrator and clause 11.2 applied.

#### **5.4 Insurance by Owner**

The Owner must from the date of the Contract effect the insurance (if any) specified in the Contract Particulars and must provide the Contractor with a copy of the relevant insurance policies.

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

- (a) satisfy itself of the nature and extent of the Owner's insurance;
- (b) if required by the Contractor, take out insurance to insure any risks not insured by the Owner's insurance or cover any such exclusions, conditions or excesses in that insurance which the Contractor wants to insure against or cover; and
- (c) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Owner under clause 5.2, bear the cost of any excesses in the Owner's insurance.

Any additional works or public liability insurance taken out by the Contractor, as contemplated by paragraph (b), must be in the joint names of the Owner, the Contract Administrator, the Contractor, all subcontractors and any other person named in the Contract Particulars for their respective rights, interests and liabilities.

#### **5.5 Contractor Insurance Obligations**

The Contractor must:

- (a) from the date of the Contract effect and have in place the following insurances with insurers and on terms satisfactory to the Contract Administrator unless the Owner is required to effect any such insurance under clause 5.4, Works Insurance, Public Liability Insurance, Workers Compensation Insurance and, if an amount is included in the Contract Particulars for such insurance, Professional Indemnity Insurance for the amounts referred to in the Contract Particulars;
- (b) in relation to the Workers Compensation Insurance where permitted by law, extend the insurance policy to provide indemnity to the Owner for its statutory liability to the Contractor's employees and ensure that each of its subcontractors has similar insurance to the Workers Compensation Insurance covering the subcontractors' employees;
- (c) provide the Contract Administrator with a copy of any required insurance policy (other than professional indemnity insurance) and evidence satisfactory to the Contract Administrator that the policy is current as required by the Contract Administrator from time to time;
- (d) inform the Owner in writing whenever the insurer under a policy effected by the Contractor receives a notice under or in connection with the insurance policy, including any claim and gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation must occur 30 days prior to the cancellation of the policy; and
- (e) ensure that it does not do anything which prejudices any insurance, if necessary, rectifies anything which might prejudice any insurance, reinstates an insurance policy if it lapses, does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Contract Administrator, immediately notifies the Contract Administrator of any event which may result in an insurance policy lapsing or being cancelled and 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.

#### **5.6 Failure to Insure**

If the Contractor fails to provide copies of any insurance policy, together with evidence satisfactory to the Contract Administrator that the policy is current or effect insurance which is with insurers and on terms satisfactory to the Contract Administrator, as required by clause 5.5, the Owner may, without prejudice to any other rights it may have, take out the insurance and the cost will be a debt due from the Contractor to the Owner.

#### **5.7 Period of Insurance**

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of the Works Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
- (b) in the case of Public Liability Insurance and Workers Compensation Insurance, until the later of the end of the last Defects Liability Period and the date upon which all Defects have been rectified in accordance with the Contract; and
- (c) in the case of professional indemnity insurance, until the expiration of the period specified in the Contract Particulars following the last Date of Completion.

### **5.8 Notice of Potential Claim**

The Contractor must as soon as possible inform the Owner in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract and keep the Owner informed of subsequent developments concerning the claim and ensure that its subcontracts contain equivalent provisions.

### **5.9 Cross Liability**

Where the Contract requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured (to the extent that they are insured) and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

## **6. CONTRACTOR DOCUMENTATION**

### **6.1 Owner's documents**

The Owner must provide to the Contractor the documents and the number of copies of those documents specified in the Contract Particulars.

### **6.2 Preparation of Contractor Documentation**

The Contractor must:

- (a) [not used];
- (b) prepare all Contractor Documentation;
- (c) as part of the program it is to prepare under clause 10.2, submit to the Contract Administrator for approval a documentation program which makes allowance for the Contractor Documentation it prepares to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Contractor Documentation within the period of time within which the Contract Administrator may review the Contractor Documentation under clause 6.3; and
- (d) submit the Contractor Documentation it prepares to the Contract Administrator in accordance with any documentation program approved by the Contract Administrator or otherwise in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Contractor Documentation within the period of time within which the Contract Administrator may review the Contractor Documentation under clause 6.3.

### **6.3 Contract Administrator may review Contractor Documentation**

The Contract Administrator may:

- (a) review any Contractor Documentation, or any resubmitted Contractor Documentation, prepared and submitted by the Contractor; and
- (b) within 7 days after the submission by the Contractor of such Contractor Documentation or resubmitted Contractor Documentation, reject the Contractor Documentation if in its reasonable opinion the Contractor Documentation does not comply with the requirements of the Contract.

If any Contractor Documentation is rejected, the Contractor must submit amended Contractor Documentation to the Contract Administrator.

The Contractor must not commence construction of the part of the Works to which any Contractor Documentation which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had 7 days to review the Contractor Documentation and has not rejected the Contractor Documentation.

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

No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Contractor Documentation prepared by the Contractor or any other Direction by the Contract Administrator about the Contractor Documentation will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law or prejudice the Owner's rights against the Contractor whether under the Contract or otherwise according to law.

#### **6.5 Copies of Contractor Documentation**

For the purposes of clauses 6.1(b) and 6.2, the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Contractor Documentation.

#### **6.6 Not used**

#### **6.7 Copyright**

Copyright in the Contractor Documentation prepared by the Contractor under clause 6.1 is assigned to the Owner upon its creation. The Owner grants to the Contractor a licence to use the Contractor Documentation for the Contractor's Activities.

#### **6.8 Intellectual Property Rights and Moral Rights**

The Contractor must ensure that the Contractor's Activities do not infringe any patent, registered design, trade mark or name, copyright, moral right or other protected right and indemnify the Owner against any claims against, or costs, losses or damages suffered or incurred by, the Owner, arising out of, or in any way in connection with, any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, moral right or other protected right.

#### **6.9 Resolution of Ambiguities**

If there is any ambiguity, discrepancy or inconsistency in the documents which together make up the Contract or between the Contract and any Design Documentation provided by the Owner after the date of the Contract:

- (a) the order of precedence in the Contract Particulars will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail;
- (c) if it is discovered by the Contractor or the Contract Administrator, then the party discovering it must promptly give notice to the other; and
- (d) the Contract Administrator must instruct the Contractor as to the course it must adopt within 7 days of the notice under paragraph (c).

If compliance with a direction by the Contract Administrator under clause 6.9(d) is other than in accordance with clause 6.9(b) and causes the Contractor to incur more or less cost that would otherwise have been incurred had the direction not been given, then the difference will be assessed by the Contract Administrator and added to or deducted from the Contract Price.

## **6.10 Availability**

The Contractor must keep available for the use of the Contract Administrator, the Owner and any person authorised by either the Contract Administrator or the Owner:

- (a) on the Site, one complete set of the Works Description, all Design Documentation provided by the Owner under clause 6.1 and all Contractor Documentation prepared by the Contractor and which the Contractor is entitled to use for construction purposes under clause 6.3; and
- (b) at any area off-Site where the Contractor's Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area,

and provide to the Owner on request:

- (c) in such electronic format as the Owner reasonably requires; and
- (d) in hard copy form, the number of additional copies specified in the Contract Particulars,

of any Contractor Documentation submitted by the Contractor under clause 6.2(c).

## **7. THE SITE**

### **7.1 Contractor to Inform Itself**

The Contractor:

- (a) warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in assessing the risks which it is assuming under the Contract and ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating;
- (b) warrants that it did not in any way rely upon any information, data, representation, statement or document made by or provided to the Contractor by the Owner or anyone on behalf of the Owner (including the Information Documents) or the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract; and
- (c) acknowledges that the Owner does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any the information, data and documents made available to the Contractor (including any Information Document) and that, to the extent permitted by law, the Owner will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, that information, data and documents.

### **7.2 Contractor's Obligation to Provide Access**

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to the Owner or occupiers of the Site (or their representatives) in their occupation or use of, or attendance upon, any part of the Site and others having a right of access to the Site;
- (b) at all reasonable times give the Contract Administrator, the Owner and any person authorised by either the Contract Administrator or the Owner access to the Works or a Stage, the Site or any areas off-Site where Contractor's Activities are being carried out;
- (c) provide the Owner and the Contract Administrator with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities; and
- (d) without limiting or otherwise affecting any other provision of the Contract, comply with the House Rules.

### **7.3 Site access**

The Owner:

- (a) is not obliged to:
  - (i) provide the Contractor with sole access to the Site; or
  - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
- (b) may engage Other Contractors, and allow any person stated in the Contract Particulars, to work upon or in the vicinity of the Site at the same time as the Contractor; and
- (c) must use reasonable endeavours to ensure that any Other Contractors engaged by the Owner comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, Site safety, noise levels, insurance and hours of working.

