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Construction Contract

Project: Wangaratta Sports and Aquatic Centre (WSAC)
Amenities Upgrade

Contract Number: 110938

Wangaratta Rural City Council
ABN 67 784 981 354

and

[## Note to Tenderers: Tender the name of the proposed Contractor entity]
ACN **[## Note to Tenderers: Tender the ACN of the proposed Contractor entity]**

Formal Instrument of Agreement

Date / /

Parties

Name	Wangaratta Rural City Council
Address	Having its municipal office 62-68 Ovens St, Wangaratta VIC 3677
Short name	Principal

Name	## Note to Tenderers: Tender the name of the proposed Contractor entity] ACN [## Note to Tenderers: Tender the ACN of the proposed Contractor entity]
Address	## Note to Tenderers: Tender the address of the proposed Contractor entity]
Short name	Contractor

Background

- A. The Principal wishes to engage a contractor to construct the Works.
- B. The Contractor has represented to the Principal that it has 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 perform their respective obligations in accordance with the Contract.

2. Definitions

Words which are capitalised in this Formal Instrument of Agreement and 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 Formal Instrument of Agreement;
- (b) the Conditions of Contract;
- (c) the Authorities and Headworks Matrix;
- (d) Attachment G (Redacted Funding Agreement);
- (e) Attachment M (Work Standards);
- (f) Attachment I (Operational Areas, Special Events and Restricted Times);
- (g) Attachment K (Pre-Agreed Variations);
- (h) Attachment O (Programming Requirements);
- (i) the clarifications, assumptions, qualifications and exclusions (if any) which are set out or described in Attachment P to this Formal Instrument of Agreement;
- (j) the Drawings; and
- (k) the Specification.

4. Operation of Contract

Where any part of the work under the Contract is performed prior to the Execution Date-

- (a) that work shall be deemed to have been performed pursuant to the Contract; and
- (b) payments made by the Principal to the Contractor in connection with that work shall be deemed to be payments on account of the Contract Sum.

5. Entire Agreement

To the extent permitted by law, in relation to its subject matter, the Contract-

- (a) embodies the entire agreement of the parties; and
- (b) supersedes any prior written or other agreement, understanding, representation or warranty of the parties,

and any prior written or other agreement shall terminate upon the Execution Date.

6. Commencement

The Contract comes into effect on the Execution Date.

7. Counterparts

The Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

8. Further Assurances

Each party agrees to do all things and execute all documents and instruments as may be necessary or desirable to give full effect to the terms of the Contract.

9. Severance

Any provision of the Contract which is illegal, void or unenforceable will be read down so as to be valid and enforceable and if not capable of being read down, will be ineffective only to the extent of such illegality, voidness or unenforceability and the provision will not invalidate the other provisions of the Contract.

10. Electronic execution

Each party consents to the signing of the Contract by electronic means. The parties agree to be legally bound by the Contract signed in this way.

The Principal may provide the Contractor with the ability to sign the Contract by electronic means, including by giving access to software or to an online service for this purpose.

Signing Page

Executed by the parties on / /

The Common Seal of the Wangaratta Rural City Council was hereunto affixed on the _____ day) of _____ 2026 in the presence of: _____)

..... Councillor

Councillor

..... Chief Executive Officer

Alternative 1 – Where the Contractor has more than one director

Executed by [## Note to Tenderers: Tender the name and ACN of the proposed Contractor entity] in accordance with s 127(1) of the *Corporations Act 2001*:

Signature of Director

Signature of Director/Company Secretary

Print full name

Print full name

Alternative 2 – Where the Contractor has only one director

Executed by [## Note to Tenderers: Tender the name and ACN of the proposed Contractor entity] in accordance with s 127(1) of the *Corporations Act 2001*:

..... Signature of Sole Director and Sole Company Secretary

..... Print full name

Attachment A Conditions of Contract

Based on or amended from General conditions of contract

AS 2124-1992

together with

**General conditions of tendering and form of tender
(AS 2125-1992)**

**Form of formal instrument of agreement
(AS 2127-1992)**
(Incorporating Amendment No.1)

AS 2124
First published as part of AS CA24—1952.
Revised and redesignated in part as AS CA24.1—1964.
Second edition 1973.
Revised and redesignated AS 2124—1978.
Second edition 1981.
Third edition 1986.
Fourth edition 1992.
AS 2125
First published as part of AS CA24—1952.
Revised and redesignated in part as AS CA24.2—1964
and AS CA24.3—1964.
AS CA24.2—1964 revised and redesignated
AS 2125—1978.
AS CA24.3—1964 revised and redesignated
AS 2126—1978.
Second edition AS 2125—1981.
Second edition AS 2126—1981.
AS 2125—1981 and AS 2126—1981 revised,
amalgamated and designated AS 2125—1986.
Third edition 1992.
AS 2127
First published as AS 2127—1978.
Second edition 1981.
Third edition 1986.
Fourth edition 1992.
Incorporating Amendment No. 1 (October 2000).

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Conditions of Contract

1. Construction of Contract

The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law of the State or Territory stated in Item 1.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in Item 2.

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).

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.

2. Definitions and Interpretation

2.1 Definitions

In the Contract, except where the context otherwise requires-

'Act of Prevention' means-

- (a) any one of-
 - (i) a breach of the Contract by the Principal; or
 - (ii) any act or omission of the Principal, the Superintendent or the Principal's employees, consultants or agents, other than-
 - (A) any acts or omissions that are authorised by, and done or omitted to be done (as the case may be) in accordance with, the Contract; or
 - (B) an Authority Delay Event;
 - (C) an act or omission of the relevant building surveyor appointed by the Principal in respect of the work under the Contract in the exercise of that person's powers under the Building Legislation;
- (b) Variations expressly directed by the Superintendent in a Variation Order;
- (c) a direction issued by the Superintendent under Clause 33.1 as to the order in, or the times at, which the various stages or parts of the work under the Contract shall be carried out except to the extent that such direction is-
 - (i) consistent with the Approved Construction Management Plan; or
 - (ii) issued as a result of any act or omission of the Contractor or its Associates; or

(d) suspensions directed by the Superintendent pursuant to Clause 34.1(a)(i);

'Adjoining Property' means any site or property adjoining or proximate to the Site;

'Adjoining Property Consent' means any consent, licence, agreement, arrangement or the like given or made by or with or which it is necessary to obtain from an Adjoining Property Owner for the purpose of providing the Contractor with use of or access to, over or under the Adjoining Property of that Adjoining Property Owner;

'Adjoining Property Owner' means the legal owner or occupier of an Adjoining Property;

'Adjudication Application' means an application for adjudication of a 'payment claim' (as defined in section 14 of the SOP Act) made pursuant to section 18 of the SOP Act;

'Alleged Variation Order' means any order, direction or response to a request for information given by or on behalf of the Principal or the Superintendent which, whilst not expressly issued as a Variation Order, the Contractor (acting reasonably) considers to amount to a direction to vary the work under the Contract;

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

'Applicable Entity' has the meaning given in the *Child Safety and Wellbeing Act 2005* (Vic);

'Approvals' means any licence, permit, consent, authorisation, approval, determination, requirement, certificate or the like issued or required by or to be obtained from any Authority, or required under any Legislative Requirement, for or in connection with the work under the Contract or the Works;

'Approved Catch-Up Plan' has the meaning given in Clause 35.18;

'Approved Final Dilapidation Report' has the meaning given in Clause 49.4;

'Approved Initial Dilapidation Report' has the meaning given in Clause 49.2;

'Approved Construction Management Plan' has the meaning given in Clause 27A.3;

'Artefacts' means valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest;

'As-Built Drawings' means a set of the drawings marked-up so as to show the Works as constructed by the Contractor, together with a clean set of those marked-up drawings;

'Asbestos' means:

- (a) the fibrous form of the mineral silicates belonging to any one or a combination of the serpentine and amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, crocidolite (blue asbestos), chrysotile (white asbestos) or tremolite, or
- (b) any material or object, whether natural or manufactured, that contains one or more of the mineral silicates referred to in paragraph (a) above;

'Associate' means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, Subcontractor, consultant, nominee, licensee or adviser of that person or Related Body Corporate (and in the case of the Contractor's Associates, includes their respective Associates), but excludes the Principal, the Superintendent, and the Contractor;

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

‘Australian Privacy Principles’ has the meaning in the *Privacy Act 1988* (Cth);

‘Authority’ means any-

- (a) government, local government or governmental, semi-governmental, statutory or judicial body, authority or agency;
- (b) person owning, having jurisdiction over or in any way governing, regulating or controlling any part of the Site or the work under the Contract or any Services Infrastructure; or
- (c) person providing Services;

Authority Delay Event means a delay -

- (a) which is not attributable to an act or omission of the Contractor or its Associates; and
- (b) which constitutes a delay in an Authority -
 - (i) providing any consent to, or approval of, any application made by or on behalf of the Contractor for an Approval in relation to the Works;
 - (ii) providing any consent to, or approval of, any work undertaken by or on behalf of the Contractor which consent or Approval it is necessary for the Contractor to receive before it can progress with any other part of the Works; or
 - (iii) failing to undertake any works which it is expressly stated in a Contract Document that the relevant Authority will undertake, where it is necessary for such work to be undertaken in order for the Contractor to comply with its obligations under the Contract (which may include, where relevant, an Authority failing to bring Services Infrastructure to the boundary of the Site by the Date for Practical Completion (or any earlier date which is expressly stated in a Contract Document));
- (c) where the time taken by the relevant Authority to grant the relevant Approval or consent or to undertake the relevant work (as the context requires) extends beyond both -
 - (i) the relevant time stated in the Current Construction Program; and
 - (ii) if there -
 - A. is a statutory timeframe for such the granting of such Approval or consent or the undertaking of such work (as the context requires) by or on behalf of the relevant Authority, that timeframe; or
 - B. is not a statutory timeframe for the granting of such Approval or consent or the undertaking of such work (as the context requires) by or on behalf of the relevant Authority, the time which would normally be taken by an Authority to grant such approval or consent or undertake such work (as the context requires) in projects of a similar nature, complexity and magnitude to the Project; and
- (d) where the Contractor has demonstrated to the reasonable satisfaction of the Superintendent that it has taken all reasonable steps to prevent the relevant delay from arising which will be deemed to include that -

- (i) the Contractor has provided all required documentation and information to the relevant Authority in a timely manner;
- (ii) where the relevant delay relates to the granting of an Approval and the Contractor is responsible for applying for such approval, the Contractor has made the application for the relevant approval on or before the date (or the expiration of the period of time stated in) the Authorities and Headworks Matrix;
- (iii) the Contractor has notified the relevant Authority of the timeframes contained in the Current Construction Program;
- (iv) the Contractor has liaised with the relevant Authority as and when required; and
- (v) the Contractor has proactively prompted the relevant Authority to ensure that the granting of the relevant Approval or consent or the undertaking of the relevant work (as the context requires) is provided or undertaken in a timely manner;

'Bank' means a body registered by the Australian Prudential Regulation Authority as an 'authorised deposit-taking institution' which has at least one office in the State of Victoria and which has the Required Rating;

'BCA Volume One' means Volume One of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in the Appendices to that Volume;

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

'Building Legislation' means all laws governing the construction of the work under the Contract and includes the Building Act, and any regulations, orders, declarations or any subordinate legislation or instruments in force under it;

'Business Day' has the meaning given in the SOP Act;

'Category A Contamination' means any waste which constitutes 'category A waste' as that term is defined in the *Environment Regulations 2021* (Vic) as revised, supplemented or replaced from time to time;

'Category B Contamination' means any waste which constitutes 'category B waste' as that term is defined in the *Environment Regulations 2021* (Vic) as revised, supplemented or replaced from time to time;

'Category C Contamination' means any waste which constitutes 'category C waste' as that term is defined in the *Environment Regulations 2021* (Vic) as revised, supplemented or replaced from time to time;

'Category D Contamination' means any waste which constitutes 'category D waste' as that term is defined in the *Environment Regulations 2021* (Vic) as revised, supplemented or replaced from time to time;

'Change in Legislative Requirement' means a change in an existing Legislative Requirement or the introduction of a new Legislative Requirement, which-

- (a) comes into effect after the Execution Date and could not have been anticipated by a Competent Contractor prior to the Execution Date; and
- (b) necessitates a change –
 - (i) to the Works;

- (ii) being the provision of new Services Infrastructure by an Authority in connection with the work under the Contract; or
- (iii) in a fee or charge or payment of a new fee or charge by the Contractor which directly relates to the Works;

‘Child-Connected Work’ means work performed in connection with the Contract by an adult in an environment where children are present or are reasonably expected to be present;

‘Child Safety Laws’ means any Legislative Requirements that in any way relate to child safety, including the *Child Safety and Wellbeing Act 2005* (Vic);

‘Claim’ includes any claim, action, demand or proceeding (including by way of contribution or indemnity) against the Principal, including for-

- (a) an extension of time;
- (b) an adjustment to the Contract Sum;
- (c) any Loss; or
- (d) other relief or remedy arising out of or in connection with the Contract or the work under the Contract,

whether under contract, in equity, under statute (including breach of statutory duty), in tort (including for negligence or negligent misrepresentation), on a quantum merit or for restitution (including restitution based on unjust enrichment);

‘Clause’ means a clause in the Conditions of Contract;

‘Clerk of Works’ means the clerk of works appointed pursuant to Clause 22;

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

‘Competent Contractor’ means a prudent, qualified, competent and professional contractor experienced in constructing work of a similar nature to the work under the Contract and who has done those things that the Contractor represents, acknowledges or warrants, under the Contract, it has done;

‘Compliance Report’ has the meaning given to it in Clause 52.3(c);

‘Conditions of Contract’ means this document, including the Annexures;

‘Confidential Information’ means all information and materials, in any form, which comes into the Contractor’s possession or control about the Principal, the Funder or the Project pursuant to, as a result of or in performance of the Contract, excluding information which–

- (a) at the time of its first disclosure or observation under the Contract was in the public domain;
- (b) after disclosure or observation under the Contract, comes into the public domain otherwise than by disclosure in breach of the Contract;
- (c) is received by the Contractor from a third party who has the right to provide the information;
- (d) was already in the Contractor’s possession, control or knowledge without restriction prior to its disclosure or observation; or

(e) the Principal is required by law to disclose;

'Construction Program' has the meaning given to it in Clause 33.2;

'Constructional Plant' means appliances and things used in the performance 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 as constituted by the Contract Documents;

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

'Contract Sum' means the fixed lump sum amount stated in Item 3 (which includes any provisional sums) as adjusted in accordance with the terms of the Contract;

'Contractor' means the person stated in Item 7;

'Contractor's Representative' means the person stated in Item 12 or such other person who is subsequently appointed as Contractor's Representative in accordance with Clause 25.1;

'Corporation' has the meaning given to it in the Corporations Act;

'Corporations Act' means the *Corporations Act* 2001 (Cth);

'Current Construction Program' means-

- (a) subject to paragraphs (b) and (c), the Tender Program (if any);
- (b) subject to paragraph (c), where the Superintendent has not rejected a Construction Program submitted under Clause 33.3(a) within 10 Business Days of its receipt, that Construction Program; and
- (c) where the Superintendent has not rejected a Construction Program submitted under Clause 33.3(c) within 10 Business Days of its receipt, that Construction Program (provided that where more than one Construction Program has been submitted under Clause 33.3(c) and has not been rejected, it means the most recent Construction Program which has not been rejected).

'Date for Practical Completion' means where Item 38 provides a -

- (a) date for Practical Completion, the date;
- (b) period of time for Practical Completion, the last day of the period,

but if any extension of time for Practical Completion is granted by the Superintendent or by the Principal pursuant to Clause 35.5B 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;

'Deed of Guarantee' means the form of deed contained in Annexure Part J;

'Defect' includes any-

- (a) defect, shrinkage, error or omission in the Works; or
(b) aspect of the Works which fails to comply with the requirements of the Contract;

'Defect Rectification List' means a list which sets out-

- (a) any Defects; and
(b) the dates by which the work of rectification for such Defects must be commenced and completed;

'Defects Liability Period' means the periods referred to in Clause 37;

'Delay Event' means any of-

- (a) an Act of Prevention; or
(b) those events, if any, listed in Item 41;

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

'Discrepancy' means any ambiguity, discrepancy or inconsistency;

'Draft Catch-Up Plan' has the meaning given in Clause 35.16;

'Draft Construction Management Plan' has the meaning given in Clause 27A.2;

'Drawings' means the drawings referred to or set out in Attachment B 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 in Clause 12A(g);

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

'Excepted Risk' has the meaning given to it in Clause 16.3;

'Execution Date' means if counterparts of the Contract-

- (a) are not used, the date upon which the Contract is executed by the last of the parties; or
- (b) are executed, the date upon which those executed counterparts are exchanged;

'Final Certificate' has the meaning given to it in Clause 42.8;

'Final Draft Dilapidation Report' has the meaning given in Clause 49.3;

'Final Payment Claim' has the meaning given to it in Clause 42.7;

'Force Majeure Event' means any-

- (a) lightning strike, severe storm, earthquake, natural disaster, landslide, bushfire, mudslide or tsunami;
- (b) sabotage, vandalism, malicious damage, riot or a 'terrorist act' as defined in the *Terrorism and Cyclone Insurance Act 2003 (Cth)* (save to the extent that acts of terrorism are insurable pursuant to the *Terrorism Insurance Act 2003 (Cth)*);
- (c) explosion, flood or fire resulting from any of the events in paragraph (a) or (b);
- (d) war (declared or undeclared), civil war, insurrection, invasion, rebellion, revolution, military action or usurped power, martial law, act of public enemy, epidemic or embargo; or
- (e) ionising radiation, radioactive contamination, nuclear contamination or toxic, chemical or biological contamination,

that did not arise before the Execution Date, is beyond the reasonable control of a party, was not caused by an act or omission of the party or any of its Associates, and could not have been prevented, avoided, mitigated, remedied or overcome by the party taking steps a prudent and reasonable person would have taken in the circumstances;

'Formal Instrument of Agreement' means the formal instrument of agreement to which these Conditions of Contract are attached as Attachment A;

'Funder' means the entity or entities stated in Item 11;

'Funding Agreement' means the agreement or agreements, if any, set out or described in Attachment G;

'Further Period of Delay' has the meaning given in Clause 35.5D(b);

'Good Construction Practices' means practices followed when work is undertaken-

- (a) in a sound and workmanlike manner;
- (b) with a high level of care and skill;
- (c) with due expedition and without unnecessary or unreasonable delays;
- (d) in a manner which allows the Works to be efficiently performed;
- (e) in accordance with all applicable Legislative Requirements and Australian Standards (or where an Australian Standard does not exist the equivalent US Standard); and

- (f) using new materials of merchantable quality which are fit for their intended purpose;

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

'Headworks Charges' means the fees, costs and charges levied by or payable to any Authority for the connection to and alteration or upgrade of existing Services Infrastructure to the Site by reason of, or which is necessary to service, the Works;

'Incident' means the occurrence of any incident which-

- (a) results in death or in any person requiring either medical treatment by a doctor or immediate treatment as an in-patient in a hospital;
- (b) involves high risk equipment or plant listed in the *Equipment (Public Safety) Regulations 2017* (Vic);
- (c) involves theft of explosives or injuries caused by explosives;
- (d) involves any releases of dangerous goods;
- (e) involves any damage to the Environment;
- (f) results in any property damage to the property of the Principal or any third party; or
- (g) consists of any 'near misses' associated with any of the above incidents;

'Inclement Weather' means the existence of rain or other climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) and the consequences of such conditions which makes it either unreasonable or unsafe for the Contractor or its employees or subcontractors to continue with performance of the Works;

'Information Only Documents' means all documents and other information (including information communicated through meetings) made available or provided to the Contractor by or on behalf of the Principal, the Superintendent or the Principal's Associates prior to the Execution Date, excluding the Contract Documents but including the documents, if any, set out or described in Attachment H;

'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;

'Initial Dilapidation Report' has the meaning given in Clause 49.1;

'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 the Contract or in the subject matter of the Contract becomes attached or taken in execution or under any legal process;
- (c) an encumbrancer 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 disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Principal;

- (e) any 'security interest' (as defined in section 51A of the Corporations Act) becomes enforceable or is enforced against the Contractor;
- (f) a distress, attachment or other execution in excess of \$10,000 is levied or enforced against the Contractor;
- (g) the Contractor has a judgment or order exceeding \$10,000 given against it and that judgment or order is not satisfied, 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 of 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 in writing by the 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 or amalgamation previously approved in writing 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 part of the undertaking of the Contractor is appointed;
- (p) the Contractor is or makes a statement from which it may be reasonably deduced by the Principal that the Contractor is the subject of an event described in section 459C(2) of the Corporations Act; or
- (q) any event that is analogous or having a substantially similar effect to any of the events specified in this definition;

'Item' means an item in Annexure Part A;

'Key Personnel' means the persons stated in Annexure Part E and any replacements made in accordance Clause 25.2;

'Latent Condition' has the meaning given to that term in Clause 12.1;

'Legislative Change Delay Event' means a delay caused by a Change in Legislative Requirement in circumstances where -

- (a) the Contractor has complied with Clause 14.2; and
- (b) the relevant Change in Legislative Requirement -

- (i) does not relate to or arise from a delay in relation to an Authority issuing an Approval or providing any consent in relation to any part of the Works or an Authority failing to undertake any works which it is expressly stated in a Contract Document that the relevant Authority will undertake; and
- (ii) was not attributable to an act or omission of the Contractor or its Associates;

'Legislative Requirement' includes-

- (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) without limiting the general nature of paragraph (a) of this definition, the Building Legislation, Environmental Laws and OH&S Laws;
- (c) the lawful requirements of Authorities;
- (d) codes of practice, compliance codes and Ministerial directions;
- (e) applicable Australian Standards; and
- (f) fees and charges payable in connection with the foregoing;

'Loss' includes any loss, cost, expense, penalty, debt, damages (including delay costs) or liability of any kind, whether direct, indirect, consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent, and whether arising under contract, in tort (including negligence), restitution, pursuant to statute or otherwise at law or in equity;

'Maximum Daily Amount' means that amount stated in Item 43;

'month' means calendar month;

'Monthly Report' has the meaning given to this term in Clause 33A.1;

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

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

- (a) the OH&S Act; and
- (b) the OH&S Regulations;

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

'Operation and Maintenance Manuals' means the written manuals, instructions and specifications published by the manufacturers of the plant and equipment incorporated in the Works or which may otherwise be required by the Contract Documents;

'Operational Area' means the area or areas so described in Attachment I;

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

'person' includes a firm or body corporate or unincorporate, individual, Authority, associate, an incorporated association, partnership, trust or joint venture;

