

Date / /

##Insert project name]
Construction Contract
##Insert project address]

City of Wodonga
and

##Contractor]
##ACN]

Formal Instrument of Agreement

Date / /

Parties

Name	City of Wodonga
Address	Municipal Offices, 104 Hovell Street, Wodonga 3689

Name	##insert full company name] ##insert ABN]
Address	##insert address]

Background

- A. The Principal wishes to engage a contractor to construct the Works.
- B. The Contractor has represented to the Principal that it has the experience and expertise in the construction of works equivalent to the Works.
- C. The Contractor has agreed to construct the Works in accordance with the terms and conditions of the Contract.

It Is Agreed

1. Agreement

The Principal and the Contractor agree to carry out and complete their respective obligations in accordance with this agreement (**Contract**).

2. Definitions

Words which are defined in the Conditions of Contract have the same meaning in this Formal Instrument of Agreement unless the context otherwise requires.

3. Evidence of Agreement

The following documents comprise the Contract-

- (a) this document (**Formal Instrument of Agreement**);
- (b) the Conditions of Contract, including Annexures (**Attachment A**);
- (c) the Drawings (**Attachment B**); and

(d) the Specifications (**Attachment C**).

For the avoidance of doubt, the Comparison Copy included at Attachment D does not form part of the Contract.

4. Contractor's Representations and Warranties

The Contractor represents and warrants that-

- (a) it is duly incorporated and has the power to own property, carry on its business and perform the Contract;
- (b) it has the power and has taken all corporate and other actions required to enter into and authorise the execution of the Contract and the performance of the Contractor's obligations arising out of the Contract;
- (c) no representation, warranty or information provided by it contains any untrue statement of material fact or omits to state a material fact necessary to make such representation and warranty not misleading in light of the circumstances under which it was made;
- (d) the execution, delivery and performance of the Contract does not violate any existing law or any document or agreement to which it is a party or which is binding on it or any of its assets; and
- (e) no litigation, arbitration, criminal or administrative proceedings are current, pending or (to its knowledge) threatened which, if adversely determined, would have a material adverse effect on its ability to perform its obligations arising out of the Contract.

5. Continuing Representations

All representations and warranties in the Contract-

- (a) shall survive the execution and delivery of the Contract; and
- (b) shall remain in full force and effect following the completion of the Works and the issue of the Final Certificate.

6. Early Works

Unless otherwise agreed in writing by the parties, any work performed by the Contractor prior to the Execution Date in respect of the Project forms part of the work under the Contract and shall be governed by the terms of the Contract. The Contract Sum includes any amounts claimed by the Contractor in respect of such Works.

7. Entire Understanding

The Contract comprises the entire understanding between the parties as to the subject matter of the Contract. All previous negotiations, communications, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting the subject matter of the Contract are merged in and superseded by the Contract.

No party shall be liable to the other party in respect of previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of the Contract.

8. Execution and Counterparts

- (a) A party may sign this Formal Instrument of Agreement, and any variations to it or the Contract, by electronic means where permitted by law. Each other party consents to that party signing by electronic means.
- (b) The parties agree that if any party signs this Formal Instrument of Agreement under this clause 8, then-
 - (i) an electronic form of this Formal Instrument of Agreement with that party's electronic signature(s) appearing will constitute an executed counterpart; and
 - (ii) a print-out of this Formal Instrument of Agreement with that party's electronic signature(s) appearing will also constitute an executed counterpart.
- (c) This Formal Instrument of Agreement may be signed in counterparts, each of which shall, upon execution, be deemed to constitute one agreement.

9. Commencement

This Formal Instrument of Agreement comes into effect on the date that the parties execute this Formal Instrument of Agreement (**Execution Date**).

Attachment A – Conditions of Contract

**Based on AS 2124-1992 General Conditions of
Contract**

SAMPLE ONLY

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Conditions of Contract

NOTE: Clauses prefixed by an asterisk can be omitted without making consequential amendments.

1. Construction of Contract

The law governing the Contract and its interpretation is the law of the State or Territory stated in Annexure Part A.

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

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

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

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

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

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

Words importing a gender include every gender.

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

No rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part.

The words 'includes' and 'including' (and any variants of those words) shall be read as if followed by the words 'without limitation'.

Any provision of the 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.

Where the Contractor provides a warranty, the warranty shall be given full effect in its own right and is not to be read down by reason of existence of or absence of any other warranty.

All obligations to indemnify under the Contract survive termination of the Contract.

A reference to any Act or regulation means a reference to that Act or regulation as amended, supplemented or replaced from time to time.

Unless the context requires otherwise, use of the words 'hereunder', 'herein' or similar means a reference to this Contract.

2. Interpretation

In the Contract, except where the context otherwise requires-

'Adjudication Application' means an application for adjudication of a progress payment made pursuant to section 18 of the Security of Payment Act;

'Annexure' means an annexure to the Conditions of Contract;

'Apportionable Claim' has the meaning given to the term 'apportionable claim' in the Wrongs Act;

'As-Built Drawings' means drawings which reflect the Works as constructed;

'Associate' means an officer, employee, agent, contractor, licensee, consultant, invitee, client or customer of the Principal or the Contractor (as the context requires), but does not include the Principal, the Superintendent or the Contractor;

'Attachment' means an attachment to the Formal Instrument of Agreement;

'Australian Privacy Principles' has the meaning given in the *Privacy Act 1988* (Cth);

'Authority' means any governmental authority, including any municipal, statutory or public body, agency, department or person (including the relevant building surveyor), having jurisdiction over the Site, the Works or the performance of any of the work under the Contract, whether such work is performed by the Contractor or any of the Contractor's Associates;

'Building Act' means the *Building Act 1993* (Vic);

'Business Day' means a day that is not-

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

'Certificate of Practical Completion' means the certificate referred to in Clause 42.5;

'Change in Control' means a change in direct or indirect legal or beneficial ownership of more than 50% of the issued share capital or (if it is convertible into shares), of the loan capital of the Contractor;

'Child Safe Standards' has the meaning in the *Child Wellbeing and Safety Act 2005* (Vic);

'Claim' means any claim, action, demand, proceeding, suit or cause of action for-

- (a) an extension to -
 - (i) the time (or times) within which the Contractor is required to execute the work under the Contract (or any part of it) or carry out any obligation arising out of the Contract; or

- (ii) the Date for Practical Completion;
- (b) an adjustment or addition to the Contract Sum;
- (c) the payment of an other amount by the Principal;
- (d) relief from any of the Contractor's obligations or liabilities arising out of the Contract; or
- (e) any other legal or equitable right, remedy or claim;

'Clause' means a clause in these Conditions of Contract;

'Commissioner' means the Commissioner for Privacy and Data Protection appointed under the PDP Act;

'Comparison Copy' means the document set out in Attachment D;

'Concurrent Wrongdoer' has the meaning given to the term 'concurrent wrongdoer' in the Wrongs Act;

'Conditions of Contract' means these conditions of contract, including the Annexures;

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

'Contamination' means any substance (whether solid, gaseous, or liquid) or other physical or biological matter that presents a risk of harm to human health or the Environment or that is controlled, prohibited or regulated from time to time by Environmental Law, including by-products and derivatives of any such substance or matter;

'Contract' means the agreement between the Principal and the Contractor;

'Contract Documents' means the documents listed or referred to in clause 3 of the Formal Instrument of Agreement;

'Contractor's Program' has the meaning given to that term in Clause 33.2;

'Contract Sum' means the fixed lump sum amount stated in Annexure Part A, including Provisional Sums, as adjusted in accordance with the express terms of the Contract;

'Contractor' means the party identified as such in the Formal Instrument of Agreement having the address stated in Annexure Part A;

'Contractor's Program' has the meaning given that term in Clause 33.2;

'Date for Practical Completion' means the date identified as such in Annexure Part A, but if any extension of time for Practical Completion is granted by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;

'Date of Practical Completion' means-

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

'day' means calendar day;

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

'Discrepancy' means an error, omission (including insufficient or inadequate details for the purposes of construction), discrepancy, ambiguity, fault or inconsistency within or between any of the Contract Documents;

'Drawings' means the drawings included or referenced in Attachment B to and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract;

'Environment' has the meaning given in the EP Act;

'Environmental Law' means any Legislative Requirement or common law concerning the management or protection of the Environment and includes any law relating to land use, pollution of air, water, soil or groundwater, use or release of chemicals, storage and handling of dangerous goods, presence of Contamination, generation and disposal of waste, degradation of land and property and protection of species and biodiversity and includes the EP Act;

'Environmental Notification' has the meaning given to in Clause 53(i);

'EP Act' means the *Environment Protection Act 2017* (Vic);

'Execution Date' has the meaning given to that term in the Formal Instrument of Agreement;

'Formal Instrument of Agreement' means the document bearing that title to which these Conditions of Contract are attached;

'GST Act' means *A New Tax System (Goods And Services Tax) Act 1999* (Cth);

'Information Privacy Principles' means the 'Information Privacy Principles' set out in Schedule 1 to the PDP Act together with any 'applicable code of practice' as defined in that Act;

'Insolvency Event' means any of the following events -

- (a) the Contractor assigns any of its property for the benefit of creditors or any class of them;
- (b) the Contractor's interest in or under this Contract or in the subject matter of this Contract becomes attached or taken in execution or under any legal process;
- (c) an encumbrance takes any step towards taking possession or takes possession of any assets of the Contractor or exercises any power of sale;
- (d) the Contractor ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or dispose of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by the other party;
- (e) any security interest is enforced against the Contractor;
- (f) a distress, attachment or other execution is levied or enforced against the Contractor in excess of \$100,000;

- (g) the Contractor has a judgment or order given against it in an amount exceeding \$100,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (h) the Contractor takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;
- (i) a resolution is passed by the Contractor to appoint an administrator or an administrator of the Contractor is appointed;
- (j) an order is made that the Contractor be wound up;
- (k) an order is made appointing a liquidator or a provisional liquidator to the Contractor;
- (l) the Contractor resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by the other Principal, or is otherwise wound up or dissolved;
- (m) an order is made or a resolution is passed for the Contractor to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction nor amalgamation previously approved by the Principal;
- (n) the Contractor is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim the subject of a dispute in good faith) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (o) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the Contractor is appointed; or
- (p) there is a Change in Control with respect to the Contractor;

'Key Personnel' means the personnel stated in Annexure Part E;

'Known Site Condition' means any Site Condition, the existence of which-

- (a) is identified or disclosed in the tender documents or a Site report provided to the Contractor by the Principal prior to the Execution Date; or
- (b) was known to the Contractor (including any of the Contractor's employees) on the Execution Date; or
- (c) should have been known to a competent and prudent contractor on the Execution Date had the Contractor properly undertaken measures the Contractor is required to undertake under Clause 4.1(e);

[[Drafting Note: This definition should be deleted where Alternative 1 in clause 12 applies]]

'Legislative Requirements' means all-

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

- (b) certificates, licences, consents, permits (including the building permit for the Works), approvals and requirements of Authorities;
- (c) requirements, directions or orders of persons acting in the exercise of statutory powers enabling them to give directions in respect of any part of the work under the Contract; and
- (d) fees and charges payable in connection with the foregoing;

'Modern Slavery Legislation' means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force from time to time in Victoria;

'month' means calendar month;

'OH&S Act' means the *Occupational Health and Safety Act 2004* (Vic);

'OH&S Laws' means all Legislative Requirements concerning the health, safety and welfare of people at work including-

- (a) the OH&S Act;
- (b) the OH&S Regulations;
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Dangerous Goods (Explosives) Regulations 2022* (Vic);
- (e) *Dangerous Goods (HCDG) Regulations 2016* (Vic);
- (f) *Dangerous Goods (Storage and Handling) Regulations 2022* (Vic); and
- (g) *Dangerous Goods (Transport by Road or Rail) Regulations 2018* (Vic),

as may be updated from time to time;

'OH&S Regulations' means the *Occupational Health and Safety Regulations 2017* (Vic);

'PDP Act' means the *Privacy and Data Protection Act 2014* (Vic);

'person' includes a firm or body corporate or unincorporate or an individual;

'Personal Information' has the meaning in the *Privacy Act 1988* (Cth);

'Pollution Incident' has the same meaning as under the EP Act, and includes a notifiable incident as defined under the EP Act;

'Practical Completion' is that stage in the execution of the work under the Contract when-

- (a) the Works are complete except for minor omissions and minor defects-
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the Works; and

- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed;
- (c) all As-Built Drawings, documents and other information required under the Contract which are necessary for the use, operation and maintenance of the Works have been supplied by the Contractor to the Superintendent;
- (d) an occupancy permit has been issued in respect of those parts of the Works for which an occupancy permit is required;
- (e) all services which the Contractor is obliged to supply and/or install under the Contract have been supplied and/or installed in accordance with the Contract and are fully operational;
- (f) all Constructional Plant has been removed from and around the Site;
- (g) all cleaning of the Works (internally and externally) has been completed including removal of rubbish, sweeping of floors, wiping down surfaces (walls, glazing, doors), mopping of tiled areas and vacuuming of carpets and the Site has otherwise been restored to the satisfaction of the Superintendent;
- (h) all landscaping and Site remediation works required by the Contract Documents have been completed to the satisfaction of the Superintendent; and
- (i) the Contractor has provided to the Superintendent a certificate from a licensed surveyor certifying that the Works are located within the boundaries of the Site in the place and position required by the terms of the Contract;

'Principal' means the party identified as such in the Formal Instrument of Agreement having the address stated in Annexure Part A;

'Privacy Laws' means any Legislative Requirement which relates to the privacy of information about individuals and with which the Contractor must comply, including the *Privacy Act 1988* (Cth), the Australian Privacy Principles and any applicable code of practice;

'Project' means the project described in Annexure Part A;

'Provisional Sum' means the items and corresponding amounts identified as Provisional Sums in Annexure Part A, which shall be deemed to include all monetary sums and contingency sums;

'Schedule of Rates' means the schedule of rates, if any, attached at Annexure Part G which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, Provisional Sums, other sums, quantities and prices;

'Security of Payment Act' means the *Building and Construction Industry Security of Payment Act 2002* (Vic);