#### **7.4 Continued operations**

The Contractor acknowledges and agrees that, while the Contractor's Activities are being performed on the Site:

- (a) the Owner will continue to conduct its business and other operations with members of the public, clients, employees and agents of the Owner in premises adjoining the Site (including the Country Club, the Motel, tennis courts and surrounding areas);
- (b) the Contractor will access the Site only in accordance with the directions of the Contract Administrator;
- (c) the Contractor must:
  - (i) perform the Contractor's Activities in such a manner as to interfere to the least extent possible with the conduct of the business and other operations of the Owner and of any invitees of the Owner on the Site and areas adjacent to the Site;
  - (ii) only access the Site during the hours and on the days provided for in the Contract or if not provided for in the Contract as directed by the Contract Administrator;
  - (iii) take all steps necessary to protect the safety of the Owner and the employees, agents and invitees of the Owner from risks to safety caused by the performance of the Contractor's Activities;
  - (iv) complete such safety or other training or induction as the Contract Administrator from time to time directs;
  - (v) comply with all procedures, policies and rules adopted from time to time by the Owner in connection with the Site; and
  - (vi) keep itself informed as to the requirements of, comply with and not do anything which may place the Owner in breach of laws and legal requirements applying to the Site and the operation of the Owner's business;
  - (vii) erect appropriate signage for the benefit of employees, agents and invitees of the Owner at the Site to enable them to find their way around the Site;
  - (viii) keep the Site clean and tidy at all times;
  - (ix) keep the Contract Administrator and the Owner informed as frequently as possible and at least on a daily basis of the operations of the Contractor which may affect the conduct of the business and other operations of the Owner at the Site and areas adjacent to the Site; and
  - (x) consult and co-operate with the Contract Administrator and the Owner and attend meetings as required by the Contract Administrator in relation to the interface between the business operations of the Owner and the Contractor's Activities.

The Contractor shall not have any entitlement to make any Claim in performing its obligations under, or as a consequence of the matters described in, this clause 7.3.

## **7.5 Site Conditions risk generally**

Subject to:

- (a) any amount payable to the Contractor under clause 7.7(b) in relation to the discovery of any Latent Condition; and
- (b) any extension of time to any Date for Completion to which the Contractor may be entitled under clause 10.4(a) in relation to the discovery of any Latent Condition,

the Contractor otherwise assumes all risks for and will not be entitled to make any Claim arising out of, or in way in connection with, any Site Conditions.

## **7.6 Latent Conditions**

- (a) If during the performance of the Contractor's Activities, the Contractor becomes aware of any Latent Condition, the Contractor shall as soon as practicable and where possible before the Latent Condition is disturbed, give a Latent Condition Notice to the Contract Administrator. The Latent Condition Notice must specify:
  - (i) the nature of the Latent Condition;
  - (ii) the steps the Contractor proposes to be taken to deal with the Latent Condition and, to the extent the Latent Condition involves Contamination, the steps the Contractor proposes to take to investigate, remediate, incorporate, dispose of, manage, monitor, contain, destroy, render inert or otherwise deal with the Contamination so that the Site is remediated to a standard suitable for the proposed use of the Site;
  - (iii) an estimate of any additional time required to complete the Contractor's Activities as a direct result of the discovery of the Latent Condition;
  - (iv) an estimate of any additional cost to be incurred by the Contractor in performing the Contractor's Activities as a direct result of the Latent Condition (using any rates and prices identified in the Schedule of Rates to the extent applicable); and
  - (v) any other details reasonably required by the Owner or the Contract Administrator.
- (b) The Contract Administrator will, within 10 Business Days after receipt of a Latent Condition Notice, give a direction to the Contractor as to what additional or different work, if any, the Contractor must carry out to deal with the Latent Condition compared to the work allowed for as part of the Contractor's Activities.

## **7.7 Contractor's entitlements**

- (a) Within 10 Business Days after receipt of a direction from the Contract Administrator in accordance with clause 7.6(b) to carry out additional or different Contractor's Activities, the Contractor may give a Latent Condition Claim to the Contract Administrator. The Latent Condition Claim must specify any additional cost incurred by the Contractor in performing the Contractor's Activities as a direct result of complying with the direction given by the Contract Administrator under subclause 7.6(b), calculated in accordance with clause 7.7(c). The Contractor must provide any supporting material requested by the Contract Administrator in relation to a Latent Condition Claim including any trucking records and waste disposal fees incurred by the Contractor.
- (b) Subject to:
  - (i) subclause 7.7(d); and
  - (ii) the Contractor having:
    - (A) issued a Latent Condition Notice within the time required by clause 7.6(a);
    - (B) complied with the direction of the Contract Administrator under clause 7.6(b); and
    - (C) issued a Latent Condition Claim within the time required by clause 7.7(a) and provided any supporting material requested by the Contract Administrator under clause 7.7(a),



the Owner will pay or allow to the Contractor the additional reasonable costs incurred by the Contractor in performing the Contractor's Activities as a direct result of complying with the direction of the Contract Administrator to carry out additional or different work (including any reasonable costs and expenses payable under clause 10.10 as a result of the Latent Conditions (or additional or different work) delaying the Contractor), as determined by the Contract Administrator in accordance with clause 7.7(c) below.

- (c) The value of the additional reasonable costs incurred by the Contractor pursuant to a direction of the Contract Administrator under clause 7.7(b) shall be determined using the following order of precedence:
  - (i) prior agreement;
  - (ii) applicable rates and prices identified in the Schedule of Rates;
  - (iii) where none of the rates or prices referred to in sub-paragraph (ii) above are applicable, reasonable rates or prices, to which shall be added the percentage thereof stated in the Contract Particulars for off-site overheads and profit.

In making such determination, the Contract Administrator must deduct any savings that will result from the Contractor complying with the direction of the Contract Administrator under clause 7.7(b) to carry out additional or different work. The price determined shall be added to or deducted from the Contract Price.

- (d) The Owner will not be liable to pay for or contribute to any costs in connection with any Latent Condition if those costs arose in connection with:
  - (i) any wilful or negligent act or omission of the Contractor or its associates; or
  - (ii) any action by the Contractor which was not required to be undertaken by the Contractor to perform the Contractor's Activities or complete the Works in accordance with the Contract.

## **8. CONSTRUCTION**

### **8.1 Description of Works**

The Contractor must construct the Works in accordance with:

- (a) the Works Description and any Design Documentation issued by the Contract Administrator to the Contractor after the date of the Contract;
- (b) any Contractor Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.2;
- (c) any Direction by the Contract Administrator given under a provision of the Contract, including any Variation given by the Contract Administrator under clause 11.1; and
- (d) the other requirements of the Contract.

The Contractor has allowed for the provision of all plant, equipment and work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Works Description or any Design Documentation.

Any such Plant, Equipment and Work, materials and other work:

- (a) must be undertaken and provided by the Contractor; and
- (b) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

### **8.2 Statutory Requirements and Approvals**

The Contract Particulars describe the Approvals which exist at the date of the Contract or which the Owner will obtain after date of the Contract.

In carrying out the Contractor's Activities, the Contractor must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;

- (b) without limiting paragraph (a):
  - (i) apply for and obtain all Approvals other than those referred to in the Contract Particulars; and
  - (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
- (c) promptly, and in any event as a condition precedent to Completion, give the Contract Administrator copies of all documents (including Approvals and other notices) that any Authority issues to the Contractor.

**8.2A Change in Statutory Requirements**

If:

- (a) there is any change in a Statutory Requirement after the date of the Contract (other than a COVID-19 Change in Statutory Requirement); or
- (b) a Statutory Requirement is at variance with the Contract (other than a COVID-19 Change in Statutory Requirement),

then:

- (c) the party discovering this must promptly notify the other;
- (d) the Contract Administrator will instruct the Contractor as to how it is to proceed with the Contractor's Activities insofar as they are affected by the change, variance or terms (as the case may be); and
- (e) the Contract Price will be:
  - (i) increased by any extra costs reasonably incurred by the Contractor; or
  - (ii) decreased by any saving made by the Contractor,

in carrying out the Contractor's Activities after the giving of instruction under paragraph (d) and arising directly from the change or variance (as the case may be) or the Contract Administrator's instruction, in either case as determined by the Contract Administrator.

**8.2B Change in COVID-19 Statutory Requirements**

If:

- (a) there is any change in a COVID-19 Change in Statutory Requirement; or
- (b) a COVID-19 Statutory Requirement is at variance with the Contract,

then:

- (c) the party discovering this must promptly notify the other;
- (d) the Contract Administrator will instruct the Contractor as to how it is to proceed with the Contractor's Activities insofar as they are affected by the change, variance or terms (as the case may be); and
- (e) the Contract Price will be:
  - (i) increased by any extra costs reasonably incurred by the Contractor; or
  - (ii) decreased by any saving made by the Contractor,

in carrying out the Contractor's Activities after the giving of instruction under paragraph (d) limited to the costs or savings in costs referred to in the next paragraph, as determined by the Contract Administrator.

For the purpose of clause 8.2B(e), the relevant costs or savings in costs must relate to:

- (f) cleaning costs solely attributable to increased or decreased site restrictions;
- (g) shed costs solely attributable to increased or decreased site restrictions;

- (h) increased or decreased labour costs solely attributable to increased or decreased site restrictions requiring change of labour rosters; and
- (i) additional or reduced PPE solely attributable solely to increased or decreased site restrictions.

### **8.3 Subcontracting**

The Contractor must not, without the prior written approval of the Contract Administrator, which will not be unreasonably withheld, subcontract any work. The Contractor will remain fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities.

#### **8.3A Approved subcontractors**

The Contractor must subcontract the work described in the Contract Particulars to the corresponding subcontractor named in the Contract Particulars.