'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;

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

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

- (a) the Works are complete in accordance with the requirements of the Contract except for minor Defects-
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) the existence and rectification of which will not prejudice or adversely affect the convenient use of the Works;
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed;
- (c) documents, guarantees, certifications, warranties, evacuation plans, and other information required under the Contract to be supplied by the Contractor in order for the Works to reach Practical Completion have been supplied to the Superintendent including-
 - (i) all warranties required by Clause 9.6 (if any);
 - (ii) any Adjoining Property Consents which the Contractor is obliged to procure pursuant to Clause 15.2(a);
 - (iii) all guarantees, certifications and warranties required by the Contract Documents; and
 - (iv) documents and other information which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works;
- (d) all services, systems and installations comprised in the Works are performing as required by the Contract (or where no requirement is stated, in accordance with the specification issued by the manufacturer of the relevant service, system or installation), and the Contractor has-
 - (i) conducted the commissioning tests required by the Contract for the purpose of verifying that the building services, systems and installations are so performing; and
 - (ii) supplied evidence, to the reasonable satisfaction of the Superintendent, both of the conduct and the results of those commissioning tests;
- (e) the Contractor has provided to the Superintendent draft As-Built Drawings and draft Operation and Maintenance Manuals in accordance with the Contract;
- (f) the Contractor has complied with its obligations under Clause 49.5 and has otherwise has completed such dilapidation, existing condition and other surveys as are reasonably required by the Superintendent from time to time (or as are

otherwise required by the Contract) and has made good any damage caused by the Contractor or its Associates to the Site, the property of the Principal or any Adjoining Property;

- (g) all keys to the completed buildings and rooms have been individually numbered or appropriately labelled as required by the Superintendent and provided to the Superintendent;
- (h) all demolition work forming part of the work under the Contract has been undertaken and all debris, waste materials arising from such demolition have been removed from the Site;
- (i) all Site Amenities and any other facilities or structures which the Contractor and its Associates are using or have used for temporary storage or accommodation have been demobilised or demolished (as the case may be) and removed from the Site and the Site has been swept clean, all rubbish has been removed from the Site and the Site is in a condition appropriate for its final intended use;
- (j) all new roads, car-parking, signage (including all external signage, statutory signage, carparking signage and internal and external wayfinding signage) and infrastructure which forms part of the Works has been carried out, installed and completed in accordance with the Contract;
- (k) to the extent that the supply and installation of any fixed furniture and equipment forms part of the Works, such fixed furniture and equipment has been supplied and installed in accordance with the Contract;
- (l) to the extent that the supply and installation of joinery forms part of the Works, such joinery has been supplied and installed in accordance with the Contract;
- (m) the Contractor has satisfied the other preconditions to Practical Completion, if any, set out or described in Item 39;

'prescribed notice' has the meaning given to it in Clause 46.1;

'Principal' means the person stated in Item 5;

'Principal Contractor' has the meaning given to the term 'principal contractor' in the OH&S Regulations;

'Principal Requested Report' has the meaning given to that term in Clause 33A.2;

'Principal's Policies and Procedures' means the policies and procedures state in Annexure Part L;

'Privacy Laws' means any law which relates to the privacy of information about individuals and with which the Contractor must comply, including the Australian Privacy Principles and any applicable code of practice;

'Profit and Overhead Costs' means the Contractor's profit and direct and indirect costs associated with preliminaries, attendance, establishment, administration and supervision, including onsite and offsite overheads;

'Prohibited Cladding Products' means:

- (a) aluminium composite panels with a core of less than 93% inert mineral filler (inert content) by mass in external cladding as part of a wall system; and
- (b) expanded polystyrene products used in an external insulation and finish (rendered) wall system;

'Project' means the project described in Item 4;

'Proposed Variation Notice' has the meaning given to it in Clause 40.2;

'Provisional Period of Delay' has the meaning given in Clause 35.5D(a);

'provisional sum' means the monetary sums, contingency sums or prime cost allowances set out in Annexure Part C for the performance of each provisional sum item;

'provisional sum item' means the works or items described in Annexure Part C;

'provisional sum work value' has the meaning given in Clause 11.4;

'Quality Management Plan' has the meaning given to it in Clause 30.2;

'Related Body Corporate' has the meaning given to it in the Corporations Act;

'Reputable Insurer' means an insurance company having the Required Rating;

'Required Rating' means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc;

'Restricted Times' means the relevant times, if any, stated in Attachment I;

'Restricted Works' has the meaning given in Attachment I;

'Schedule of Rates' means the schedule or schedules, if any, set out or identified in Attachment D;

'Security' means security in accordance with the requirements of Clauses 5.2 and 5.3, except that in the case of additional security under Clause 42.4, the amount of security shall be as stated in that Clause;

'Security Interest' means a 'security interest' as defined in sections 10 and 12 of the PPS Act;

'Selected Subcontract Work' means that particular work or the supply of those items which are to be subcontracted to a Selected Subcontractor pursuant to Clause 10;

'Selected Subcontractor' means a subcontractor, if any, listed in stated in Item 20;

'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;

'Separable Portions Schedule' means the schedules so entitled which are set out being Annexure Part A;

'Services' means services and utilities including water, gas, electricity, sewerage, drainage, waste and telecommunications;

'Services Infrastructure' means any infrastructure or installations used for or in connection with the transmission, delivery, distribution, supply or provision of any Services and includes earthworks, channels, poles, towers, pipes, cables, drains, conduits and electrical systems and related plant and equipment;

'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 Amenities' means the site amenities referred to in Clause 27.7(a);

'Site Conditions' means the physical conditions on, above or below the surface of the Site;

'Site Meeting' has the meaning given in Clause 33B.1;

'Site Plan' means the plan set out in Annexure Part I;

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

'Special Event' means any sporting, aquatic or other event, function or activity to be undertaken or held at any Operational Area and will be deemed to include the events, functions and activities set out in Attachment I;

'Specification' means the document or documents referred to or set out in Attachment C and any modification of such document or documents thereafter directed or the use of which has been permitted by the Superintendent pursuant to powers contained in the Contract;

'Stakeholder' means the entity or entities, if any, described as a 'Stakeholder' in Attachment I and is deemed to include the Principal;

'Subcontract' means a contract between the Contractor and a Subcontractor;

'Subcontract Work' means the work to be undertaken by the Subcontractor under its Subcontract;

'Subcontractor' means any person engaged by the Contractor to perform a portion of the work under the Contract (but does not include an employee of the Contractor) and includes any person who provides services, materials, plant, equipment or advice in respect thereof;

'Superintendent' means the person stated in Item 9 as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative;

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

'survey mark' 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;

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

'Tender Construction Management Plan' means the document or documents set out or described in Attachment F;

'Tender Program' means the program (if any) contained in Attachment E;

'test' includes examine and measure;

'Type A Construction' has the meaning given to it in Part C1 of the BCA Volume One;

'Type B Construction' has the meaning given to it in Part C1 of the BCA Volume One;

'Variation' means any one or more of the following-

- (a) an increase or decrease in or omission of any part of the work under the Contract;
- (b) a change to the character or quality of any material or work comprised in the work under the Contract;
- (c) a change to the levels, lines, positions or dimensions of any part of the work under the Contract or anything described in the Contract Documents; or
- (d) the performance of additional work;

'Variation Order' has the meaning given to it in Clause 40.1;

'Variation Proposal' has the meaning given to it in Clause 40.2;

'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 perform under the Contract and includes Variations, remedial work, Constructional Plant and Temporary Works;

'Working Day' means the days stated in Item 35;

'Working Hours' means those hours on Working Days which are stated in Item 36;

'Works' means the whole of the work to be executed in accordance with the Contract including variations provided for by the Contract; and

'Wrongs Act' means the *Wrongs Act* 1958 (Vic).

2.2 Interpretation

In the Contract, except as expressly stated otherwise-

- (a) clause headings and sub-clause headings in the Conditions of Contract shall not form part of the Conditions of Contract and shall not be used in the interpretation of the Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) if the time for doing any act required or permitted by the Contract falls on a day that is not a Business Day, then the time for doing the act shall be deemed to be on the next day which is a Business Day;
- (e) in the construction and interpretation of the Contract, no rule of construction or interpretation applies to the disadvantage of the Principal on the basis that the Principal prepared the Contract;
- (f) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (g) the words 'include', 'includes' and 'including' shall be read as if followed by the words 'without limitation';
- (h) where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract;

- (i) all obligations to indemnify under the Contract will survive termination or expiration and completion of the Contract;
- (j) a reference to any statute, regulation or Approval means a reference to that statute, regulation or Approval as amended, re-enacted, supplemented or replaced from time to time;
- (k) other grammatical forms of a term defined in Clause 2.1 have a corresponding meaning;
- (l) a reference to a party to a document includes that party's successors, executors, administrators and permitted assigns;
- (m) all warranties and representations given by the Contractor in the Contract survive the termination or expiration and completion of the Contract;
- (n) the rights and remedies under the Contract are cumulative and, except to the extent expressly provided for in the Contract, are not exclusive of any rights and remedies provided by law or equity or any other agreement; and
- (o) the rights and obligations of the parties under the Contract will not merge on expiration and completion or termination of the Contract unless expressly set out in the Contract.

2.3 Survival

The following provisions of the Contract are continuing and survive termination or expiration and completion of the Contract-

- (a) Clauses 2.2(i), 8.6, 8.7, 8.8, 8.9, 8.10, 42.6, 42.10, 44, 45, 47 and this Clause 2.3;
- (b) any provision relating to or connected with-
 - (i) a warranty given, or an indemnity granted by, the Contractor to the Principal;
 - (ii) the Principal's rights to recover and set-off moneys;
 - (iii) the Security;
 - (iv) confidentiality;
 - (v) intellectual property; and
 - (vi) any right arising on completion or termination of the Contract; and
- (c) any provision which, otherwise from its nature (whether expressly or by implication), is intended to survive completion or termination of the Contract.

2.4 Principal's rights

Where the Principal has a right or power arising out of the Contract, unless otherwise expressly stated, the Principal may exercise that right or power in its absolute discretion.

3. Nature of Contract

3.1 Performance and Payment

The Contractor shall-

- (a) perform and complete the work under the Contract; and
 - (b) bring the Works to Practical Completion by the Date for Practical Completion,
- in accordance with the Contract.

The Principal shall pay the Contractor the Contract Sum in accordance with the Contract.

3.2 Not Used

3.3 Not Used

3.4 Schedule of Rates

The Schedule of Rates may in the absolute discretion of the Superintendent be used for the following purposes only-

- (a) valuing Variations in accordance with Clause 40.5;
- (b) valuing Daywork in accordance with Clause 41; and
- (c) at the discretion of the Superintendent, assessing claims for payment in accordance with Clause 42.1B.

3.5 Deemed allowance

The rates and prices set out in the Schedule of Rates will be deemed to include all-

- (a) labour costs;
- (b) Profit and Overhead Costs;
- (c) costs associated with the manufacture, supply, delivery, installation and testing of the relevant item;
- (d) other costs associated with the relevant item; and
- (e) plant and equipment required for the relevant trade.

3.6 No Claim

The Contractor is not entitled to make any Claim arising out of or in connection with any Discrepancy in the Schedule of Rates.

4. Representations and Warranties

4.1 General representations and warranties

The Contractor represents and warrants to the Principal that-

- (a) it is duly and validly incorporated and has the legal capacity and power to-
 - (i) own property and carry on its business; and
 - (ii) enter into and perform its obligations arising out of the Contract;

- (b) all representations, warranties and information provided by the Contractor prior to the Execution Date are true and correct as at the Execution Date and are not, by omission or otherwise, misleading; and
- (c) no litigation, arbitration, criminal or administrative proceedings are current, pending or (to its knowledge) threatened which may have a material adverse effect on the Contractor's ability to perform its obligations arising out of the Contract.

4.2 Contractor's representations and warranties regarding the Contract

The Contractor represents and warrants to the Principal that-

- (a) prior to the Execution Date, it did each of the following to the standard of a Competent Contractor-
 - (i) carefully examined each of the Contract Documents and satisfied itself that they are suitable and adequate for the purpose of constructing the Works in accordance with the Contract;
 - (ii) carefully inspected the Site and its surroundings; and
 - (iii) informed and satisfied itself of the nature of the work, materials, equipment and Constructional Plant necessary for the performance and completion of the work under the Contract; and
- (b) it is satisfied that the Contract Sum and Date for Practical Completion make sufficient allowance for:
 - (i) the performance and completion of the work under the Contract; and
 - (ii) the Contractor to comply with its notification obligations arising out of the Contract, including complying with such notification obligations within any relevant timeframe set out in the Contract.

4.3 Contractor's representations and warranties regarding the Works

The Contractor represents and warrants to the Principal that the Contractor shall-

- (a) perform the work under the Contract-
 - (i) in accordance with the Contract Documents;
 - (ii) in a proper and workmanlike manner;
 - (iii) using Good Construction Practices;
 - (iv) so that it does not disturb or disrupt the Optus telecommunications tower being constructed next to the Site as marked on the Site Plan;
 - (v) so that it and its Associates does not harm or otherwise adversely affect the protected endangered moths which are living next to the Site in the area marked on the Site Plan; and
 - (vi) so that upon Practical Completion the Works shall –
 - A. comply with all Legislative Requirements; and
 - B. comply with all requirements of the Contract;

- (b) without limiting the general nature of Clause 4.3(a), exercise the due skill, care and diligence of a Competent Contractor in the performance and completion of the work under the Contract;
- (c) ensure that the work under the Contract is undertaken by persons and Subcontractors who are suitably qualified and experienced;
- (d) without limiting the general nature of Clause 4.3(c), to the extent relevant, ensure that persons and Subcontractors undertaking any part of the work under the Contract are appropriately registered or licensed and maintains such registration or licence; and
- (e) without limiting the general nature of Clause 4.3(c) or Clause 4.3(d), to the extent the work under the Contract involves or may involve the disturbance, removal or disposal of any Asbestos, ensure that-
 - (i) such work is undertaken by a Class A licensed contractor;
 - (ii) the contractor undertaking such work has trained its employees and subcontractors in accordance with all relevant Legislative Requirements and standards; and
 - (iii) any persons involved in the disturbance, removal or disposal of such Asbestos maintains at all relevant times all licences required by any Legislative Requirement.

4.4 No Principal warranties

The Contractor agrees that-

- (a) the Information Only Documents were provided to the Contractor solely for its information and do not form part of the Contract; and
- (b) the Contractor is not entitled to make any Claim arising out of or in connection with-
 - (i) the Information Only Documents; or
 - (ii) any Discrepancies in the Information Only Documents.

5. Security

5.1 Purpose

Security is for the purpose of ensuring the due and proper performance of the Contract.

5.2 Provision of Security

The Contractor shall provide to the Principal Security in the amount stated in Item 13 and in accordance with this Clause 5.

5.3 Form of Security

The Security shall-

- (a) be in the form of two (2) unconditional and irrevocable guarantees issued by a Bank;
- (b) be payable on demand by the Principal at an office of the issuer in Melbourne;
- (c) not have an expiry date; and

- (d) be otherwise in the form contained in Annexure Part D or as approved in writing by the Principal.

5.4 Time for Lodgement of Security

The Contractor shall lodge the Security within 5 Business Days of the Execution Date and, in any event, prior to commencing any part of the Works on the Site.

5.5 Recourse to Security

The Principal may at any time, after having provided 5 Business Days prior written notice to the Contractor, have recourse to Security to satisfy any –

- (a) debt or other moneys due from the Contractor to the Principal arising out of the Contract;
- (b) without limiting the general nature of Clause 5.5(a), amount (including liquidated damages) which is payable by the Contractor to the Principal arising out of Clause 35.6;
- (c) entitlement or bona fide claim to moneys which the Principal has against the Contractor arising out of the Contract whether for damages or otherwise; or
- (d) Loss which the Principal suffered or incurred (or reasonably considers that it will suffer or incur) arising out of-
 - (i) the Contractor being the subject of an Insolvency Event;
 - (ii) a Defect which the Contractor fails to rectify in accordance with the Contract; or
 - (iii) a breach of the Contract by the Contractor.

5.6 Not Used

5.7 Reduction of Security

Within 10 Business Days after the last to occur of-

- (a) the issue of the Certificate of Practical Completion (or, if there are Separable Portions, the issue of the Certificate of Practical Completion for the last Separable Portion to achieve Practical Completion);
- (b) the Superintendent having received from the Contractor all Operation and Maintenance Manuals and all As-Built Drawings;
- (c) the Contractor providing to the Superintendent a letter from the Contractor's relevant insurance broker or brokers confirming that all insurances required to be effected by the Contractor under the Contract were maintained by the Contractor during the course of the Works; and
- (d) if the payment certificate issued immediately subsequent to the Certificate of Practical Completion certifies a balance owing from the Contractor to the Principal, the Contractor having paid to the Principal such balance,

the Principal's entitlement to the Security and shall be reduced by the percentage thereof stated in Item 14.

The Principal shall, within 10 Business Days of its entitlement being so reduced, release the Security in excess of the entitlement.

5.8 Release of Security

The Principal shall release the remaining Security within 15 Business Days after the last to occur of-

- (a) the issue of the Final Certificate;
- (b) the Principal having received the deed of release in the form set out in Annexure Part F;
- (c) if the Final Certificate certifies a balance owing from the Contractor to the Principal, the Contractor having paid to the Principal such balance; and
- (d) the rectification by the Contractor of all Defects notified by the Superintendent in accordance with the Contract.

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

5.9 Interest on Security

The Principal-

- (a) is not obliged to pay the Contractor interest on the Security, or the proceeds of the Security if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in Clause 5.9(a) on trust for the Contractor.

5.10 Deed of Guarantee

Where the Contractor is a corporation that is related to or is a subsidiary of another corporation, then the Contractor shall, within 5 Business Days after the Execution Date, provide the Principal with the Deed of Guarantee duly executed by the Contractor and that other corporation for the performance of the obligations and the discharge of the liabilities of the Contractor arising under the Contract.

5.11 Contractor not to injunct

The Contractor shall not take any steps to injunct or otherwise restrain-

- (a) any issuer of the Security from paying the Principal pursuant to the Security;
- (b) the Principal from taking any steps for the purposes of making a demand under the Security or receiving a payment under the Security; or
- (c) the Principal using the money received under the Security.

5.12 Personal Property Securities Act

The Contractor-

- (a) must do everything the Principal considers reasonably necessary to-
 - (i) ensure that any Security Interest arising under the Contract in favour of the Principal is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;

- (ii) enable the Principal to apply for any registration, or give any notification, in connection with any such Security Interest; and
 - (iii) enable the Principal to exercise rights in connection with any such Security Interest;
- (b) agrees-
 - (i) that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of any such Security Interest;
 - (ii) not to register a financing change statement without the prior written consent of the Principal; and
 - (iii) agrees not to disclose information of the kind referred to section 275(1) of the PPS Act; and
- (c) waives any rights it may have had but for this Clause 5.12 under-
 - (i) section 157(1) of the PPS Act to receive a verification statement; and
 - (ii) section 275(7)(c) of the PPS Act to authorise the disclosure of information relating to any such Security Interest.

6. Not Used

7. Service of notices

7.1 Giving of Notices

A communication (including a notice, approval, consent, request or demand) required or permitted under the Contract shall be in writing and shall be-

- (a) delivered to the address;
- (b) posted by prepaid post to the address; or
- (c) sent by email to the email address,

of the relevant addressee stated in Item 6, Item 8 or Item 10 (as the context requires).

7.2 When a communication is given

A communication is deemed to have been given-

- (a) when delivered by hand, on delivery (or if after 5pm, on the following Business Day at 9am);
- (b) if sent by prepaid post within Australia, 6 Business Days after the date of posting and if outside Australia, 10 Business Days after posting (by airmail); and
- (c) if sent by email, upon the first to occur of-
 - (i) receipt by the sender of an email acknowledgement from the addressee's information system showing that the email has been delivered to the email address of that addressee;

- (ii) the time that the email enters an information system that is under the control of the addressee; and
- (iii) the time that the email is first opened or read by the addressee,

provided that if the relevant occurrence occurs after 5.00pm, it will be deemed to have been given on the following Business Day at 9.00am.

7.3 Change of Address

The Principal, the Contractor, the Contractor's Representative and the Superintendent shall each notify the others of a change of address or email address.

7.4 Costs of electronic platform

The Contractor will bear the cost of acquiring, paying all required licence fees for, and any other costs of any online document management and correspondence system used by the parties in connection with the Project and the work under the Contract.

8. Contract documents

8.1 Discrepancies

The Contract Documents are to be taken as mutually explanatory of one another.

If the Contractor discovers any Discrepancy in or between any of the Contract Documents or any document prepared for the purpose of performing the work under the Contract, the Contractor shall promptly notify the Superintendent in writing of such Discrepancy.

In the event of a Discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent shall direct the Contractor as to the interpretation to be followed by the Contractor in performing the work and in so directing may apply the following rules in descending order of precedence-

- (a) the higher or greater requirement, level, standard or quality shall prevail;
- (b) to the extent that Clause 8.1(a) does not resolve the Discrepancy, figured dimensions shall prevail over scaled dimensions;
- (c) to the extent that neither Clause 8.1(a) or Clause 8.1(b) resolves the Discrepancy, the Contract Documents shall be construed according to the order of precedence set out in clause 3 of the Formal Instrument of Agreement.

Subject to Clause 8.1A, the Contractor is not entitled to make any Claim arising out of or in connection with the existence or the resolution of a Discrepancy or the operation of this Clause 8.1.

8.1A Further direction or entitlement

Where the Superintendent considers that any Discrepancy cannot be resolved in accordance with Clause 8.1, the Superintendent shall give the Contractor a direction (which shall expressly state that it is a direction under this Clause 8.1A) resolving the Discrepancy.

If-

- (a) the Discrepancy could not have been identified by a Competent Contractor prior to the Execution Date;

- (b) the Superintendent has given a direction stated to be under this Clause 8.1A; and
- (c) compliance with the Superintendent's direction causes the Contractor to incur more or less cost than could reasonably have been anticipated by a Competent Contractor as at the Execution Date,

then the difference shall be valued under Clause 40.5.