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

'Separate Contractor' means the consultants, contractors and agents of the Principal, other than the Superintendent, and each of their respective employees, consultants, contractors and agents, not being employed by the Contractor;

'Separate Works' means works to be executed on behalf of the Principal for or in connection with the Project by any Separate Contractor;

'Services Infrastructure' means any services or utilities infrastructure-

- (a) on, over the surface, under, or in the vicinity of the Site; or
- (b) outside the Site to provide services or utilities to the Site,

including any services or utilities infrastructure for water, sewerage, gas, telecommunications, drainage, electricity and any other like services;

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

'Site Condition' means any physical or chemical condition on, over the surface of, under or in the vicinity of the Site, including-

- (a) all existing improvements, structures, services and installations on and any particular heritage or other significance attaching to them;
- (b) Contamination;
- (c) the availability and condition of the Services Infrastructure;
- (d) the availability and condition of roads and all other means of and rights required to access the Site; and
- (e) any other physical and chemical conditions and characteristics of the Site above, on or below the surface, which may affect the performance by the Contractor of its obligations under the Contract;

'Specifications' means the specifications included or referenced in Attachment C and any modification of such specification thereafter directed or the use of which has been permitted by the Superintendent pursuant to powers contained in the Contract;

'Superintendent' means the person stated in Annexure Part A as the Superintendent having the address stated in Annexure Part A, or such other person as may be appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative;

'Superintendent's Representative' means a person appointed in writing by the Superintendent under Clause 24;

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

'Unknown Site Condition' means any Site Condition which, on the Execution Date, was not a Known Site Condition; **##Drafting Note: This definition should be deleted where Alternative 1 in clause 12 applies]**

'Waste' has the meaning given to it in the EP Act;

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

'Working Day' means every day-

- (a) shown as a working day (being any day of the week that is not shown as a rostered day off, public holiday, fixed long weekend, picnic day or a day during the minimum agreed Christmas closedown) on the 'Master Builders Association of Victoria

(MBAV) Working Day Calendar' for the relevant calendar year or years during which the work under the Contract is being carried out, as publicised by the MBAV or any successor body from time to time; and

- (b) upon which the Contractor was scheduled to be undertaking the work under the Contract in accordance with the Contractor's Program (as updated from time to time);

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

'Wrongs Act' means the *Wrongs Act 1958 (Vic)*; and

'WWC Check' has the same meaning as in the *Worker Screening Act 2020 (Vic)*.

3. Nature of Contract

3.1 Performance and Payment

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

The Principal shall pay the Contractor the Contract Sum for the completion of the work under the Contract in accordance with the requirements of the Contract.

The Contractor acknowledges and agrees that the Contract Sum is a fixed lump sum price for the work under the Contract and shall not be adjusted except as expressly permitted under this Contract.

3.2 Quantities

Quantities in a Schedule of Rates are estimated quantities only.

A direction shall not be required to be given by the Superintendent by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in the Schedule of Rates.

3.3 Purpose of the Schedule or Rates

The parties acknowledge that-

- (a) the Schedule of Rates shall be used for the sole purpose of-
- (i) valuing variations in accordance with Clause 40;
 - (ii) valuing Daywork in accordance with Clause 41; and
 - (iii) at the discretion of the Superintendent, assessing payment claims in accordance with Clause 42,
- (b) the rates and prices set out in the Schedule of Rates shall be deemed to include all-
- (i) labour costs;
 - (ii) costs associated with the manufacture, delivery and installation of the relevant items;

- (iii) establishment and other costs associated with the relevant item; and
- (iv) plant and equipment required for the relevant trade; and
- (c) there shall be no adjustment to the Contract Sum by reason of any errors, omissions, ambiguities, inconsistencies or omissions in the Schedule of Rates.

4. Warranties

4.1 Contractor's warranties

The Contractor represents and warrants to the Principal that-

- (a) at all times the Contractor shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
- (b) the Contractor shall execute and complete the work under the Contract in accordance with the Contract Documents so that the Works, when completed, comply with all the requirements of the Contract and all Legislative Requirements;
- (c) the Contract Sum includes all allowances necessary and appropriate to carry out the work under the Contract;
- (d) in carrying out the work under the Contract, the Contractor will rely on its own skill and judgment and that of its employees, consultants and agents, in relation to the work under the Contract and is not relying upon the skill and judgement of the Principal or the Principal's Associates; and
- (e) the Contractor has, as of the Execution Date-
 - (i) examined the Site and its surroundings;
 - (ii) informed and satisfied itself of the nature of the works required to complete the work under the Contract;
 - (iii) satisfied itself that the Contract Sum makes sufficient allowances for the execution of the work under the Contract; and
 - (iv) informed and satisfied itself of all Legislative Requirements relevant to the execution of the work under the Contract.

4.2 Warranties unaffected

The Contractor's warranties under Clause 4.1 shall remain unaffected notwithstanding-

- (a) any variation under Clause 40; and
- (b) any warranties obtained by the Contractor from third parties in respect of any part of the work under the Contract.

5. Security, retention moneys and performance undertakings

5.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract.

5.2 Provision of Security

The Contractor shall provide security in the amount stated in Annexure Part A and in accordance with this Clause 5.

5.3 Form of Security

The security shall be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security.

The Principal shall have discretion to approve or disapprove the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The form of unconditional undertaking attached at Annexure Part C is approved.

If the security is not transferable by delivery, it shall be accompanied by an executed transfer or such other documentation as is necessary to effect a transfer of the security. The costs (including all stamp duty or other taxes) of and incidental to the transfer and retransfer, shall be borne by the party providing the security.

5.4 Time for Provision of Security

Security shall be provided to the Principal within 10 days after the Execution Date.

5.5 Recourse to Retention Moneys and Conversion of Security

The Principal may have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money, in each case in an amount sufficient to cover the amount of the entitlement, debt, damages or claim, where-

- (a) the Principal party has become entitled to exercise a right under the Contract in respect of the retention moneys and/or security;
- (b) the Principal reasonably believes it has a bona-fide claim against the Contractor;
- (c) there is a debt due from the Contractor to the Principal arising out of the Contract (including in respect of liquidated damages) and the Contractor has not paid the debt within 5 Business Days after Contractor's receipt of a written demand for payment from the Principal; or
- (d) the Contractor is in material breach of any of its obligations under the Contract and the Contractor has not cured such breach within 5 Business Days after Contractor's receipt of written notice of the breach.

The Contractor waives its right to commence any proceeding or seek injunctive relief against the Principal or the issuer of the security in order to prevent the Principal from having recourse to the security under this Clause 5.5. However, nothing in this Contract shall be construed to prevent the Contractor from challenging the Principal's conversion of the security on the basis that such conversion was undertaken in breach of this Contract.

5.6 Substitution of Security for Retention Moneys

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

5.7 Reduction of Security and Retention Moneys

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

Subject to the first paragraph of this Clause 5.7, if at any time after Practical Completion, in the opinion of the Superintendent it is reasonable to further reduce the Principal's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal shall, within 10 Business Days after the Superintendent makes such a determination, release security and retention moneys in excess of the entitlement.

5.8 Release of Security

If the Contractor has provided additional security pursuant to Clause 42.4, the Principal shall release that additional security within 10 Business Days after the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished.

If the Contractor has provided security, then the Principal shall release it when required by Clause 42.8.

5.9 Interest on Security and Retention Moneys

Alternative 1

The Principal shall forthwith deposit retention moneys and/or cash security provided by the Contractor in an interest bearing account in a bank. The account shall be in the joint names of the Principal and the Contractor and shall be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Principal and the Contractor. The moneys shall be held until the Principal or the Contractor is entitled to receive them.

Interest earned on security lodged by the Contractor and on retention moneys belongs to the Contractor.

Upon the Principal or the Contractor becoming entitled to receive any moneys, including interest in the account, the other party shall forthwith have that party's appointee sign all documentation necessary to withdraw the moneys and shall give the signed documentation to the other party.

Alternative 2

The Principal shall own any interest earned on the retention moneys or security. The Principal does not hold any non-cash security (such as an unconditional undertaking) or retention monies on trust for the Contractor and is not obliged to pay the Contractor interest on such security or retention monies (or the proceeds of any security that is converted into cash).

5.10 Parent Company Guarantee

Where the Contractor is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Law as amended from time to time, the Contractor shall within 10 Business Days after receipt of a written request by the Principal, procure and provide to the Principal a deed of parent company guarantee in a form approved by the Principal, duly executed by the Contractor and that other corporation for the performance of the obligations and the discharge of the liabilities of the Contractor under the Contract.

For the purpose of Clause 5.10, the terms 'corporation' and 'subsidiary' have the meanings defined in the Corporations Law.

6. Evidence of Contract

6.1 Contract in Absence of Formal Instrument of Agreement

Until the Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Contract shall be evidenced by the Contract Documents.

6.2 [Not Used]

7. Service of notices

A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in Annexure Part A or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

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

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

8. Contract documents

8.1 Discrepancies

The Contract Documents are to be taken as mutually explanatory of one another. If either party discovers a Discrepancy in any Contract Document or between any Contract Documents, that party shall notify the other party and the Superintendent in writing of the Discrepancy.

The Superintendent shall direct the Contractor as to how the Discrepancy must be resolved by, where the Superintendent considers it is appropriate to do so, applying the following rules-

- (a) where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail; and
- (b) if there is a Discrepancy between any of the Contract Documents, the priority shall be the order of precedence set out in clause 3 of the Formal Instrument of Agreement (in descending order).

Subject to Clause 8.2, the Contractor acknowledges that it shall not be entitled to make any Claim arising out of or in any way in connection with any Discrepancy or any direction given by the Superintendent pursuant to this Clause 8.1.

8.2 Adjustment to the Contract Sum

If-

- (a) the Superintendent gives a direction in accordance with Clause 8.1 for the resolution of a Discrepancy in a manner other than in accordance with the rules set out in that Clause; and

- (b) compliance with the direction causes the Contractor to incur more or less cost than the contractor could reasonably have anticipated on the Execution Date,

the difference shall be valued under Clause 40.5.

8.3 Supply of Documents by Principal

The Principal shall supply to the Contractor the number of copies stated in Annexure Part A, or if no number is stated, then 5 copies of the Drawings, Specifications and other documents required by the Contract to be supplied to the Contractor by the Principal.

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

8.4 Supply of Documents by Contractor

The Contractor shall supply the documents stated in Annexure Part A; the number of copies of such documents to be supplied shall be as stated in Annexure Part A or, if no number is stated, 5 copies.

If the Contractor submits documents to the Superintendent, then-

- (a) the Superintendent shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Contract;
- (b) notwithstanding the provisions of Clause 23, the Superintendent's approval shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract;
- (c) if the Contract provides that the Contractor must obtain the Superintendent's direction whether documents are suitable or are not suitable then within the time stated in the Annexure Part A (or if no time is stated then within 10 Business Days) after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable;
- (d) if the Superintendent notifies the Contractor that the documents are not suitable, the Superintendent shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Superintendent's direction under this Clause; and
- (e) the Superintendent shall not reject documents which are in accordance with the requirements of the Contract.

Copies of documents supplied by the Contractor shall be the property of the Principal but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works.

8.5 Availability of Documents

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

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

place of manufacture or assembly and shall be available for reference by the Principal, the Superintendent and any person nominated in writing by either of them.

8.6 Confidential Information

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

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.8 or the earlier termination of the Contract.

8.7 Media Releases

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

9. Assignment and Subcontracting

9.1 Assignment

The Contractor shall not, without the prior written approval of the Principal and except on such reasonable terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or any other right or benefit or interest thereunder.

9.2 Subcontracting

The Contractor shall not without the written approval of the Principal, assign or subcontract the whole of the work under the Contract. Such approval may be withheld or conditioned by the Principal in its sole discretion.

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a subcontractor to assign or subcontract work described in Annexure Part A.

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

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

Within 10 Business Days after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including-

- (a) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor; and
- (b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.

9.3 Contractor's Responsibility

The subcontracting of any part of the work under the Contract (including Selected Subcontract Work and Nominated Subcontract Work) shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

To the full extent permitted by law, it is the parties' intention that the Contractor shall be entirely responsible and liable to the Principal for-

- (a) the acts and omissions of the Contractor's Associates as if they were acts or omissions of the Contractor; and
- (b) for the purposes of section 24AI of the Wrongs Act, any failure to take reasonable care on the part of any of the Contractor's Associates arising out of, or in any way in connection with the work under the Contract whether or not acting under the Contractor's direction, supervision or control.

For the purposes of Part IVAA (including, in particular, sections 24AI and 24AF) of the Wrongs Act, to the full extent permitted by law, the Contractor shall be jointly and severally liable to the Principal in relation to any amount payable to the Principal by any of the Contractor's Associates in respect of-

- (c) any Apportionable Claim in relation to which the Contractor's Associate is a Concurrent Wrongdoer; and
- (d) any liability assumed by the Contractor under the Contract that is apportioned to the Contractor's Associate by a court, tribunal or any other decision maker.

9.4 Deeds of Collateral Warranty

For the work, goods, materials or equipment listed in Annexure Part A, the Contractor shall procure the execution of a deed of collateral warranty for such work, goods, materials or equipment in the form contained in Annexure Part D and provide the deed or deeds duly executed by the Contractor and subcontractor or supplier to the Superintendent prior to the Date for Practical Completion.

The deeds of collateral warranty procured by the Contractor pursuant to this Clause 9.4 shall be for the period stated in Annexure Part A.

10. Selected and Nominated Subcontractors

10.1 Definitions

If Annexure Part A provides that certain work or the supply of certain items shall be subcontracted to a Selected or Nominated Subcontractor, the work or the supply of the items is 'Selected Subcontract Work' or 'Nominated Subcontract Work' as the case may be.

'Selected Subcontractor' means a subcontractor identified in the Contractor's tender from a list of subcontractors provided by the Principal in the tender documents for Selected Subcontract Work. The list may include one or more subcontractors.