The Contractor acknowledges and agrees that if the Owner has prior to the date of the Contract identified approved subcontractors and the Contractor has selected an approved subcontractor (including those subcontractors named in the Contract Particulars), the Owner shall not be under any obligation or have any liability (as the case may be) to:

- (a) nominate any replacement subcontractor for the relevant work or services if:
  - (i) an Insolvency Event occurs with respect to the approved subcontractor or that subcontractor repudiates its subcontract with the Contractor; or
  - (ii) such subcontract is otherwise terminated by the Contractor including for the subcontractor's default; or
- (b) pay any amount to the Contractor if:
  - (i) an Insolvency Event occurs with respect to the approved subcontractor or the subcontractor repudiates its subcontract with the Contractor; or
  - (ii) such subcontract is otherwise terminated by the Contractor including the subcontractor's default.

### **8.4 Subcontractor Warranties**

The Contractor must, as a condition precedent to Completion of the Works or the final Stage to reach Completion, procure and provide the Owner with those warranties described in the Contract Particulars from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty.

These warranties must be in the terms prescribed by the Contract (or if no terms are prescribed by the Contract, on reasonable commercial terms) and must be in favour of the Owner and will not derogate from any rights which the Owner may have against the Contractor in respect of the subject matter of these warranties.

### **8.5 Co-operation with Other Contractors**

The Contractor must permit Other Contractors to carry out their work, fully co-operate with Other Contractors, carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors and carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

The Owner will use its best endeavours to ensure that Other Contractors do not delay or disrupt the performance of the Contractor's Activities.

### **8.6 Setting out**

The Contractor must:

- (a) set out the Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

## **8.7 Plant, Equipment and Work**

The Contractor must not remove from the Site any plant, equipment and work without the Contract Administrator's prior written approval, except for the purpose of achieving Completion as contemplated under clause 8.8(b).

## **8.8 Cleaning Up**

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site and the Works or each Stage clean and tidy and free of refuse; and
- (b) as a condition precedent to Completion of the Works or a Stage, remove all rubbish, materials and plant, equipment and work from the part of the Site relevant to the Works or the Stage.

## **8.9 The Owner May Act**

The Owner may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract. The costs, expenses, losses and damages suffered or incurred by the Owner in so carrying out such a Contract obligation will be a debt due from the Contractor to the Owner.

## **8.10 Working Hours**

Unless otherwise agreed between the Contractor and the Contract Administrator, the hours of work applicable to the Contractor's Activities to be carried out on Site are those set out in the Contract Particulars.

## **8.11 Work Health and Safety**

The Contractor must carry out the Contractor's Activities safely and so as to protect persons and property.

Without limiting the previous paragraph, the Contractor must comply with the safety and other requirements described in Schedule 10.

Without limiting or otherwise affecting the obligations of the Contractor under any other provision of the Contract but subject to the final paragraph of this clause 8.11, the parties acknowledge and agree that:

- (a) the Owner has engaged the Contractor as principal contractor for the Contractor's Activities, the Works or each Stage and the Site including any work carried out by an Other Contractor on the Site prior to the Date of Completion of the Works or the final Stage to reach Completion;
- (b) the Owner authorises the Contractor to:
  - (i) have management and control of the Contractor's Activities, the Works and the Site; and
  - (ii) discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the WHS Regulation in connection with the Contractor's Activities, the Works and the Site including in respect of any work carried out by an Other Contractor on the Site prior to the Date of Completion of the Works or the final Stage to reach Completion;
- (c) the Contractor accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the WHS Act and WHS Regulation; and
- (d) to the extent that the Contractor is, for any reason, taken or otherwise found not to be the principal contractor for the Contractor's Activities, the Works or the Site or any work carried out by a Other Contractor on the Site prior to the Date of Completion of the Works or the final Stage to reach Completion, the Contractor shall discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of the Contractor's Activities, the Works and the Site and that work as if the Contractor was the principal contractor for the Contractor's Activities, the Works and the Site and that work.

Except as otherwise provided in subclause 1.1, all terms used in this clause 8.11 have the meanings given to them in the WHS Act and the WHS Regulation.

The Contractor indemnifies the Owner against any cost, expense, loss or damage suffered or incurred by the Owner

arising out of, or in any way in connection with, a breach by the Contractor of its obligations under this clause 8.111.

### **8.12 Provisional Sum Work**

For each item of Provisional Sum Work, the Contract Administrator will give the Contractor an instruction either deleting that item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the relevant work.

If any item of Provisional Sum Work is deleted from the Contract:

- (a) the Contract Price will be reduced by the amount allowed for the item of Provisional Sum Work in the Contract Particulars;
- (b) the Owner may engage an Other Contractor to carry out the item of Provisional Sum Work; and
- (c) the Owner will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, the deletion of the item of Provisional Sum Work.

### **8.13 Design of Provisional Sum Work - Owner**

If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Owner's designers will progressively prepare the Design Documentation for the item of Provisional Sum Work and the Contract Administrator will issue that Design Documentation to the Contractor.

The Contractor must attend such design and other meetings as required by the Contract Administrator to assist those designers in preparing the Design Documentation for the Provisional Sum Work and to advise upon:

- (a) buildability issues and the choice of materials to be incorporated in the Works;
- (b) the sufficiency and completeness of the Design Documentation; and
- (c) the coordination of the Design Documentation with the Works Description and any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.2.

### **8.13 Letting of Provisional Sum Work**

Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Contract Administrator, be carried out under subcontracts entered into by the Contractor as follows:

- (a) after the Design Documentation for the item of Provisional Sum Work has been prepared, the Contractor must invite tenders:
  - (i) from at least three persons as either specified in the Contract Particulars or otherwise proposed by the Contractor and approved by the Contract Administrator; and
  - (ii) on the terms of a subcontract consistent with the terms of the Contract and approved by the Contract Administrator;
- (b) the Contractor must give the Contract Administrator such details of each tender as the Contract Administrator may require;
- (c) the Contractor must recommend to the Contract Administrator which tenderer it believes should be accepted and, if this tenderer is not the lowest priced tenderer, it must give reasons why the lowest priced tenderer is not recommended; and
- (d) the Contractor must then enter into a subcontract with a tenderer as instructed by the Contract Administrator.

### **8.14 Price adjustment for Provisional Sum Work carried out under subcontracts**

After the Contractor is instructed to enter into a subcontract for an item of Provisional Sum Work under clause 8.12:

- (a) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount allowed in the Contract Particulars for that item

of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.17; and

- (b) any Variation to that work will be dealt with under clause 11.

### **8.15 Price adjustment for other Provisional Sum Work**

If the Contract Administrator directs that an item of Provisional Sum Work is not to be put out to tender in accordance with the procedure in clause 8.14, the Contract Price will be adjusted for the item of Provisional Sum Work by the difference between:

- (a) the amount allowed for the item of Provisional Sum Work in the Contract Particulars; and
- (b) either:
  - (i) an amount agreed between the Contractor and the Contract Administrator; or
  - (ii) if they fail to agree, an amount determined by the Contract Administrator under clause 11.2(a) or 11.2(c)(ii) as if the item of Provisional Sum Work were a Variation

### **8.16 Additional margin for Provisional Sum Work**

If, after each and every item of Provisional Sum Work has been deleted under clause 8.12, put out to tender under clause 8.13 or priced under clause 8.15, the total net increase to the Contract Price after all adjustments under clauses 8.12, 8.13 and 8.15 exceeds 10% of the total amount allowed in the Contract Particulars for Provisional Sum Work, the Contract Price will be further increased by the percentage set out in the Contract Particulars of the amount by which the total net increase to the Contract Price exceeds 10% of the total amount allowed in the Contract Particulars.

### **8.17 Environment**

Without limiting clause 8.2, the Contractor must comply with all Statutory Requirements relating to the protection of the environment.

The Contractor must make good and / or remediate any pollution, contamination or damage to the environment arising out of, or in any way in connection with, the Contractor's Activities and indemnifies the Owner against any cost, expense, loss or damage suffered or incurred by the Owner arising out of, or in any way in connection with, a breach by the Contractor of its obligations under this clause 8.17.

### **8.18 Relics**

Any things of value or archaeological or special interest found on or in the Site will, as between the parties, be the property of the Owner.

Where such an item is found the Contractor must:

- (a) immediately notify the Contract Administrator;
- (b) protect it and not disturb it further; and
- (c) comply with any instructions of the Contract Administrator in relation to the item.

The Contract Price will be increased by the extra costs reasonably incurred by the Contractor in complying with the Contract Administrator's instructions, as determined by the Contract Administrator.

## **9. QUALITY**

### **9.1 Construction**

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship of the standard prescribed in the Contract or to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Works and which is fit for its purpose stated in or reasonably able to be inferred from the Works Description;

- (b) use materials which comply with the requirements of the Contract or if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Works and of merchantable quality, which are fit for their purpose stated in or reasonably able to be inferred from the Works Description and consistent with the nature and character of the Works; and
- (c) comply with the requirements of the Contract and, to the extent they are not inconsistent, the requirements of the National Construction Code and all relevant standards of Standards Australia.

## **9.2 Contract Administrator's Right to Inspect**

The Contract Administrator may at any time inspect the Contractor's Activities.

## **9.3 Testing**

The Contractor must carry out all tests required by the Contract or directed by the Contract Administrator.