8.2 Not Used

8.2A Shop Drawings

Without limiting the general nature of Clause 8.4-

- (a) the Contractor must not commence that part of the Works to which a shop drawing relates unless and until the Contractor has complied with this Clause 8.2A;
- (b) the Contractor must periodically submit to the Superintendent for its comment shop drawings which the Contractor is obliged to submit by any Contract Document-
 - (i) in accordance with the Contract Documents;
 - (ii) in a manner and at a rate which will give the Superintendent a reasonable opportunity to review such shop drawings (which period of time must not be less than 10 Business Days or such time (if any) as is stated in the Contract Documents (whichever is the longer) prior to manufacture for each shop drawing);
 - (iii) in a form acceptable to the Superintendent (in its sole discretion); and
- (c) if the Contractor requests any consultant engaged by the Principal to review any shop drawing prepared by or on behalf of the Contractor, the onus and responsibility for ensuring that the Works comply with the Contract including that the Works the subject of the relevant shop drawing are operationally suitable, conform with the requirements of the Contract Documents (including any performance requirements contained in the Contract), and are dimensionally accurate, remains at all times with the Contractor, despite any review or approval of any shop drawings by any consultant engaged by the Principal.

8.3 Supply of Documents by Principal

The Principal shall supply to the Contractor the number of copies stated in Item 15, or if no number is stated, then 5 copies of the Drawings, Specification 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 performance of the work under the Contract.

8.4 Supply of Documents by Contractor

If the Contract requires the Contractor to supply the number of copies stated in Item 16 or, if no number is stated, 5 copies.

If the Contractor submits documents to the Superintendent, then-

- (a) neither the Superintendent nor the Principal shall be bound to check the documents for any Discrepancies or other failure to comply with the requirements of the Contract;

- (b) notwithstanding the provisions of Clause 23, the Superintendent's, the Principal's or the Principal's Associate's receipt, review, check, comment on, approval or rejection of or direction (including whether or not documents are suitable) in relation to the Contractor's documents, or failure (in whole or in part) to do any one or more of those things shall not relieve the Contractor from responsibility for those documents or for any Discrepancy in them or other failure to comply 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 relevant time stated in Item 17 (or if no time is stated then within 10 Business Days or such time (if any) as is stated in the Contract Documents (whichever is the longer)) after receipt of the documents, the Superintendent shall notify the Contractor that the relevant document is suitable or is 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 promptly submit new or amended documents for the Superintendent's direction under this Clause 8.4 (and the Superintendent will be deemed to have a minimum period of 10 Business Days or such time (if any) as is stated in the Contract Documents (whichever is the longer) to review any such new or amended document);
- (e) subject to any provision of the Contract to the contrary, the Superintendent shall not reject documents which are in accordance with the requirements of the Contract; and
- (f) the Contractor is not entitled to make any Claim arising out of or in connection with the Contractor's documents including in relation to any direction, notification or rejection of the Superintendent pursuant to this Clause 8.4.

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 construction, use, maintenance or alteration of the Works.

8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of Drawings, Specification and other written information supplied by the Principal, the Superintendent, the Contractor and the Contractor's Associates 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

The Contractor shall, at all times-

- (a) keep confidential;
- (b) maintain proper and secure custody of; and
- (c) not use, merge, mix or reproduce in any form,

the Confidential Information except to the extent that disclosure is required for the Contractor to perform its obligations under the Contract.

The Contractor shall immediately on the Principal's request-

- (d) deliver to the Principal all Confidential Information and all changes to, reproductions of, extracts from and notes regarding the Confidential Information, in any form;
- (e) destroy the Confidential Information and, if it is in the form of computer software, by erasing it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived; and
- (f) provide a statutory declaration to the Principal that all Confidential Information has been delivered or destroyed in accordance with this Clause 8.6.

The obligations and restrictions imposed under this Clause 8.6 survive the expiry or earlier determination of the Contract (for any reason whatsoever).

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. The Contractor shall refer to the Principal any enquiries concerning the Project from any media.

8.8 Inspection of Documents

The Contractor shall-

- (a) permit an accountant or auditor on behalf of the Principal from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of the Contract; and
- (b) provide and ensure that its Associates provide all reasonable assistance to any person authorised to undertake such audit or inspection.

Any information provided or to which an accountant or auditor has access under this Clause 8.8 shall be treated as Confidential Information and shall not be used other than for the purposes of the Contract or disclosed other than as required to comply with the written request of the Principal's auditor, the Ombudsman, the Auditor General for Victoria or the Australian National Audit Office.

8.9 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 8.9(a)(i) by the Contractor or of any investigation by the Office of the Australian Information Commissioner; and
 - (iii) indemnify the Principal on demand from and against any claim brought against, or Loss suffered or incurred by, the Principal arising out of or in connection with a breach of Clause 8.9(a)(i) 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.

8.10 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).

9. Assignment and Subcontracting

9.1 Assignment

The Contractor shall not, without the prior written approval of the Principal-

- (a) assign or novate the whole or any part of the Contract; or
- (b) assign any payment or any other right or benefit or interest thereunder.

9.2 Subcontracting

Except where the Subcontractor is a Selected Subcontractor to be engaged by the Contractor in accordance with Clause 10 or is a Subcontractor listed in Item 18, the Contractor shall not without the prior written approval of the Superintendent, subcontract, or allow a Subcontractor to assign or subcontract, any part of the work under the Contract described in Item 19.

The Contractor must make any request to approve subcontracting (or to allow a Subcontractor to assign or subcontract) any part of the work under the Contract described in Item 19 at least 20 Business Days or such time (if any) as is stated in the Contract Documents (whichever is the longer) before the relevant Subcontractor (or sub-subcontractor) is required to commence the relevant part of the work under the Contract. 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 or such time (if any) as is stated in the Contract Documents (whichever is the longer) after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

The Contractor shall ensure that each Subcontract that it enters into with a Subcontractor includes provision or provisions-

- (a) prohibiting the Subcontractor from assigning, novating or subcontracting without the prior consent in writing of the Contractor;

- (b) which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (c) providing that if for any reason the Contract is terminated or work is taken out of the Contractor's hands, the Contractor and the Subcontractor shall promptly and in any event within 5 Business Days after being directed by the Superintendent to do so, execute a deed of novation in the form of Annexure Part H and deliver the same to the Principal;
- (d) which entitle the relevant Subcontractor to submit claims for payment every 30 days and which oblige the Contractor to pay the Subcontractor amounts which are due and payable under the relevant subcontract within 30 days of receipt of the relevant claim for payment.

For the purposes of effecting a novation under paragraph 9.2(c) above, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.

9.2A Contractor's Warranties

When entering into any subcontract, the Contractor shall be deemed to have warranted to the Principal that-

- (a) except where the Subcontractor is an insured under the terms of the insurance the Contractor is required to provide in accordance with the Contract and without limiting Clause 22, the Subcontract shall contain terms that require the Subcontractor to have in place the following insurances-
 - (i) workers compensation insurance; and
 - (ii) public liability insurance; and
- (b) there is no limitation on the Subcontractor's liability under the Subcontract that has the effect of limiting the amount of any indemnity that, but for such limitation, would otherwise be available under the Subcontractor's insurance.

9.3 Contractor's Responsibility

Approval to subcontract shall not relieve the Contractor from any liability or obligation arising out of the Contract. Despite any other provision of the Contract, the Contractor shall be vicariously liable to the Principal for the acts and omissions of the Contractor's Associates as if they were acts or omissions of the Contractor.

The Contractor shall supervise its Associates and regularly inspect works performed by them so as to ensure that the Works comply with the requirements of the Contract.

9.4 Proportionate Liability

To the full extent permitted by law-

- (a) the Contractor is entirely responsible for any failure to take reasonable care on the part of any of its Associates; and
- (b) without limiting the general nature of Clause 9.4(a), the Contractor indemnifies the Principal against any Loss suffered or incurred by the Principal arising out of the operation of Part IVAA of the Wrongs Act (including any Loss arising out of an apportionment in accordance with Part IVAA of the Wrongs Act of any claim made by the Principal against the Contractor).

9.5 Subcontractors and the SOP Act

The Contractor shall-

- (a) immediately give the Principal a copy of any notice the Contractor receives from a Subcontractor under the SOP Act;
- (b) ensure that each Subcontractor immediately gives the Principal a copy of any notice that the Subcontractor receives from another party under the SOP Act (including the Contractor); and
- (c) immediately notify the Principal if it becomes aware that a Subcontractor intends to suspend work under a Subcontract under the SOP Act or exercise a statutory lien over unfixed plant or materials.

If the Principal becomes aware that a Subcontractor is entitled to suspend work which forms part of the work under the Contract pursuant to the SOP Act, the Principal-

- (d) may pay to the Subcontractor the amount owing to the Subcontractor in respect of that work and any amount so paid by the Principal is recoverable from the Contractor as a debt due and immediately payable from the Contractor to the Principal; and
- (e) shall notify the Contractor prior to making the payment referred to in Clause 9.5(d).

The Contractor must indemnify the Principal on demand against any Loss arising out of or in connection with any-

- (f) suspension by a Subcontractor of work pursuant to the SOP Act;
- (g) failure by the Contractor to comply with Clause 9.3; or
- (h) notice or claim under the SOP Act being served on the Principal by a Subcontractor exercising a lien or charge over any part of the work under the Contract.

9.6 Warranties

The Contractor shall obtain, from each Subcontractor with whom it enters into a Subcontract of the nature described in Annexure Part G, a warranty-

- (a) on terms reasonably commercially available having regard to the nature and value of the relevant subcontract work;
- (b) for the benefit of (or capable of being assigned to) the Principal, its successors and assigns; and
- (c) for the relevant duration stated in Annexure Part G calculated from the Date of Practical Completion (or if the Contract is terminated, from the date of completion of the relevant Subcontract Work).

Each of the warranties referred to in the preceding paragraph must be progressively supplied (and where relevant, assigned) to the Principal (or its nominee) promptly after the date of completion of the relevant Subcontract Work and in any event as a precondition to Practical Completion.

10. Selected Subcontractors

If Item 20 includes Selected Subcontract Work, the Contractor shall subcontract the relevant Selected Subcontract Work to one of the relevant Selected Subcontractors.

Without limiting the general nature of Clause 9.3, every Selected Subcontractor engaged by the Contractor pursuant to this Clause 10 will be deemed to be an Associate of the Contractor for the purposes of the Contract and the Contractor will be vicariously liable to the Principal for the acts and omissions of each Selected Subcontractor as if they were the acts and omissions of the Contractor.

11. Provisional Sums

11.1 Provisional Sum Items

For each provisional sum item, the Superintendent shall give the Contractor a direction either-

- (a) requiring the Contractor to perform the relevant provisional sum item; or
- (b) deleting it from the work under the Contract.

If the Superintendent does not give the Contractor a direction under this Clause 11.1 in relation to a provisional sum item by the Date for Practical Completion, the provisional sum items shall be deemed to be deleted from the work under the Contract. The Contractor shall not be entitled to Claim for any provisional sum item where it carried out the works specified in the provisional sum item without the express direction of the Superintendent under this Clause 11.

11.2 Estimates for Provisional Sum Work

Before the Superintendent gives the Contractor a direction under Clause 11.1, the Superintendent may-

- (a) provide, or otherwise make available, to the Contractor the relevant Drawings and Specification or other details for the provisional sum item; and
- (b) request that the Contractor provides an estimate of the cost of performing or supplying the work required for the provisional sum item for approval prior to the provisional sum item being performed or supplied (including, where the provisional sum item is to be performed or supplied by a Subcontractor to the Contractor, requesting that the Contractor provide prices from alternative subcontractors or suppliers); or
- (c) direct the Contractor to tender the relevant provisional sum item. If the Superintendent directs the Contractor to tender the provisional sum item under this Clause 11.2(c), the tender process shall be carried out by the Contractor on an open-book basis and the Contractor shall obtain at least three tenders for each provisional sum item.

11.3 Provisional Sum Adjustments

Where the Superintendent directs the Contractor to perform a provisional sum item in accordance with Clause 11.1(a), to the extent that it is performed or supplied by-

- (a) the Contractor, the work or item shall be valued under Clause 40.5, save that no adjustment shall be made for the Contractor's Profit and Overheads Costs; and
- (b) a Subcontractor to the Contractor, the value of the relevant provisional sum item shall be the amount properly, reasonably and actually incurred and paid by the Contractor to the relevant Subcontractor for the performance of the relevant item of provisional sum item excluding any-
 - (i) allowance for the Contractor's Profit and Overheads Costs;

- (ii) amounts paid by the Contractor to the relevant subcontractor arising from any breach of contract or other wrongful act or omission by the Contractor; and
- (iii) other amount-
 - A. which the Contract provides is to be borne by the Contractor;
 - B. for work, events or circumstances in respect of which the Contractor is, under the Contract, not entitled to make a Claim; or
 - C. which the Contract provides is a debt due from the Contractor to the Principal.

11.4 Provisional sum work value

Where the value of a provisional sum item determined in accordance with Clause 11.3 (the '**provisional sum work value**') is-

- (a) equal to the provisional sum stated in Annexure Part C for the relevant provisional sum item, the Contract Sum shall remain unchanged;
- (b) greater than the provisional sum stated in Annexure Part C for the relevant provisional sum item, the Contract Sum shall be increased by the amount equal to the difference between the relevant provisional sum work value and the provisional sum for the relevant provisional sum item; or
- (c) less than the provisional sum stated in Annexure Part C for the relevant provisional sum item, the Contract Sum shall be reduced by the amount equal to the difference between the relevant provisional sum work value and the provisional sum for the relevant provisional sum item.

11.5 Further adjustment

Where the aggregate of all provisional sum work values determined in accordance with Clause 11.4 is greater than the sum of all provisional sums (as stated in Annexure Part C) then the Contract Sum shall be adjusted by an amount for the Contractor's Profit and Overheads Costs calculated by applying the percentage stated in Item 21 to the amount of the increase and decrease.

11.6 Evidence

The Contractor shall provide the Superintendent with copies of purchase orders, agreements, invoices, receipts and such other documents as evidence of the amount payable by the Contractor to a Subcontractor or supplier pursuant to Clause 11.3(b).

12. Latent Conditions

12.1 Definition

'**Latent Condition**' are adverse Site Conditions which are discovered on the Site or its surroundings and the presence of which-

- (a) is not disclosed in any report or other information listed in Attachment H;
- (b) was not known to the Contractor as at the Execution Date;
- (c) requires the Contractor to incur additional cost to remediate such condition or remove such condition from the Site; and

- (d) could not have been reasonably anticipated by a Competent Contractor as at the Execution Date if such Competent Contractor had-
 - (i) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contract Sum or the Date for Practical Completion or both and obtainable by the making of enquiries and investigations; and
 - (iii) inspected the Site and its surroundings,

but which does not include weather conditions or its effects.

12.2 Notification

If during the execution of the work under the Contract, the Contractor becomes aware of a Latent Condition, the Contractor shall within 5 Business Days of becoming so aware and where possible before the Latent Condition is disturbed, give written notice thereof to the Superintendent specifying-

- (a) the Latent Condition encountered and in what respects it differs materially from the physical conditions which a Competent Contractor could have reasonably anticipated;
- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Superintendent.

12.2A Direction of the Superintendent

As soon as practicable following receipt of the Contractor's notice under Clause 12.2, the Superintendent shall-

- (a) determine whether a Latent Condition has been encountered; and
- (b) if the Superintendent determines that a Latent Condition has been encountered, direct the Contractor in writing what action, if any, should be taken in respect of the Latent Condition.

12.3 Extensions of Time and Cost

Delays caused by a Latent Conditions may justify an extension of time under Clause 35.5.

Subject to the Contractor having complied with Clause 12.2, if compliance with a direction under Clause 12.2A causes the Contractor to incur extra costs than otherwise would have been incurred had the direction not been given by reason of-

- (a) the performance of additional work; or
- (b) the use of additional Constructional Plant,

which a Competent Contractor could not reasonably have anticipated as at the Execution Date, the difference shall be assessed by the Superintendent and added to or deducted from the Contract Sum save that despite any provision of the Contract to the contrary, the Contractor will not be entitled to claim (and releases and discharges the Principal from) any Losses which the Contractor or its Associates suffer or incur arising out of any delay, disruption or prolongation arising from the presence of any Latent Condition.

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 or additional Constructional Plant used more than 10 Business Days before the date on which the Contractor gives the written notice required by Clause 12.2.

12.5 Site Conditions

Except to the extent expressly stated in Clause 12.3, Clause 35.5 and Clause 35.5A, the Contractor-

- (a) accepts all responsibility for and assumes the risk of any and all delays, disruption or prolongation and any and all increased costs and Losses, arising out of or in any way in connection with any Site Conditions which are encountered at any time during the performance of the work under the Contract;
- (b) shall not be entitled to make any Claim arising out of or in any way in connection with encountering any Site Condition; and
- (c) shall perform at its cost any work necessary to overcome the effect of any Site Conditions.

12A. Environment

Without limiting the generality of any other provision of the Contract, the Contractor-

- (a) 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 12A(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 12A(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 12A(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 12A(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 27.1 until 4pm on the Date for Practical Completion, as between the parties and for the purposes of this Clause 12A 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 12A(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 12A, while it is in management and control of the Site, as specified in Clause 12A(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 12A(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 12A, 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 12A(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 12A;
 - (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.

13. Patents, Copyright and other Intellectual Property Rights

13.1 Principal's warranty

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.

13.2 Contractor's warranty

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

Subject to anything expressly to the contrary in the Authorities and Headworks Matrix, the Contractor shall-

- (a) comply with all Legislative Requirements and Approvals;
- (b) apply for and obtain all Approvals;
- (c) provide all reasonable and proper assistance and documentary support required by the Principal in any application for, or amendment to, an Approval obtained or to be obtained by the Principal;
- (d) promptly give the Superintendent copies of all documents (including Approvals and other notices) issued to the Contractor by any Authority; and
- (e) upon becoming aware of a Change in Legislative Requirement, promptly (and in any event within 5 Business Days after the earlier to occur of the Contractor becoming aware, or the date on which a Competent Contractor would reasonably have become aware, of the relevant Change in Legislative Requirement) give written notice to the Superintendent specifying-
 - (i) the Change in Legislative Requirement;
 - (ii) the additional work and additional resources, if any, which the Contractor estimates to be necessary to deal with the relevant Change in Legislative Requirement;
 - (iii) the time the Contractor anticipates will be required to deal with the relevant Change in Legislative Requirement and the expected delay, if any, in achieving Practical Completion;
 - (iv) the Contractor's estimate of the cost of the measures necessary to deal with the relevant Change in Legislative Requirement; and
 - (v) other details reasonably required by the Superintendent.

14.2 Change in Legislative Requirements

Subject to the Contractor having complied with Clause 14.1(e), if a Change in Legislative Requirement (other than an Approval for which the Contractor is responsible under Clause 14.1(b)) occurs after the Execution Date, then to the extent the Contractor incurs more or less cost than would otherwise have been incurred, the difference shall be valued under Clause 40.5.

14.3 Not Used

14.4 Documents Evidencing Approvals of Authorities

The Contractor shall give the Principal copies of documents issued to the Contractor by any Authority in respect of the work under the Contract and, in particular, any Approvals within 5 Business Days of receipt.

14.5 Headworks Charges

Without limiting the general nature of Clause 14.1 but subject to anything expressly to the contrary in the Authorities and Headworks Matrix,, the Contractor shall be responsible for-

- (a) procuring the undertaking of all headworks; and
- (b) liaising and coordinating with all relevant Authorities as required with respect to the undertaking of all headworks at or adjacent to the Site; and
- (c) paying all Headworks Charges.

14.6 Services Infrastructure

Subject to anything expressly to the contrary in the Authorities and Headworks Matrix, the Contractor-

- (a) is responsible for the coordination of the abolition of redundant Services Infrastructure;
- (b) subject to Clauses 35.5 and 35.5A, assumes all risk for and will not be entitled to make any Claim arising out of or in connection with-
 - (i) the availability, construction, installation, remediation or upgrade of any new or existing Services Infrastructure required in connection with the performance of the work under the Contract;
 - (ii) obtaining any required Approval to close off existing road infrastructure;
 - (iii) any need to connect, disconnect, construct, install, upgrade, relocate, protect, demolish or decommission any Services Infrastructure forming part of or affecting the work under the Contract; and
 - (iv) the payment of any fees, charges, or other amounts to any Authority or any other person in connection with the construction, installation, remediation or upgrade of any new or existing Services Infrastructure.

Subject to anything expressly to the contrary in the Authorities and Headworks Matrix, the Contractor shall check and liaise as necessary with all Authorities and shall identify, physically locate and mark all Services Infrastructure on the Site which may be affected by the Works.

14.7 Interruption of Services Infrastructure

Without limiting the general nature of Clause 52, the Contractor shall not interrupt Services or Services Infrastructure on the Site without the prior written approval of the Principal, and, if applicable, the relevant Authority.

14.8 Notification of damage to Services Infrastructure

Without limiting the general nature of Clauses 15, 15A or 16, the Contractor shall-

- (a) be responsible for all loss or damage to any Services Infrastructure on the Site or on other properties which are caused by or contributed to by an act, default or omission of the Contractor or its Associates; and
- (b) notify the Principal in writing immediately of any damage to any Services Infrastructure.

15. Protection of people and property

15.1 Protection

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 temporary facilities and services, barricades, guards, fencing, temporary roads, footpaths, security, services and devices, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

Without limiting Clause 15.2, if the Contractor or the Contractor's Associates damage property, including but not limited to public utilities and services and property on, under, over or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

15.2 Adjoining Property Obligations

Where the work under the Contract requires the Contractor to travel through or over, or to perform work on, in, under or over any adjoining property, the Contractor shall-

- (a) with the exception of the Adjoining Property Consents identified in Item 22 (if any), be responsible for and assume the risk of procuring from Adjoining Property Owners all such Adjoining Property Consents as are required by the Contractor for the purposes of performing the work under the Contract;
- (b) comply with the terms of all such Adjoining Property Consents as are procured by it and provide copies to the Superintendent and the Principal within 2 Business Days of procurement;
- (c) bears all risk of delay or disruption arising from the carrying out of works on any Adjoining Property by contractors engaged by or on behalf of any Adjoining Property Owner;
- (d) comply with section 84 of the *Building Act* 1993 (Vic) as if a reference to an 'owner' was a reference to the Contractor;
- (e) make good at its own cost, and with the least possible delay, or at the option of the Adjoining Property Owner, meet the cost of making good any damage to any Adjoining Property arising out of the Works; and
- (f) to the maximum extent permitted by law, indemnify the Principal on demand from and against any claim brought against (including any injunctive or other claims brought against the Principal by an Adjoining Property Owner or other person having an

interest in any Adjoining Property), or Loss suffered or incurred by the Principal arising out of or in connection with any-

- (i) use of or access to, over, under, or upon any Adjoining Property by the Contractor or its Associates;
- (ii) Adjoining Property Consents or any failure by the Contractor or its Associates to comply with those consents; or
- (iii) breach of this Clause 15.2,

except that the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that a negligent or wrongful act or omission of the Principal or employees or agents of the Principal contributed to such claim or Loss.