'Nominated Subcontractor' means-

- (a) a subcontractor to whom the Contractor is directed by the Superintendent to subcontract Nominated Subcontract Work; or

- (b) a subcontractor named in the Contract with whom the Principal has entered into a prior contract for Nominated Subcontract Work, and in which prior contract the subcontractor has consented to the assignment by the Principal of the benefit of the prior contract, a copy of which is included in the tender documents; or
- (c) a subcontractor named in the Contract with whom the Principal has entered into a prior contract for Nominated Subcontract Work, and in which prior contract the subcontractor has consented to the novation of the prior contract by the Principal pursuant to a deed of novation, a copy of which is included in the tender documents.

'Nominated Subcontract Work' shall relate only to work or the supply of items for which a Provisional Sum has been included in the Contract.

10.2 Selected Subcontract

If the Contract includes Selected Subcontract Work, the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. The subcontract shall include such terms and conditions as may be reasonably required by the Superintendent.

10.3 Nominated Subcontract

If the Contract includes Nominated Subcontract Work, at such time as is necessary to avoid delay to the Contractor, the Superintendent shall direct the Contractor to subcontract the Nominated Subcontract Work to a Nominated Subcontractor.

If the Contract provides that the Principal may assign to the Contractor the benefit of a prior contract made between the Principal and a Nominated Subcontractor, the Contractor shall when directed by the Superintendent, accept the assignment of that prior contract.

If the Contract provides that the Principal may novate to the Contractor a prior contract made between the Principal and a Nominated Subcontractor in respect of Nominated Subcontract Work, the Contractor shall when directed by the Superintendent, execute a deed of novation of that prior contract in the form included in the tender documents and unless the Contract otherwise provides, the Contractor shall give the Principal credit for payments made by the Principal to the Nominated Subcontractor in respect of the Nominated Subcontract Work.

The Contractor shall ensure that the provisions of the subcontract are severally set out in the subcontract documents, so that the subcontract is fully expressed and complete in itself and includes provisions-

- (a) that in respect of the Nominated Subcontract Work, the Nominated Subcontractor will undertake towards the Contractor obligations and liabilities which will enable the Contractor to discharge the Contractor's obligations and liabilities to the Principal under the terms of the Contract;
- (b) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any failure by the Nominated Subcontractor to perform such obligations or fulfil such liabilities;
- (c) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any negligence by the Nominated Subcontractor and the Nominated Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract;
- (d) that the Nominated Subcontractor will lodge security in a form provided by Clause 5.3 and that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract; and

- (e) that are equivalent to those in Clause 44.

The Contractor shall not be obliged to enter into a subcontract with a Nominated Subcontractor against whom the Contractor raises reasonable objection.

If the Contractor declines to enter into a subcontract with a Nominated Subcontractor on the ground that the Nominated Subcontractor refuses to enter into a subcontract containing provisions in paragraphs (a) to (e) of Clause 10.3, the Superintendent shall nominate another Nominated Subcontractor or direct the Contractor to enter into a subcontract with the Nominated Subcontractor on such other terms as the Superintendent specifies. In the latter event the Contractor shall not be bound to discharge obligations and liabilities under the Contract to the extent that the subcontract terms so specified by the Superintendent are inconsistent with the discharge.

10.4 Provisions Applying Generally to Selected and Nominated Subcontract Work

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

With the consent of the Contractor, the Superintendent may direct the Contractor to perform Selected or Nominated Subcontract Work.

Notwithstanding Clause 16.2 if the Contractor is to be responsible to the Principal for the design or suitability of Selected or Nominated Subcontract Work, as distinct from the quality or workmanship, the responsibility shall be expressly stated in the Contract and the Contractor's liability for the design or suitability of the Selected or Nominated Subcontract Work shall only be that which is expressly stated in the Contract.

Except as herein contained, and subject to any reasonable objection made by the Contractor pursuant to this Clause-

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

10.5 Direct Payment of Nominated Subcontractor

In respect of Nominated Subcontract Work performed by a Nominated Subcontractor, the Principal shall make payment directly to the Nominated Subcontractor if Annexure Part A so provides. Except where the Contractor has accepted an assignment of the benefit of a prior contract made between the Principal and a Nominated Subcontractor-

- (a) such payment shall be made on behalf of the Contractor; and
- (b) if the Contractor reasonably requests the Principal in writing not to make a payment to the Nominated Subcontractor, the Principal shall withhold payment but under no circumstances, including bankruptcy or winding up of the Contractor, shall payment be made to the Contractor.

The Principal as stakeholder shall hold retention moneys and security provided by a Nominated Subcontractor and shall disburse or apply the retention moneys or security as jointly requested by the Contractor and the subcontractor or in accordance with the decision of an arbitrator or Court.

10.6 Termination of Nominated Subcontract

The Contractor shall not unreasonably terminate a subcontract for Nominated Subcontract Work and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. If a Nominated Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall immediately notify the Superintendent in writing and the Superintendent shall proceed under Clause 10.3 to nominate a Nominated Subcontractor to complete the subcontract work and Clause 11(b) shall apply.

11. Provisional Sums

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

- (a) the Contractor, the work or item shall be valued under Clause 40.5;
- (b) a subcontractor to the Contractor the Principal shall pay the Contractor the amount payable by the Contractor to the subcontractor for the work or item, disregarding any damages payable by the Contractor to the subcontractor or vice versa, plus the amount or percentage thereon for profit and attendance stated in Annexure Part A or, where not so stated, as stated elsewhere in the Contract; and
- (c) a Nominated Subcontractor pursuant to a prior contract made between the Principal and a Nominated Subcontractor, the benefit of which has been assigned to the Contractor, the Principal shall pay the Contractor the amount stated in Annexure Part A or the percentage for profit and attendance stated in Annexure Part A of the amount payable by the Principal to the Nominated Subcontractor for the work or item or, where no amount or percentage is stated, as stated elsewhere in the Contract, disregarding any damages payable by the Principal to the Nominated Subcontractor or vice versa.

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

12. Site Conditions

Drafting Note: 2 alternatives have been provided for the allocation of Site Conditions risk. Council may either:

- (a) **select its preferred alternative on a case-by-case basis and delete the other alternative prior to issuing the Contract to tenderers; or**
- (b) **Council may choose to require tenderers to nominate and price both alternatives in their tender responses. Council will then choose an alternative to apply when the successful tenderer is selected. In that case, the alternative which does not apply should be deleted prior to execution.]**

##Alternative 1

The Contractor assumes all risks in relation to, and shall not be entitled to make any Claims, arising out of or in connection with any Site Condition.

##Alternative 2

12.1 Site conditions risk generally

Subject to-

- (a) any amount payable to the Contractor under Clause 12.3 in relation to the discovery of any Unknown Site Condition; and
- (b) any extension of time to the Date for Practical Completion to which the Contractor is entitled under Clause 35.5D in relation to the discovery of any Unknown Site Condition,

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

The Contractor must comply with the reasonable directions of the Superintendent in relation to any Site Condition.

12.2 Unknown Site Conditions

- (a) If during the execution of the work under the Contract, the Contractor becomes aware of any Unknown Site Condition, the Contractor shall within 2 Business Days, and where possible before the Unknown Site Condition is disturbed, give a written notice to the Superintendent specifying-
 - (i) the nature of the Unknown Site Condition;
 - (ii) an estimate of the volume of the Unknown Site Condition (if applicable);
 - (iii) an estimate of any additional time required to complete the work under the Contract as a direct result of the discovery of the Unknown Site Condition;
 - (iv) a detailed estimate of any additional cost to be incurred by the Contractor in carrying out the Work under the Contract as a direct result of the discovery of the Unknown Site Condition; and
 - (v) any other information reasonably required by the Principal or the Superintendent.
- (b) The Superintendent will, within 10 Business Days of receipt of a notice under Clause 12.2(a), direct the Contractor as to what additional work, if any, the Contractor must carry out to deal with the Unknown Site Condition, and the Contractor must comply with that direction.

12.3 Extension of Time and Cost

Delay caused by an Unknown Site Condition may justify an extension of time under Clause 35.5B.

Subject to the Contractor having complied with the requirements of Clause 12.2, if compliance with a direction of the Superintendent under Clause 12.2 in relation to the discovery of an Unknown Site Condition causes the Contractor to-

- (a) carry out additional work;
- (b) use additional Constructional Plant; or
- (c) incur extra cost (including but not limited to the cost of delay or disruption),

which the Contractor could not reasonably have anticipated at the Execution Date, a valuation shall be made under Clause 40.5.

12.4 Time Bar

In making a valuation pursuant to Clause 12.3, regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 10 Business Days before the date on which the Contractor gives the written notice required by the first paragraph of Clause 12.2.

13. Patents, Copyright and other Intellectual Property Rights

The Principal warrants that unless otherwise provided in the Contract-

- (a) design;
- (b) materials;
- (c) documents; and
- (d) methods of working,

specified in the Contract or provided or directed by the Principal or the Superintendent will not infringe any patent, registered design, trademark or name, copyright or other protected right.

The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe any patent, registered design, trademark or name, copyright or other protected right.

14. Legislative Requirements

14.1 Complying with Legislative Requirements

The Contractor shall satisfy and comply with (and shall ensure that the work under the Contract complies with) all Legislative Requirements except those which-

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

If a Legislative Requirement is at variance with a provision of the Contract, as soon as possible (and in any event within 3 Business Days) after the Contractor discovers the variance, the Contractor shall notify the Superintendent in writing, specifying the difference.

14.2 Changes in Legislative Requirements

If a change in a Legislative Requirement takes effect after the Execution Date and-

- (a) is notified to the Superintendent by the Contractor in the time required under Clause 14.1; and
- (b) could not have been reasonably anticipated by the Contractor, acting prudently, on or before the Execution Date; and
- (c) necessitates a change to the Works or so much of the Temporary Works or method of working as may be specified in the Contract,

the Superintendent shall direct a variation under Clause 40.1 and the variation shall be valued under Clause 40.5.

Except to the extent that this Clause 14.2 provides for reimbursement in respect of a Legislative Requirement the Contractor shall bear the cost of complying with the requirement, whether the requirement existed at the time of tendering on the Execution Date or otherwise.

14.3 Notices Permits and Fees

Without limiting the general nature of the Contractor's obligations under Clause 14.1, the Contractor shall-

- (a) give the notices necessary to comply with the requirements referred to in Clause 14.1;
- (b) obtain all consents, licences, permits and approvals (excluding those permits stated in Annexure Part A, which shall be the responsibility of the Principal) as are necessary for the execution of the work under the Contract or the occupation of the Site or the work under the Contract upon completion; and
- (c) pay any fees or charges associated with such consents, licences, permits and approvals described in paragraph (b) above.

14.4 Documents Evidencing Approvals of Authorities

The Contractor shall promptly give the Principal and the Superintendent copies of documents issued to the Contractor by any Authorities in respect of the work under the Contract and, in particular, any approvals of work.

15. Protection of people and property

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

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

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

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

If the Contractor fails to comply with an obligation under Clause 15 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

16. Care of the Work and reinstatement of damage

16.1 Care of the Work Under the Contract

From and including the earlier of the date of commencement of work under the Contract and the date on which the Contractor is given access to the Site to 4 p.m. on the Date of Practical Completion of the Works, the Contractor shall be responsible for the care of the work under the Contract.

Without limiting the generality of the Contractor's obligations, the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment schedule under Clause 42.1, things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract, things brought on the Site by subcontractors for that purpose, the Works, the Temporary Works and Constructional Plant, and the Contractor shall provide the storage and protection necessary to preserve these items and things, and the Works, the Temporary Works and Constructional Plant.

After 4 p.m. on the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and shall be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clauses 30.6, 31.1 and 37.

16.2 Reinstatement

If loss or damage (except loss or damage which is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.3) occurs to anything while the Contractor is responsible for its care, the Contractor shall at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

16.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Contractor is not liable to the Principal, are-

- (a) any negligent act or omission of the Principal, the Superintendent or the Associates of the Principal;
- (b) any risk specifically excepted in the Contract;
- (c) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Associates;
- (e) use or occupation of any part of the work under the Contract by the Principal or the Principal's Associates; and
- (f) defects in the design of the work under the Contract other than a design provided by the Contractor or its Associates.

17. Damage to persons and property other than the Works

17.1 Indemnity by Contractor

The Contractor shall indemnify the Principal against-

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

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

Clause 17.1 shall not apply to-

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (ii) exclude any other right of the Principal to be indemnified by the Contractor;
- (iii) things for the care of which the Contractor is responsible under Clause 16.1; and
- (iv) claims in respect of the right of the Principal to construct the work under the Contract on the Site.

17.2 Indemnity by the Principal

The Principal shall indemnify the Contractor in respect of claims referred to in Clause 17.1(iv).

18. Insurance of the Works

Alternative 1

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

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

The insurance cover may exclude-

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;

- (d) damages for delay in completing or for the failure to complete the Works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the Excepted Risks in Clause 16.3.

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

- (i) the Contract Sum;
- (ii) the amount stated in Annexure Part A to provide for costs of demolition and removal of debris;
- (iii) the amount stated in Annexure Part A to cover fees of consultants;
- (iv) the value stated in Annexure Part A of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (v) the additional amount or percentage stated in Annexure Part A of the total of the items referred to in sub-paragraphs (a) to (e) of this paragraph.

The insurance policy shall note the interests of the Principal as an insured party under the policy, and shall cover the Principal, the Contractor and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with a reputable insurer. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

Alternative 2

On or before the Execution Date the Principal shall effect a policy of insurance in relation to the work under the Contract. The Principal shall maintain the policy while ever the Contractor has an interest therein and the Principal shall pay all premiums.

19. Public Liability Insurance

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall take out a Public Liability Policy of insurance that notes the interests of the Principal as an insured party under the policy and which covers the Principal, the Contractor, the Superintendent and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a Workers Compensation Policy of insurance).

The Public Liability Policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Annexure Part A and, unless otherwise specified elsewhere in the Contract, shall be effected with a reputable insurer. The policy shall be maintained until the Final Certificate is issued under Clause 42.8.

Alternative 2

On or before the Execution Date, the Principal shall effect in relation to the work under the Contract a public liability policy of insurance. The Principal shall maintain the policy while ever the Contractor has an interest therein and the Principal shall pay all premiums.

20. Insurance of Employees

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

The insurance shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.

The Contractor shall ensure that every subcontractor has similarly insured their employees.