All tests are to be carried out in accordance with any procedure set out in the Contract which may apply to the tests or if no procedure exists, as reasonably directed by the Contract Administrator.

## **9.4 Defects**

Subject to clause 9.4(b), the Contractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period, the Contract Administrator discovers or believes there is a Defect, the Contract Administrator may give the Contractor an instruction specifying the Defect and doing one or more of the following:

- (a) requiring the Contractor to, at its cost, correct the Defect, or any part of it, and specifying the time within which this must occur; or
- (b) advising the Contractor that the Owner will accept the work, or any part of it, despite the Defect, in which case, the Contract Price will be reduced by the amount determined by the Contract Administrator which represents the cost of correcting the Defect (or the relevant part).

If the Contractor fails to comply with an instruction under paragraph (a), the Contract Administrator may have the Defect rectified by others and the cost thereby incurred shall be moneys due and owing from the Contractor to the Owner.

## **9.5 Extension of Defects Liability Period**

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.4(a) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Defect (or the relevant part).

## **9.6 Common law rights not affected**

Neither the Owner's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period or any extended Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Owner or Contract Administrator by this clause 9 or any other provision of the Contract;
- (b) the failure by the Owner or the Contract Administrator to exercise any such rights; or

any instruction of the Contract Administrator under clause 9.6.

## **10. TIME**

### **10.1 Progress and Time for Completion**

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) achieve Completion of the Works or each Stage by the relevant Date for Completion.

### **10.2 Programming**

The Contractor must, within 10 Business Days of the date of the Contract, give the Contract Administrator a construction program for its approval and the Contractor must update the program periodically to take into account changes to the program or delays which may have occurred (including any for which the Contractor is granted an extension of time under the Contract).

In conjunction with, and as part of the overall program lodged in accordance with this clause 10.2, the Contractor must lodge a Critical Path Program that shows all the Critical Path Activities, their dependencies and durations that establishes the critical path.

If the actual progress of the Contractor's Activities departs from that shown in the Critical Path Program by more than 5 days, or if the Contractor alters the sequence or durations of activities in a manner that changes the critical path, the Contractor must submit to the Contract Administrator for approval each month, a revised Critical Path Program which:

- (a) shows the Contractor's bona fide planned work activities and sequences for bringing the work under the Contract to Completion; and
- (b) is in a form and contains such other details as the Contract Administrator may require.

The Contractor shall not, without reasonable cause, depart from a construction program.

### **10.3 Notice of Delay**

If the Contractor is, or is likely to be, delayed by any cause in a manner which will delay it in achieving Completion of the Works or a Stage, the Contractor must give the Contractor Administrator written notice within 7 days after the commencement of the occurrence causing the delay.

### **10.4 Delays Entitling Claim**

If the Contractor is, or is likely to be, delayed:

- (a) prior to the Date for Completion of the Works or a Stage, by an Act of Prevention or a cause described in the Contract Particulars in a manner which will prevent it from achieving Completion of the Works or the Stage by the relevant Date for Completion; or
- (b) after the Date for Completion of the Works or a Stage, by an Act of Prevention in a manner which will delay it in achieving Completion of the Works or the Stage,

the Contractor may claim an extension of time.

### **10.5 Claim**

To claim an extension of time, the Contractor must:

- (a) within 14 days after the commencement of the occurrence causing the delay, submit a written claim to the Contract Administrator for an extension to the Date for Completion which gives detailed particulars of the delay and the occurrence causing the delay and states the number of days' extension of time claimed together with the basis of calculating that period, including evidence that it will be delayed in achieving Completion in the manner set out in clause 10.6(c); and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay,



submit a further written claim to the Contract Administrator every 14 days after the first written claim until 7 days after the end of the effects of the delay and containing the information required by paragraph (a).

#### **10.6 Conditions Precedent to Extension**

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written notice and claim required by clause 10.5 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor;
- (c) the Contractor must have actually been, or be likely to be, delayed by:
  - (i) prior to the Date for Completion of the Works or a Stage, an Act of Prevention or a cause described in the Contract Particulars in a manner which will prevent it from achieving Completion of the Works or the Stage by the relevant Date for Completion unless that date is extended; or
  - (ii) after the Date for Completion of the Works or a Stage, an Act of Prevention in a manner which will delay it in achieving Completion of the Works or the Stage; and
- (d) the cause of delay has delayed or will delay a Critical Path Activity.

#### **10.7 Extension of Time**

Subject to clause 10.8, if the conditions precedent in clause 10.6 have been satisfied, the Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Owner and the Contractor within 14 days of the Contractor's written claim under clause 10.5.

#### **10.8 Reduction in Extension of Time**

The Contract Administrator will reduce any extension to the Date for Completion it would otherwise have notified to the Owner and the Contractor under clause 10.7 to the extent that the Contractor contributed to the delay or failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

#### **10.9 Unilateral Extensions**

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 10, the Contract Administrator may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Owner, unilaterally extend any Date for Completion. The Contract Administrator is not required to exercise its discretion under this clause 10.9 for the benefit of the Contractor.

#### **10.10 Delay Costs**

This clause 10.10 applies unless the Contract Particulars state that it does not apply.

The Contractor will be entitled to be paid any extra costs directly incurred by the Contractor to a maximum of the amount in the Contract Particulars for each day by which the Date for Completion of the Works or a Stage is extended due to a breach of the Contract by the Owner or the Contractor encountering or finding a Latent Condition. The Contractor will not be entitled to make, nor will the Owner be liable upon, any Claim in these circumstances other than for the amount which is payable by the Owner under this clause 10.10.

Where there are two or more Stages, the maximum applies to all Stages in aggregate and not to each Stage.

#### **10.11 Suspension**

The Contract Administrator may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities.

The Contractor can only suspend the Contractor's Activities in accordance with clause 14.5 or as otherwise permitted by law.

If a suspension under this clause 10.11 or under clause 14.5 arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Owner arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
  - (i) an instruction to suspend under this clause 10.11 or a suspension under clause 14.5 will entitle the Contractor to:
    - (A) be paid by the Owner the extra costs reasonably incurred by it as a result of the suspension as determined by the Contract Administrator; and
    - (B) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.7;
  - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make any Claim against the Owner arising out of, or in any way in connection with, the suspension other than under this paragraph (b).

## **11. VARIATIONS**

### **11.1 Variation Price Request**

At any time prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.4), the Contract Administrator may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Owner is considering with respect to the Works or a Stage.

Within 14 days of the receipt of a "Variation Price Request" the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:

- (a) the adjustment to the Contract Price to carry out the proposed Variation; and
- (b) the effect which the proposed Variation will have on the then approved program, including each Date for Completion.

### **11.2 Directing Variations**

The Contractor shall not vary the Contractor's Activities except as directed in writing.

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 11.1, the Contract Administrator may, at any time prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.4), instruct the Contractor to carry out a Variation by a written document titled "Variation Order" in which the Contract Administrator will state one of the following:

- (a) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c).

If a Variation the subject of a Direction by the Contract Administrator omits or decreases any part of the Works, the Owner may thereafter carry out this omitted or decreased work either itself or by engaging Other Contractors and the Contractor will have no Claim in relation to that Variation.

### **11.3 Cost of Variation**

The Contract Price will be increased or decreased for all Variations which have been the subject of a Direction by the Contract Administrator by:

- (a) where clause 11.2(a) applies, the agreed amount; or
- (b) an amount determined by the Contract Administrator using any rates or prices which appear in the Works Description or Schedule of Rates to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation, to which will be added:

- (i) the following percentage or percentages of the amount determined:
  - (A) where the adjustment to the Contract Price is to be an increase, those percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
  - (B) where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
- (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor; or
- (c) to the extent paragraphs (a) and (b) do not apply, a reasonable amount:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Contract Administrator,
    - to which will be added:
    - (iii) the following percentage or percentages of the amount determined:
      - (A) where the adjustment to the Contract Price is to be an increase, those percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
      - (B) where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
    - (iv) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.

The Contractor shall not be entitled to any increase in the Contract Price or other payment for the costs or expenses which the Contractor may incur in measuring, pricing, negotiating, processing or administering any claim for the valuation of, any Variation.

#### **11.4 Variations requested by the Contractor**

The Contractor may, for its convenience, request the Contract Administrator to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Owner including the amount;
- (c) any benefits which will flow to the Owner from the Variation; and
- (d) a warranty by the Contractor to the Owner as to the effect which the Variation will have upon the Works including:
  - (i) whether or not any other part of the Works will no longer comply with any requirement under the Contract including any Statutory Requirement; and
  - (ii) any impact on the future cost of operating and maintaining the Works.

If the Contractor does not include a warranty as to the effects which the Variation will have upon the Works, the Contractor shall be deemed to warrant to the Owner in the request that the Variation shall have no detrimental impact on the Works or upon the future cost of operating and maintaining the Works.

#### **11.5 Contract Administrator's determination**

After a request is made by the Contractor in accordance with clause 11.4, the Contract Administrator will, in its absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or

- (b) approving the request either conditionally or unconditionally.