15.3 Debt due

If the Contractor fails to comply with an obligation under this 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 and immediately payable from the Contractor to the Principal.

15A. Occupational Health and Safety

15A.1 Contractor Responsible for Occupational Health and Safety

The Contractor is responsible for all aspects of health and safety in the performance of the work under the Contract and shall-

- (a) comply with all OH&S Laws and the Principal's Policies and Procedures; and
- (b) do all things necessary to ensure that the Contractor's Associates comply with all OH&S Laws and the Principal's Policies and Procedures.

15A.2 Contractor's Occupational Health and Safety Obligations

Without limiting the Contractor's obligations under Clause 15A.1, in the performance of the work under the Contract the Contractor shall-

- (a) eliminate risks to health and safety so far as is reasonably practicable (and if not reasonably practicable, reduce those risks so far as is reasonably practicable);
- (b) provide such information, instruction, training and supervision to the Contractor's Associates as is necessary to enable those persons to perform their work in a way that is safe and without risks to health; and
- (c) develop, implement and maintain an occupational health and safety system describing how the Contractor will comply with OH&S Laws and the Principal's Policies and Procedures, which system shall include appropriate occupational health and safety management and site safety plans and hazard and risk assessments.

15A.3 Control of Site

The Principal appoints the Contractor to be and the Contractor accepts its appointment as the Principal Contractor for all works carried out and activities undertaken at the Site in the performance of the work under the Contract.

The Contractor-

- (a) shall perform and satisfy all of the functions, duties and obligations of Principal Contractor under the OH&S Laws;
- (b) is authorised by the Principal to manage and control the Site to the extent necessary to ensure that the Contractor complies with the OH&S Laws and performs and satisfies all of the functions, duties and obligations of Principal Contractor under the OH&S Laws; and
- (c) acknowledges that the Principal does not control the manner in which the work under the Contract is performed.

For the purposes of this Clause 15A, the 'Site' constitutes a "workplace" within the meaning of the OH&S Act.

15A.4 Incident Notification

The Contractor shall immediately notify the Principal and the Superintendent (initially by telephone with written confirmation of the notification to be provided within 12 hours of such matter arising) of all work, health and safety matters arising out of or in connection with the work under the Contract including an Incident.

15A.5 Indemnity

To the maximum extent permitted by law the Contractor shall indemnify the Principal on demand from and against any claim brought against, or Loss suffered or incurred by, the Principal arising out of or in connection with any breach by the Contractor or by any of its Associates of the OH&S Laws, the Principal's Policies and Procedures or of this Clause 15A.

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 certificate under Clause 42.1B, things entrusted to the Contractor by the Principal for the purpose of performing 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 or its Associates 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 occurs to anything while the Contractor is responsible for its care, the Contractor shall promptly rectify that loss and damage at its own cost. However, where the loss and damage results-

- (a) solely from the occurrence of an Excepted Risk; or

- (b) from the occurrence of an Excepted Risk in combination with other causes for which the Contractor or its Associates are responsible,

then the Contractor shall only perform rectification works if and to the extent directed by the Superintendent and-

- (c) any such direction of the Superintendent shall be deemed to be a Variation Order issued under Clause 40.1; and
- (d) where Clause 16.2(b) applies, the Superintendent's direction and valuation under Clause 40.5 shall take account of and reflect the proportional responsibility of the Contractor or its Associates and the Excepted Risk.

16.2A Insurance Proceeds

The Contractor shall procure that the proceeds of any relevant insurances maintained by the Contractor pursuant to the Contract are applied to the reinstatement and completion of the work under the Contract in accordance with Clause 16.2.

16.3 Excepted Risks

The '**Excepted Risks**' are any of the following occurring without fault or omission on the part of the Contractor or its Associates-

- (a) any negligent act or omission of the Principal, the Superintendent or the employees, consultants or agents of the Principal;
- (b) acts of terrorism (save to the extent that acts of terrorism are insurable pursuant to the *Terrorism Insurance Act 2003* (Cth));
- (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 Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Associates;
- (e) use or occupation by the Principal or the employees or agents of the Principal (not being employed by the Contractor) of any part of the Works or the Temporary Works; 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 on demand from and against any claim brought against, or any Loss suffered or incurred by the Principal arising out of or in connection with-

- (a) loss of or damage to property of the Principal (whether owned, leased, licensed or controlled by the Principal), including existing property in or upon which the work under the Contract is being carried out;
- (b) personal injury (including illness) or death;

- (c) without limiting the general nature of Clause 17.1(a), claims by any person against the Principal in respect of loss of or damage to any property; and
- (d) claims by any person against the Principal in respect of nuisance, unreasonable noise and disturbance or other claims,

arising out of or in connection with the performance 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 or employees or agents of the Principal contributed to the loss, damage, death or injury.

This 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) [not used]
- (v) claims in respect of the right of the Principal to construct the work under the Contract on the Site.

17.2 [Not Used]

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; and
- (f) loss or damage resulting from the Excepted Risks (b) and (c) in Clause 16.3.

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

- (g) the Contract Sum;
- (h) the amount stated in Item 24 to provide for costs of demolition and removal of debris;
- (i) the amount stated in Item 25 to cover fees of consultants;
- (j) the value stated in Item 26 of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (k) the additional amount or percentage stated in Item 27 of the total of the items referred to in sub-paragraphs (g) to (j) of this paragraph.

The insurance policy shall name as insureds the Principal and the Contractor, 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 and on terms approved in writing by the Principal which approval shall not be unreasonably withheld. 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, the Contractor shall take out a Public Liability Policy of insurance which names as insureds the Principal and the Contractor 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 Item 29 and, unless otherwise specified elsewhere in the Contract, shall be effected with a Reputable Insurer and on terms approved in writing by the Principal which approval shall not be unreasonably withheld. 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 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 is similarly insured.

20A Other Insurances

20A.1 Motor Vehicle Insurance

This Clause 20A.1 only applies where so stated in Item 30.

Before the commencement of the work under the Contract and for the duration of the carrying out of the work under the Contract, the Contractor must effect and maintain third party property damage motor vehicle insurance in respect of all vehicles to be used by the Contractor in connection with the work under the Contract for a minimum of \$10 million arising out of any one occurrence.

20A.2 Transit insurance

This Clause 20A.2 only applies where so stated in Item 31.

The Contractor shall, before any plant or materials intended for incorporation into the Works are transported or otherwise moved in any way, either-

- (a) itself effect; or
- (b) ensure that the Subcontractor or supplier transporting or otherwise moving the relevant plant or materials effects,

a policy of insurance against loss of or damage to the relevant plant or materials during their transit to the Site (including by air, sea or otherwise) and during their unloading at the Site, which policy of insurance shall-

- (c) be for an amount being no less than the full value of the plant or materials;
- (d) be effected with a Reputable Insurer and on terms approved in writing by the Principal which approval shall not be unreasonably withheld; and
- (e) name the Principal as an insured.

20A.3 Asbestos insurance

This Clause 20A.3 only applies where so stated in Item 32.

Where-

- (a) the work under the Contract involves or may involve the disturbance, removal or disposal of any Asbestos; and
- (b) the Contractor cannot demonstrate that any other insurance policy which the Contractor is maintaining for the Works, covers such risks in an amount and manner to the reasonable satisfaction of the Superintendent,

the Contractor must effect (or must procure that its relevant subcontractor effects) a policy of insurance in respect of the Contractor's liability in respect of occurrences arising as a result of exposure of any person to any Asbestos or any compounds related to Asbestos for an amount not less than the amount stated in Item 32.

Such policy of insurance shall be for the amount required by the Superintendent (acting reasonably) and shall comply with any relevant Legislative Requirements. The Contractor must (or must procure that the relevant subcontractor must) maintain such policy of insurance until the Final Certificate is issued. The policy shall respond to claims made in respect of any liability covered under the policy regardless of the fact that the claims are made after the expiration of the period during which the policy is to be maintained.

21. Inspection and provisions of Insurance Policies

21.1 Proof of Insurance

Before the Contractor commences work and whenever requested in writing by the Principal the Contractor shall-

- (a) produce evidence to the satisfaction and approval of the Principal of the insurance effected and maintained; and
- (b) provide to the Principal a copy of all relevant insurance policies.

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

21.2 Failure to Produce Proof of Insurance

If, within 2 Business Days of being requested in writing by the Principal to do so, the Contractor fails to produce evidence of compliance with insurance obligations under Clauses 18, 19, 20 or 20A to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due and immediately payable from the Contractor to the Principal. It is a precondition to the Contractor's entitlement to submit a claim for payment under Clause 42.1A that it has produced evidence of compliance with its insurance obligations under Clauses 18, 19, 20 or 20A to the satisfaction and approval of the Principal. The rights given by this Clause 21.2 are in addition to any other right.

21.3 Notices from or to the Insurer

The Contractor shall ensure that each policy of insurance under Clauses 18 and 19 contains provisions acceptable to the Principal that will-

- (a) require the insurer, whenever the insurer gives the Contractor or a Subcontractor a notice of expiration, renewal, cancellation or other notice concerning the policy at the same time to inform the Principal in writing that the notice has been given and provide a copy;
- (b) provide that 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) require the insurer, whenever the Contractor fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal and the Contractor and 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 affected 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 required by the Principal, be paid into a Bank nominated by the Principal 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 in the names of more than one insured in accordance with the Contract shall include a cross-liability clause in which the insurer agrees-

- (a) to waive all rights, remedies or relief by way of subrogation or contribution or action against any of the persons comprising the insured;
- (b) that the insurance operates in the same manner as if a separate policy of insurance had been issued to each of the insureds (subject always to the overall sum insured not being increased as a result) and not to impute any acts, omissions or breach of the duty of disclosure by any one insured to any other insured; and
- (c) not to impute any acts, omissions, misrepresentations (whether fraudulent or otherwise), breach of a term or condition of a policy (including any breach of duty of disclosure) or any fraud by one insured to another insured.

21.7 General Insurance Obligations

With respect to the insurances required to be effected by the Contractor pursuant to Clauses 18 and 19 the Contractor shall-

- (a) ensure that those insurances-
 - (i) are governed by the laws of the State or Territory stated in Item 1;
 - (ii) contain no endorsements unless first approved by the Principal; and

- (iii) are not altered, cancelled or permitted to lapse without the prior approval of the Principal;
- (b) not do or allow anything to be done which may render any of the insurances void or voidable; and
- (c) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of all or any benefits under the policy.

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 Superintendent's role

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 fairly;
- (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.

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.

23.2 No power to alter or waiver

The Superintendent has no authority to alter or waive any terms of the Contract.

A direction of the Superintendent shall not constitute an approval of work performed by the Contractor and shall not relieve the Contractor of any of its obligations arising out of or in connection with the Contract.

23.3 SOP Act

For the purposes of the SOP Act-

- (a) payment claims delivered to the Superintendent under Clause 42.1A are received by the Superintendent as agent for the Principal; and
- (b) the Superintendent shall issue payment certificates and a Final Certificate and perform all other functions of the Principal under the SOP Act as agent of the Principal.

24. Superintendent's Representative

24.1 Appointment

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.

24.2 Notification

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; and
- (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

25.1 Contractor's Representative

The Contractor shall personally superintend the performance of the work under the Contract or, at all times during which any activities relating to the performance of the work under the Contract are taking place, ensure that the Contractor's Representative is present on the Site and, if required by the Superintendent, at other places at which activities relating to the performance of the work under the Contract are taking place.

Any direction that is given to the Contractor's Representative shall be deemed to have been given to the Contractor.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

The Contractor shall forthwith notify the Superintendent in writing should it wish to change the identity of the Contractor's Representative. If the Superintendent makes a reasonable objection to the appointment of a person as the Contractor's Representative, the Contractor shall not appoint or shall terminate the appointment of that person, as the case may be, and appoint another representative.

25.2 Key Personnel

The Contractor shall-

- (a) provide the Key Personnel for the purposes of the work under the Contract in the positions and in respect of the duties set out in Annexure Part E; and
- (b) not replace or remove Key Personnel from their positions and identified duties during the course of the work under the Contract without the prior written approval of the Superintendent.

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. The Contractor shall appoint any proposed replacements

approved in writing by the Superintendent. If the proposed replacements are not approved, the Contractor shall propose further replacements until such time as the Superintendent's approval is obtained.

26. Control of Contractor's employees and Subcontractors

26.1 General

The Superintendent may direct the Contractor to have 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.

26.2 Industrial Relations

The Contractor-

- (a) shall notify the Superintendent immediately in writing of an industrial relations event or perceived or anticipated industrial relations event that may cause disruption to or otherwise effect the performance of the work under the Contract;
- (b) accepts all industrial relations risks, responsibilities and costs related directly or indirectly to the work under the Contract, including complying with the terms and conditions of all awards, building industry agreements, government codes of practice and site agreements that relate directly or indirectly to the work under the Contract; and
- (c) subject to Clauses 35.5 and 35.5A, is not entitled to make any Claim arising out of or in connection with complying with its obligation under this Clause 26.2 or any industrial relations event, action, strike or dispute.

27. Site

27.1 Access to Site

Subject to the Contractor having complied with Clause 27.1A, the Principal shall on or before the expiration of the time stated in Item 33 give the Contractor non-exclusive access to the Site or sufficient part of the Site to enable the Contractor to commence work.

If the Principal has not given the Contractor access to the whole Site, the Principal shall from time to time give the Contractor non-exclusive access to such further parts of the Site as may be necessary to enable the Contractor to perform the work under the Contract in accordance with the requirements of the Approved Construction Management Plan or as directed by the Superintendent.

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 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 non-exclusive access of the Site shall confer on the Contractor a revocable licence to only use and control such part of the Site as is necessary to enable the Contractor to perform the work under the Contract and to comply with its obligations under the Contract.

27.1A Preconditions to access

Despite any provision of the Contract to the contrary, the Contractor shall not commence any work on the Site unless and until:

- (a) the Contractor has provided security to the Principal in accordance with Clause 5.2;
- (b) where required by Clause 5.10, the Contractor has provided to the Principal an executed Deed of Guarantee in accordance with Clause 5.10;
- (c) the Contractor has provided to the Superintendent certificates of currency demonstrating that the Contractor has complied with its obligations under Clauses 18, 19, 20, 20A and 21;
- (d) the Contractor has provided to the Superintendent an Initial Dilapidation Report in accordance with Clause 49.1;
- (e) the Contractor has provided to the Superintendent a Construction Program in accordance with Clause 33.3(a);
- (f) the Contractor has provided to the Superintendent a Draft Construction Management Plan in accordance with Clause 27A.2; and
- (g) the Contractor has undertaken the other actions, if any, described in Item 33.

Despite any provision of the Contract to the contrary, the Contractor shall not be entitled to make any Claim (including any claim for an extension of time or delay costs) arising out of or in any way in connection with delay or disruption to the work under the Contract due to the Contractor not being entitled to access the Site by the date or within the period of time stated in Item 33 due to the Contractor's failure to fully comply with this Clause 27.1A.

27.2 Access for the Principal and Others

The Contractor acknowledges and agrees that it is not entitled to exclusive access to the Site and that 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 performance 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 authorised in writing by the Principal (including any Authorities and any officers, staff or agents of any State or Federal Government department or body with which the Principal has entered into a funding agreement for the Project) 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 use reasonable endeavours to ensure that the Contractor is not impeded in the performance of the Contractor's work under the Contract by any persons referred to in Clause 27.2, whilst exercising the right of access given by Clause 27.2.

27.3 Delivery of Materials to and Work on Site Before Access

Until 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

Artefacts found on the Site shall as between the parties be and remain the property of the Principal.

Subject to Clause 11 and this Clause 27.5, the Contractor shall not be entitled to make any Claim arising out of or in connection with the discovery of any Artefact found on the Site.

27.6 Signage

The Contractor must-

- (a) erect signs in a form and size required by the Superintendent at locations and at the times directed by the Superintendent for the purposes of branding, promotion or information;
- (b) subject to Clause 27.6(a), not erect or display any signs, advertisements or displays on or adjacent to the Site without the prior written approval of the Principal, which approval may be withheld at the Principal's sole discretion;
- (c) where Item 57 provides that Clause 51.1 applies, ensure that all signage is in a form prescribed by the Funder in accordance with the Victorian Government Branding Guidelines or any other guidance notified to the Contractor by the Superintendent or the Funder; and
- (d) at its cost, comply with any direction of the Superintendent relating to the appearance or aesthetics of the Site or the Works (including to Temporary Works) to the extent that it is reasonably practicable to do so.

27.7 Site Amenities

The parties acknowledge and agree that -

- (a) the Contractor must provide, maintain and clean all necessary site accommodation and facilities for the Superintendent, the Superintendent's Representative(s) and the Contractor's Associates for the duration of the work under the Contract (**Site Amenities**);
- (b) the Contractor must not (and must procure that its Associates must not) park any vehicle, place any Site Amenities or store all plant, materials or equipment on the oval which is adjacent to the Site and marked on the Site Plan;
- (c) as a precondition to Practical Completion, the Contractor must remove the Site Amenities (including the connection or disconnection to temporary Services Infrastructure as necessary) from the Site and make good those parts of the Site upon which the Site Amenities or the route for accessing the Site Amenities were located; and

- (d) without limiting the general nature of Clause 27.7(c), the Superintendent may direct the Contractor to move the Site Amenities at any time and to make good those parts of the Site upon which the Site Amenities or the route for accessing the Site Amenities were located.

27A Project Plans

27A.1 Traffic Management

The Contractor is responsible for the control, direction and management of traffic that is affected by work under the Contract and shall-

- (a) manage the Works to ensure-
 - (i) the continuous, safe and efficient movement of traffic; and
 - (ii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
- (b) take all measures necessary to protect people and property, including the provision of adequate lighting, barricades and signage if traffic flow or movement is or may be disrupted by the undertaking of work under the Contract;
- (c) comply with the Superintendent's directions with respect to the management of traffic; and
- (d) without limiting the general nature of this Clause 27A.1, at all times comply with the provisions of the *Road Management Act 2004* (Vic), the *Road Safety Act 1986* (Vic) and any other Legislative Requirement or guidelines affecting the management of roads.

27A.2 Submission of the Draft Construction Management Plan

Within 10 Business Days of the Execution Date (or such other time as approved by the Superintendent in writing) and as a precondition to being entitled to submit any claim for payment, the Contractor shall submit a draft construction management plan (**Draft Construction Management Plan**) to the Superintendent for its review which must-

- (a) be consistent with the Tender Construction Management Plan (if any);
- (b) comprise of-
 - (i) a traffic management plan which complies with all relevant Australian Standards and all relevant requirements and specifications of VicRoads and which enables the Contractor to comply with its obligations arising out of Clause 27A.1:
 - (ii) a detailed management plan which-
 - A. identifies the risks arising from the carrying out of the work under the Contract;
 - B. sets out the minimisation and mitigation strategies that the Contractor will adopt to overcome and manage such risks;
 - C. demonstrates the Contractor's methodology for maintaining and managing risks in the construction zone;

- D. demonstrates the Contractor's methodology for ensuring that it does not disturb that area shown on the Site Plan as where endangered moths are living;
 - E. states the times at which the Contractor will relocate the water-tanks shown in the Site Plan to be relocated and the location to which such water-tanks will be relocated;
 - F. demonstrates how the Contractor will abide by the constraints on working on or adjacent to the Operational Areas in accordance with Clause 52; and
 - G. demonstrates the Contractor's methodology for managing constructability; and
- (iii) a site control plan which set out the details and locations of-
- A. the Site perimeter;
 - B. the location of temporary fences, hoardings, gates and security points on the Site;
 - C. the location of temporary walls, site retentions and supports;
 - D. the location of loading and unloading areas together with details of any temporary public crossings and access;
 - E. the location of cranes and hoists including all mobile hoists;
 - F. the location of temporary accommodation, the Site office and staff welfare facilities; and
 - G. the location of plant and materials designated storage sites on the Site;
- (iv) an environmental management plan in a form and with the contents required by the Contract Documents;
- (v) a construction waste management plan in a form and with the contents required by the Contract Documents; and
- (vi) a protection of people and property plan in a form and with the contents required by the Contract Documents;
- (c) address any other matters required by any Contract Document;
- (d) address any other matters reasonably requested in writing by the Superintendent to be addressed in such plans to the Superintendent's reasonable satisfaction; and
- (e) be provided in such form as may be directed in writing by the Superintendent (acting reasonably).

27A.3 Approval of the Draft Construction Management Plan

The Superintendent may, within 10 Business Days (or such other time as agreed by the parties) of receiving the Draft Construction Management Plan in accordance with Clause 27A.2-

- (a) approve the Draft Construction Management Plan (in which case the Draft Construction Management Plan shall be deemed to be the '**Approved Construction Management Plan**');;

- (b) reject the Draft Construction Management Plan (in which case the Draft Construction Management Plan shall not be the Approved Construction Management Plan); or
- (c) make no comment on the Draft Construction Management Plan (in which case the Contractor may elect to proceed with work under the Contract as if the Draft Construction Management Plan is the '**Approved Construction Management Plan**').

If the Superintendent rejects the Draft Construction Management Plan, the Superintendent shall give written reasons for the rejection and the Contractor shall within 5 Business Days of being notified of the rejection or such other time as the Superintendent directs make any appropriate amendments to the Draft Construction Management Plan and resubmit it for approval in accordance with this Clause 27A.3 as if the resubmitted Draft Construction Management Plan was the Draft Construction Management Plan.

The Contractor is not entitled to make any Claim arising out of or in any way in connection with the Superintendent's rejection or failure to comment on the Draft Construction Management Plan or any resubmitted Draft Construction Management Plan.

If the Contractor fails to provide the Draft Construction Management Plan in accordance with Clause 27A.2 or fails to resubmit a Draft Construction Management Plan to the Superintendent in accordance with this Clause 27A.3, the Superintendent may (at the Contractor's cost) engage consultants on behalf of the Principal to prepare or complete the Draft Construction Management Plan, which (once provided to the Contractor) will be deemed to be the Approved Construction Management Plan.

27A.4 Compliance with Approved Construction Management Plan

Without limiting the Contractor's obligations arising out of the Contract, the Contractor shall, in performing the work under the Contract-

- (a) not materially depart from the Approved Construction Management Plan without the prior written approval of the Superintendent; and
- (b) ensure that its Subcontractors and any persons it engages to work on the Site complies with the requirements of the Approved Construction Management Plan.

27A.5 No Claims

The Contractor shall not be entitled to make any Claim against the Principal arising out of or in connection with its obligations under this Clause 27A.