21. Inspection and provisions of Insurance Policies

21.1 Proof of Insurance

Within 5 Business Days after the Execution Date and at such other times as may be requested in writing by the Principal, the Contractor shall promptly produce to the Principal certificates of currency as evidence that all insurances the Contractor is required under the Contract to effect and maintain has been so effected and maintained.

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

21.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the Principal to do so, the Contractor fails to produce certificates of currency evidencing compliance with its insurance obligations under Clauses 18, 19 or 20, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Contractor to the Principal. The Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 and 20 is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by Clause 21.2 are in addition to any other right.

21.3 Notices from or to the Insurer

The party effecting insurance under Clause 18 or 19 shall ensure that:-

- (a) it promptly gives the other party a notice of cancellation or other notice concerning the policy from the insurer after the party effecting insurance receives said notice;
- (b) a notice of claim given to the insurer by the Principal, the Superintendent, the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Contractor and the subcontractor; and
- (c) any notice in writing provided to the party effecting insurance notifying it of a failure to renew the policy or pay a premium is given to the other party prior to the insurer giving any notice of cancellation.

21.4 Notices of Potential Claims

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 18 or 19 and shall keep the Principal informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the Principal.

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

21.5 Settlement of Claims

Upon settlement of a claim under the insurance specified by Clause 18-

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

21.6 Cross Liability

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

21.7 Excesses

The Contractor shall be responsible and must bear the cost of any excesses or deductibles payable-

- (a) under any of the policies of insurance the Contractor is required to take out under the Contract; and
- (b) under any of the policies of insurance the Principal is required to take out under the Contract where the basis of a claim under the policy is caused by or arises out of an act or omission of the Contractor or its Associates,

where an insured party successfully claims and/or is indemnified under an insurance policy effected pursuant to this Contract,

22. Clerk of Works and inspectors

The Superintendent shall forthwith notify the Contractor in writing of the name of any Clerk of Works or inspector appointed by the Principal or the Superintendent.

23. Superintendent

23.1 Role of the Superintendent

The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent-

- (a) acts honestly and reasonably;
- (b) acts within the time prescribed under the Contract or where no time is prescribed within a reasonable time; and
- (c) arrives at a reasonable measure or value of work, quantities or time.

The Contractor acknowledges and agrees that, except where the Contract provides that the Superintendent shall act as an independent certifier or valuer, the Superintendent is the agent of the Principal and in that capacity is not obliged to act reasonably or in the interests of the Contractor.

The Superintendent shall have-

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

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

23.2 Directions

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

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

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

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

24. Superintendent's Representative

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

Superintendent's Representative shall not prevent the Superintendent from exercising any function.

The Superintendent shall forthwith notify the Contractor in writing of-

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

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

25. Contractor's Representative and Key Personnel

25.1 Contractor's Representative

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

The Contractor shall forthwith notify the Superintendent in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall-

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

be deemed to have been given to the Contractor.

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

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

25.2 Key Personnel

The Contractor shall-

- (a) provide the Key Personnel (if any) for the purposes of the work under the Contract in the positions set out in Annexure Part E; and
- (b) not replace or remove Key Personnel from their positions during the course of the work under the Contract without reasonable cause.

In the event of a vacancy due to ill health, resignation, unavailability or removal of any of the Key Personnel, the Contractor shall propose a replacement as soon as possible for the Superintendent's approval. Such proposal shall include such information about the candidate as the Superintendent shall reasonably require. If a proposed replacement is not approved, the Contractor shall propose further replacements until such time as the Superintendent is satisfied that the replacement is duly qualified for the position and capable of performing the duties thereof.

26. Control of Contractor's employees and Subcontractors

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

27. Site

27.1 Access to the Site

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

Notwithstanding the provisions of Clause 27.1, if the Contractor is in breach of Clause 21.1, the Principal may refuse to give the Contractor non-exclusive access to the Site or any part of the Site until the Contractor has complied with the requirements of Clause 21.1.

The Contractor acknowledges and agrees that it shall not be entitled to exclusive access to or possession of the Site. Access to the Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to execute the work under the Contract.

27.2 Access for the Principal and Others

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

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

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

The Contractor shall at all reasonable times give the Principal, the Superintendent, the Clerk of Works and inspectors appointed under Clause 22, and other persons authorized in writing by the Principal or by the Superintendent access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

The Principal shall ensure that the Contractor is not impeded in the execution of the Contractor's work by the Superintendent, whilst exercising the right of access given by Clause 23 or by any persons exercising the right of access given to those persons under this Clause 27.2.

27.3 Delivery of Materials to and Work on Site Before Access

Until non-exclusive access to the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Superintendent.

27.4 Use of Site by Contractor

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

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

27.5 Finding of Minerals, Fossils and Relics

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

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

28. Setting out the Works

28.1 Setting Out

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

28.2 Care of Survey Marks

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

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

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

28.3 Errors in Setting Out

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

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

28.4 Survey Mark Defined

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

29. Materials, Labour and Constructional Plant

29.1 Provision of Materials, Labour and Constructional Plant

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

29.2 Removal of Materials and Constructional Plant

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

29.3 Manufacture and Supply of Materials

The Superintendent may direct the Contractor to supply particulars of-

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

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

30. Materials and Work

30.1 Quality of Materials and Work

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

30.2 Quality Assurance

The Contractor shall, if requirements are so stated in the Contract -

- (a) plan, establish and maintain a quality system which conforms to those requirements;
- (b) provide the Superintendent with access to the quality system of the Contractor and each of the subcontractors of the Contractor to enable monitoring and quality auditing.

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

30.3 Defective Materials or Work

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

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

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

If the Contractor fails to comply with a direction issued by the Superintendent pursuant to Clause 30.3 within the time specified by the Superintendent in the direction and provided the Superintendent has given the Contractor notice in writing that after the expiry of 7 days from the date on which the Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Materials or Work

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

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

30.5 Acceptance of Defective Material or Work

Instead of a direction under Clause 30.3 or 30.4, the Superintendent may notify the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in the value to the Principal of the Works and any other loss suffered by the Principal shall be valued under Clause 40.5.

30.6 Generally

The Superintendent shall give either a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5 as soon as practicable after the Superintendent becomes aware that material or work is not in accordance with the Contract. The Superintendent may give the direction or notice at any time before the issue of the Final Certificate under Clause 42.8.

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

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

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

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

31. Examination and Testing

31.1 Superintendent May Order Tests

In Clause 31 'test' includes examine and measure.

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

31.2 Covering Up of Work

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

31.3 Who Conducts Tests

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

31.4 Notice of Tests

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

31.5 Procedure if Tests Delayed

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

31.6 Results of Tests

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

31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5. Such costs shall be borne by the Contractor unless the test is directed by the Superintendent under Clause 31.1 and the test results indicate that the material or work is in accordance with the Contract.

31.8 Access for Testing

If, before the issue of the Final Certificate -

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

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

32. Working hours

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

Each party shall bear its own costs attributable to contract administration during times approved pursuant to the previous paragraph.

33. Progress and Programming of the Works

33.1 Rate of Progress

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

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

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

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

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

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

33.2 Contractor's Program

The Contractor shall, within 5 Business Days after the Execution Date, submit to the Superintendent a critical path method construction program for the work under the Contract which-

- (a) at a minimum, indicates-
 - (i) all key dates under the Contract (including the Date(s) for Practical Completion); and
 - (ii) the sequences of activities which constitute the critical path and the interrelationships between such activities; and
- (b) is in electronic and hard copy form;

(Contractor's Program).

The Contractor's Program shall not affect the rights or obligations of the parties in Clause 33.1.

The Contractor must furnish to the Superintendent an updated Contractor's Program each month, and at such other reasonable times as may be directed by the Superintendent during the performance of the work under the Contract.

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

- (c) the initial Contractor's Program; or
- (d) any updated Contractor's Program furnished to the Superintendent.

The furnishing of the Contractor's Program or of an updated Contractor's Program shall not relieve the Contractor of any obligations under the Contract, including its obligation to achieve Practical Completion by the Date for Practical Completion.

34. Suspension of the Works

34.1 Suspension by Superintendent

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

- (a) because of an act or omission of-
 - (i) the Principal, the Superintendent or an Associate of the Principal; or
 - (ii) the Contractor, or an Associate of the Contractor;
- (b) for the protection or safety of any person or property; or
- (c) to comply with an order of an Authority,

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

34.2 Suspension by Contractor

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

34.3 Recommencement of Work

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

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

34.4 Cost of Suspension

Any cost incurred by the Contractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Contractor but if the suspension is due to an act or omission of the Principal, the Superintendent or an employee, consultant or agent of the Principal and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.

34.5 Effect of Suspension

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

35. Times for Commencement and Practical Completion

35.1 Time for Commencement of Work on the Site

The Contractor shall give the Superintendent 7 days' notice of the date upon which the Contractor proposes to commence work on the Site.

The Superintendent may reduce the period of notice required.

The Contractor shall commence work on the Site within 10 Business Days after the Principal has given the Contractor access to sufficient of the Site to enable the Contractor to commence work.

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

35.2 Time for Practical Completion

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

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

35.3 Separable Portions

The interpretations of-

- (a) Date for Practical Completion;

- (b) Date of Practical Completion; and
- (c) Practical Completion,

and Clauses 5.7, 16, 35, 37, 38, 42.3 and 42.5 shall apply separately to each Separable Portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion.

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

35.4 Use of Partly Completed Works

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

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

35.5 Claiming an Extension of Time for Practical Completion

Except in respect of an extension of time that has been agreed between the Contractor and the Superintendent and identified in a written direction for a variation, as a pre-condition to the Contractor's entitlement to claim an extension of time to the Date for Practical Completion, the Contractor must-

- (a) when it becomes evident to the Contractor that any event or circumstance including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall promptly (and in any event, within 10 Business Days) after it becomes aware of the event or circumstance, notify the Superintendent in writing with details of the event or circumstance, possible delay and the possible cost of dealing with the delay; and .
- (b) if the event or circumstance is a qualifying cause of delay under Clause 35.5A, the Contractor shall, within 15 Business Days after receipt by the Superintendent of the notice referred to in Clause 35.5(a), give the Superintendent a written claim for an extension of time that sets out the facts upon which the claim is based (including the applicable qualifying cause of delay under Clause 35.5A) and the number of days claimed.

If a cause of delay listed in Clause 35.5A results in a delay that extends beyond the period of time for submitting a claim for an extension of time under Clause 35.5(b), the Contractor shall give the Superintendent a further written claim for an extension of time which evidences the facts and extent of such delay every 10 Business Days until the relevant delay ceases.

The Contractor must strictly comply with the requirements of this Clause 35.5 as a precondition to the Contractor's entitlement to an extension of time to the Date for Practical Completion

35.5A Qualifying Causes of Delay

The causes of delay for which the Contractor may be entitled to an extension of time for Practical Completion are-

- (a) inclement weather;
- (b) delays caused by acts or omissions of-
 - (i) the Principal;
 - (ii) the Superintendent;
 - (iii) the Principal's Associates;
- (c) delays by Authorities not caused by the Contractor;
- (d) claims referred to in Clause 17.1(iv);
- (e) any breach of the Contract by the Principal;
- (f) a change in Legislative Requirements occurring after the Execution Date that could not, as at the Execution Date, have been reasonably anticipated by the Contractor acting prudently and with due diligence;
- (g) subject to the Contractor's compliance with Clauses 12.2 and 12.3, the discovery of an Unknown Site Condition; **## Drafting Note: Delete if Alternative 1 of Clause 12 is selected**
- (h) state-wide or industry-wide industrial action not caused by or arising out of an act or omission of the Contractor;
- (i) subject to Clause 40.1A, variations directed under Clause 40.1 or 40.2; and
- (j) any other cause which is expressly stated in the Contract to be a cause for extension of time for Practical Completion.

35.5B Evaluating and Granting Extension of Time Claims

The Contractor shall only be entitled to an extension of time if the Contractor-

- (a) has fully and strictly complied with the requirements of Clause 35.5; and
- (b) satisfies the Superintendent (acting reasonably) that-
 - (i) the cause of the delay was beyond the control of the Contractor;
 - (ii) the cause of the delay arose only out of one or more of the qualifying causes listed in Clause 35.5A;
 - (ii) it is or will be been delayed in achieving Practical Completion by the Date for Practical Completion by reason of the qualifying causes of delay listed in Clause 35.5A; and
 - (iii) the relevant delay has affected or will affect the completion of an activity on the critical path outlined in the Contractor's Program.

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

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 20 Business Days after receipt of a valid claim for an extension of time under Clause 35.5, grant a reasonable extension of time. If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent shall give the Contractor notice in writing of the reasons.

In determining a reasonable extension of time for a qualifying event causing delay for which the Contractor has submitted a valid claim for an extension of time under Clause 35.5, the Superintendent shall have regard to whether, and the extent to which, the Contractor has taken all reasonable steps to mitigate the delay and its consequences.

The Principal may, in its absolute discretion at any time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason. The Principal is not required to exercise its discretion under this paragraph for the benefit of the Contractor.

A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 20 Business Days of receipt of a valid claim shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Contractor to damages.

35.6 Liquidated Damages for Delay in Reaching Practical Completion

If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in Annexure Part A for every day after the Date for Practical Completion to and including the Date of Practical Completion or the date that the Contract is terminated under Clause 44, whichever first occurs.

If after the Contractor has paid or the Principal has deducted liquidated damages, the time for Practical Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period up to and including the new Date for Practical Completion.

The parties acknowledge and agree that the amount of liquidated damages payable under this Clause 35.6 is an agreed, genuine pre-estimate of the Principal's damages if Practical Completion is not achieved by the Date for Practical Completion and is not a penalty.

Any amount payable by the Contractor to the Principal under this Clause 35.6 shall be a debt due from the Contractor to the Principal. If any part of this Clause 35.6 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal to liquidated damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion, the Principal shall be entitled to recover general damages at common law from the Contractor in respect of such failure, which damages shall not be capped or limited in any way.

35.7 Limit on Liquidated Damages

The Contractor's liability under Clause 35.6 is limited to the amount stated in Annexure Part A.