The Contract Administrator will not be obliged to exercise its discretion for the benefit of the Contractor:

### **11.6 Variations approved by the Contract Administrator**

If the Contract Administrator issues a written notice under clause 11.5(b) approving the Contractor's request under clause 11.4:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Owner arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Owner and this was accepted by the Contract Administrator under clause 11.8, the Contract Price will be reduced by the amount offered by the Contractor in its request (or otherwise agreed between the Owner and the Contractor); and
- (c) the Contractor will be responsible to the Owner for all parts of the Works or each Stage which are in any way affected by the Variation and not included in the Contractor's report under clause 11.4 (including for breach of warranty provided in the report provided under clause 11.4).

### **11.7 Pre-Priced Variations**

- (a) The Contractor acknowledges and agrees that if the Contract Administrator issues a Variation Order under clause 11.2 directing a Pre-Priced Variation on or before the relevant Pre-Priced Variation Date, then:
  - (i) the Works shall be deemed to include or exclude (as the case may be) the relevant Pre-Priced Variation;
  - (ii) the Contract Price shall be increased or decreased (as the case may be) by the relevant Pre-Priced Variation Price; and
  - (iii) the Owner shall not be liable for, and Contractor shall not be entitled to make, any other Claim arising out of or in any way in connection with the Pre-Priced Variation or the direction of the Pre-Priced Variation (including, for the avoidance of doubt, any claim to an extension of time or delay costs).
- (b) For the avoidance of doubt, Clause 11.3 shall not apply in respect of the Pre-Priced Variation.
- (c) Nothing in this clause 11.7 will limit or otherwise affect the right of the Contract Administrator to issue a Variation Order under clause 11.2 in respect of a Pre-Priced Variation after the relevant Pre-Priced Variation Date, in which case the variation will be priced under clause 11.3 and the Contractor's other entitlements will be as provided for under the Contract.

## **12. PAYMENT**

### **12.1 Payment Obligation**

Subject to clause 12.8 and to any other right to set-off which the Owner may have, the Owner must pay the Contractor the Contract Price and any other amounts which are payable by the Owner to the Contractor under the Contract.

### **12.2 Payment Claims**

The Contractor must give the Contract Administrator claims for payment on account of the Contract Price and any other amounts payable by the Owner to the Contractor under the Contract at the times stated in the Contract Particulars and within the format and including such evidence reasonably required by the Contract Administrator of the value of work completed in accordance with the Contract and the amount claimed.

The Contractor must, with the first payment claim made by the Contractor under this clause 12.2, provide to the Contract Administrator a proposed cash flow setting out the anticipated payments on account of the Contract Price up to and including the Date of Completion. The Contractor must update this cash flow from time to time based on payments by the Owner under clause 12.4 and provide copies of such updates to the Contract Administrator.

### **12.3 Payment Schedule**

The Contract Administrator must within the time period stated in the Contract Particulars of receiving a payment claim under clause 12.2 give the Contractor and the Owner a payment schedule which sets out the Contract Administrator's determination as to:

- (a) the value of work completed in accordance with the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Owner is entitled to retain as retention moneys under clause 4.1 (if any); and
- (d) the amount then payable by the Owner to the Contractor on account of the Contract Price and otherwise under the Contract,

together with the reasons for any difference in the amount set out as then payable from the amount in the Contractor's payment claim.

The Contract Administrator may, in any payment schedule correct any error in any previous payment schedule and modify any previous payment schedule, issued by the Contract Administrator.

The issue of a payment schedule by the Contract Administrator does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the payment schedule has been satisfactorily carried out in accordance with the Contract.

### **12.4 Payment**

Subject to clause 12.8, the Owner must within the time period stated in the Contract Particulars of receiving a payment claim under clause 12.2, pay the Contractor the amount set out as then payable in the payment schedule, less any amounts disclosed as unpaid under clause 12.9. The Owner is not obliged to pay any amounts disclosed as unpaid under clause 12.9 until the Contractor produces evidence to the reasonable satisfaction of the Contract Administrator that the amounts have been paid to the relevant persons.

Interest at the rate set out in the Contract Particulars shall be due and payable after the date of default in payment.

### **12.5 Payment on Account**

Any payment of moneys under clause 12.4 is not evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract, an admission of liability or approval by the Owner or the Contract Administrator of the Contractor's performance or compliance with the Contract, but is only to be taken as payment on account.

### **12.6 Unfixed Goods and Materials**

The Owner shall not be liable to pay for unfixed goods and materials unless they are listed in the Contract Particulars.

Unfixed goods and materials to which this clause 12.6 applies will not be included in the value of work in a payment schedule under clause 12.3 unless:

- (a) the Contractor gives the Contract Administrator with its payment claim under clause 12.2:
  - (i) additional Approved Security equal to the payment claimed for the unfixed goods and materials; and
  - (ii) such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in the Owner upon payment;
- (b) the unfixed goods and materials are clearly marked as the property of the Owner and are on the Site or available for immediate delivery to the Site;
- (c) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator; and

- (d) if the PPS Law applies, has registered a Security Interest in the unfixed plant or materials in favour of the Owner in accordance with clause 19 and has provided evidence to the Contract Administrator (in a form satisfactory to the Owner) that the Contractor has registered a Security Interest in favour of the Owner in the unfixed plant or materials.

Upon payment of a payment schedule which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Owner.

If the Contractor has given the Owner additional Approved Security for payment for unfixed goods and materials, the Owner must release it to the Contractor once those goods and materials are incorporated into the Works.

### **12.7 Final Payment Claim and Notice**

Within 28 days after the end of the Defects Liability Period, the Contractor must give the Contract Administrator:

- (a) a payment claim which must include all amounts which the Contractor claims from the Owner on account of the Contract Price or otherwise under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Owner,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the Defects Liability Period for the Works or the final Stage to reach Completion.

The payment claim, and notice required under this clause 12.7, are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

### **12.8 Right of Set-Off**

The Owner may:

- (a) deduct from moneys otherwise due to the Contractor:
  - (i) any debt or other moneys due from the Contractor to the Owner; and
  - (ii) any claim to money which the Owner may have against the Contractor whether for damages (including liquidated damages) or otherwise,whether under the Contract or otherwise; and
- (b) without limiting paragraph (a) of this clause 12.8, deduct from moneys otherwise due to the Contractor any amount that the Owner is obliged to withhold from payment to the Contractor pursuant to the Security of Payment Act.

Nothing in this 12.8 affects the right of the Owner to recover from the Contractor the whole of the debt or claim or any balance that remains owing.

This clause 12.8 will survive any termination of the Contract.

### **12.9 Payment of Workers and Subcontractors**

The Contractor must with each payment claim under clause 12.2 provide the Contract Administrator with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by the Contract Administrator, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subcontractors):
  - (i) all workers who have at any time been employed by the Contractor on the Contractor's Activities have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities; and

- (ii) all subcontractors and consultants have been paid all moneys due and payable to them in respect of the Contractor's Activities;
- (b) documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the Contractor's Activities; and
- (c) a supporting statement required by section 13 of the Security of Payment Act.

#### **12.10 Subcontractor suspension**

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

### **13. COMPLETION**

#### **13.1 Completion**

The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Completion of the Works or a Stage.

The Contract Administrator must promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under the paragraph above, inspect the Works or the Stage and give to the Contractor either a Notice of Completion evidencing the Date of Completion of the Works or the Stage or written reasons for not doing so.

If the Contract Administrator is of the opinion that Completion of the Works or a Stage has been reached, the Contract Administrator may issue a Notice of Completion for the Works or the Stage.

A Notice of Completion will not constitute approval by the Owner of the Contractor's performance of its Contract obligations, be taken as an admission or evidence that the Works or the Stage comply with the Contract or prejudice any rights or powers of the Owner or Contract Administrator.

Upon the issue of a Notice of Completion, the Contractor must hand over the Works or the Stage to the Owner and the Contractor must correct all minor Defects listed in the Notice of Completion as soon as possible after the Date of Completion.

#### **13.2 Liquidated Damages**

If the Date of Completion of the Works or a Stage has not occurred by the relevant Date for Completion, the Contractor must pay liquidated damages at the rate specified in the Contract Particulars for every day after the Date for Completion of the Works or the Stage until the Date of Completion of the Works or the Stage or the Contract is terminated, whichever is first. This amount is an agreed genuine pre-estimate of the Owner's damages if the Date of Completion of the Works or a Stage does not occur by the relevant Date for Completion. The amount payable under this clause 13.2 will be a debt due from the Contractor to the Owner.

If the first paragraph of this clause 13.2 is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the Owner from recovering liquidated damages for the Contractor's failure to achieve Completion of the Works or a Stage by the relevant Date for Completion, the Owner shall be entitled to recover damages from the Contractor for such failure under general law, which damages will not be limited to the liquidated damages that the Owner would otherwise have been entitled to recover from the Contractor under that paragraph.

The Contractor's liability under this clause 13.2 is exclusive of any liability the Contractor has or may have under clause 20.

#### **13.3 Parts of the Works or a Stage**

The Owner may, after written notice is given to the Contractor by the Contract Administrator occupy or use any part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.

If any such notice is given by the Contract Administrator:

- (a) the Owner must allow the Contractor reasonable access to the part of the Works or the Stage referred to in the notice and being occupied or used by the Owner, to enable the Contractor to bring the Works, or the relevant Stage of which the area being occupied or used forms part, to Completion; and
- (b) this will not otherwise limit or affect the obligations of the parties under the Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Stage of which the area being occupied or used forms part by the relevant Date for Completion.