28. Setting out the Works

28.1 Setting Out

The Contractor shall procure the information and survey marks necessary to enable the Contractor to set out the Works including the survey marks specified in the Contract (if any). The Contractor shall verify the accuracy of and accepts all risk and responsibility for the accuracy of all survey marks whether specified in the Contract or not. Upon procuring any necessary information and the 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.

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 at its cost.

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. Unless the Superintendent otherwise directs, the Contractor shall rectify the error at its cost and is not entitled to make any Claim arising out of or in connection with-

- (a) the error; or
- (b) complying with any direction of the Superintendent in respect of the error.

29. Materials, Labour and Constructional Plant

29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Contract otherwise provides-

- (a) 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; and
- (b) incidental items and activities not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the work under the Contract shall be supplied and executed by the Contractor without any adjustment to the Contract Sum.

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 in the Contract to the contrary, the Contractor shall-

- (a) use suitable new, good quality and undamaged materials;
- (b) use a high standard of proper and tradesman like workmanship; and
- (c) ensure that all materials, equipment and work shall be in accordance with-
 - (i) any applicable Legislative Requirements; and
 - (ii) Good Construction Practices,

and shall be of a kind which is both suitable for their purpose and consistent with the nature and character of that part of the Works to which they apply.

30.2 Quality Accreditation

The Contractor-

- (a) shall within the time period set out in Item 34, submit to the Superintendent a quality management plan which conforms with the requirements of AS/NZS ISO 9000 series (**Quality Management Plan**);
- (b) shall comply with the Quality Management Plan;
- (c) shall immediately implement changes to the Quality Management Plan-
 - (i) if the Quality Management Plan has changed as a result of an audit;
 - (ii) if the Quality Management Plan no longer represents the Contractor's current practice; or
 - (iii) in accordance with any reasonable direction of the Superintendent;
- (d) warrants to the Principal that compliance with the Quality Management Plan shall ensure that the performance and completion of the work under the Contract is in accordance with the requirements of the Contract; and
- (e) shall provide the Superintendent with access to the quality system of each of its Associates 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 this 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 and immediately payable 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 29 or 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

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-

- (a) provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Superintendent;
- (b) on completion of the tests, make good the work under the Contract so that it fully complies with the Contract; and
- (c) promptly provide to the Superintendent the results of any of the tests undertaken by or on behalf of the Contractor (including the results of tests undertaken in relation to any part of the Works manufactured off the Site).

The obligations of the Contractor arising out of the Contract including in relation to the quality and suitability of the Works shall not be diminished in any respect by any testing undertaken pursuant to this Clause 31.

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 and shall be borne by the Principal or paid by the Principal to the Contractor unless-

- (a) the Contract provides that the Contractor shall bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;

- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent's prior approval; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

31.8 Access for Testing

If, during the Defects Liability Period-

- (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

32.1 Generally

Subject to any contrary Legislative Requirements, the Working Hours and the Working Days shall not be varied without the prior approval of the Superintendent except when in the interests of safety of the work under the Contract or to protect life or property the Contractor finds it necessary to perform work outside the Working Hours or on days that are not Working Days. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

32.2 Maximum levels

Despite any provision of the Contract to the contrary, the Contractor may not perform any part of the work under the Contract in a way which creates-

- (a) any vibration, including during any demolition or excavation work, which exceeds the tolerable vibration limits referred to in any Approval, Legislative Requirement or any guidelines or standards notified or published by the EPA from time to time; or
- (b) any noise in excess of any decibel levels, as measured from the centre of the Site, referred to in any Approval, Legislative Requirement or any guidelines or standards notified or published by the EPA from time to time.

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, pursuant to a statutory right under the SOP Act 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 the Contractor considers that compliance with the direction will cause it to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the Contractor shall give the Superintendent written notice to that effect within 2 Business Days from receipt of the Superintendent's direction. The Superintendent shall then give written notice confirming or withdrawing its direction within 5 Business Days from receipt of the Contractor's notice.

If the Superintendent confirms its direction and compliance causes the Contractor to incur more or less cost than would otherwise have been incurred, then provided that the-

- (a) Contractor has strictly complied with the notice requirements of this Clause 33.1; and
- (b) direction was not given in response to any non-compliance by the Contractor with the requirements of the Contract,

the difference shall be valued under Clause 40.5, provided that in respect of any delay or disruption costs which the Contractor incurs resulting from such direction the Contractor shall only be entitled to claim the Maximum Daily Amount for each day for which it is granted an extension of time resulting from direction.

33.1A Overcoming Delays

If progress of the Works is delayed then-

- (a) in addition to the Contractor's obligations arising out of Clause 33.1, the Contractor shall notify the Superintendent in writing of its plans and programs for overcoming such delay; and
- (b) if requested by the Superintendent, the Contractor shall meet with the Superintendent and provide such reports to the Superintendent as may be required as to the cause of delay and available options for overcoming that delay.

33.2 Construction Program

A '**Construction Program**' comprises a written time scaled bar-chart and supporting critical path network analysis showing-

- (a) the Contractor's planned work activities and sequences for bringing the Works to Practical Completion and the dates by which, or the times within which, the various stages or parts of the work under the Contract are to be performed or completed;
- (b) all critical path and non-critical path activities and activity dependencies;
- (c) early and late start and finish dates for each activity (taking into account rostered days off and public holidays);
- (d) total float for each activity;

- (e) the relationship and sequencing of each activity;
- (f) key milestone dates;
- (g) dates for the award of Subcontracts, procurement lead times and the provision of shop drawings;
- (h) times for the submission of applications for and obtaining Approvals;
- (i) the allowances for the Superintendent to review and comment on the relevant document or item (which allowances must be at least that requirement by Attachment O);
- (j) a commissioning period of the minimum duration stated in Attachment O;
- (k) any other information required by Attachment O, any other Contract Document or otherwise requested in writing by the Superintendent.

33.3 Submission of Construction Program

The Contractor shall submit to the Superintendent-

- (a) within the time period set out in Item 37, a Construction Program (which shall, where a Tender Program appears at Attachment E, be based on that Tender Program);
- (b) at the times stated in Attachment O, look ahead programs which are based on the Current Construction Program and which show anticipated activities on the Project for those intervals described in Attachment O; and
- (c) when directed by the Superintendent to do so, a revised version of the Current Construction Program which is only updated so as to reflect any extensions of time which have been granted by the Superintendent under Clause 35.5A since the Current Construction Program was last revised.

33.4 Compliance with the Current Construction Program

Without limiting the Contractor's obligation to bring the Works to Practical Completion by the Date for Practical Completion, the Contractor shall not-

- (a) change the Current Construction Program without the prior written approval of the Superintendent; or
- (b) materially depart from the Current Construction Program unless it is necessary to do so to comply with the Contract.

If the Contractor fails to provide a Construction Program or fails to resubmit a Construction Program to the Superintendent in accordance with Clause 33.3, the Superintendent may (at the Contractor's cost) engage consultants on behalf of the Principal to prepare or complete a Construction Program, which (once provided to the Contractor) will be deemed to be the Current Construction Program.

33.5 Status of the Current Construction Program

The Current Construction Program-

- (a) does not form part of the Contract; and
- (b) may be used by the Superintendent to monitor the progress of the work under the Contract and to assess claims by the Contractor for extensions of time.

33.6 Programs Generally

No review by the Superintendent of, nor any comment or direction (including any approval) by the Superintendent upon or in connection with, any Construction Program (including a draft Construction Program, a revised Construction Program or the Current Construction Program) shall-

- (a) relieve the Contractor from any of its liabilities or obligations, arising out of the Contract including the obligation to achieve Practical Completion by the Date for Practical Completion;
- (b) evidence or constitute a direction by the Superintendent to accelerate, disrupt, prolong or vary any or all of the work under the Contract or grant an extension of time; or
- (c) affect the time for performance of the Principal's or the Superintendent's obligations or functions; and

the Contractor is not entitled to make any Claim arising out of or in connection with any Construction Program.

33A Reports

33A.1 Monthly Reports

At the times for payment claims under Clause 42.1A, the Contractor shall submit to the Superintendent three copies of a monthly report ('**Monthly Report**').

The Monthly Report shall be in a format agreed between the parties and shall include as a minimum-

- (a) details of the progress and programming of the work under the Contract;
- (b) details of how the Contractor has dealt with or intends to deal with any delays to the work under the Contract;
- (c) the current forecast of the Date for Practical Completion;
- (d) details of pending or anticipated claims for an extension of time;
- (e) details of potential disputes;
- (f) details of insurance claims, including anticipated insurance claims;
- (g) status of the appointment of Subcontractors;
- (h) status of the ordering of plant, equipment and materials with lead times;
- (i) status of the supply and delivery to the Site of plant, equipment and materials with lead times;
- (j) details of persons working on the Site or who are scheduled to be working on the Site;
- (k) details of the occurrence of any Incidents on the Site;
- (l) details of Variations and Alleged Variation Orders;
- (m) any other information required by the Contract Documents; and

- (n) any other matters the Principal or the Superintendent has reasonably requested the Contractor to address in the Monthly Report.

33A.2 Reports on Principal's Request

The Principal may during the performance of the work under the Contract, request the Contractor to provide the Principal with a report that contains any information or addresses any matters the Principal or the Superintendent has reasonably requested the Contractor in writing to address in such a report ('**Principal Requested Report**').

The Contractor shall provide an electronic copy of the Principal Requested Report within 5 Business Days of receipt of the written request from the Principal.

33B Meetings

33B.1 Attendance at Meetings

The Contractor's Representative shall attend-

- (a) fortnightly site meetings with the Superintendent or the Superintendent's Representative at such times and places as directed by the Superintendent ('**Site Meeting**'); and
- (b) if required by the Principal, project steering committee, project control group or any other project governance meetings.

The Contractor's Representative shall bring to all meetings referred to in this Clause 33B.1 all documentation, information and persons (including any Associates) the Superintendent directs the Contractor to bring.

33B.2 Minutes

The Contractor shall-

- (a) distribute an agreed agenda at least 3 Business Days prior to each Site Meeting;
- (b) keep the minutes of each Site Meeting;
- (c) distribute the minutes to the attendees at such meetings within 3 days of the relevant Site Meeting; and
- (d) otherwise comply with the requirements for Site Meetings which are set out or described in the Contract Documents.

33B.3 No Direction

Notwithstanding the recording of the minutes of any Site Meeting, no resolution or communication at any Site 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.

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 employee, consultant or agent 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 a court or 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 or pursuant to its rights under the SOP Act, the Contractor shall obtain the prior written approval of the Superintendent. The Superintendent may approve or reject 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 shall direct the Contractor to recommence work 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 by a Competent Contractor but for the suspension, the difference shall be valued under Clause 40.5 provided that in respect of any delay or disruption costs which the Contractor incurs resulting from such suspension the Contractor shall only be entitled to claim the Maximum Daily Amount for each day for which it is granted an extension of time resulting from such suspension.

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 35.5.

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' written 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 14 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 perform the work under the Contract to Practical Completion by the Date for Practical Completion.

Upon the Date of Practical Completion the Contractor shall relinquish its rights of access to 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 16, 35, 37, 38 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 liquidated damages or delay costs applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the liquidated damages or delay costs 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.

Despite anything to the contrary in this Clause 35.3, where in Item 40 it is specified that the Contractor is not required to satisfy certain preconditions to achieve Practical Completion of that Separable Portion, the definition of 'Practicable Completion' will be interpreted so that such preconditions are excluded from that definition.

35.4 Use of Partly Completed Works

The Superintendent may at any time direct that a part of the Works (including any part that has reached a stage equivalent to Practical Completion) constitutes a Separable Portion. In so directing the Superintendent shall clearly identify for the Separable Portion the-

- (a) part of the Works;
- (b) Date for Practical Completion; and
- (c) amount for liquidated damages and applicable Maximum Daily Amount.

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

35.5 Claim for Extension of Time for Practical Completion

When it becomes evident to the Contractor that anything including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants or agents, may delay the work under the Contract, the Contractor shall promptly notify the Superintendent in writing with details of the possible delay and the cause.

If the Contractor is or will be delayed in reaching Practical Completion by a Delay Event and wishes to claim an extension of time, then the Contractor shall-

- (a) within 10 Business Days of the date on which the Contractor became aware or ought reasonably to have become aware of the Delay Event, give to the Superintendent a written claim for an extension of time which-
 - (i) identifies and provides detailed particulars of the Delay Event relied upon;
 - (ii) states the number of days extension of time claimed together with the basis for calculating that period (including by reference to the critical path in the Current Construction Program); and
 - (iii) identifies the reasonable steps that the Contractor has taken or proposes to take (without being required to accelerate the Works) to preclude the occurrence and to avoid, minimise or mitigate the consequences of the Delay Event; and
- (b) if the effects of the delay the subject of a written claim for an extension of time under Clause 35.5(a) continues beyond the 10 Business Days referred to in that Clause and the Contractor wishes to claim an extension of time in respect of that further delay, give to the Superintendent a further written claim for an extension of time containing the information referred to in Clause 35.5(a) every 10 Business Days after the initial claim until 5 Business Days after the effects of the delay have ceased.

35.5A Grant of Extension of Time

If the Contractor has-

- (a) given the Superintendent a written claim for an extension of time in accordance with Clause 35.5; and
- (b) by reason of the Delay Event the subject of its claim, actually been or will be-
 - (i) prior to the Date for Practical Completion, prevented from reaching Practical Completion by the Date for Practical Completion; or
 - (ii) after the Date for Practical Completion, delayed in achieving Practical Completion; and
- (c) demonstrated to the satisfaction of the Superintendent (acting reasonably) that the Delay Event the subject of its claim has affected or will affect the completion of an activity on the critical path outlined in the Current Construction Program,

then the Superintendent shall, within 20 Business Days after receipt of the Contractor's written claim for an extension of time pursuant to Clause 35.5, grant a reasonable extension of time and give written notice of such extension to the Contractor and the Principal. If within the 20 Business Days the Superintendent does not grant the full extension of time claimed, the Superintendent shall before the expiration of the 20 Business Days give the Contractor and the Principal notice in writing of the reason.

In determining a reasonable extension of time, the Superintendent shall have regard to whether and the extent to which-

- (d) the Contractor has taken the reasonable steps that would have been taken by a Competent Contractor (without being required to accelerate the Works) to preclude the occurrence and to avoid, minimise or mitigate the consequences of the Delay Event; and
- (e) the Contractor or its Associates contributed to the delay the subject of the Contractor's written claim for an extension of time pursuant to Clause 35.5,

and shall reduce any extension of time accordingly.

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 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.

35.5B Unilateral Discretion

Whether or not the Contractor has claimed, or is entitled to claim, an extension of time to the Date for Practical Completion, the Principal may, in its absolute discretion, at any time and from time to time by written notice to the Contractor, unilaterally extend the Date for Practical Completion for any reason.

The Principal and the Contractor acknowledge and agree that-

- (a) the Principal is not required to exercise its discretion under this Clause 35.5B for the benefit of the Contractor;
- (b) the Principal is not obliged to act reasonably in exercising its discretion under this Clause 35.5B or to waive any rights or conditions precedent; and
- (c) this Clause 35.5B does not confer any rights on the Contractor.

35.5C Overlapping delays

If-

- (a) two or more delays to the work under the Contract overlap;
- (b) each of those delays, in the absence of any of the other overlapping delays, would delay the Contractor in reaching Practical Completion; and
- (c) the cause of at least one of those delays, but not all of them, is a cause for which the Contractor would otherwise not be entitled to an extension of time,

then, for the period of such overlap, the Contractor will (subject to the Contract) be entitled to an extension of time but will not be entitled to make any other Claim (including for any delay or disruption damages or costs).

35.5D Provisional period of delay

Despite any provision to the contrary in the Contract, the parties acknowledge and agree that-

- (a) the Contractor bears all risk of delays and costs associated with, incurred due to or arising out of Inclement Weather up to and including the first 20 Working Days of delay in reaching Practical Completion caused by Inclement Weather (**Provisional Period of Delay**);
- (b) if the Contractor is delayed in reaching Practical Completion by Inclement Weather for a period greater than the Provisional Period of Delay (**Further Period of Delay**), the Contractor will only be entitled to an extension of time for the Further Period of Delay (or any part of it) where it has-
 - (i) demonstrated to the reasonable satisfaction of the Superintendent that it has incurred the Provisional Period of Delay; and
 - (ii) otherwise complied with Clause 35.5 with respect to the Further Period of Delay (or any part of it); and

- (c) the parties are using the Provisional Period of Delay to proactively manage the Works in an efficient manner and that the Contractor has satisfied itself that the Contract Sum and the Date for Practical Completion makes allowance for the Contractor not being entitled to an extension of time for delays arising from Inclement Weather during the Provisional Period of Delay.

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 (without the requirement for the giving of any further notice, certificate or demand) for liquidated damages at the rate stated in Item 42 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.

Without limiting any other rights of the Principal, the Principal may at any time and from time to time, recover liquidated damages for which the Contractor is indebted, whether or not Practical Completion has occurred.

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 Contractor acknowledges and agrees that the liquidated damages under this Clause 35.6 are a genuine pre-estimate of the Loss that the Principal will suffer, and a sum commensurate with the Principal's interests which will be adversely affected, if the Contractor fails to reach Practical Completion by the Date for Practical Completion and are not a penalty.

If a court of competent jurisdiction or arbitrator determines that the Contractor's liability under this Clause 35.6 for liquidated damages is void, voidable or unenforceable, then the Principal is entitled to claim against the Contractor common law damages due to the failure of the Contractor to achieve Practical Completion by the Date for Practical Completion.

35.7 Not Used

35.8 Not Used

35.9 No Claims

Except to the extent expressly set out in Clauses 35, 36, and 40, the Contractor is not entitled to make (and releases the Principal from) any Claim arising out of or in connection with any delay or disruption howsoever arising (including by reason of any breach of contract).

35.10 Instruction to Accelerate

If the Contractor gives the Superintendent a claim under Clause 35.5, the Superintendent may-

- (a) instruct the Contractor to accelerate the work under the Contract by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay and/or disruption including, if required, in order to achieve Practical Completion by the Date for Practical Completion; and
- (b) give such an instruction whether or not the cause of delay and/or disruption for which the Contractor has given its claim under Clause 35.5 otherwise entitles the Contractor to an extension of time to the Date for Practical Completion.

35.11 Partial Acceleration

If the Superintendent gives the Contractor an instruction to accelerate under Clause 35.10 requiring it to accelerate the work under the Contract and that instruction only applies to part of the delay and/or disruption, the Contractor's entitlement to any extension of time which it otherwise would have had will be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay and/or disruption.

35.12 Acceleration

If the Superintendent gives the Contractor an instruction to accelerate under Clause 35.10-

- (a) the Contractor must accelerate the work under the Contract to overcome or minimise the extent and effect of some or all of the delay and/or disruption as instructed, including, if required, in order to achieve Practical Completion by the Date for Practical Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the Date for Practical Completion for the cause of delay and/or disruption, the Contractor shall be entitled to be paid the extra costs reasonably incurred by it and directly attributable to accelerating the work under the Contract; and
- (c) subject to Clause 35.12(b), the Contractor shall not be entitled to make any Claim arising out of or in any way in connection with the cause of delay and/or disruption and the instruction, other than for the amount which is payable by the Principal under this Clause 35.12.

35.13 Principal's Rights to Liquidated Damages not Affected

The Principal's rights to liquidated damages for a failure by the Contractor to achieve Practical Completion by the relevant Date for Practical Completion are not affected by the Superintendent's giving the Contractor an instruction to accelerate under Clause 35.10.

35.14 Acceleration by Contractor

The Principal, the Superintendent and the Principal's Associates are not obliged to do or refrain from doing anything to enable the Contractor to achieve Practical Completion before the Date for Practical Completion.

The time for performance of the Principal's or the Superintendent's obligations is not affected by the Contractor's desire or attempts to achieve Practical Completion before the Date for Practical Completion.

35.15 Review of Progress

If at any time the Superintendent forms the opinion that-

- (a) the Contractor is not complying with the Current Construction Program; or
- (b) there is no reasonable likelihood that the Contractor will achieve Practical Completion by the Date for Practical Completion,

the Superintendent may issue a written notice to the Contractor notifying the Contractor of its opinion, together with reasons for forming that opinion.

35.16 Draft Catch-Up Plan

Within 5 Business Days of the Superintendent issuing a notice under Clause 35.15, the Contractor must prepare and provide to the Superintendent a draft plan and program for overcoming the relevant delay or delays (**Draft Catch-Up Plan**).

35.17 Review of the Draft Catch-Up Plan

Within 5 Business Days of receipt of the Draft Catch-Up Plan, the Superintendent must give notice to the Contractor as to whether the Draft Catch-Up Plan is-

- (a) accepted;
- (b) rejected; or
- (c) requires amendment.

35.18 Amending the Draft Catch-Up Plan

Where the Superintendent notifies the Contractor that the Draft Catch-Up Plan is rejected under Clause 35.17(b) or requires amendment pursuant to Clause 35.17(c), the Contractor must revise the Draft Catch-Up Plan and resubmit it to the Superintendent.

This Clause 35.18 will continue to apply until the Superintendent issues a notice of acceptance pursuant to Clause 35.17(a).

Upon the Superintendent issuing a notice of acceptance pursuant to 35.17(a), the Draft Catch-Up Plan will be deemed to constitute an '**Approved Catch-Up Plan**'.

35.19 Compliance with the Catch-Up Plan

The Contractor must comply with an Approved Catch-Up Plan.

36. Delay or Disruption Costs

36.1 Maximum Daily Amount

Subject to Clause 36.2, for every Working Day for which the Contractor has been granted an extension of time by the Superintendent under Clause 35.5A for any delay caused by an Act of Prevention, the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor as a direct result of such Act of Prevention, as assessed by the Superintendent, provided that-

- (a) in no event shall such costs-
 - (i) include an allowance for profit or loss of profit; or
 - (ii) exceed the Maximum Daily Amount per Working Day; and
- (b) despite any other provision of the Contract, where there are Separable Portions, the cumulative amount of extra costs for delay across all Separable Portions will not exceed the amount stated in Item 44.

36.2 Failure to mitigate

The amount payable under the above paragraph shall be reduced by the Superintendent (acting reasonably) to the extent that-

- (a) the Contractor has failed to take the reasonable steps that would have been taken by a Competent Contractor to avoid, minimise or mitigate the extra costs; and
- (b) 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 Item 45 shall commence at 4pm on the Date of Practical Completion.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify any Defects in the work under the Contract existing at Practical Completion to the reasonable satisfaction of the Superintendent.

Without limiting the general nature of the preceding paragraph, the Contractor shall commence and complete the rectification of the Defects stated in the Defect Rectification List by the times or dates stated in the Defect Rectification List.