35.8 Bonus for Early Practical Completion

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

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

36. Delay or Disruption Costs

Subject to Clause 35.5B and this Clause 36, the Contractor is not entitled to make any Claim arising out of or in connection with any delay or disruption to the performance of the Contractor's obligations under the Contract (including the obligation to complete the Works by the Date for Practical Completion).

For each Working Day in respect of which the Contractor has been granted an extension of time under Clause 35.5B for delay caused by any of the events referred to in paragraphs (b), (d) or (e) of Clause 35.5A, the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

The extra costs payable by the Principal pursuant to this Clause 36 shall be as agreed between the parties or, failing agreement, in accordance with a valuation made under Clause 40.5, but in no case shall the Contractor's aggregate entitlement under this Clause 36 exceed the amount set out in Annexure Part A for each individual Working Day within the period of the extension of time.

Nothing in Clause 36 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract.

37. Defects Liability

The Defects Liability Period stated in Annexure Part A shall commence on the Date of Practical Completion.

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

At any time prior to the 14th day after the expiration of the Defects Liability Period, the Superintendent may direct the Contractor to rectify any omission or defect in the work under the Contract existing at the Date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence. The direction may provide that in respect of the work of rectification there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in Annexure Part A. The separate Defects Liability Period shall commence on the date the Contractor completes the work of rectification. Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification.

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

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

38. Cleaning up

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

Within 10 Business Days after the Date of Practical Completion the Contractor shall remove Temporary Works and Constructional Plant.

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

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

39. Urgent protection

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

If time permits, the Superintendent shall give the Contractor prior written notice of the Principal's intention to take action under Clause 39.

40. Variations

40.1A General

The Contractor shall not vary the work under the Contract and, subject to Clause 40.3, is not entitled to make any Claim in connection with any variation unless, prior to the variation being executed by the Contractor, the Superintendent-

- (a) issued a direction in writing to the Contractor to carry out a variation under Clause 40.1;
- (b) issued a direction in writing to the Contractor to carry out a variation under Clause 40.2; or
- (c) gave written notice of approval of a variation under Clause 40.4.

No variation or variations (including a variation omitting work) shall invalidate, or constitute a repudiation of, the Contract, notwithstanding the timing, extent or number of such variations.

40.1 Variations to the Work

The Superintendent may direct the Contractor to-

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work;

- (c) change the levels, lines, positions or dimensions of any part of the work under the Contract;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by the Principal.

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

The Contractor shall not be bound to execute a variation directed after Practical Completion unless the variation is in respect of rectification work referred to in Clause 37. If the Contractor considers that compliance with a direction issued by the Superintendent shall require the Contractor to carry out a variation which is beyond the general scope of the Contract, the Contractor shall, within 5 Business Days of receipt of the direction, notify the Principal of this fact in writing before complying with such direction. If the Contractor fails to provide such written notice it shall be deemed to have agreed that the variation is within the general scope of the Contract.

The Contractor shall not be bound to execute a variation directed after Practical Completion unless the variation is in respect of rectification work referred to in Clause 37.

40.2 Proposed Variations

The Superintendent may inform the Contractor in writing that it wishes to propose a variation to the work under the Contract.

Within a reasonable period of time (and in any event within 5 Business Days of receiving the Superintendent's notice) the Contractor shall notify the Superintendent in writing-

- (a) whether or not the Contractor reasonably believes the proposed variation shall-
 - (i) require a variation to any approval; or
 - (ii) cause any delay to the work under the Contract; and
- (b) the estimated cost of carrying out the proposed variation.

The Principal shall reimburse the Contractor for the reasonable costs of complying with the requirements of Clause 40.2.

Following receipt of the Contractor's notice in accordance with this Clause 40.2, the Superintendent may direct the Contractor to proceed with the proposed variation by issuing a direction to the Contractor attaching a copy of the Contractor's notice.

40.3 Pricing the Variation

Unless the Superintendent and the Contractor agree upon the price for a variation, the variation directed by the Superintendent under Clause 40.1 or Clause 40.2 shall be valued under Clause 40.5 except to the extent that the variation is directed as a result of the Contractor failing to comply with its obligations arising out of the Contract.

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

40.4 Variations for the Convenience of the Contractor

If the Contractor wishes to vary the work under the Contract, the Contractor shall give the Superintendent a written notice, which-

- (a) describes the variation the Contractor wishes to make;
- (b) states why the Contractor wishes to make the variation;
- (c) states what effect the proposed variation shall have on the work under the Contract;
- (d) if the variation shall result in any delay to the work under the Contract, states the Contractor's reasonable estimate as to how long such delay shall be and the anticipated effect (if any) on the Date for Practical Completion; and
- (e) requests the Superintendent's approval for a variation.

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

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

- (f) an extension of time for Practical Completion; or
- (g) extra payment,

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

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

The Contractor shall reimburse the Principal for the reasonable cost that the Superintendent, the Principal and their Associates incur in considering a request for a variation under this Clause 40.3

40.5 Valuation

Where the Contract provides that a valuation shall be made under Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal as the case may require, an amount ascertained by the Superintendent as follows-

- (a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in the Schedule of Rates shall be used to the extent that it is reasonable to use them;
- (c) to the extent that neither Clause 40.5(a) or 40.5(b) apply, reasonable rates or prices shall be used in any valuation made by the Superintendent;
- (d) in determining the deduction to be made for work which is taken out of the Contract, the deduction shall include the amount or percentage stated in Annexure A for the Contractor's profit, attendance, supervision, off-site overheads and on-site overheads;
- (e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.3, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit;
- (f) if the valuation relates to extra costs incurred by the Contractor for delay or disruption, the valuation shall include a reasonable amount for on-site overheads

but shall not include profit or loss of profit but in no case shall such extra costs exceed the amount stated in Annexure Part A or the relevant Separable Portion schedule;

- (g) [Not Used]; and
- (h) daywork shall be valued in accordance with Clause 41.

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

40.6 Omission of Work

If the Superintendent issues a direction under Clause 40.1 or 40.2 omitting any part of the work under the Contract, the Principal may either carry out that work itself or employ or engage another person or contractor to carry out such omitted works.

40.7 Alleged Variation Orders

If the Superintendent gives a direction to the Contractor which is not identified as variation direction under Clause 40.1 or 40.2, but which the Contractor considers requires a variation to the work under the Contract, the Contractor shall, prior to executing any work to which the direction relates, issue a written notice to the Superintendent which-

- (a) identifies the direction;
- (b) describes why the Contractor considers the direction requires the Contractor to vary the work under the Contract; and
- (c) requests the Superintendent to issue a direction under Clause 40.1 with respect to the alleged variation the subject of the direction.

Notwithstanding any provision of the Contract to the contrary, if the Contractor fails to issue a notice in accordance with this Clause 40.7, the Contractor cannot later claim that the relevant direction amounted to a variation and the Contractor shall not be entitled to make any Claim on the basis that the direction amounts to a variation.

Where-

- (d) the Contractor issues a notice in accordance with this Clause 40.7; and
- (e) the Superintendent does not subsequently issue a direction pursuant to Clause 40.1 directing the Contractor to vary the work under the Contract in the manner described in the original direction; and
- (f) the Superintendent subsequently issues a written direction to the Contractor to execute the work the subject of the original direction,

the Contractor shall not be barred from claiming that the direction issued under Clause 40.7 amounts to a variation and the question of whether such direction amounts to a variation may be referred for dispute resolution under Clause 47.

The Contractor shall comply with a direction issued under Clause 40.7 regardless of whether the question of whether such direction amounts to a variation is referred to dispute resolution or not.

41. Daywork

The Superintendent may direct that quantities greater than those determined by reference to variations directed by the Superintendent under Clause 40.1 or 40.2, shall be carried out as Daywork. The Contractor shall thereafter each day record particulars of all resources used by the Contractor for the execution of the Daywork and each day furnish to the Superintendent the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Daywork. The Superintendent may direct the manner in which matters are to be recorded.

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

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

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

42. Payment Claims and Payments

42.1 Payment Claims, Payment Schedules, Calculations and Time for Payment

At the times for submission of payment claims stated in Annexure Part A, upon issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor shall deliver to the Superintendent claims for payment supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require. Payment claims shall include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach thereof.

Within 10 Business Days after receipt of a payment claim, the Superintendent shall issue to the Principal and to the Contractor a payment schedule stating the amount of the payment which, in the opinion of the Superintendent, is to be made by the Principal to the Contractor or by the Contractor to the Principal. The Superintendent shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the

amount claimed by the Contractor, the reasons for the difference. The Superintendent shall allow in any payment schedule issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract.

If the Contractor fails to make a payment claim under Clause 42.1, the Superintendent may, in its discretion, nevertheless issue a payment schedule.

Subject to the provisions of the Contract, within 30 days after receipt by the Superintendent of a payment claim or within 10 Business Days of issue by the Superintendent of the Superintendent's payment schedule, whichever is the earlier, the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in the Certificate as due to the Contractor or to the Principal as the case may be, or if no payment schedule has been issued, the Principal shall pay the amount of the Contractor's claim. A payment made pursuant to this Clause shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.

42.2 Correction of Certificates and Payment Schedules

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

42.3 Retention Moneys

The Principal may deduct from moneys otherwise due to the Contractor amounts up to the limit of the percentages, if any, stated in Annexure Part A of so much of the value of the respective items stated in Annexure Part A as is included in the calculation of a payment.

42.4 Unfixed Plant and Materials

The Principal shall not be obliged to make payment for any item of unfixed plant and materials unless-

- (a) that item is listed in Annexure Part A;
- (b) the Contractor establishes to the satisfaction of the Superintendent that the Contractor has paid for the item, and the item is properly shipped, stored, labelled the property of the Principal and adequately protected; and
- (c) the Contractor provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials.

Upon payment to the Contractor of the amount which includes the value of the item, the item shall be the property of the Principal free of any lien or charge. Notwithstanding that the Principal may become the owner of unfixed plant or material in accordance with this Clause 42.4, the Contractor shall remain responsible for, and shall bear the risk of any loss or damage to, such unfixed plant or material until 4 pm on the Date of Practical Completion

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

42.5 Certificate of Practical Completion

The Contractor shall give the Superintendent at least 20 days advance notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Superintendent to issue a Certificate of Practical Completion. Within 10 Business Days of the receipt of the request, the Superintendent shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

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

42.6 Effect of Certificates

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

42.7 Final Payment Claim

Within 30 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire, the Contractor shall lodge with the Superintendent a final payment claim and endorse it 'Final Payment Claim'.

The Contractor shall include in that claim all moneys which the Contractor considers to be due from the Principal under or arising out of the Contract or any alleged breach thereof.

After the expiration of the period for lodging a Final Payment Claim, any claim which the Contractor could have made against the Principal and has not been made shall be barred.

42.8 Final Certificate

Within 10 Business Days after receipt of the Contractor's Final Payment Claim or, where the Contractor fails to lodge such claim, the expiration of the period specified in Clause 42.7 for the lodgement of the Final Payment Claim by the Contractor, the Superintendent shall issue to the Contractor and to the Principal a final payment schedule endorsed 'Final Certificate'. In the certificate the Superintendent shall certify the amount which in the Superintendent's opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.

Unless either party, either before the Final Certificate has been issued or not later than 20 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of-

- (a) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been

disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or

- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

Within 10 Business Days after the latest to occur of-

- (i) issue of a Final Certificate which certifies a balance owing by the Principal to the Contractor;
- (ii) the provision by the Contractor to the Principal of an original duly executed deed of release in the form attached at Annexure Part F;
- (iii) the provision by the Contractor to the Superintendent or the Principal (as the case may be) of any outstanding collateral warranties which the Contractor is required to procure pursuant to Clause 9.4; or
- (iv) payment by the Contractor of moneys owing to the Principal under the Final Certificate (if any),

the Principal shall release to the Contractor any retention moneys or security then held by the Principal.

42.9 Interest on Overdue Payments

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

42.10 Set Offs by the Principal

The Principal may deduct from moneys otherwise due to the Contractor any debt or other money due from the Contractor to the Principal under the Contract and if those moneys are insufficient, the Principal may, subject to Clause 5.5, have recourse to the security (including any retention) then held by the Principal under the Contract. This Clause 42.10 shall survive termination of the Contract.

42.11 Recourse for Unpaid Moneys

Where, within the time provided by the Contract, the Contractor fails to pay the Principal an amount due and payable under the Contract, the Principal may, subject to Clause 5.5, have recourse to the security (including any retention) then held by the Principal under the Contract, and any deficiency remaining may be recovered by the Principal as a debt due and payable. This Clause 42.11 shall survive termination of the Contract.

43. Payment of Workers and Subcontractors

- (a) Before the Principal makes each payment to the Contractor, the Superintendent may, not less than 5 days before a Payment schedule is due, in writing request the Contractor-
 - (i) to give the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at

any time been employed by the Contractor on work under the Contract have at the date of the request been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and

- (ii) to provide documentary evidence to the Superintendent that at the date of the request all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
- (b) Not less than 10 days after the Contractor has made each payment claim under Clause 42.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors have been paid all moneys due and payable to them in respect of work under the Contract.
- (c) If the Contractor fails-
- (i) within five days after a request by the Superintendent under Clause 43(a), to provide the statutory declaration, or the documentary evidence (as the case may be) required pursuant to Clause 43; or
 - (ii) to comply with Clause 43(b),

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

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

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

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 43(a) or (b) and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After the making of a sequestration order or a winding up order in respect of the Contractor, the Principal shall not make any payment to a worker or subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

44. Default or Insolvency

44.1 Preservation of Other Rights

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

44.2 Default by the Contractor

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

Substantial breaches include but are not limited to-

- (a) suspension of work, in breach of Clause 33.1;
- (b) failing to proceed with due expedition and without delay, in breach of Clause 33.1;
- (c) failing to lodge security in breach of Clause 5;
- (d) failing to use the materials or standards of workmanship required by the Contract, in breach of Clause 30.1;
- (e) failing to comply with a direction of the Superintendent under Clause 30.3, in breach of Clause 23;
- (f) failing to provide evidence of insurance, in breach of Clause 21.1; and/or
- (g) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue.