#### **13.4 Maintenance**

During the Defects Liability Period for the Works or each Stage, the Contractor must carry out any maintenance services required by the Works Description.

### **14. TERMINATION**

#### **14.1 Preservation of Rights**

Subject to clause 14.7, nothing in this clause 14 or that a party does or fails to do pursuant to this clause 14 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

#### **14.2 Contractor Default**

The Owner may give a written notice under clause 14.4 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities otherwise in accordance with clause 14.5 or as permitted by law or otherwise does not proceed with the Contractor's Activities regularly and diligently;
- (c) fails to provide security as required by clause 4.1;
- (d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.5 or 5.7;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any Direction of the Contract Administrator made in accordance with the Contract; or
- (g) is otherwise in substantial breach of the Contract.

#### **14.3 Owner Default**

The Contractor may give a written notice under clause 14.4 to the Owner, if the Owner:

- (a) fails, for the period in excess of 10 Business Days, to provide the Contractor with access to the Site as required by clause 2.2(a);
- (b) fails to pay the Contractor an amount due and payable under the Contract;
- (c) fails to appoint a person to act as the Contract Administrator; or
- (d) is otherwise in substantial breach of the Contract.

#### **14.4 Contents of Notice of Default**

A notice under this clause 14.4 must state:

- (a) that it is a notice under clause 14.4;
- (b) the breach relied upon; and
- (c) that the party giving the notice requires the other party to remedy the breach within 14 days of receiving the



notice.

#### **14.5 Termination for Insolvency or Breach**

If:

- (a) an Insolvency Event occurs to a party, or where a party comprises 2 or more persons, to any one of those persons; or
- (b) a party does not remedy a breach of Contract the subject of a notice under clause 14.4 within 14 days of receiving the notice under clause 14.4,

then:

- (c) where that party is the Contractor, the Owner may by written notice to the Contractor terminate the Contract; or
- (d) where that party is the Owner, the Contractor may by written notice to the Owner:
  - (i) suspend the whole or any part of the Contractor's Activities; and
  - (ii) if within 7 days after the date of this suspension the Owner fails:
    - (A) to remedy the breach; or
    - (B) if the breach is not capable of remedy or in the case of an Insolvency Event, to make arrangements reasonably satisfactory to the Contractor,terminate the Contract.

The Contractor may at any time it sees fit remove a suspension under this clause 14.5.

#### **14.6 Owner's Entitlements after Termination**

Subject to clause 14.1, if the Owner terminates the Contract under clause 14.5 or if the Contractor repudiates the Contract and the Owner otherwise terminates the Contract:

- (a) the Owner will:
  - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Contractor's plant and all materials, equipment and other things intended for the Works that are located on or adjacent to the Site;
  - (ii) be entitled to require the Contractor to novate to the Owner or the Owner's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Owner; and
  - (iii) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.6 or a payment schedule under clause 12.7; and
  - (iv) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Contractor must immediately hand over to the Owner all copies of:
  - (i) any documents provided by the Owner under the Contract; and
  - (ii) Contractor Documentation prepared by the Contractor to the date of termination (whether complete or not).

#### **14.7 Contractor's Entitlements after Termination**

If the Contractor terminates the Contract under clause 14.5 or if the Owner repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and

- (b) not be entitled to a quantum meruit.

This clause 14.7 will survive the termination of the Contract.

#### **14.8 Termination for Convenience**

Without prejudice to any of the Owner's other rights under this Contract, the Owner may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Owner's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging Other Contractors.

#### **14.9 Costs**

If the Owner terminates the Contract under clause 14.8, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Contract Administrator:
  - (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
  - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:
    - (A) the value of the goods or materials is not included in the amount payable under sub-paragraph (i); and
    - (B) title in the goods and materials will vest in the Owner upon payment;
  - (iii) the reasonable cost of removing from the Site all labour, the Contractor's plant and equipment and other things used in the Contractor's Activities; and
- (b) must:
  - (i) take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii) and (a)(iii); and
  - (ii) immediately hand over to the Owner all copies of:
    - (A) documents provided by the Owner under the Contract; and
    - (B) Contractor Documentation prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.9 will be a limitation upon the Owner's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Owner arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.9.

This clause 14.9 will survive the termination of the Contract by the Owner under clause 14.8.

### **15. DISPUTES**

As a condition precedent to litigation, where a dispute or difference arises between the Contractor and the Owner, or between the Contractor and the Contract Administrator, in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or a Stage or the Contract, or either party's conduct before the Contract was entered into, either party may give a notice in writing to the Contract Administrator and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and

- (c) the position which the party believes is correct.

If after giving the notice of dispute referred to in the paragraph above, the parties cannot resolve, or agree upon a procedure to resolve, the dispute or difference within such period of time as these persons may agree in writing, the dispute or difference may be referred by either party to litigation.

Despite the existence of a dispute or difference between the parties the Contractor must continue to carry out the Contractor's Activities and otherwise comply with its obligations under the Contract.

## **16. NOTICES**

Any notice to be given or served under or arising out of a provision of this Contract must be in writing and delivered by hand or sent by registered post or email, as the case may be, to the relevant address or facsimile number:

- (a) stated in the Contract Particulars; or
- (b) last notified in writing to the party giving the notice,

for the party to whom or upon which the notice is to be given or served.

In the case of a notice given or served by email, the notice will be deemed given or served:

- (c) subject to clause 16(d), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; or
- (d) if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

## **17. GST**

Each party warrants to the other that it is registered for GST. Amounts payable under the Contract do not include GST unless otherwise stated and if the amount payable under the Contract does not include GST, the Owner must pay the Contract Price plus the applicable GST.

## **18. PROPORTIONATE LIABILITY**

The parties agree that, to the extent permitted by law, the operation of the Proportionate Liability Acts are excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort (including negligence) or otherwise at law or in equity. The Contractor must ensure that a provision equivalent to this clause 18 is included in all subcontracts and consultant agreements.

## **19. PERSONAL PROPERTY SECURITIES ACT**

### **19.1 Further Assurances**

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

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

### **19.2 Contracting out of PPS Act**

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

### **19.3 Acknowledgments and undertakings**

The Contractor:

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

### **19.4 Requests for information**

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

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

## **20. CLUB OPERATIONS**

### **20.1 Further Assurances**

The Contractor acknowledges and agrees that:

- (a) the Owner will continue to operate the Thurgoona Country Club (**Club**) during the performance of the Contractor's Activities and the carrying out of the Works;
- (b) part of the operations of the Club include gaming machines which generate significant revenue for the Club; and
- (c) the Contractor must perform the Contractor's Activities and carry out and complete the Works, in a way that avoids any interference or other interruption to the operation of the Club's gaming machines.

Without limiting or otherwise affecting clause 20.1(c), the Contractor must:

- (d) ensure that all services (including electricity) of whatsoever nature and description servicing the Club's operations are not interfered with or otherwise interrupted during normal Club trading hours by reason of the performance of the Contractor's Activities, or the carrying out or completion of the Works or any Stage, without the prior written consent of the Contract Administrator. The Contractor must provide reasonable prior notice of planned interference or interruption of such services and acknowledges and agrees any consent under this clause 20.1(d) may be given by the Contract Administrator subject to conditions;
- (e) comply with the directions of the Contract Administrator relating to or concerning the continuation of the Club operations; and
- (f) indemnify the Owner against any cost, expense, loss or damage suffered or incurred by the Owner arising out of, or in any way in connection with, any breach by the Contractor of this clause 20.

**SCHEDULE 1 - CONTRACT PARTICULARS**

**CLAUSE 1 - GLOSSARY OF TERMS**

**Adjoining Land:**  
(Clause 1.1)

Nil

**Completion - Conditions precedent to Completion:**  
(Clause 1.1)

Works/All Stages

- 1 The Contractor has provided to the Contract Administrator the documents and other information required under the Contract to be provided at or prior to Completion.
2. The Contractor has completed training required under the Contract for all of the Owner's staff in relation to the operation and maintenance of the Works or the Stage.
3. The Contractor has obtained and provided to the Contract Administrator a certificate of occupancy (or equivalent in respect of complying development) in respect of the Works or the Stage in accordance with the any relevant Statutory Requirement
4. The Contractor has performed or satisfied the requirements in Schedule 9.

**Contract - Other documents forming part of the Contract:**  
(Clause 1.1)

1 Schedules 2 and 4 – ##13 (inclusive)

The documents described in Schedule 3 do not form part of the Contract.

**Contract Administrator:**  
(Clause 1.1)

##AKPS

**Contract Price:**  
(Clause 1.1)

The lump sum of \$## (exclusive of GST) which is not, unless elsewhere stated in the Contract, subject to rise and fall in costs or prices and as is more particularly described in the Contract Price Breakdown.