At any time during the Defects Liability Period and at any time prior to the 10th Business Day after the expiration of the Defects Liability Period, the Superintendent may direct the Contractor to rectify any 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 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. If the direction states that the rectification of a Defect is urgent for the purposes of protecting health and safety or to prevent loss or damage to any part of the Works or other property, the Contractor shall commence rectification of the relevant Defect immediately and complete such rectification works as soon as is reasonably practicable. 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 Item 45. The separate Defects Liability Period shall commence on the date the Contractor completes the work of rectification. This Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification.

If the Contractor does not commence or complete the rectification of Defects by the dates stated in the Defect Rectification List or in any direction the Superintendent issues under this Clause 37, 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 Defect and the cost of the work of rectification incurred by the Principal shall be a debt due and immediately payable from the Contractor to the Principal.

If it is necessary for the Contractor to perform 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 this 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

and immediately payable 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 and immediately payable from the Contractor to the Principal.

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 Variations Generally

Subject to Clause 40.6, the Contractor shall not perform a Variation unless the Superintendent has given-

- (a) a direction in accordance with Clause 40.1; or
- (b) its written approval in accordance with Clause 40.4,

to perform a Variation.

The Contractor shall comply with any direction given by the Superintendent under Clause 40.1 but shall not be bound to perform a Variation directed after the Date of Practical Completion unless the Variation is in respect of defective materials or work referred to in Clause 30 or rectification work referred to in Clause 37.

No Variation, either individually or in combination with other Variations, shall invalidate or constitute a repudiation of the Contract, regardless of the nature, extent, timing or value of that Variation.

If a Variation omits or decreases any part of the Works, the Principal may then perform that omitted work either itself or by engaging a third party to do so.

40.1 Directions to Perform Variations

The Superintendent may, by giving a written notice which is expressly entitled '**Variation Order**' and which is stated to be issued under this Clause 40.1, direct the Contractor to perform a Variation.

40.2 Proposed Variations

The Superintendent may, by giving a written notice entitled '**Proposed Variation Notice**', advise the Contractor of a proposed Variation.

Within 10 Business Days of receipt of a Proposed Variation Notice, the Contractor shall, by giving a written notice entitled '**Variation Proposal**', advise the Superintendent –

- (a) of the effect that the Variation will have on the Current Construction Program and time for Practical Completion and whether or not the Variation shall necessitate any extension of time (and if so, of what duration);

- (b) of the cost (including delay costs, if any) of the proposed Variation supported by measurements or other evidence of cost (including Subcontractor and supplier quotations); and
- (c) whether or not the Contractor reasonably anticipates that the proposed Variation will necessitate a variation to any Approval or have an adverse effect on any guarantee or warranty provided by the Contractor under the Contract.

In preparing a Variation Proposal the Contractor shall-

- (d) minimise so far as is practicable, any impacts on any Approval, guarantees and warranties; and
- (e) use all reasonable endeavours to mitigate and minimise the cost of the proposed Variation and its effect on the Current Construction Program and time for Practical Completion.

Where a Variation Proposal is acceptable to the Principal, the Superintendent may direct the Contractor to proceed as specified in that Variation Proposal by giving a Variation Order under Clause 40.1 attaching a copy of it.

The Principal shall not be obliged to proceed with any Variation the subject of a Proposed Variation Notice or Variation Proposal.

40.3 Cost and impacts of the Variation

Where a Variation Proposal has been accepted in accordance with Clause 40.2, the cost (including delay costs, if any) and impacts of the Variation in issue shall be limited to those specified in the Variation Proposal.

Otherwise, unless the Superintendent and the Contractor agree upon the cost and impacts of the Variation, the Variation directed by the Superintendent under Clause 40.1 shall be valued under Clause 40.5 and any other impacts shall be subject to the terms of the Contract.

The Superintendent may direct the Contractor to provide a detailed costing for 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 proposed Variation the Contractor wishes to make;
- (b) states why the Contractor wishes to make the proposed Variation;
- (c) states what effect the proposed Variation shall have on the work under the Contract, including to any guarantee or warranty, and whether a variation to any Approval will be required;
- (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 those delays shall be and the anticipated effect (if any) on the Date for Practical Completion; and
- (e) states the cost of the proposed Variation and the effect it shall have on the Contract Sum.

The Superintendent may approve the Variation proposed by the Contractor in writing. The approval may be conditional.

The Contractor shall not be entitled to make any Claim in respect of any proposed Variation approved by the Superintendent in accordance with this Clause 40.4.

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

The Contractor shall reimburse the Principal on demand for all costs the Principal incurs (including the cost of any consultants engaged by or on behalf of the Principal to review the proposed Variation) in receiving and considering any Variation proposed for the convenience of the Contractor under this Clause 40.4.

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) [Not Used];
- (c) if Clause 40.5(a) does not apply, reasonable rates or prices shall be used in any valuation made by the Superintendent (not including any allowance for the Contractor's Profit and Overheads Costs);
- (d) [Not Used]
- (e) subject to Clause 14.2, if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.2, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to the Contractor's Profit and Overhead Costs; and
- (f) [Not Used]
- (g) [Not Used]
- (h) Daywork shall be valued in accordance with Clause 41.

For the purpose of a valuation to be made under Clause 40.5(a) or Clause 40.5(c)-

- (i) in determining the addition to be made for work which is to be added to the Contract, except to the extent that the relevant rates or prices already made (or were required by the Contract to make) allowance for the Contractor's Profit and Overheads Costs, the addition shall include the amount for the Contractor's Profit and Overheads Costs stated in Item 46; and
- (j) in determining the deduction to be made for work which is taken out of the Contract, the deduction shall include the amount for the Contractor's Profit and Overheads Costs stated in Item 47.

For the avoidance of doubt, any valuation made under this Clause 40.5 will not allow any extra costs incurred by the Contractor for delay or disruption. If the Contractor wishes to claim any such costs, it must do so in accordance with Clause 36.

40.6 Variations and Directions

If the Contractor considers that an Alleged Variation Order, whilst not a Variation Order, requires the performance of a Variation, then-

- (a) the Contractor shall give written notice to the Superintendent within 5 Business Days of receipt of (and in any event before implementing) the Alleged Variation Order, stating that it considers the Alleged Variation Order involves a Variation; and
- (b) as soon as practicable after receipt of a notice from the Contractor under Clause 40.6(a), the Superintendent shall-
 - (i) give a Variation Order under Clause 40.1;
 - (ii) withdraw the Alleged Variation Order by written notice to the Contractor; or
 - (iii) advise the Contractor in writing that it does not consider the Alleged Variation Order requires the performance of a Variation in which event the Contractor shall comply with the Alleged Variation Order but, subject to having strictly complied with the notice requirements in this Clause 40.6, the Contractor's right to refer the issue for dispute resolution is preserved.

The Contractor agrees that should it fail to give notice in accordance with Clause 40.6(a), the Contractor-

- (c) will be deemed to agree that the relevant Alleged Variation Order does not constitute a Variation; and
- (d) cannot later claim that the relevant Alleged Variation Order amounted to a Variation and the Contractor shall not be entitled to make any Claim on the basis that the Alleged Variation Order amounts to a Variation.

40A Pre-Agreed Variations

40A.1 Pre-agreed Variation Notice

The Principal may at any time and from time to time after the Execution Date but before the relevant date (or the expiration of the relevant period of time) stated in Attachment K issue a written notice to the Contractor which requires the Contractor to perform all or any part of the work described in Attachment K (**Pre-agreed Variation Notice**).

A Pre-agreed Variation Notice -

- (a) must state that it is issued under this Clause 40A.1;
- (b) must describe that part of the work described in Attachment K which the Contractor is required to perform (**Pre-agreed Variation**); and
- (c) may state the date or the period of time within which the Contractor must commence the Pre-agreed Variation.

40A.2 Incorporation of the Pre-agreed Variation

If the Principal issues an Pre-agreed Variation Notice -

- (a) the Pre-agreed Variation which is described in such Pre-agreed Variation Notice will be deemed to form part of the Works;
- (b) the Contractor must commence the Pre-agreed Variation on the date or within the time nominated by the Principal in the relevant Pre-agreed Variation Notice or, if no such date or time is nominated, 10 Business Days after the date of issuance of the relevant Pre-agreed Variation Notice;

- (c) the Contract Sum will be deemed to have been adjusted by adding or removing (as the context requires) that amount set out in Attachment K which is stated to constitute the relevant 'Pre-agreed Variation Adjustment Amount' (**Pre-agreed Variation Adjustment Amount**);
- (d) the Contractor must perform the Pre-agreed Variation in accordance with the Contract; and
- (e) the Contractor must update the Current Construction Program to show the incorporation of the Pre-agreed Variation into the Works within 10 Business Days of the date of issuance of the relevant Pre-agreed Variation Notice (provided always that the Contractor has confirmed that it shall not be entitled to any extension of time by reason of the issuance of the Pre-agreed Variation Notice).

This Clause 40A.2 sets out the Contractor's sole entitlement to make any Claim arising out of the direction of any Pre-agreed Variation and the issuance of any Pre-agreed Variation Notice.

40A.3 No Guarantee

The Contractor -

- (a) acknowledges and agrees that none of the Superintendent, the Principal or any of the Principal's Associates have, at any time, made any representations to the Contractor that the Principal will issue any Pre-agreed Variation Notice in respect of any Pre-agreed Variation and the Contractor warrants that it has not entered into the Contract in reliance on the Principal doing so;
- (b) the Contractor is not entitled to make any Claim against the Principal arising out of or in connection with the Principal failing to issue any Pre-agreed Variation Notice in respect of any or all of the Pre-agreed Variation; and
- (c) the Principal may elect (at its absolute discretion) to engage another contractor to carry out all or any Pre-agreed Variation and the Superintendent may direct any variation under the Contract that it considers necessary to give effect to such engagement of any other contractor or contractors.

41. Daywork

The Superintendent may direct that Variations directed by the Superintendent under a Variation Order shall be carried out as Daywork. The Contractor shall thereafter each day record particulars of all resources used by the Contractor for the performance 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 Item 48 or, if no charge is stated, a charge agreed between the Superintendent and the Contractor to cover the Contractor's Profit and Overhead Costs 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. Certificates and Payments

42.1 Payment Claims

The Contractor shall be entitled to deliver to the Superintendent claims for payment -

- (a) progressively in accordance with Item 49 up to the Date of Practical Completion;
- (b) upon the issuance of the Certificate of Practical Completion; and
- (c) within the time prescribed by Clause 42.7.

Early claims for payment will be deemed to have been made on the date for making the claim.

42.1A Contents of Payment Claims

Each claim for payment shall be given in writing to the Superintendent, set out the amount then claimed by the Contractor and shall include -

- (a) a detailed breakdown of the value of work carried out by the Contractor in the performance of the Contract to that time;
- (b) amounts previously paid under the Contract;
- (c) a statutory declaration in accordance with Clause 43(a);
- (d) where relevant, subject to Clause 42.4, details of any amounts claimed for items of plant or materials intended for incorporation in the Works but not yet incorporated; and
- (e) details of any other amounts then due from the Principal to the Contractor or from the Contractor to the Principal arising out of or in connection with the Contract or for any alleged breach thereof.

42.1B Payment Certificates

Within 10 Business Days after receipt of a claim for payment in compliance with Clause 42.1A, the Superintendent shall assess the claim for payment and issue to the Principal and to the Contractor a payment certificate which-

- (a) identifies the claim for payment to which it relates;

- (b) states 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;
- (c) without limiting the general nature of Clause 42.1B(b), states amounts that the Principal is entitled to retain, deduct, withhold or set off arising out of the Contract or otherwise;
- (d) without limiting the general nature of Clause 42.1B(b) or Clause 42.1B(c), states the value deducted for omitted material or work or the cost to the Principal, as assessed by the Superintendent, of rectifying any material or work that is defective or not in accordance with the Contract; and
- (e) sets out the calculations employed by the Superintendent to arrive at that 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 certificate issued pursuant to this Clause 42.1B 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, or is not entitled, to make a claim for payment under Clause 42.1A, the Superintendent may nevertheless issue a payment certificate.

Any failure by the Superintendent to include in a payment certificate any amount payable by the Contractor to the Principal (including liquidated damages) shall not constitute a waiver of the Principal's right to recover, retain, deduct, withhold or set-off that amount.

42.1C Payment

Where pursuant to a payment certificate or the Final Certificate the Superintendent determines that moneys are due from-

- (a) the Principal to the Contractor then-
 - (i) the Contractor must issue to the Superintendent and the Principal a valid tax invoice (within the meaning of the GST Act) for the amount of the payment certificate or the Final Certificate (as the case may be) within 2 Business Days of the date on which the Superintendent issued the relevant payment certificate or the Final Certificate (as the context requires); and
 - (ii) subject to the Principal's rights under the Contract, the Principal shall pay to the Contractor the amount shown in the payment certificate or the Final Certificate (as the case may be) within 20 Business Days after receiving the relevant payment certificate or the Final Certificate (as the case may be); or
- (b) the Contractor to the Principal, then the Contractor shall pay to the Principal the amount shown in the payment certificate or Final Certificate (as the case may be) within 10 Business Days after receipt of the payment certificate or Final Certificate (as the case may be).

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.

Except as provided for in Clause 42.4, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

42.1D SOP Act

For the purposes of and to the extent permitted by the SOP Act-

- (a) a reference to a claim for payment or a Final Payment Claim is a reference to a 'payment claim' as defined in section 14 of the SOP Act; and
- (b) a reference to a payment certificate or a Final Certificate is a reference to a 'payment schedule' as defined in section 15 of the SOP Act; and
- (c) the authorised nominating authorities to which an Adjudication Application may be made are as stated in Item 50.

42.2 Correction of Payment Certificates

At any time and from time to time, the Superintendent may by a further payment certificate correct any error which has been discovered in any previous payment certificate, other than a Final Certificate.

Without limiting the general nature of the previous paragraph or Clause 42.1A, the Superintendent may at any time and for any reason issue a payment certificate.

42.3 [Not Used]

42.4 Unfixed Plant and Materials

The Contractor shall not include in any claim for payment under Clause 42.1A an amount for plant or materials intended for incorporation in the Works but not incorporated, unless-

- (a) such plant or materials are listed in Item 51;
- (b) such plant or materials have reasonably but not prematurely been delivered to or adjacent to the Site;
- (c) ownership of such plant and materials will pass to the Principal upon the making of the payment claimed;
- (d) such plant or materials are properly stored, labelled the property of the Principal and adequately protected;
- (e) the Contractor has provided additional Security in an amount equal to the payment claimed for the plant and materials;
- (f) the Contractor has obtained and is maintaining fire and theft insurance over the relevant plant and materials in a form which is satisfactory to the Superintendent;
- (g) if the item of plant and materials is to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading or its equivalent, drawn or endorsed to the order of the Principal and, where appropriate, a customs invoice for the item; and
- (h) the Contractor has taken all such steps (including signing documents, providing information and giving and obtaining consents) as are necessary to enable the Principal to register and perfect a Security Interest in the item on the register or otherwise perfect the Security Interest.

By including in a claim for payment under Clause 42.1A an amount for any item of plant or materials intended for incorporation in the Works but not incorporated, the Contractor acknowledges and represents, and is deemed to acknowledge and represent, that the requirements of section 19(2) of the PPSA have been satisfied in respect of that item.

Should the Contractor include in a claim for payment under Clause 42.1A an amount in breach of this Clause 42.4, then the claim for payment in issue will be deemed not to include, and the Superintendent shall not be obliged to assess, that amount.

Upon the earlier of incorporation in the Works of an item or payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be, and the Contractor shall procure that they are, the unencumbered property of the Principal, free of any lien, charge or competing Security Interest.

42.5 Certificate of Practical Completion

The Contractor shall give the Superintendent at least 10 Business Days' 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 certificate 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 20 Business Days after the last to occur of-

- (a) the expiration of the Defects Liability Period, or where there is more than one, the last to expire;
- (b) the rectification by the Contractor of all Defects notified by the Superintendent in accordance with the Contract; and
- (c) the Contractor providing the Principal with a duly executed deed of release in the form set out in Annexure Part F,

the Contractor shall lodge with the Superintendent a final claim for payment and endorse it **'Final Payment Claim'**.

The Contractor shall include in the Final Payment 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.

The Contractor acknowledges and agrees that after the expiration of the period for lodging a Final Payment Claim, any such claim for moneys and any other Claim arising out of or in connection with the Contract or the Works which the Contractor could have made against the Principal and has not been made shall be barred and the Contractor releases the Principal from all such Claims.

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 certificate 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 10 Business 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 the Works have been completed in accordance with the terms of the Contract and 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 within the said Certificate;
- (b) any Defect 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;
- (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 15 Business Days after the last to occur of-

- (d) the issue of a Final Certificate; or
- (e) if the Final Certificate certifies a balance owing by the Contractor to the Principal, the Contractor having paid that amount to the Principal,

the Principal shall release to the Contractor any 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 Item 52 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

Without limiting any other right that the Principal may have under the Contract or otherwise at law or in equity, the Principal may deduct or set-off from any moneys due to the Contractor any debt or other money due or payable from the Contractor to the Principal arising out of or in connection with the Project or 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 or payable arising out of or in connection with the Project or the Contract, without limiting the Principal's rights under Clause 5.5, the Principal may have recourse to the Security and any deficiency remaining may be recovered by the Principal as a debt due and immediately payable from the Contractor to the Principal.

42.12 Goods and Services Tax

In this Clause 42.12, words and expressions that are defined in the GST Act have the same meaning as in the GST Act.

Except as otherwise provided by this Clause 42.12, any consideration payable under the Contract in relation to any supply is exclusive of GST.

To the extent that GST is payable by a party making a taxable supply ('**Supplier**') under or in connection with the Contract, the recipient of the taxable supply ('**Recipient**') shall pay the Supplier an amount equal to the GST payable on the taxable supply ('**GST Amount**').

The Recipient shall pay the GST Amount at the same time and in the same manner as the consideration for the taxable supply is to be provided under the Contract, save that the GST Amount shall not be payable unless the Supplier has first provided the Recipient with a tax invoice in respect of the taxable supply.

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.

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

- (c) the Supplier shall provide an adjustment note to the Recipient within 5 Business Days of becoming aware of the adjustment; and
- (d) any payment necessary to give effect to the adjustment shall be made within 5 Business Days after the date of receipt of the adjustment note.

43. Payment of Workers and Subcontractors

- (a) The Contractor shall submit with each claim for payment under Clause 42.1A 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) in the form set out in Annexure Part K confirming the matters set out in Annexure Part K as well as documentary evidence to the reasonable satisfaction of the Superintendent to the effect that:
 - (i) all workers who have at any time been employed by the Contractor on work under the Contract have at the date of the claim for payment been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and
 - (ii) all Subcontractors or suppliers of the Contractor engaged in the performance of the work under the Contract have at the date of the claim for payment been paid all moneys due and payable to them pursuant to their Subcontracts.
- (b) Within 5 Business Days after receipt of a written request from the Superintendent, the Contractor shall provide documentary evidence to the Superintendent (and in a form satisfactory to the Superintendent) that as at the date of the request, all workers who have been employed by a Subcontractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
- (c) If the Contractor fails-

- (i) [Not Used]
- (ii) to comply with Clause 43(b),

notwithstanding Clause 42.1C and to the extent permitted by law, the Principal may withhold payment of moneys due to the Contractor until the documentary evidence is received by the Superintendent.
- (d) 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.
- (e) At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor and after giving the Contractor 2 Business Days' written notice of its intention to do so, make payments directly to any worker or Subcontractor.
- (f) 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 and immediately payable from the Contractor to the Principal.
- (g) After becoming aware of the making of a relation-back day 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 this 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, the Principal may give the Contractor a written notice to show cause.

Substantial breaches will be deemed to 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 provide a Deed of Guarantee, in breach of Clause 5.10;
- (e) failing to use the materials or standards of workmanship required by the Contract, in breach of Clause 30.1;
- (f) failing to comply with a direction of the Superintendent under Clause 30.3, in breach of Clause 23;

- (g) failing to comply with Legislative Requirements or to obtain Approvals, in breach of Clause 14;
- (h) failing to comply with OH&S Laws or its obligations with respect to health and safety, in breach of Clause 15A;
- (i) failing to provide evidence of insurance, in breach of Clause 21.1;
- (j) the Contractor or any of its Associates accessing the Site before the Contractor has fully complied with or satisfied all of the preconditions stated Clause 27.1A;
- (k) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue;
- (l) failing to issue a Draft Catch-Up Plan where required to do so by Clause 35.17 or Clause 35.18;
- (m) failing to provide a tax invoice in accordance with Clause 42.1C;
- (n) failing to comply with an Approved Catch-Up Plan;
- (o) failing to comply with the Approved Construction Management Plan;
- (p) replacing or removing Key Personnel from their positions and identified duties during the course of the work under the Contract without the prior written approval of the Superintendent; and/or
- (q) any other material breach by the Contractor of its obligations arising out of the Contract.

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 the 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 5 Business 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 under the Contract remaining to be completed;
- (b) terminate the Contract; or

- (c) where the substantial breach consists of the Contractor or any of its Associates accessing the Site before the Contractor has fully complied with or satisfied all of the preconditions stated in Clause 27.1A, either (at the Principal's absolute discretion)-
 - (i) exercise a right under Clause 44.4(a) or Clause 44.4(b); or
 - (ii) suspend the work under the Contract and require the Contractor and its Associates to leave the Site and reinstate the Site as near as reasonably practicable to the condition that it was in at the date the Contractor or its relevant Associate accessed the Site, and all costs associated with such suspension and reinstatement shall be borne by the Contractor.

44.4A Suspension of Payments

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

- (a) the date upon which the Contractor shows reasonable cause;
- (b) the date upon which the Principal takes action under Clause 44.4(a) or (b); or
- (c) the date which is 5 Business 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 or procure the completion of 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 (including documents, information, materials and equipment).

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 both the amount of that cost and the amount that would have been paid to the Contractor if the work had been completed by the Contractor.

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 and immediately payable 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 are 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 14 days of receipt of a request by the Contractor to issue the Certificate, in breach of Clause 42.5;
- (c) [Not Used]
- (d) failing to give the Contractor access to the Site, in breach of Clause 27.1, but only if the failure continues for longer than the period stated in Item 53.
- (e) [Not Used]

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 5 Business 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 this 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 20 Business Days after the date of suspension under this 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 extra costs incurred by the Contractor by reason of the suspension, which costs shall be valued under Clause 40.5 provided that in respect of any delay or disruption costs which the Contractor incurs resulting from a suspension the Contractor shall only be entitled to claim the Maximum Daily Amount for each day for which it is granted an extension of time resulting from such 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 35.5.