44.3 Requirements of a Notice by the Principal to Show Cause

A notice under Clause 44.2 shall-

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

44.4 Rights of the Principal

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

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

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

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 44.4(a) or (b); or

- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.

If the Principal exercises the right under Clause 44.4(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 44.6.

44.5 Procedure when the Principal Takes Over Work

If the Principal takes work out of the hands of the Contractor under Clause 44.4(a) the Principal shall complete that work and the Principal may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.

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

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

When work taken out of the hands of the Contractor under Clause 44.4(a) is completed the Superintendent shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate to the Principal and the Contractor certifying the amount of that cost.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal. The Principal shall keep records of the cost in a similar manner to that prescribed in Clause 41.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

44.7 Default of the Principal

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

Substantial breaches include but are not limited to-

- (a) failing to make a payment, in breach of Clause 42.1;
- (b) failure by the Superintendent to either issue a Certificate of Practical Completion or give the Contractor, in writing, the reasons for not issuing the Certificate within 10 Business Days of receipt of a request by the Contractor to issue the Certificate, in breach of Clause 42.5; and
- (c) failing to produce evidence of insurance, in breach of Clause 21.1.

A failure by the Principal to give the Contractor access to the Site or sufficient portion of the Site to enable the Contractor to commence or perform the work under the Contract, or any part thereof, shall not be deemed to constitute a 'substantial breach' within the meaning of

this Clause 44.7, but the Contractor may be entitled to an extension of time under Clause 35.5D in respect of such failure.

44.8 Requirements of a Notice by the Contractor to Show Cause

A notice under Clause 44.7 shall-

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

44.9 Rights of the Contractor

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

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

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

44.10 Rights of the Parties on Termination

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

44.11 Insolvency

If an Insolvency Event occurs in respect of the Contractor then the Principal may, without giving a notice to show cause, exercise its rights under Clause 44.4(a).

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

45. Termination by frustration

If, under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor-

- (a) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had made a progress claim on the date of frustration;

- (b) the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;
- (c) costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
- (d) all retention moneys and security (subject to any right that the Principal may then have to the security pursuant to Clauses 5.5, 42.10 or 42.11);
- (e) the reasonable cost of removal of Constructional Plant;
- (f) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration.

45A. Termination for convenience

- (a) Without prejudice to any of the Principal's other rights under the Contract, the Principal may at any time for its sole convenience, and for any or no reason, by written notice to the Contractor terminate the Contract effective from the time and date stated in the Principal's notice, or if no time and date is stated, at the time the notice is received by the Contractor.
- (b) If the Principal terminates the Contract under Clause 45A(a), the Contractor will be entitled to payment of the following amounts to be assessed in accordance with the requirements of the Contract-
 - A. for work under the Contract carried out prior to the date of termination, the amount that would have been payable to the Contractor under the Contract if the Contract had not been terminated and the Contractor had been entitled to issue, and had issued, a payment claim for that work under the Contract;
 - B. if not included in subclause 45A(b)(b), the cost of goods and materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that unencumbered title in the goods and materials will vest in the Principal upon payment;
 - C. the reasonable cost of removing from the site all labour, construction plant, temporary works and other things used in carrying out work under the Contract;
- (c) The Contractor must take all reasonable steps to mitigate the costs referred to in Clauses 45A(b)(b)B and C.
- (d) The Contractor acknowledges its only Claims against the Principal for termination in accordance with this clause 45A are the payments referred to in Clause 45A(b).

46. Time for Notification of claims

46.1 Contractor's Prescribed Notice

The Principal shall not be liable upon, and the Contractor hereby releases the Principal from, any claim by the Contractor in respect of or arising out of a breach of the Contract unless within 20 days after the first day upon which the Contractor could reasonably have been aware of the breach, the Contractor has given to the Superintendent the prescribed notice.

Subject to Clause 40.3, the Principal shall not be liable upon any other claim by the Contractor for any extra cost or expense in respect of or arising out of any direction or approval by the Superintendent unless within 20 days after the first day upon which the Contractor could reasonably have been aware of the entitlement to make the claim, the Contractor has given to the Superintendent the prescribed notice.

The prescribed notice is a notice in writing which includes particulars of all of the following-

- (a) the breach, act, omission, direction, approval or circumstances on which the claim is or will be based;
- (b) the provision of the Contract or other basis for the claim or proposed claim; and
- (c) the quantum or likely quantum of the claim.

This Clause 46.146 shall not have any application to-

- (i) any claim for payment for a variation directed by the Superintendent or to be made pursuant to Clause 12.3;
- (ii) any claim for an extension of time for Practical Completion; or
- (iii) the provisions of Clause 46.2.

46.2 Time for Disputing Superintendent's Direction

If the Superintendent-

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

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by one party to the other party and to the Superintendent within 60 days after the date of service on that party of the notice pursuant to Clause 46.2(b).

47. Dispute Resolution

47.1 Notice of Dispute

If a dispute between the Contractor and the Principal arises out of or in connection with the Contract, including-

- (a) a dispute concerning a direction given by the Superintendent; or
- (b) any claim, whether made in tort, under contract, under statute, or under any equitable theory of liability or recovery,

then either party shall deliver by hand or send by certified mail to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute.

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

A claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.

47.2 Further Steps Required Before Proceedings

Within 10 Business Days after service of a notice of dispute, the parties shall confer at least once, and at the option of either party and provided the Superintendent so agrees, in the presence of the Superintendent, to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

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

47.3 Arbitration

Arbitration shall be effected by a single arbitrator who shall be nominated by the person named in Annexure Part 1, or if no person is named, by the Chairperson for the time being of the Chapter of the Institute of Arbitrators Australia in the State or Territory named in Annexure Part A. Such arbitration shall be held in the State or Territory stated in Annexure Part A.

Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.

Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.

If one party has overpaid the other, whether pursuant to a Superintendent's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

47.4 Jurisdiction

The courts and tribunals of the State of Victoria shall have exclusive jurisdiction in respect of any legal proceedings between the parties arising out of this Contract or the performance of the work under the Contract.

47.5 Summary or Urgent Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 42 or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

48. Waiver of conditions

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

49. Security of Payment Act

49.1 Service of notices under the Security of Payment Act

The Contractor shall-

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time; and
- (b) when the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, promptly and without delay give the Superintendent a copy of any written communication of whatever nature in relation to the Security of Payment Act which the Contractor receives from a subcontractor.

49.2 Acknowledgments

The parties acknowledge and agree that-

- (a) for the purposes of section 10(1)(a) of the Security of Payment Act, the scheduled amount set out in a payment schedule issued under Clause 42.1 is the amount of the progress payment calculated in accordance with the terms of the Contract; and
- (b) the Superintendent is the Principal's agent for the purpose of issuing payment schedules to the Contractor under the Contract.

49.3 Method of Resolving Disputes

The Principal and Contractor agree that Clause 47 is a method for resolving disputes for the purposes of section 10A(3)(d) of the Security of Payment Act.

49.4 Nominating Authorities

For the purposes of sections 18(3) and 18(4) of the Security of Payment Act, the authorised nominating authorities to which an Adjudication Application may be made are-

- (a) Resolution Institute;
- (b) Rialto Adjudications Pty Ltd; or
- (c) Royal Institution of Chartered Surveyors Dispute Resolution Service (RICS DRS).

49.5 Subcontractor suspension

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

49.6 Indemnity

The Contractor shall indemnify, keep indemnified and hold harmless the Principal against all damage, expense (including legal costs), loss or liability of any nature suffered or incurred by the Principal arising out of-

- (a) a suspension of work which forms part of the Work under the Contract by a subcontractor pursuant to the Security of Payment Act; or

- (b) a failure by the Contractor to comply with Clause 49.1.

50. Occupational Health and Safety

50.1 Definitions

Words and phrases in this Clause 50 have the same meaning given to them in the OH&S Act and the OH&S Regulations.

50.2 General OH&S obligations

The Contractor shall-

- (a) comply with all OH&S Laws;
- (b) comply with all relevant compliance codes approved under section 149 of the OH&S Act; and
- (c) implement and maintain a system of obtaining and updating information on OH&S Laws and compliance codes dealing with occupational health and safety.

50.3 Contractor is appointed as principal contractor

The Principal hereby appoints the Contractor as principal contractor, for purposes of section 26 of the OH&S Act and Division 2 (Subdivision 2) of Part 5.1 of the OH&S Regulations, in relation to the construction work to be performed on behalf of the Principal pursuant to the Contract.

The Principal authorises the Contractor to manage and control the Site to the extent necessary to discharge the duties imposed on a principal contractor under the OH&S Regulations.

The Principal will exercise its best endeavours to ensure that its Separate Contractors comply with the Contractor's OH&S policies and instructions in order to enable the Contractor to discharge the duties imposed on a principal contractor under the OH&S Regulations.

50.4 Specific occupational health and safety obligations

Without limiting the applicability of Clauses 50.2 and 50.3, the Contractor shall-

- (a) in executing the work under the Contract, eliminate risks to health and safety so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as far as is reasonably practicable;
- (b) promptly notify the Superintendent of any accident, injury or breach of any OH&S Laws that occur in connection with or arising out of the work under the Contract;
- (c) prepare a written list of health and safety representatives and display the written list at the Site; and
- (d) establish a safety induction and training program and ensure that all persons admitted to the Site participate in the program prior to being permitted to perform any work at the Site.

50.5 Registration

The Contractor shall not allow any Associates of the Contractor, or any employee of any Associate of the Contractor, to perform construction work in connection with the Contract unless the person is registered, or deemed to be registered, to perform construction work under Part 6.2 of the OH&S Regulations.

50.6 Indemnity

The Contractor shall indemnify, keep indemnified and hold harmless the Principal from and against any claim made against the Principal by any third party (including any statutory or governmental authority) arising out of any breach by the Contractor of this Clause 50, reduced to the extent that the Principal or its agents or Separate Contractors are responsible for such claim.

51. Industrial Relations

51.1 Notification

The Contractor shall notify the Superintendent immediately in writing of any industrial relations event or perceived or anticipated industrial relations event that may cause delay or disruption to or otherwise effect the execution of the work under the Contract.

51.2 Contractor's Risks

Subject to the Contractor's entitlements under Clause 35.5D, the Contractor accepts all industrial relations risks, responsibilities and costs related directly or indirectly to the work under the Contract, including complying with, and ensuring that its Associates are aware of and comply with, the terms and conditions of all awards, building industry agreements and site agreements that relate directly or indirectly to the work under the Contract.

51.3 Contractor's Allowances

Without limiting the general nature of Clause 51.1, the Contractor acknowledges that it has allowed for, and shall be deemed to have allowed for, in the Contract Sum, the cost of-

- (a) employees of the Contractor or of any subcontractor or consultant being (or wishing to be) members of applicable unions or associations;
- (b) Legislative Requirements for superannuation, redundancy allowances and the like;
- (c) compliance with applicable safety standards;
- (d) Site or building access and other security issues;
- (e) Site overheads and other Site-related allowances;
- (f) the potential for demarcation disputes;
- (g) restricted working hours; and
- (h) rostered days off.

52. Coordination of the Works**52.1 Contractor Acknowledgments**

The Contractor acknowledges and agrees that-

- (a) the Principal has or may be entering into separate contracts with the Separate Contractors for the Separate Works; and
- (b) it is of paramount importance that the Separate Works are fully and completely coordinated with the work under the Contract and integrated into the Works.

52.2 Contractor to Manage and Coordinate the Separate Works

The Contractor shall, as part of the work under the Contract, use its best endeavours to supervise, manage, program and coordinate the carrying out of the Separate Works with the work under the Contract so that the Separate Works are fully and completely integrated with the Works.

52.3 Contractor's Obligations

Without limitation to Clause 52.2, the Contractor shall-

- (a) comply with all reasonable requirements and directions of the Superintendent in respect of the supervision, management, programming and coordination of the Separate Works;
- (b) coordinate and integrate the work under the Contract with the Separate Works;
- (c) liaise, consult and cooperate with the Separate Contractors including, without limitation, the preparation of joint programs, methods statements, and coordination drawings and specifications;
- (d) at such times and places as reasonably required by the Superintendent;
- (e) cooperate with the Principal in reviewing the progress of the work under the Contract from time to time as reasonably required by the Superintendent;
- (f) convene or attend meetings with the Separate Contractors to plan, review and determine coordinated activities for the management of interfaces between the Separate Works and the work under the Contract;
- (g) plan, program and carry out the work under the Contract in a manner so as to minimise any interference with the carrying out of the Separate Works;
- (h) refrain from carrying out any work under the Contract in a manner or at a time which is likely to cause damage or inconvenience to the carrying out of the Separate Works;
- (i) take all necessary steps to protect the Works from accidental damage caused by the Separate Works; and
- (j) monitor, manage and coordinate the integration of the Separate Works with the work under the Contract.

52.4 Superintendent may give directions

If the Works and the Separate Works are not being coordinated and integrated to the reasonable satisfaction of the Superintendent, the Superintendent may issue such directions as it considers necessary including, without limitation-

- (a) directions suspending any work under the Contract; and
- (b) a Variation Order pursuant to Clause 40 to vary the work under the Contract.

The Contractor is not entitled to any extension of time to the Date for Practical Completion or to make any Claim or to any Compensation in addition to the Contract Sum or other payment for any direction given by the Superintendent in accordance with this Clause 52.4 due to the Contractor's failure to comply with its obligations under this Clause 52.

52.5 Principal's Obligations

The Principal will exercise best endeavours to ensure that its Separate Contractors-

- (a) liaise, consult and cooperate with the Contractor including the preparation of joint programs, methods statements, and coordination of drawings and specifications;
- (b) attend relevant meetings convened by the Contractor to plan, review and determine coordinated activities for the management of interfaces between the Separate Works and the work under the Contract;
- (c) plan, program and carry out their Separate Works in a manner so as to minimise any interference with the carrying out of the work under the Contract; and
- (d) take all necessary steps to prevent accidental damage to the Works caused by their Separate Works.