**Contractor Documentation:**  
(Clause 1.1)

##

**Contractor's Representative:**  
(Clause 1.1)

##

<b>Date for Completion:</b> (Clause 1.1)	## 2024		
<b>Defects Liability Period:</b> (Clauses 1.1 and 9.5)	Twelve (12) months.		
<b>Information Documents:</b> (Clause 1.1)	The documents described in Schedule 3.		
<b>Owner's Risks:</b> (Clause 1.1)	Nil		
<b>Provisional Sum Work:</b> (Clauses 1.1, 8.12(a), 8.14(a), 8.15(a) and 8.16)	Work or goods	Amount (ex GST)	Designer
	##		
<b>Public Liability Insurance and Works Insurance– Additional insureds:</b> (Clauses 1.1 and 5.4)	The owners of any Adjoining Land (if any).		
<b>Schedule of Rates:</b> (Clause 1.1)	The schedule of rates in Schedule 5.		
<b>Site:</b> (Clause 1.1)	The Site described in the Site plan that forms part of the Works Description		
<b>Stages of the Works:</b> (Clause 1.1)	Not applicable		

**Works:**  
(Clause 1.1)

The Works comprise ##, as more particularly described in the Works Description.

**Works Description:**  
(Clause 1.1)

The document or documents described in Exhibit 1.

**CLAUSE 2 - COMMENCEMENT**

**Date for commencement on the Site:**  
(Clauses 2.1(b) and 2.2(a)(ii))

##

**Pre-conditions to Site access:**  
(Clause 2.2(a)(i))

##

**CLAUSE 3 - PERSONNEL**

**Contractor's key people:**  
(Clause 3.3(a))

<b>Person</b>	<b>Position</b>	<b>% time on project</b>
##	Contractor's Representative	As required by clause 3.2 of the Conditions of Contract
##	Project Manager	##%
##	Site Manager	100%
##	##	##

**CLAUSE 4 – SECURITY**

**Security to be provided by the Contractor:**  
(Clause 4.1)

**Amount and Form:**

Security is required for 5% of the original Contract Price by way of two (2) separate Approved Securities each for 2.5% of the original Contract Price.

**Guarantee – named person**  
(Clause 4.5)

Not applicable

**CLAUSE 5 - RISKS AND INSURANCE**

**Insurance policies required to be effected by the Owner:**  
(Clauses 1.1 and 5.4)

Nil

**Insurance policies required to be effected by the Contractor:**  
(Clause 5.5(a))

**Works Insurance**

Amount of Cover

a) Contract Price plus 20%.

plus

Excess - \$25,000 each and every claim

**Public Liability Insurance**

Amount of Cover

\$20 million in respect of any one occurrence

Excess:

\$25,000 each and every claim

**Workers Compensation Insurance**

Amount of Cover: Not less than the minimum amount required by relevant Statutory Requirements

**Professional Indemnity Insurance**

\$10 million

**Period for maintenance of Professional Indemnity Insurance:**  
(Clause 5.7(c))

7 years



**CLAUSE 6 - DESIGN AND DOCUMENTATION**

**Documents and number of copies to be provided by Owner:**  
(Clause 6.1)

<b>Documents</b>	<b>No of copies</b>
Works Description	1
Any other Design Documentation prepared by or on behalf of the Owner after the date of the Contract	1

**Number of copies of Contractor Documentation to be submitted by the Contractor to the Owner:**  
(Clause 6.5)

Two hard copies and two electronic copies in a format reasonably required by the Contract Administrator (provided that all drawings must be in both pdf and dwg format).

**Order of precedence of Contract documents:**  
(Clause 6.9(a))

- Formal Agreement
- Conditions of Contract
- Contract Particulars
- Schedules 2 and 4 to ##13 (inclusive)
- Works Description

**Number of copies:**  
(Clause 6.10(d))

##One (1)

**CLAUSE 7 – THE SITE**

**Persons who may access the Site:**  
(Clause 7.3(b))

The Owner’s maintenance contractors.

**Latent Conditions margin:**  
(Clause 7.7(c)(iii))

##%

**CLAUSE 8 - CONSTRUCTION**

**Existing Approvals and Other Approvals Which the Owner is to Obtain:**

(Clauses 8.2 and 8.2(b)(i))

##The Owner has obtained development consent under the *Environmental Planning and Assessment Act 1979* (NSW). The Contractor must satisfy all conditions of the development consent, except any the satisfaction of which are allocated to the Owner in the matrix in Schedule 8.

##The Owner will also obtain any construction certificates required to be obtained under section 6.7 of the *Environmental Planning and Assessment Act 1979* (NSW).

The Contractor must provide any document, other information or assistance reasonably required by the Owner or the Contract Administrator to enable the Owner to obtain any such construction certificate.

**Approved Subcontractors:**

(Clause 8.3A)

Work	Approved Subcontractor
------	------------------------

##

##

##

##

**Warranties required to be procured by the Contractor from Subcontractors:**

(Clause 8.4)

Those warranties for the elements of the Works and for the relevant periods stated in Schedule 6 in the form of Schedule 7.

**Working Hours for Contractor's Activities on Site:**

(Clause 8.10)

As permitted by relevant Statutory Requirements

**Contractor to Invite Tenders for Provisional Sum Work from the Following Tenderers:**

(Clause 8.14(a)(i))

<b>Work</b>	<b>Tenderers</b>
-------------	------------------

Not applicable

**Percentage for Additional Profit and Attendance for Provisional Sum Work Exceeding Provisional Sum Allowance by 10%:**

(Clause 8.16)

##

**CLAUSE 10 - TIME**

**Causes of delay entitling Contractor to Claim an Extension of Time:**

(Clauses 10.4(a) and 10.6(c)(i))

Industrial disputes beyond the reasonable control of the Contractor or any subcontractor

Owner's Risks

A change in a Statutory Requirement after the date of the Contract that materially impacts on the Works or the Contractor's Activities (excluding a COVID-19 Change in Statutory Requirement)

Unreasonable delay by an authority with statutory jurisdiction over a part of the Works in issuing an approval

The Contractor encounters or finds a Latent Condition

Inclement weather at the Site, provided that the Contractor will not be entitled to an extension of time under the Contract in respect of inclement weather at the Site unless and until the Contractor has been delayed, in aggregate, by 18 working days

As a direct result of the COVID-19 virus (being the disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020), there are, after the date of the Contract, restrictions imposed by Statutory Requirements that restrict or otherwise affect the movement of labour, or cause shortages of or delays to the provision of materials, provided that the Contractor has taken all reasonable steps to prevent and mitigate such restrictions, affectations, shortages or delays

Natural catastrophes such as flood, fire, earthquake, hurricane, typhoon or volcanic activity, except to the extent caused or contributed to by the Contractor or any of its subcontractors.

**Delay Costs**

(Clause 10.10)

Clause 10.10 does apply

Where clause 10.10 applies, the maximum amount payable is \$## per working day as shown in the approved program.

This maximum applies whether there is a single Works or two or more Stages. It does not apply to each Stage.

**CLAUSE 11 - VARIATIONS**

**Percentage adjustments for valuing a Variation:**

(Clause 11.3(b) and 11.3(c))

##% of amount determined for non-time related on-site overheads and preliminaries

##% of amount determined for off-site overheads and profit

**CLAUSE 12 - PAYMENT**

**Times for submission of payment claims by the Contractor to Contract Administrator:**

(Clause 12.2)

Monthly on the last Business Day of each month

**Time for provision of payment schedules by Contract Administrator following receipt of a payment claim:** 10 Business Days  
(Clause 12.3)

**Time for payment by Owner following receipt of a payment claim:** 15 Business Days  
(Clause 12.4)

**Interest Rate on overdue payments:** RBA Cash rate plus 2%  
(Clause 12.4)

**Unfixed goods and materials that may be claimed by the Contractor:** ##  
(Clause 12.6)

**CLAUSE 13 - COMPLETION**

**Liquidated Damages payable by Contractor when Date of Completion occurs after Date for Completion:** \$## per calendar day  
(Clause 13.2)

**CLAUSE 16 - NOTICES**

**Address and Facsimile Number, for the giving or serving of notices, upon:**  
(Clause 16)

**Owner:**

As stated in the Formal Agreement

Attention: Dave Vidler  
Email: DaveV@liverpoolcatholic.com.au

**Contract Administrator:**

##AKPS

Attention: Steve Yann  
Email: syann@akps.com.au

**Contractor:**

Name: ##  
Address: ##  
Attention: ##  
Email: ##

**SCHEDULE 2 - UNCONDITIONAL UNDERTAKING**

(Clause 4.1)

## SCHEDULE 3 – INFORMATION DOCUMENTS

1. ##

**SCHEDULE 4 – CONTRACT PRICE BREAKDOWN**

The Contract Price of \$## plus GST is detailed below:

**SCHEDULE 5 – SCHEDULE OF RATES**

(Clause 1.1)



**SCHEDULE 6 – WARRANTY ITEMS AND PERIODS**

(Clause 8.4)

<b>Item</b>	<b>Period (commencing on the Date of Completion)</b>

**SCHEDULE 7 – WARRANTY FORM**

(Clause 8.4)

**EXECUTED** as a deed poll.

**THIS DEED POLL** is made on ....., 20....  
by ..... ABN ..... of  
..... ("**Subcontractor**")

**RECITALS**

- A. Liverpool Catholic Club Limited (ABN 78 000 874 073) ("**Owner**") and ## (ABN ##) ("**Contractor**") are parties to a head contract ("**Contract**") in respect of the project known as the ## project ("**Works**").
- B. The Contractor and the Subcontractor are parties to a subcontract ("**Subcontract**") pursuant to which the Subcontractor agreed to carry out work and/or supply products ("**Subcontract Works**"), which form part of the Works.
- C. It is a requirement of the Contract that the Contractor procure the Subcontractor to warrant in favour of the Owner that the Subcontract Works will comply with the Subcontract.
- D. The Subcontractor has agreed to execute this Deed Poll.