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.

If the Principal terminates the Contract pursuant to Clause 44.4(b), the Contractor shall-

- (a) cease the performance of the work under the Contract within the time directed by the Superintendent;
- (b) de-mobilise from the Site in accordance with any direction of the Superintendent;
- (c) ensure that the Site is left in a safe condition and that the work under the Contract is properly secured and protected;
- (d) hand over to the Principal all documentation and information in its possession or control relating to the Works packed and indexed as required by the Superintendent;
- (e) novate or assign to the Principal or its nominee any Subcontracts stipulated by the Principal from time to time;
- (f) provide the Principal with ownership and possession of all items which have formed or will form part of any payment by the Principal which are required for the Works; and
- (g) otherwise mitigate the cost to the Contractor of such termination.

44.11 Insolvency

If an Insolvency Event occurs to the Contractor (or, where the Contractor comprises two or more persons, to any one of those persons) the Principal may, without giving a notice to show cause, exercise the right under Clause 44.4(a) or Clause 44.4(b).

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

44A Termination for convenience

44A.1 Principal may terminate on giving notice

The Principal may at any time terminate the Contract for its sole convenience by giving written notice to the Contractor.

If the Principal terminates the Contract under this Clause 44A, the Contractor shall-

- (a) cease the performance of the work under the Contract immediately within the time stipulated by the Principal;
- (b) de-mobilise from the Site in accordance with any direction of the Superintendent;
- (c) ensure that the Site is left in a safe condition and that the work under the Contract is properly secured;

- (d) hand over to the Principal all documentation and information in its possession or control relating to the Works packed and indexed as required by the Superintendent;
- (e) if requested to do so, novate or assign to the Principal or its nominee any Subcontracts stipulated by the Principal; and
- (f) otherwise mitigate the cost to the Contractor of such termination.

Termination of the Contract by the Principal under this Clause 44A.1 is without prejudice to the Principal's other rights under the Contract.

44A.2 Contractor entitlement to payment

If the Principal terminates the Contract under Clause 44A.1, the Contractor shall be entitled to payment of the following amounts as determined by the Superintendent-

- (a) the value of all work under the Contract performed in accordance with the Contract to the date of termination (less amounts previously paid to the Contractor in respect of such work) as evaluated in accordance with the Contract; and
- (b) except to the extent already provided by Clause 44A.2(a), the cost of material, plant and equipment ordered for the work under the Contract to the extent that the Contractor cannot cancel such orders, but only if-
 - (i) on payment by the Principal, the unencumbered title to the materials, plant and equipment passes to the Principal; and
 - (ii) the materials, plant and equipment have not been ordered prematurely or before any relevant dates shown in the Current Construction Program.

The amount to which the Contractor is entitled under this Clause 44A.2 shall be full payment and compensation for the termination and the Contractor shall have no right to make any Claim in respect of such termination other than in respect of the amount payable under this Clause 44A.2.

45. Termination by frustration

If, under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor the following amounts as determined and certified by the Superintendent-

- (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 claim for payment 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 Security;
- (e) the reasonable cost of removal of Constructional Plant; and
- (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.

The Contractor shall promptly deliver to the Superintendent all such documentary evidence as is required by the Superintendent in order to certify amounts claimed by the Contractor pursuant to this Clause 45. If the Contractor fails to deliver that documentary evidence promptly and in any event within 20 Business Days from the date of a request by the Superintendent to do so, the Superintendent shall determine what allowances should be made pursuant to this Clause 45 and certify that amount for payment.

46. Time for Notification of Claims

46.1 Contractor's Prescribed Notice

The Principal shall not be liable upon or in connection with any Claim by the Contractor in respect of or arising out of or in connection with the Project, the Works or the Contract (including a breach of the Contract) unless within 20 Business Days after the first day upon which a Competent Contractor could reasonably have been aware of the circumstances on which the Claim is based, the Contractor has given to the Superintendent the prescribed notice.

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

- (a) the breach, act, omission, direction, approval or other circumstances on which the Claim is or will be based;
- (b) the provision of the Contract or other legal basis for the Claim or proposed Claim; and
- (c) the quantum or likely quantum of the Claim together with detailed calculations substantiating that quantum.

Where the circumstances on which the Claim is based (or the consequences) are continuing, the Contractor shall give an updated prescribed notice every 20 Business Days from the date of the initial prescribed notice until the circumstances (or the consequences) have ceased.

This Clause 46.1 shall not have any application to-

- (d) any claim for payment to the Contractor of an amount or amounts forming part of the Contract Sum;
- (e) any claim for payment for a Variation directed by the Superintendent under Clause 40;
- (f) any claim for an extension of time for Practical Completion; or
- (g) the provisions of Clause 46.2.

46.2 Time for Disputing Superintendent's Direction

If the Superintendent-

- (a) has given a direction 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 56 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 or the Works, including a dispute concerning-

- (a) a direction given by the Superintendent; or
- (b) a claim-
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment; or
 - (iv) for rectification or frustration,

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.

47.1A Conference after receipt

Within 5 Business Days of a notice of dispute, the parties shall together confer with the Superintendent at least once to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to such resolution. All aspects of every such conference except the fact of occurrence shall be privileged. If the dispute has not been resolved within 10 Business Days of service of the notice of dispute, then that dispute shall be referred to senior executive negotiation under Clause 47.1B.

47.1B Senior Executive Negotiation

Senior executive negotiation shall be referred to the persons in Item 54 who shall-

- (a) meet and undertake genuine good faith negotiations with a view to resolving the dispute; and
- (b) if they cannot resolve the dispute, endeavour to agree upon a procedure to resolve the dispute and the maximum period for the procedure.

If, within 30 Business Days of the giving of the notice of dispute, the persons stated in Item 54 cannot resolve the dispute, or the dispute is not resolved in accordance with the agreed procedure by the expiration of the agreed maximum period, either party may refer the dispute to arbitration in accordance with Clause 47.3.

47.2 [Not Used]

47.3 Arbitration

Arbitration shall be effected by a single arbitrator who shall be nominated by the person named in Item 55. Such arbitration shall be held in the State or Territory stated in Item 56.

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.

Notwithstanding anything else to the contrary, to the extent permitted by law the arbitrator appointed pursuant to this Clause 47.3 shall have no power to apply or to have regard to the provisions of any proportional liability legislation (including Part IVAA of the Wrongs Act) which might, in the absence of this provision, have applied to any dispute referred to arbitration pursuant to the Contract.

47.4 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 this Clause 47 or any matter arising under the Contract.

47.5 Method of Resolving Disputes

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

48. Waiver of conditions

None of the terms of the Contract shall be varied, amended, discharged or released, except by written agreement signed by both parties.

49. Dilapidation Reporting

49.1 Initial Dilapidation Report

Without limiting the general nature of any other dilapidation reporting obligations imposed on the Contractor by any Contract Document, before it commences work at the Site under the Contract, the Contractor must procure (at its own expense) the preparation of a draft dilapidation report (or, where required by the Superintendent, separate draft dilapidation reports) prepared by a suitably qualified person (together the '**Initial Dilapidation Report**') which shall-

- (a) describe the condition of the immediate surroundings of the Site or part thereof (including all improvements, existing courts, the existing adjoining structures on the Site (including any plant-rooms, gyms and mezzanine areas), trees, landscaping, footpaths, roadways, kerbs and gutters, pits and covers, surfaces, structures, improvements and Services Infrastructure);
- (b) address all subject matter which the Contract Documents requires any dilapidation report to address;
- (c) include a photographic colour schedule of condition of the Site and its immediate surroundings; and
- (d) cover any other matter required by the Principal and/or the Superintendent for review by the Superintendent.

49.2 Review of the Initial Dilapidation Report

The Superintendent may, within 10 Business Days of receiving the Initial Dilapidation Report-

- (a) approve the Initial Dilapidation Report (in which case the Initial Dilapidation Report shall be deemed to be the **'Approved Initial Dilapidation Report'**);
- (b) reject the Initial Dilapidation Report (in which case the Initial Dilapidation Report will not be the **'Approved Initial Dilapidation Report'**); or
- (c) make no comment on the Initial Dilapidation Report (in which case the Contractor will be entitled to treat the Initial Dilapidation Report as the **'Approved Initial Dilapidation Report'**).

If the Superintendent rejects the Initial Dilapidation Report, the Superintendent shall give written reasons for the rejection and the Contractor shall within 5 Business Days of being notified of the rejection or such other time as the Superintendent directs make any appropriate amendments to the Initial Dilapidation Report and resubmit it for approval in accordance with Clause 49.1 as if the re-submitted Initial Dilapidation Report was the Initial Dilapidation Report.

The Contractor is not entitled to make any Claim arising out of or in any way in connection with the Superintendent's review of, comment on or rejection of (or failure to review, comment on or reject) the Initial Dilapidation Report or any resubmitted Initial Dilapidation Report.

The parties agree that the Approved Initial Dilapidation Report will be deemed to be the benchmark of the condition of the properties to which it refers.

49.3 Final Draft Dilapidation Report

Without limiting the general nature of any other dilapidation reporting obligations imposed on the Contractor by any Contract Document, at least 10 Business Days before the date on which the Contractor anticipates that Practical Completion will be achieved, the Contractor must procure (at its own expense) the preparation of a draft dilapidation report by a suitably qualified person (**Final Draft Dilapidation Report**) which-

- (a) reinspects the areas referred to in Clause 49.1(a); and
- (b) updates the Approved Initial Dilapidation Report to describe any and all deviations from the Approved Initial Dilapidation Report.

49.4 Review of the Final Draft Dilapidation Report

The Superintendent may, within 10 Business Days of receiving the Final Draft Dilapidation Report-

- (a) approve the Final Draft Dilapidation Report (in which case the Final Draft Dilapidation Report shall be deemed to be the **'Approved Final Dilapidation Report'**);
- (b) reject the Final Draft Dilapidation Report (in which case the Final Draft Dilapidation Report will not be the **'Approved Final Dilapidation Report'**); or
- (c) make no comment on the Final Draft Dilapidation Report (in which case the Contractor will be entitled to treat the Final Draft Dilapidation Report as the **'Approved Final Dilapidation Report'**).

If the Superintendent rejects the Final Draft Dilapidation Report, the Superintendent shall give written reasons for the rejection and the Contractor shall within 5 Business Days of

being notified of the rejection or such other time as the Superintendent directs make any appropriate amendments to the Final Draft Dilapidation Report and resubmit it for approval in accordance with Clause 49.3 as if the re-submitted Final Draft Dilapidation Report was the Approved Final Draft Dilapidation Report.

The Contractor is not entitled to make any Claim arising out of or in any way in connection with the Superintendent's review of, comment on or rejection of (or failure to review, comment on or reject) the Final Draft Dilapidation Report or any resubmitted Final Draft Dilapidation Report.

49.5 Rectification

The parties acknowledge and agree that the Approved Initial Dilapidation Report and the Approved Final Dilapidation Report may be used by the Superintendent as one of the means of assessing the responsibility for damage arising out of the performance of the work under the Contract.

The Contractor must ensure that any deviations between the Approved Initial Dilapidation Report and the Approved Final Dilapidation Report are rectified to the satisfaction of the Superintendent as a precondition to the Contractor achieving Practical Completion.

50. Local Jobs First Policy

50.1 Application

This Clause 50 applies if indicated in Item 57.

50.2 Contractor's obligations

Attachment L forms part of the Contract. The Contractor in performing its obligations under the Contract must comply with Attachment L.

51. Funding Agreements

51.1 Application

This Clause 51 applies if indicated in Item 58.

51.2 Contractor's acknowledgements

The Contractor acknowledges that-

- (a) the Principal and the Funder have entered, or will shortly enter into, a Funding Agreement;
- (b) it has had an opportunity to review the Funding Agreement and understands the obligations and liabilities imposed upon the Principal arising out of the Funding Agreements;
- (c) it must provide, and must procure from its Associates, any written undertaking relating to confidentiality as are required by the Funding Agreements or as are reasonably required by any Stakeholder;
- (d) it shall undertake all tasks and activities necessary to enable the Principal to comply with the Funding Agreement (including by providing the Principal with all documentation, information, reports, records, accounts, advice, data and access to its

associates that will enable the Principal to comply with its obligations arising out of the Funding Agreement) to the extent relevant to the Works;

- (e) the Funder may publicly disclose the name of the Contractor or any of its subcontractors engaged in the performance of the Works;
- (f) it must provide any relevant signage required by any Funding Agreement; and
- (g) it shall not do anything which may cause the Principal to fail to discharge its obligations arising out of the Funding Agreement.

51.3 Works Standards

The Contractor must-

- (a) ensure that the Works comply with the standards described in Attachment M; and
- (b) when requested to do so by the Superintendent from time to time, provide evidence to the reasonable satisfaction of the Superintendent that the Works comply with the standards described in Attachment M.

51.4 Cladding products

The Contractor must-

- (a) not install Prohibited Cladding Products into any building work in connection with buildings of Type A Construction or Type B Construction;
- (b) if it becomes aware of the use of any Prohibited Cladding Products being used on the Project, immediately notify the Superintendent in writing.

51.5 Indemnity

To the full extent permitted by law, the Contractor shall indemnify, keep indemnified and hold harmless the Principal against all Loss suffered or incurred by the Principal arising out of the Contractor failing to comply with this Clause 51.

52. Special Events and Operational Areas

52.1 Contractor's acknowledgements

The Contractor acknowledges and agrees that-

- (a) the Operational Areas may be in use during the period of the Contract;
- (b) Special Events will be held or staged at or adjacent to one or more of the Operational Areas during the undertaking of the work under the Contract;
- (c) the Contractor is required to perform the work under the Contract in, around, under and connecting to the Operational Areas;
- (d) the Contractor shall do all things reasonably necessary to co-ordinate the work under the Contract with the operation of each of the Operational Areas and so as to minimise disruption to any Operational Area, which will be deemed to include the Contractor doing all things reasonably necessary to prevent any disruption to the holding or staging of any Special Events;

- (e) it must not (and must procure that its Associates must not) store equipment or materials in any Operational Area at any time;
- (f) without limiting the general nature of Clause 52.5 or Clause 52.6, it must not (and must procure that its Associates must not) block emergency services from accessing the WSAC First Aid Room; and
- (g) it must not commence the demolition of existing netball facilities unless and until the Superintendent has notified the Contractor in writing that the balance of the Works have achieved a stage which is equivalent to Practical Completion

52.2 Coordination with operations

Without limiting the general nature of Clause 52.1, the Contractor must-

- (a) manage, co-ordinate, program and supervise the work under the Contract so as to minimise interference with services, activities and events provided at, to, on and from the Site;
- (b) minimise disruption and inconvenience to the Stakeholders, the Stakeholders' employees and users of, and visitors to, the Operational Areas in their occupation or use of, or attendance at, such Operational Areas;
- (c) ensure that the Stakeholders, the Stakeholders' employees and users of the Operational Areas (including persons who are elderly or disabled) are able to safely and easily access and exit the Operational Areas, and any Separable Portion (if any) for which a Certificate of Practical Completion has been issued, and to the extent changes are made to the mode of access or egress, such changes are appropriately signposted and safe;
- (d) perform the work under the Contract so as not to expose the Stakeholders, the Stakeholders' employees or users of, or visitors to, the Operational Areas to danger;
- (e) ensure that vehicles are able to safely and easily access and exit relevant parts of the Operational Areas, including car parking areas; and
- (f) without limiting the general nature of any part of this Clause 52, ensure that when the work under the Contract is being undertaken in or on areas adjacent to the Operational Areas (including car parking areas), dust and dirt is eliminated to the extent reasonably practicable and ensure that car parking areas are regularly cleaned of loose materials and other debris to the reasonable satisfaction of the Superintendent.

52.3 Restricted Times

Despite any provision of the Contract to the contrary, the Contractor must-

- (a) not undertake any Restricted Works at the relevant Operational Area or Operational Areas during any-
 - (i) times during which any Special Event is being held; or
 - (ii) Restricted Times;
- (b) prior to any Special Event being held, undertake such cleaning, protection, support and other works as are reasonably required by the Superintendent;
- (c) where required to do so by the Superintendent, provide a written report to the Superintendent to its reasonable satisfaction 5 Business Days before the relevant

Special Event detailing the measures which the Contractor will take to ensure that it complies with this Clause 52.3 (**Compliance Report**);

- (d) make any amendments reasonably required by the Superintendent to a Compliance Report before the relevant Special Event; and
- (e) comply, and ensure that its Associates comply, with each Compliance Report.

52.4 Allowance for additional Restricted Times

The parties acknowledge and agree that-

- (a) as at the Execution Date, the Principal is not in a position to determine all days and times which need to be treated as Restricted Times;
- (b) the Contractor warrants to the Principal that it has made adequate allowance in the Contract Sum and the Date for Practical Completion for any delay or disruption arising from the Contractor or its Associates not being able to undertake-
 - (i) Restricted Works at the relevant Operational Area or Operational Areas during the relevant Restricted Times; and
 - (ii) any the work under the Contract for the number of further Working Days, if any, stated in Attachment I;
- (c) the Principal may at any time, and from time to time, notify the Contractor that a day which is not a day referred to in Clause 52.4(b)(i) or Clause 52.4(b)(ii) will constitute a day on which the Contractor and its Associates are not entitled to undertake any work provided that the Principal or the Superintendent provides the Contractor with at least 5 days' notice of such determination before the occurrence of the relevant day;
- (d) subject to Clause 52.4(e), the Contractor bears all risk of delays and costs associated with, incurred due to or arising out of the Contractor and its Associates not being able to undertake Restricted Works or works (as the context requires) at the times or on the days referred to in Clause 52.4(b) or Clause 52.4(c); and
- (e) where the number of days on which the Contractor is not entitled to carry out work or Restricted Work (as the context requires) exceeds the number of days referred to in Clause 52.4(b) the Contractor may claim an extension of time under Clause 35.5 but only to the extent of the excess.

52.5 Maintenance of Emergency Exits

Without limiting Clauses 52.2, the Contractor shall at all times during the performance of the work under the Contract provide and maintain safe, clear, unobstructed and functional emergency exits from the Operational Areas.

The Contractor's obligations arising out of this Clause 52.5 shall include the provision of any signage, lighting and barriers required by any relevant Legislative Requirements.

52.6 Maintenance of services

The Contractor shall maintain all Services to the Operational Areas at all times and the Contractor shall only allow interruption to any service with the Superintendent's prior written consent.

The Contractor must give the Superintendent no less than 7 Business Days prior written notice of any proposed interruption to any Service. The Superintendent has the right to refuse to consent to the interruption of any Service where that interruption would, or would

be likely to, materially disrupt the use or operation of an Operational Area or the staging or viewing of any Special Event.

52.7 Contractor Risk

Subject to Clause 52.4(e), the Contractor-

- (a) acknowledges and accepts all risks and responsibility (including all risks of delays and disruption to work under the Contract) associated with complying with its obligations arising out of Clause 52; and
- (b) is deemed to have made adequate allowance in the Contract Sum and in the Date for Practical Completion for the risks and responsibilities set out in this Clause 52.

Without limiting the general nature of Clause 52.8, if the Contractor fails to undertake the works or activities described in this Clause 52 in a reasonable time and in accordance with this Clause 52, the Principal may, after giving the Contractor 2 Business Days' notice, have the relevant works carried out at the Contractor's expense but without prejudice to any other rights which the Principal may have against the Contractor and the cost of such works incurred by the Principal shall be a debt due and immediately payable from the Contractor to the Principal.

52.8 Superintendent may give directions

In the event the Contractor fails to do all things necessary to facilitate the operation of the Operational Areas and holding or staging of any Special Events to the reasonable satisfaction of the Superintendent, the Superintendent may issue such directions as it considers necessary and the Contractor must comply with such directions.

52.9 No Claim

Subject to Clause 52.4(e), the Contractor shall have no entitlement to make any Claim arising out of this Clause 52 and shall indemnify the Principal on demand against any claim brought against, and all Loss suffered or incurred by, the Principal arising out of breach of this Clause 52 by the Contractor.

53. Child Safety

53.1 Acknowledgements

The parties acknowledge that the Principal is committed to-

- (a) creating a child safe environment; and
- (b) protecting children from abuse or harm, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with its legal obligations, including Child Safety Laws.

53.2 Child Safety Laws

The Contractor-

- (a) acknowledges that the Principal is required to comply with Child Safety Laws as an Applicable Entity; and
- (b) must not do anything, in performing its obligations under the Contract, that would prevent the Principal from complying with its obligations under Child Safety Laws.

53.3 Child-Connected Work

The Contractor must ensure that any person employed or engaged by the Contractor or its Associates in connection with the Works who enters the Site and is carrying out Child-Connected Work-

- (a) complies with any policies of the Principal at or near the Site regarding child safety made available to the Contractor;
- (b) behaves in a manner which is consistent with the continued operation and use of the area within or around the Site by children, including not using offensive language and or other behaviour; and
- (c) does not have direct contact with any child at or near the Site without the prior approval of the Principal.

53.4 WWCC Clearance

The Contractor-

- (a) must ensure that all workers attending the Site at any time possess a 'WWC clearance' (**WWCC**) as defined under the *Worker Screening Act 2020* (Vic); and
- (b) acknowledges and accepts responsibility in all respects regarding compliance with the *Worker Screening Act 2020* (Vic) and procuring WWCCs for all its employees and Subcontractors.

Annexure Part A Contract Details

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.