53. Environment

- (a) Without limiting the generality of any other provision of the Contract, the Contractor- must prepare, implement, regularly review, update and comply with an environmental management system which-
 - (i) complies with all Environmental Laws;
 - (ii) minimises the risk of harm to the Environment;
 - (iii) is otherwise suitable for the performance of the work under the Contract in accordance with the Contract;
- (b) prior to commencement of the work under the Contract on the Site, must-
 - (i) provide a copy of the Contractor's environmental management system to the Superintendent which complies with Clause 53(a); and
 - (ii) promptly amend the Contractor's environmental management system to address any reasonable comments of the Superintendent and resubmit the system pursuant to Clause 53(b)(i) prior to commencement of the work under the Contract on the Site;
- (c) must, at such other intervals as are required by the Superintendent-

- (i) provide updated copies of the Contractor's environmental management system to the Superintendent to demonstrate that the environmental management system continues to comply with Clause 53(a); and
 - (ii) promptly amend the Contractor's environmental management system to address any reasonable comments of the Superintendent on the updated system provided under Clause 53(c)(i);
- (d) must comply (and ensure that its Associates comply) with all Environmental Laws which will be deemed to include carrying out the work under the Contract in a manner that does not cause the Principal to breach any of its duties or obligations under any Environmental Law;
- (e) acknowledges and agrees that, without limiting an express entitlement of the Contractor (if any) under Clause 12 in respect of Contamination, Waste or pollution-
 - (i) the Principal does not warrant or make any representation to the Contractor about whether or not any Contamination may be in, on or under the Site;
 - (ii) it is responsible for any and all Waste generated by the Contractor and its Associates in the course of carrying out the work under the Contract and that it must ensure that any such Waste is:
 - A. promptly and lawfully removed from the Site and transported to a lawful place for disposal; and
 - B. disposed of in compliance with Environmental Laws;
 - (iii) from the date on which the Contractor is entitled to access the Site under Clause 27 until 4pm on the Date of Practical Completion, as between the parties and for the purposes of this Clause 53 the Contractor is in management and control of the Site and the Principal is not in management or control of the Site for the purposes of any Environmental Law except to the extent that the Principal:
 - A. exercises its rights under Clause 53(h); or
 - B. becomes aware of any additional information in respect of the Site (which the Principal must disclose to the Contractor to the extent required by law);
- (f) must, without limiting any other provision of this Clause 53, while it is in management and control of the Site, as specified in Clause 53(e)(iii)-
 - (i) minimise risks of harm to human health and the Environment from the presence of Contamination in land or groundwater in accordance with section 39 of the EP Act; and
 - (ii) proactively minimise risks of harm to human health or the Environment from pollution or Waste, so far as reasonably practicable and otherwise discharge the general environmental duties described in Part 3.2 of the EP Act;
- (g) must not (and must ensure that its Associates must not)-
 - (i) cause, permit or exacerbate any Contamination at or in the vicinity of the Site; or
 - (ii) cause or contribute to a Pollution Incident;

- (h) if the Contractor breaches Clause 53(g), must-
 - (i) immediately notify the Principal and the Superintendent in writing of the nature and extent of the relevant Contamination and/or Pollution Incident (as the case may be);
 - (ii) notify any relevant Authorities of the relevant Contamination and/or Pollution Incident (as the case may be) to the extent required by law, but (except where the Contractor, acting reasonably, considers that time does not permit this) only after disclosing the proposed form and contents of such notice to the Principal and incorporating any reasonable amendments proposed by the Principal; and
 - (iii) except to the extent that doing so would be contrary to any law, comply (at its cost) with the Principal's reasonable directions regarding the relevant Contamination and/or Pollution Incident (as the case may be) including any direction requiring investigation, management and remediation of the Environment;
- (i) must immediately notify the Principal and the Superintendent in writing if the Contractor or any of its Associates receive any notice, order, demand, direction or similar notification from an Authority in connection with the Works pursuant to any Environmental Law (**Environmental Notification**) and provide the Principal and the Superintendent as soon as practicable with a copy of any such Environmental Notification;
- (j) acknowledges and agrees that, if the Contractor fails to comply with any of its obligations arising out of this Clause 53, the Principal may at its absolute discretion take whatever action it (acting reasonably) considers to be necessary to remedy such failure and, if the Principal does so, any loss which the Principal suffers or incurs in taking such action will be deemed to be a debt due by the Contractor to the Principal; and
- (k) to the extent permitted by law and without limiting the general nature of Clause 53(i), must indemnify the Principal on demand in respect of any loss suffered or incurred by, and any claim brought against, the Principal arising out of or in connection with:
 - (i) any breach of this Clause 53;
 - (ii) any Pollution Incident or Contamination arising out of any act or omission of the Contractor; or
 - (iii) any breach of any Environmental Law by the Contractor or its Associates.

54. Reports

During the period from the Execution Date to the Date of Practical Completion, the Contractor shall, at the times specified in Annexure Part A and at its own cost, submit to the Superintendent 2 copies of a report with respect to matters relating to that part of the Works under the Contract executed since the last report submitted by the Contractor and which-

- (a) is in a format agreed between the parties or otherwise as may be reasonably required by the Superintendent;
- (b) contains the following information-
 - (i) details of the progress and the programming of the work under the Contract;

- (ii) details of how the Contractor has dealt with or intends to deal with any delays to the work under the Contract;
 - (iii) the current forecast of the Date of Practical Completion;
 - (iv) details of pending or anticipated claims for extensions of time and variations;
 - (v) a copy of the current Contractor's Program; and
- (c) addresses any other matters which the Superintendent has requested that the Contractor by notice in writing address in the report.

55. GST

55.1 Definitions

In this Clause 55, words and expressions that are not defined in the Contract but which have a defined meaning in the GST Act have the same meaning as in the GST Act.

55.2 GST exclusive

Except as otherwise provided by this Clause 55, all consideration payable under the Contract in relation to any supply is exclusive of GST.

55.3 Increase in consideration

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

55.4 Payment of GST

Subject to Clause 55.5 the recipient shall pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under the Contract.

55.5 Tax invoice

The supplier shall provide a tax invoice to the recipient before the supplier shall be entitled to payment of the GST Amount under Clause 55.4.

55.6 Reimbursements

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

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

55.7 Adjustment events

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

- (a) the supplier shall provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

- (b) any payment necessary to give effect to the adjustment shall be made within 7 days after the date of receipt of the adjustment note.

56. Modern Slavery

The Contractor acknowledges and agrees that the Contractor must-

- (a) comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Contractor;
- (b) in any event, facilitate the Principal complying with any of the Modern Slavery Legislation applicable to the Principal, by reporting in a timely manner and providing all information concerning its supply chain and that of its subconsultants, subcontractors and suppliers which the Principal may acting reasonably require, such reporting and other information being provided no later than 60 days after expiry of the period to which the reporting relates to, or earlier where required in order for the Principal to meet its obligations under the applicable Modern Slavery Legislation; and
- (c) ensure that such reporting and other information is accurate, complete and in such form as the Principal in its discretion requires.

57. Privacy

57.1 Australian Privacy Principles

The Contractor must-

- (a) in respect of Personal Information held in connection with the Contract and whether received from the Principal or otherwise-
 - (i) comply, and ensure that its Associates comply, with the Privacy Laws;
 - (ii) immediately notify the Principal where it becomes aware of a breach of Clause 57.1(a) by the Contractor or of any investigation by the Office of the Australian Information Commissioner;
 - (iii) indemnify the Principal on demand from and against any Claim or loss suffered or incurred by the Principal arising out of or in connection with a breach of Clause 57.1(a) by the Contractor or its Associates; and
- (b) if the Principal gives notice to the Contractor that it proposes to audit, either directly or through its auditors, the Contractor's information handling practices, the Contractor must provide all reasonable assistance to the party conducting such an audit.

57.2 Victorian Information Privacy Principles

The Contractor-

- (a) is bound by, and shall procure that its Associates are bound by, the Information Privacy Principles with respect to any act done or practice engaged in by it or its Associates for the purposes of the Contract in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles in respect of that act or practice had it been directly done or engaged in by the Principal;

- (b) must not, and must procure that its Associates do not, cause the Principal to be in breach of its obligations under the PDP Act; and
- (c) must comply with all procedures for the enforcement of the Information Privacy Principles set out in the PDP Act (including complying with any compliance notices or other notices given by the Commissioner, attending before the Commissioner, producing documents and attending conciliations).

58. Child Safety

- (a) This Clause 58 applies where so stated in Annexure Part A.
- (b) The Contractor must comply with the Child Safe Standards. The Principal requires WWC Checks to be completed by all staff (including any subcontractor's staff, consultants, volunteers, replacement or additional staff) who have direct contact with children or working where children are present at the Site.
- (c) WWC Checks must be kept up to date. All personnel working in direct contact with children are required to have an understanding of, and comply with, the *Children's Service Act 1996* (Vic), *WSorker Screening Act 2020* (Vic) and the Child Safe Standards.

59. Local Jobs First Policy

- (a) This clause 59 only applies where so stated in Annexure Part A
- (b) Annexure Part H, Annexure Part I, Annexure Part J and Annexure Part K form part of the Contract. The Contractor in performing its obligations under the Contract must comply with Annexure Part H, Annexure Part I, Annexure Part J and Annexure Part K.

Annexure Part A

Annexure to the Conditions of Contract Part A

This Annexure shall be issued as part of the tender documents and is to be attached to the Conditions of Contract and shall be read as part of the Contract.

The law applicable is that of the State or Territory of: Victoria
(Clause 1)

Payments under the Contract shall be made at:
(Clause 1)

The Contract Sum:
(Clause 2)

The Contractor:
(Clause 2)

The address of the Contractor:

Phone number of the Contractor:

The Principal: City of Wodonga
(Clause 2)

The address of the Principal: City of Wodonga
Municipal Offices, 104 Hovell Street
(PO Box 923)
Wodonga VIC 3689

Phone number of the Principal: (02) 6022 9300
.....

The Project: Wodonga Creek Activation Project
(Clause 2)

Provisional Sums:
(Clause 2)

The Superintendent: City of Wodonga Representative
(Clause 2)

The address of the Superintendent: Municipal Offices, 104 Hovell Street
(Clause 2) (PO Box 923)
Wodonga VIC 3689

Contractor shall provide security in the amount of: Five percent (5%) of the Contract Sum
(Clause 5.2)

The percentage to which the entitlement to security and retention moneys is reduced: Fifty Percent (50%)
(Clause 5.7)

Interest on retention moneys and security – the **Alternative 1 or 2**

Where there are Separable Portions, these items shall be deleted

alternative applying:
(Clause 5.9)

The number of copies to be supplied by the Principal: One (1)
(Clause 8.3)

The documents and number of copies to be supplied by the Contractor:
(Clause 8.4)

Document: - Any shop drawings.
- Construction Program
- Set Out & Survey
- Quality Assurance Documentation
- Certification and Compliance Documents
- Materials, Testing & Products Submittals
- As-Builts

No. of copies: One (1) of each document noted above.

The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies:
(Clause 8.4(c))

10 Business Days

Work which cannot be subcontracted without approval:
(Clause 9.2)

.....

Subcontractors and suppliers from whom a Deed of Collateral Warranty is required
(Clause 9.4)

Works, Goods or Equipment	Length of warranty
Play equipment and items supplied by Lypa Pty Ltd	As per supplier
Play equipment and items supplied by Richter Spielgerate Pty Ltd	As per supplier
items supplied by GX Outdoors Pty Ltd	As per supplier

Selected Subcontractors:
(Clause 10.1)

.....

Nominated Subcontractors:
(Clause 10.1)

.....

Direct payment to Nominated Subcontractors:
(Clause 10.5)

.....

Where there are Separable Portions, these items shall be deleted

The percentage for profit and attendance:
(Clause 11(b))

.....

The amount or percentage for profit and attendance:
(Clause 11(c))

.....

The permits that shall be the responsibility of the Principal:
(Clause 14.3(b))

Nil

Insurance of the Works - the alternative applying:
(Clause 18)

Alternative 1 ~~or 2~~

The assessment for insurance purposes of the cost of demolition and removal of debris:
(Clause 18(ii))

.....

The assessment for insurance purposes of consultants' fees:
(Clause 18(iii))

.....

The value of materials to be supplied by the Principal:
(Clause 18(iv))

Nil

The additional amount or percentage:
(Clause 18(v))

.....

Public Liability Insurance - the alternative applying:
(Clause 19)

Alternative 1 ~~or 2~~

The amount of Public Liability Insurance shall be not less than:
(Clause 19)

\$10,000,000

The time for giving access to the Site:
(Clause 27.1)

August 01, 2026

The Date for Practical Completion:
(Clause 35.2)

May 30, 2027

Liquidated Damages per day:
(Clause 35.6)

\$ 1,000 per Calendar Day

Limit of Liquidated Damages:
(Clause 35.7)

~~Bonus per day for early Practical Completion:~~
~~(Clause 35.8)~~

~~\$ per Working Day~~

~~Limit of bonus:~~
~~(Clause 35.8)~~

~~\$~~

Cap on costs for Delay or Disruption:
(Clause 36)

\$ per Working Day

The Defects Liability Period:
(Clause 37)

12 months

The Charge for overheads, profit, etc. for Daywork:
(Clause 41(f))

.....

Where there are Separable Portions, these items shall be deleted

Times for Payment Claims: (Clause 42.1)	20 th day of the month
Unfixed Plant or Materials for which payment claims may be made: (Clause 42.4)
The rate of interest on overdue payments: (Clause 42.9)
The person to nominate an arbitrator: (Clause 47.3)	The Resolution Institute (Victorian Chapter) Rialto Adjudications RICS Dispute Resolution Service
The time for provision of reports: (Clause 54)	10 Working Days
Child Safety (Clause 58)	Applies <i>If noting stated, the obligations in Clause 58 do not apply.</i>
Local Jobs First (Clause 59)	Applies <i>If noting stated, the obligations in Clause 59 do not apply.</i>

SAMPLE ONLY

Where there are Separable Portions, these items shall be deleted

Separable Portions

##Delete if inapplicable

- 1 Separable Portion:
- 2 Contractor shall provide security in the amount
of:
(Clause 5.2)
- 3 The Date for Practical Completion:
(Clause 35.2)
- 4 Liquidated Damages per day:
(Clause 35.6)
- 5 Cap on extra costs for Delay or Disruption: \$ per Working Day
(Clause 36)
- 6 Defects Liability Period:
(Clause 37)

SAMPLE ONLY

Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Contract. Make a separate column for each Separable Portion.