**THE SUBCONTRACTOR COVENANTS, WARRANTS AND AGREES** with and for the benefit of the Owner as follows:

- 1. Each element of the Subcontract Works specified in the Schedule will for the period specified in the Schedule ("**Warranty Period**") commencing on the Date of Completion of the Works under the Contract, satisfy the requirements of the Subcontract.
- 2. The Owner may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 1.
- 3. The Subcontractor must at its cost:
  - (a) make good, to the reasonable satisfaction of the Owner, any element of the Subcontract Works which, within the relevant Warranty Period, is found to be of a lower standard or quality than referred to in clause 1 (including any part of the Subcontract Works the subject of a notice given by the Owner under clause 1); and
  - (b) restore or make good the Works after satisfying its obligations under clause 3(a).
- 4. If the Subcontractor fails to carry out and complete the works specified in the Owner’s notice under clause 2 within a reasonable period specified for completion in the Owner’s notice, the Owner may have that work carried out by others and the amount incurred by the Owner will be a debt due and payable by the Subcontractor to the Owner.
- 5. Despite clause 4, the Owner may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1.
- 6. The liability of the Subcontractor under this Deed Poll is reduced to the extent a breach of clause 1 is caused or contributed to by:
  - (a) mishandling, damage before installation, or incorrect installation, in each case caused by others;
  - (b) normal wear and tear; or

- (c) incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor.
- 7. This Deed Poll comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Owner.
- 8. The Owner may assign the benefits and rights accrued under this Deed Poll.
- 9. This Deed Poll shall not be revoked or otherwise modified without the prior written consent of the Owner.
- 10. This Deed Poll is governed by the laws of the State or Territory in which the Works are situated.

**SCHEDULE**

Element of Subcontract Works	Warranty Period
##	

**EXECUTED** as a deed poll.

**EXECUTED** by [## SUBCONTRACTOR] )  
 ABN ## in accordance with section 127 of the )  
*Corporations Act 2001* (Cth) by authority of its )  
 Directors: )  
 )

.....  
 Signature of Director

.....  
 Signature of Director/Company Secretary\*

**\*delete whichever is not applicable**

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

.....  
 Name of Director/Company Secretary\* (please print)

**\*delete whichever is not applicable**

**SCHEDULE 8 – DEVELOPMENT CONSENT MATRIX**

(Clause 8.2)

## **SCHEDULE 9 – COMPLETION REQUIREMENTS**

(Clause 1.1)

1. The Contractor has provided to the Contract Administrator one (1) electronic (in a format approved by the Contract Administrator) copy of the following documents:
  - a) operation and maintenance manuals as the Contract Administrator may reasonably nominate;
  - b) "as-built" and "as-installed" drawings approved by the Contract Administrator reflecting the Works in graphic form. The drawings must consist of the approved drawings in CADD, secure .pdf format and paper prints; and
  - c) spare parts list for items of plant and equipment as may be nominated by the Contract Administrator.
2. The Contractor has completed the training reasonably required by the Contract Administrator for all of the Owner's maintenance and other key staff nominated by the Contract Administrator in relation to the operation and maintenance of the Works.
3. The Contractor has provided to the Contract Administrator:
  - a) all warranties and guarantees required by the Contract;
  - b) any certificate or approval required to be obtained from an Authority prior to the Owner being able to use and occupy the Works for its intended purpose;
  - c) all spare materials required to be handed over by the Contract;
  - d) a register (or report) of the residual hazards, risks or control measures that are transferred back to the Owner in the ongoing management of the workplace. In particular, any work required at height or within a confined space.
4. The Contractor has completed the following tasks:
  - a) the removal of all rubbish and Plant, Equipment and Work from the Site and from the Works;
  - b) the washing, cleaning and polishing of all facade surfaces as required;
  - c) make good of all disturbed areas to their condition prior to commencement (or better);
  - d) the replacement of any fixtures and fittings removed to enable façade replacement works and demonstration that they are in full working order;
  - e) the cleaning of all glass including but not limited to windows, skylights and other external glazing to a shine finish.

## **SCHEDULE 10 – SAFETY REQUIREMENTS**

### **1 General WHS obligations**

- a) The Contractor must as far as practicable in connection with the execution of the Contractor's Activities ensure the health and safety of all persons including members of the public, the Contractor's employees, Subcontractors and agents engaged in respect of the Works.
- b) The Contractor must implement and maintain, and at the request of the Contract Administrator demonstrate, a system of obtaining and updating information on Statutory Requirements and codes of practice dealing with WH&S.
- c) The Contractor must ensure, and at the request of the Contract Administrator demonstrate, that it has in place and complies with safe systems for and in relation to the execution of the Contractor's Activities in accordance with:
  - i) all relevant compliance codes and codes of practice;
  - ii) the WHS Act,taking into account specific site risks and considerations as reasonably determined by the Contract Administrator and notified to the Contractor.
- d) The Contractor must implement, and ensure that its Subcontractors implement, appropriate management plans which incorporate all necessary WHS Act and environment obligations and duties and on a monthly basis confirm compliance and monitoring of same is occurring.
- e) The Contractor must ensure that each person, including its employees, Subcontractors and consultants, undergo an occupational health and safety induction prior to entering or working on the Site.
- f) Where the Contractor's Activities include design responsibilities, the Contractor must ensure that the building, the structure or part thereof the subject of the design is designed to be safe and without risk to persons using the building, structure or part thereof.
- g) The Contractor must immediately give written notice to the Contract Administrator in the event of:
  - i) any injuries to any person while carrying out the Contractor's Activities;
  - ii) any injuries to any person while the person is on the Site;
  - iii) any claim made pursuant to the Works Compensation Insurance, or brought in respect of personal injury and arising out of or in connection with the performance of the Contractor's Activities; or
  - iv) any notifiable incident within the meaning of the WHS Act and any enforcement measure within the meaning of the WHS Act.

The Contractor must thereafter give all such information and do all things necessary to allow, and must assist, the Owner and the Contract Administrator to promptly investigate and monitor any event referred to in paragraphs (g).

### **2 WH&S indemnity**

The Contractor acknowledges that its acts or omissions may affect the ability of the Owner to comply with duties and obligations arising under the WHS Act. The Contractor must ensure, so far as is practicable, that it does not by its acts or omissions cause or contribute to any breach by the Owner of any provisions of the WHS Act and must

take all steps as are practicable to assist the Owner in complying with the provisions of the WHS Act. The Contractor must indemnify the Owner to the extent permitted by law in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of the WHS Act by the Owner to which the Contractor has contributed by a breach of the Contract by the Contractor. The indemnity given under this paragraph does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under this Contract.

### **3 Safety Reporting**

The Contractor must:

- a) immediately notify the Contract Administrator of any potentially or actually hazardous incident or accident that occurs during the carrying out of the Contractor's Activities whether or not the incident or accident resulted in injury or damage;
- b) within 3 Business Days after any such incident or accident occurring, provide the Contract Administrator with a report setting out complete details of the incident or accident, including the results of any investigations into its causes and any recommendations or strategies for future prevention; and
- c) provide the Contract Administrator, quarterly or more frequently on request by the Contract Administrator, with a copy of all registers, records and documents that the Contractor is required to prepare or maintain as a principal contractor under the WHS Act.

### **4 Induction and management of Other Contractor's WH&S**

As principal contractor for the purpose of the WHS Act, the Contractor is responsible for WHS matters at the Site.

The Contractor must:

- a) perform WHS inductions for Other Contractors; and
- b) manage overall Site safety.

The Principal must use its best endeavours to ensure that Other Contractors comply with the Contractor's directions in relation to WHS.

### **5 Breach**

- a) If the Contractor fails to comply with this Schedule 10 (or any other work, health and safety obligation of the Contractor), the Contract Administrator may:
  - i) require the Contractor to remedy the breach; and
  - ii) direct the Contractor to suspend carrying out the Contractor's Activities until such time as the Contractor remedies the breach to the satisfaction of the Contract Administrator.
- b) If the Contractor Administrator directs the Contractor to suspend work in accordance with this paragraph (a):
  - i) the Contractor will not be entitled to payment from the date of the suspension until the breach is rectified and is not entitled to any extension of any Date for Completion in relation to the suspension;
  - ii) the Contractor will not be entitled to any payments for work carried out to rectify the breach; and
  - iii) the Contractor fails to rectify the breach within 5 Business Days after the Contract Administrator's direction, the Owner may, at its option and without prejudice to other rights, by notice in writing



to the Contractor, terminate the Contractor's engagement under the Contract as from the date of the notice and clause 14.6 of the Conditions of Contract will apply.

**SCHEDULE 11 – GUARANTEE**

(Clause 4.6)

**SCHEDULE 12 – NOT USED**

**SCHEDULE 13 – PRE-PRICED VARIATIONS**

<b>Pre-Priced Variation</b>	<b>Pre-Priced Variation Price (ex GST)</b>	<b>Pre-Priced Variation Date</b>

**EXHIBIT 1 - WORKS DESCRIPTION**

**INDEX ONLY**