Annexure Part B

Annexure to the Australian Standard General Conditions Of Contract Part B

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended or added to Australian Standard 2124-1992.

- 1 The following Clauses have been deleted from the General Conditions in AS 2124-1992:
See the marked-up Comparison Copy in Attachment D.....
.....
.....
.....
.....
.....

- 2 The following Clauses have been amended and differ from the corresponding Clauses in AS 2124-1992:
See the marked-up Comparison Copy in Attachment D.....
.....
.....
.....
.....

- 3 The following Clauses have been added to those of AS 2124-1992:
See the marked-up Comparison Copy in Attachment D.....
.....
.....
.....

Annexure Part C

Approved Form Of Unconditional Undertaking

(Clause 5.3)

At the request of ('the Contractor') and in consideration of ('the Principal') accepting this undertaking in respect of the contract for

..... ('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of \$ (.....)

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

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

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

DATED at this day of 20.....

Annexure Part D

Form of Deed of Collateral Warranty

(Clause 9.4)

DATE / /

BETWEEN

INSERT NAME AND ACN]
of **##Insert address]**

(Subcontractor)

IN FAVOUR OF:

CITY OF WODONGA
Municipal Offices, 104 Hovell Street, Wodonga 3689

(Principal)

BACKGROUND

- A. The Principal and **##insert name]** (**Contractor**) have entered into a contract pursuant to which the Contractor has agreed to execute the Works (**Contract**).
- B. The Subcontractor has entered into a contract with the Contractor (**Subcontract**) pursuant to which the Subcontractor has agreed to perform or provide the **##insert description of the Subcontract Works, Goods or Equipment]** (**Subcontract Works**).
- C. The Subcontractor has agreed to execute this deed poll in favour of the Principal (**Deed**).

1. PRECEDENCE OF DOCUMENTS

To the extent of any inconsistency between this Deed, the Contract or the Subcontract, this Deed shall take precedence.

2. SUBCONTRACTOR'S REPRESENTATIONS

The Subcontractor represents to the Principal that-

- 2.1 all work performed and all materials or parts supplied by the Subcontractor in the course of the Subcontract Works shall be-
- (a) performed and supplied in accordance with the Subcontract;
 - (b) at least of the quality and to the standard required by the Subcontract;
 - (c) to the extent that the level of quality or standard are not stipulated in the Subcontract, of good workmanship and merchantable quality;
 - (d) in accordance with all relevant legislation, regulations, codes and standards;
and
 - (e) fit for the purpose or purposes for which they are required; and

- 2.2 it shall promptly replace or make good to the reasonable satisfaction of the Principal any part of the Subcontract Works that the Principal reasonably considers to-
- (a) be of a lower quality or standard than that referred to in clause 2.1 of this Deed; and/or
 - (b) have deteriorated to such an extent that in the reasonable opinion of the Principal the relevant part of the Subcontract Works should be made good or replaced in order to achieve the quality or standard referred to in clause 2.1 of this Deed.

3. MANUFACTURER'S WARRANTY

The representations contained in this Deed are in addition to and do not derogate from any manufacturer's warranties or warranty implied by law attaching to any materials or goods provided under the Subcontract.

4. REMEDIES ARE IN ADDITION TO THOSE PROVIDED AT LAW

The rights and remedies provided in this Deed shall be in addition to and shall not derogate from any rights or remedies provided or implied by law in favour of the Principal.

If the Subcontractor does not, as soon as practicable after receiving notification that any work performed or materials or parts supplied by the Subcontractor in the course of the Subcontract Works does not or do not satisfy the requirements of clause 2.1 of this Deed, rectify the failure or defect in that work or those materials or parts, the Subcontractor acknowledges that the Subcontractor shall be responsible for any loss or damage the Principal may suffer as a result of the Subcontractor's failure to rectify such failure or defect (including all consequential loss).

5. INDEMNITY

The Subcontractor shall indemnify, keep indemnified and hold harmless the Principal from and against all costs, losses, expenses and damages (including indirect, special and consequential loss) arising out of the Subcontractor breaching or failing to comply with this Deed.

6. GOVERNING LAW

This Deed is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

EXECUTED by the parties as a deed.

DATE:

The Common Seal of the **Wodonga City Council** was hereto affixed on the day of 2026 in the presence of:)
)
)
)

..... Councillor

..... Councillor

..... Chief Executive Officer

##Choose appropriate signing clause for subcontractor/supplier

SIGNED SEALED AND DELIVERED by)
##INSERT NAME in the presence of:)
).....

.....
Witness

The Common Seal of **##INSERT NAME**)
ACN ##INSERT ACN was affixed in the)
presence of authorised persons:)

..... Director (or Company Secretary)

..... Full name

..... Usual address

Annexure Part E

Key Personnel

(Clause 25.2)

NAME	POSITION

Annexure Part F

Deed of Release

(Clause 42.6)

DATED / /200

BETWEEN

CITY OF WODONGA

Municipal Offices, 104 Hovell Street, Wodonga 3689

(Principal)

AND

(##INSERT NAME AND ACN OF CONTRACTOR)

of **(##insert address of Contractor)**

(Contractor)

1. INTERPRETATION

In this Deed of Release, subject to the below, all words have the same meaning as in the Contract, except where the context otherwise requires-

Contract means the contract between the Principal and Contractor for the execution of the Works for the Project.

Project means **(## insert description of Project)**;

Works means the whole of the work to be executed in accordance with the Contract, including Variations provided for by the Contract, which by the Contract is to be handed over to the Principal, and includes part of the Works.

2. GENERAL

The Contractor agrees that the Contract Sum for the Works, including all adjustments (which includes all Variations made to any part of the work under the Contract) is the sum of **(##\$......)** **(Contract Sum)**.

2.1 The Contractor agrees that the total of the moneys now due or that may in the future become due arising out of or in any way connected with the Contract or the Works or any other works executed by the Contractor and/or its subcontractors and suppliers (whether selected or otherwise) on or about the Site is the sum of **\$(*.....)** **(the Final Payment)** together with retention and/or bank guarantee of **\$(*...)** **(the Security)**.

2.2 The Contractor acknowledges that on payment by the Principal to the Contractor of the Final Payment that sum is accepted as full and final payment to the Contractor of all amounts due and payable now or in the future in connection with the Contract and the Works or any other works executed by the Contractor and/or its subcontractor and suppliers (whether selected or otherwise) on or about the Site.

2.3 In consideration of the promises contained in this Deed of Release and the payment by the Principal of the Final Payment and the return of or release of the Security to the Contractor, the Contractor hereby waives, releases and forever

discharges the Principal from all or any claims, actions, suits, proceedings, demands and the like which the Contractor has now or might have against the Principal in the future whether arising out of or in any way connected with the Contract or in any way connected with the execution of the Works or for the work performed or material supplied at the Site and further acknowledges that this Deed of Release may be pleaded as a complete and unconditional bar to any proceedings of whatever nature sought to be instituted, filed or maintained against the Principal by the Contractor after the date of this Deed of Release.

Executed by the parties as a Deed.

The Common Seal of the **Wodonga City Council** was hereto affixed on the day of 2026 in the presence of:)
)
)
)

..... Councillor
 Councillor
 Chief Executive Officer

(##COMPLETE SEALING CLAUSE FOR CONTRACTOR)

Executed by **## ACN ##** by being signed by those persons who are authorised to sign for the company:)
)
)
)

..... Director (or Company Secretary)
 Director
 Full name
 Full name
 Usual address
 Usual address

Annexure Part G

Schedule of Rates

(Clause 2)

SAMPLE ONLY

Annexure Part H

Local Jobs First

(Clause 59)

1 Definitions

In this Annexure:

Agency means the Principal.

Department has the meaning given in s 3(1) the *Local Jobs First Act 2003*.

Contractor means the person or entity (however described) providing the goods and services under this Contract.

Contract Manager means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Contractor for the purposes of this Contract.

Department has the meaning given in s 3(1) the *Local Jobs First Act 2003*.

ICN means Industry Capability Network (Victoria) Limited of Level 23, 370 Little Lonsdale Street, Melbourne VIC 3000 ACN 007 058 120.

LIDP means the Local Industry Development Plan submitted by the Contractor at the time of the proposal and certified by Industry Capability Network (Victoria) by providing an acknowledgement letter.

LIDP Commitments means the obligations and undertakings of the Contractor as detailed in its LIDP.

LIDP Monitoring Table means the table of milestones and LIDP Commitments contained in the LIDP.

Local Content has the meaning given in s 3(1) of the *Local Jobs First Act 2003*.

Local Jobs First Commissioner means the person appointed under s 12 of the *Local Jobs First Act 2003*.

Local Jobs First Policy means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*.

Notice means a notice given, delivered or served in accordance with the Contract.

Practical Completion means:

- (a) Practical Completion as defined in the main body of this Contract; or
- (b) If not defined in the main body of this Contract it means when the Contractor has completed the delivery of the goods and/or services to be provided under this Contract (excluding administrative or regulatory obligations remaining to be fulfilled); or
- (c) In any case, such other reporting dates for the purposes of clause 2.3(d) of this Schedule as notified by the Agency.

Responsible Minister means the Minister with responsibility for administering the *Local Jobs First Act 2003*.

Victorian Management Centre (VMC) is a cloud based secure online platform that enables the registration of projects and associated tenders, the submission of LIDPs, collection, analysis and reporting of local content and jobs data, including, MSPG (if applicable) and, supply chain monitoring and reporting.

2 Local Jobs First Policy

2.1 Local Industry Development Plan

- (a) The Contractor must, in performing its obligations under this Contract:
 - (i) comply with the LIDP;
 - (ii) perform all obligations required to be performed under the LIDP, including the LIDP Commitments, by the due date for performance;
 - (iii) comply with the Local Jobs First Policy.
- (b) The Contractor acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Contract, any extensions to the term and until all of its Reporting obligations as set out in clause 2.3 are fulfilled.
- (c) The Contractor's failure to comply with this clause 2.1 will constitute a material breach of this Contract.

2.2 Revised LIDP

- (a) If at any time a variation to this Contract is proposed which involves or effects a change in the nature of any of the LIDP Commitments, the Contractor must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).
- (b) When requested by the Contract Manager, the Contractor must provide the Revised LIDP to the Agency.
- (c) The Revised LIDP must be agreed by the parties before any variation to the Contract can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Contract.

2.3 Reporting

- (a) The Contractor must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.
- (b) The Contractor must use the Victorian Management Centre (VMC) for LJF monitoring and reporting.
- (c) If the Contract is for a project valued at \$20 million or more, the Contractor must provide a six-monthly report demonstrating its progress towards implementing the LIDP through reporting on the VMC.
- (d) Prior to or at Practical Completion pursuant to clause 1 of this Schedule, the Contractor must provide to the Contract Manager:

- (i) the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
 - (ii) a Statutory Declaration in the form set out as part of the online LIDP to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Contract Manager, the Contractor must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
- (f) The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Contract.

2.4 Verification of Contractor's compliance with LIDP Plan

- (a) The Contractor agrees that each of the Agency and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
- (b) The Contractor must:
 - (i) permit the Contract Manager, an accountant or auditor on behalf of the Agency or the Department, or any other person authorised by the Agency or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Contractor for the purposes of this Contract;
 - (ii) permit the Agency or the Department from time to time to undertake a review of the Contractor's performance in accordance with the LIDP; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or the Department to undertake such audit or inspection.
- (c) The Contractor acknowledges and agrees that the Agency, the Department, the Agency's and Department's duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the LIDP.
- (d) The obligations set out in this clause 2.4 are in addition to and do not derogate from any other obligation under this Contract.

2.5 Use of information

The Contractor acknowledges and agrees that:

- (a) Industry Capability Network (Victoria) will assess the Contractor's performance against the LIDP;
- (b) the statistical information contained in the LIDP and the measures of the Contractor's compliance with the LIDP as reported in the LIDP Monitoring Table will be:
 - (i) included in the Agency's report of operations under Part 7 of the Financial Management Act 1994 in respect of the Agency's compliance with the

Local Jobs First Policy in the financial year to which the report of operations relates;

- (ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the compliance and performance of the LIDP during that year; and
- (iii) may be disclosed in the circumstances authorised or permitted under the terms of this Contract or as otherwise required by Law.

3 Subcontracting

- (a) The Contractor must ensure that any subcontracts entered into by the Contractor in relation to work under this Contract contain clauses requiring subcontractors:
 - (i) to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract,
 - (ii) to provide necessary information that allows the Contractor to comply with its reporting obligations under clause 2.3 of this Schedule, and
 - (iii) to permit the Agency and the Department to exercise their inspection and verification rights under clause 2.4 of this Schedule.
- (b) The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this Contract.
- (c) The Contractor's failure to comply with this clause 3 will constitute a material breach of this Contract.

4 Local Jobs First Commissioner

- (a) The Contractor acknowledges that:
 - (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the Local Jobs First Act 2003;
 - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the Local Jobs First Act 2003;
 - (iii) its failure to comply with the compliance notice referred to in this clause 4(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the Local Jobs First Act 2003; and
 - (iv) the Local Jobs First Commissioner may:
 - A. monitor and report on compliance with the Local Jobs First Policy and LIDP; and
 - B. request the Agency to conduct an audit in relation to the Contractor's compliance with the Local Jobs First Policy and the LIDP.
- (b) The Contractor acknowledges that the Commissioner may recommend that the Agency take enforcement proceedings against the Contractor if the Contractor has failed to comply with the Local Jobs First Policy or the LIDP by:
 - (i) applying to a court to obtain an injunction; or

- (ii) taking action available under this Contract.

SAMPLE ONLY

Annexure Part I

Local Industry Development Plan

(Clause 59)

[# Note to Tenderers: To be tendered.]

SAMPLE ONLY

Annexure Part J

LIDP Monitoring Table

(Clause 59)

[# Note to Tenderers: To be tendered.]

SAMPLE ONLY

Attachment B –

Drawings

SAMPLE ONLY

Attachment C –

Specifications

SAMPLE ONLY

Attachment D –

Comparison Copy

SAMPLE ONLY