1.	The law applicable is that of the State or Territory of: (Clause 1)	Victoria
2.	Payments under the Contract shall be made at: (Clause 1)	Melbourne
3.	The Contract Sum: (Clause 2.1)	\$[## Note to Tenderers: To be tendered.] (exclusive of GST)
4.	The Project: (Clause 2.1)	Wangaratta Sports and Aquatic Centre (WSAC) Amenities Upgrade
5.	The Principal: (Clause 2.1)	Wangaratta Rural City Council
6.	The address and email of the Principal: (Clause 2.1 and 7)	Address: 62-68 Ovens St, Wangaratta VIC 3677 Phone: (03) 5722 0888 Email: council@wangaratta.vic.gov.au
7.	The Contractor: (Clause 2.1)	[## Note to Tenderers: To be tendered. The Tenderer must be a legal entity with the ability to contract and not a Trust or business name]
8.	The address and email of the Contractor: (Clause 2.1 and 7)	Address: [## Note to Tenderers: To be tendered] Phone: [## Note to Tenderers: To be tendered] Email: [## Note to Tenderers: To be tendered]
9.	The Superintendent: (Clause 2.1)	Marcus Goonan, Director – Infrastructure Services
10.	The address and email of the Superintendent: (Clause 2.1)	Address: 62-68 Ovens Street, Wangaratta Vic 3677 Email: council@wangaratta.vic.gov.au
11.	Funders (Clause 2.1)	The State Government of Victoria as represented by its Department of Jobs, Precincts and Regions

Where there are Separable Portions, these items shall be deleted

12.	Contractor's Representative: (Clause 2.1)	Name: ## Note to Tenderers: To be tendered] Address: ## Note to Tenderers: To be tendered] Email: ## Note to Tenderers: To be tendered]	
13.	Contractor shall provide Security in the amount of: (Clause 5.2)	5% of the Contract Sum (by way of two unconditional bank guarantees, each for 2.5% of the Contract Sum)	
14.	The percentage to which the entitlement to Security is reduced: (Clause 5.7)	50%	
15.	The number of copies to be supplied by the Principal (Clause 8.3)	1 electronic copy	
16.	The number of copies to be supplied by the Contractor (Clause 8.4)	1 electronic copy	
17.	The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies: (Clause 8.4)	Document	Time period
		Shop drawings	As per Clause 8.2A
18.	Pre-approved Subcontractors: (Clause 9.2)	Trade or type of work	Approved Subcontractor
		## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]
19.	Work which cannot be subcontracted without approval: (Clause 9.2)	All work to be subcontracted requires written approval	
20.	Selected Subcontractors:	Selected Subcontract Work	Selected Subcontractors

Where there are Separable Portions, these items shall be deleted

	(Clause 10)	Security (CCTV, alarm systems, keying, electronic access, duress)	Name: Security 1 Solutions Pty Ltd ACN: 068 860 140 Address: 1/4 Pressnell Lane Wodonga VIC 3690 Contact Person: Richard Hall Email: richard@security1solutions.com.au Mobile: 0419302523 Phone: 0260242068
		Mechanical Services Controls	Name: Cowan Controls ABN: 80 073 260 116 Address: 67 Murdoch Road, Wangaratta, Victoria, 3677 Contact Person: Rob Cowan Email: robert@cowancontrols.com.au Mobile: 0427 197 111
		Fire contractor Services	Name: Wormald Australia ABN 80 008 399 004 Phone: (03) 9870 9331 OR Name: Tyco Fire ABN 55 148 170 003 Address: Level 3, 95 Coventry Street, Southbank, Vic 3006 Phone: (03) 9313 9700
21.	The percentage for Profit and Overhead Costs for provisional sums: (Clause 11.5)	5%	
22.	Adjoining Property Consents to be obtained by Principal: (Clause 15.2)	None	
23.	Insurance of the Works - the alternative applying:	Alternative 1	

Where there are Separable Portions, these items shall be deleted

	(Clause 18)	
24.	The assessment for insurance purposes of the cost of demolition and removal of debris: (Clause 18(h))	\$0
25.	The assessment for insurance purposes of consultants' fees: (Clause 18(i))	\$0
26.	The value of materials to be supplied by the Principal: (Clause 18(j))	\$0
27.	The additional amount or percentage: (Clause 18(k))	30%
28.	Public Liability Insurance - the alternative applying: (Clause 19)	Alternative 1
29.	The amount of Public Liability Insurance shall be not less than: (Clause 19)	\$20 million
30.	Is the Contractor required to effect motor vehicle insurance?: (Clause 20A.1)	Yes
31.	Is the Contractor required to effect transit insurance?: (Clause 20A.2)	Yes
32.	Is the Contractor required to effect Asbestos insurance?: (Clause 20A.3)	<u>Does Clause 20A.3 apply?:</u> Yes <u>If Clause 20A.3 applies, the minimum amount of Asbestos insurance is:</u> \$20 million
33.	# The time for giving access to the Site: (Clause 27.1 and Clause 27.1A)	<u>The time for giving access to the Site:</u> 15 Working Days from the last to occur of: - the Execution Date; and - the Contractor providing written notice to the Superintendent certifying that it has satisfied or complied with all of the preconditions to accessing the Site which are set out in Clause 27.1A <u>Additional preconditions to access to the Site to those set out in Clause 27.1:</u> The Contractor has provided SWMS
34.	The time for submission of the Quality Management Plan:	10 Business Days

Where there are Separable Portions, these items shall be deleted

	(Clause 30.2)	
35.	# Working Days: (Clause 32.1)	Subject to clause 52, Mondays to Saturdays not including public holidays
36.	# Working Hours: (Clause 32.1)	Subject to clause 52, the Working Hours are: - 7:00am to 6:00pm Monday to Friday; and - 7.30am to 3pm on Saturdays.
37.	The time for submission of the initial Construction Program: (Clause 33.3)	6 Business Days from the Execution Date
38.	# The Date for Practical Completion: (Clause 35.2)	[[# Note to Tenderers: To be tendered, although this must be no later than 1 September 2027]]
39.	# Additional preconditions to Practical Completion (if any): (Clause 2.1)	None
40.	# Exceptions to the preconditions to Practical Completion for specific Separable Portions: (Clause 35.3)	None
41.	Delay Events	- subject to compliance with Clause 12.2, Latent Conditions; - subject to Clause 35.5D, Inclement Weather; - a Force Majeure Event; - an Authority Delay Event; - a Legislative Change Delay Event; and - state-wide or nation-wide industrial action which is not caused or contributed to by an act or omission of the Contractor or any of its Associates.
42.	# Liquidated Damages per day: (Clause 35.6)	\$500 per day
43.	# Maximum Daily Amount: (Clauses 14.2, 28.2, 33.1, 34.4, 36 and 44.9)	\$[[# Note to Tenderers: To be tendered]] per Working Day (if nothing stated, \$0 per Working Day)
44.	Maximum Daily Amount across all Separable Portions (if any): (Clause 36.1(b))	\$[[# Note to Tenderers: To be tendered as same amount in Item 46]] per Working Day (if nothing stated, \$0 per Working Day)
45.	# The Defects Liability Period: (Clause 37)	12 months
46.	Percentage for the Contractor's Profit and Overhead Costs for Variations: (Clause 40.5(i))	10%

Where there are Separable Portions, these items shall be deleted

47.	Percentage for negative Variations: (Clause 40.5(j))	5%
48.	The Charge for Profit and Overhead Costs for Daywork: (Clause 41(f))	10%
49.	Times for claims for payment of the Contract Sum: (Clause 42.1A(a))	(a) On and from the last day of the month for Works performed to that date save that: (i) for work performed between 1 December and 21 December in any year, the time for submission of the claim for payment is 11 January; and (ii) for work performed between 22 December and 31 January, the time for submission of the claim for payment is 31 January; and (b) On the date of termination of the Contract, if applicable.
50.	Authorised Nominating Authorities: (Clause 42.1D(c))	(a) The Resolution Institute Chapter in the State of Victoria; (b) Rialto Adjudications Pty Ltd; and (c) RICS Dispute Resolution Service.
51.	Unfixed plant and materials for which payment may be claimed: (Clause 42.4(a))	## Note to Tenderers: To be tendered.
52.	The rate of interest on overdue payments: (Clause 42.9)	3%
53.	The delay in giving access to the Site which shall be a substantial breach: (Clause 44.7)	60 days
54.	Senior Executives: (Clause 47.1B)	Principal's senior executive: Matt Nelson, Chief Executive Officer Contractor's senior executive/s: ## Note to Tenderers: To be tendered.
55.	The person to nominate an arbitrator: (Clause 47.3)	The Chair of the Victorian Chapter of the Resolution Institute from time to time
56.	Location of arbitration: (Clause 47.3)	Victoria
57.	Does the Local Jobs First Policy apply? (Clause 50.1)	Yes
58.	Do the Funding Agreement requirements apply? (Clause 51.1)	Yes

Where there are Separable Portions, these items shall be deleted

SEPARABLE PORTIONS SCHEDULE

As at the Execution Date there are no Separable Portions

Where there are Separable Portions, these items shall be deleted

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Annexure Part B **Deletions, Amendments and Additions**

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

A copy of the Conditions of Contract which marks-up all amendments to Standards Australia's General Conditions of Contract AS2124-1992 is available from the Principal upon request.

Annexure Part C **Provisional Sums**

(Clauses 2.1 and 11)

Provisional Sum Items	Provisional Sums (GST exclusive)
Fire extinguishers & blankets	\$1,000.00
Additional door hardware for Building Permit (if required)	\$4,000.00
RCoW project signboard (Council, Funding body details & logos)	\$2,000.00
Hazardous materials removal works to existing Netball Pavilion. Note a Division 6 report preparation is part of the Contract works -refer 1.2 Scope of Works.	\$10,000

Annexure Part D **Approved Form of Bank Guarantee**

Approved Form Of Unconditional Undertaking

(Clause 5.3)

At the request of **## Note to Tenderers: Tender the name and ACN of the proposed Contractor entity** ('the Contractor') and in consideration of Wangaratta Rural City Council ('the Principal') accepting this undertaking in respect of the contract for the Wangaratta Sports and Aquatic Centre (WSAC) Amenities Upgrade ('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 byfor 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.

Executed as a deed

DATED at this day of 20

Annexure Part E Key Personnel

Annexure to the Conditions of Contract

KEY PERSONNEL

(Clause 25.2)

Name	Role	Duties	Percentage of time to be spent on the project
## Note to Tenderers: To be tendered]	Contractor's Representative	As per the Contract Documents	100%
## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]%
## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]%
## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]%
## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]	## Note to Tenderers: To be tendered]%

Annexure Part F

Deed of Release

(Clause 42.7)

TO: Wangaratta Rural City Council having its municipal office at
62 – 68 Ovens Street, Wangaratta Vic 3677
(**'Principal'**)

PROJECT: Wangaratta Sports and Aquatic Centre (WSAC) Amenities
Upgrade
(**'Works'**)

CONTRACTOR: **[## Note to Tenderers: Tender the name, ACN and
address of the proposed Contractor]**
(**'Contractor'**)

CONTRACT DATED: **[## Insert date]**
(**'Contract'**)

1. The Contractor hereby 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 bank guarantee of \$..... (**"the Security"**).
2. The Contractor acknowledges that payment by the Principal to the Contractor of the Final Payment and release by the Principal of the Security is accepted by the Contractor 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 subcontractors and suppliers (whether selected or otherwise) on or about the Site.
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 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 performance of the Works or for the work performed or materials 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.
4. Nothing in this Deed of Release prevents the Contractor from making any defence to any claim brought against it by the Principal.

Annexure Part G Subcontractor warranties

(Clause 9.6)

Description of Services, Work, Equipment and/ or Material	Minimum Period for which the warranty is to be provided from the Date of Practical Completion (in years)
Not applicable	Not applicable

Annexure Part H Deed of Novation

Deed of Novation

Parties

BETWEEN:

Wangaratta Rural City Council
62 – 68 Ovens Street, Wangaratta Vic 3677
("Principal")

AND: **[## Note to Tenderers: Tender the name of the proposed Contractor entity]**
(ACN **[## Note to Tenderers: Tender the ACN of the proposed Contractor entity]**)
of **[## Note to Tenderers: Tender the address of the proposed Contractor entity]**
("Contractor")

AND: **[##Insert name of the Subcontractor]**
(ACN **[##Insert ACN of the Subcontractor]**)
of **[##Insert the address of the Subcontractor]**
("Subcontractor")

RECITALS:

- A. The Contractor and the Subcontractor have entered into the Subcontract under which the Subcontractor has agreed to carry out works.
- B. The Contractor and the Principal have entered into a construction contract dated **[##Insert date]**.
- C. The Contractor is required to novate the Subcontract to the Principal and the Principal and Subcontractor have agreed to accept novation of the Subcontract from the Contractor to the Principal on the terms of this Deed.

Operative Provisions

1. Definitions

Unless the contrary intention appears:

- 1.1 **Effective Date** means the date of execution of this Deed.

- 1.2 **Subcontract** means the Subcontract between the Contractor and the Subcontractor dated **[[Insert date]]**; and

2. Novation

- 2.1 As and from the Effective Date, the Subcontract shall be read and construed subject to the terms of this Deed and if there is any inconsistency between the terms and conditions of the Subcontract and the terms and conditions of this Deed, this Deed shall, to the extent of any inconsistency, prevail.
- 2.2 From the Effective Date, the Subcontract shall be read:
- (a) as if the Principal had been named as the Contractor, so that each reference in the Subcontract to the Contractor is a reference to the Principal; and
 - (b) shall continue until terminated or a new contract is entered into between the Principal and the Subcontractor.

3. Rights and Liabilities

3.1 Principal's Obligations

Subject to this Deed the Principal undertakes to the Contractor and separately undertakes to the Subcontractor:

- (a) to be bound by the Subcontract as if the Principal had originally been named in the Subcontract in place of the Contractor; and
- (b) to perform all of the obligations of the Contractor under the Contract which have not been performed at the Effective Date,

with the exception that the Contractor shall remain responsible to pay to the Subcontractor any progress payment or other entitlement to payment which had accrued prior to the Effective Date.

3.2 Subcontractor's Obligations

Subject to clause 3.1, from the Effective Date:

- (a) the Subcontractor shall duly perform and observe the obligations, terms and conditions to be performed and observed by it under the Subcontract; and
- (b) the Principal shall be entitled to exercise all of the rights, powers and remedies which would otherwise have been available to the Contractor under the Subcontract but for the novation, in the same manner as if the Principal had always been a party to the Subcontract.

4. Subcontractor's Representation

The Subcontractor represents to the Principal that:

- 4.1 it has performed its obligations under the Subcontract to the date of this Deed in accordance with all of the requirements of the Subcontract; and
- 4.2 without limiting clause 4.1 it has used and will use skill, care and diligence so as to ensure that all work carried out by the Subcontractor will fulfil the requirements of the Subcontract.

5. General

5.1 Severability of Provisions

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of the prohibition or unenforceability, without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of any other jurisdiction.

5.2 Waivers

No failure to exercise and no delay in exercising, on the part of any party of any right, power or privilege under this Deed will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

5.3 Rights and Remedies Cumulative

The rights and remedies provided in this Deed are additional to and not exclusive of any rights or remedies provided by law.

5.4 Counterparts

This Deed may be executed in any number of counterparts and all of such taken together will be deemed to constitute one and the same instrument.

5.5 Further Assurances

Each party shall sign, execute and deliver all documents, instruments in writing and shall do all other acts, matters and things as may be necessary or desirable to give full effect to this Deed.

5.6 Assignment

- (a) The Principal may assign its rights and obligations under this Deed to any person without the consent of the Contractor or the Subcontractor.
- (b) The Subcontractor and the Contractor shall not assign their respective rights and obligations under this Deed without the prior consent of the Principal.

5.7 Proper Law

This Deed shall be interpreted in accordance with the laws of the State of Victoria and any dispute arising in any way related to this Deed shall be determined by the Courts of Victoria and any Court having jurisdiction to hear appeals therefrom.

Signing Page

Executed by the parties as a Deed on / /20

The Common Seal of the Wangaratta Rural City Council was hereunto affixed on the _____ day of _____ 2026 in the presence of:

..... Councillor

Councillor _____

..... Chief Executive Officer

Alternative 1 – Where the Contractor has more than one director

Executed by [## Note to Tenderers: Tender
the name and ACN of the proposed
Contractor entity] in accordance with s 127(1)
and s 127(3) of the *Corporations Act 2001*:

.....
Signature of Director

Signature of Director/Company Secretary

Print full name

Print full name

Alternative 2 – Where the Contractor has only one director

Executed by [## Note to Tenderers: Tender the name and ACN of the proposed Contractor entity] in accordance with s 127(1) and s 127(3) of the Corporations Act 2001:

..... Signature of Sole Director and Sole Company Secretary

..... Print full name

##Note: Use where the Subcontractor is a company with more than one director]

Executed by **##Insert name of the Subcontractor]**
ACN **##Insert ACN of the Subcontractor]** in)
accordance with s 127(1) and s 127(3) of the
Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

##Note: Use where the Subcontractor is a sole director company]

Executed by **##Insert name of the Subcontractor]**
ACN **##Insert ACN of the Subcontractor]** in)
accordance with s 127(1) and s 127(3) of the
Corporations Act 2001:

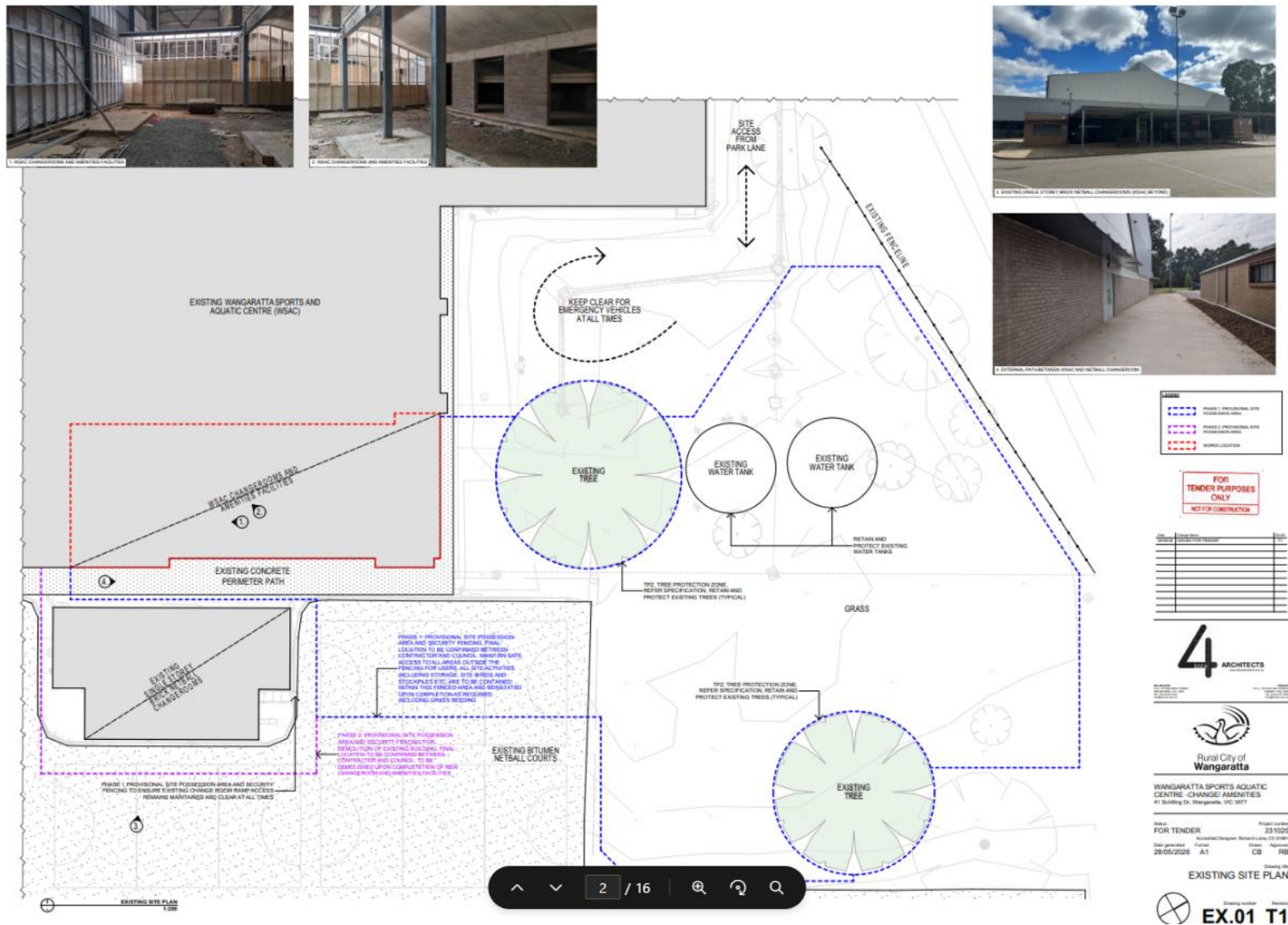
.....

Signature of Sole Director and Sole Company
Secretary

.....

Print full name

Annexure Part I Site Plan



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Annexure Part J Deed of Guarantee

(Clause 5.10)

Parties

Name	Wangaratta Rural City Council
Address	Having its municipal office at 62 – 68 Ovens Street, Wangaratta Vic 3677
Short name	Principal
Name	## Note to Tenderers: name and ACN of Guarantor to be tendered]
Address	## Note to Tenderers: Address of Guarantor to be tendered]
Short name	Guarantor

Background

- A. The Principal has entered into the Contract with the Contractor for the performance of the Works.
- B. The Guarantor has fully informed itself of and acknowledges the obligations and liabilities of the Contractor under the Contract.
- C. In consideration of the Principal entering into the Contract with the Contractor at the request of the Guarantor (which request is testified by the Guarantor's execution of this Deed), the Guarantor agrees to provide the guarantees, agreements and undertakings contained in this Deed.

This Deed Witnesses

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the Contract have the same meaning in this Deed unless otherwise defined or unless a contrary intention appears:

Contract means the contract between the Principal and the Contractor in relation to the construction works for the Wangaratta Sports and Aquatic Centre (WSAC) Amenities Upgrade dated on or about the date of this Deed;

Contractor means **## Note to Tenderers: Name and ACN of the proposed Contractor entity to be tendered]**;

Deed means this deed of guarantee; and

Guaranteed Obligations means all of the obligations, responsibilities and liabilities of the Contractor arising out of or in connection with Contract.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to this Deed or another document is to this Deed or that other document as varied, amended, novated, ratified or replaced from time to time;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) in the construction and interpretation of this Deed, no rule of construction or interpretation applies to the disadvantage of the Principal on the basis that the Principal put forward the Deed or any part of it;
- (d) a 'person' includes a firm or body corporate or unincorporate, an individual, authority, association, unincorporated association, partnership, trust or joint venture; and
- (e) the words 'include', 'includes' and 'including' shall be read as if followed by the words 'without limitation'.

2. Guaranteed Obligations

2.1 Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees to the Principal the due and punctual performance by the Contractor of the Guaranteed Obligations.

2.2 Undertaking

If the Contractor fails to perform, observe or discharge any of the Guaranteed Obligations, the Guarantor must or must procure that the relevant Guaranteed Obligations are performed, observed and discharged if and to the extent demanded by the Principal and whether or not the Principal has made a demand or otherwise exercised or exhausted its rights, powers or remedies against the Contractor.

2.3 Guarantee not affected

This Deed and the liability of the Guarantor under this Deed will not at any time be released, discharged or otherwise affected by any act, default, matter or thing which but for this clause might have that effect, including:

- (a) the grant to any person of any time, indulgence or other concession;
- (b) any variation;
- (c) any amendment, variation, supplement to or replacement, termination or release of the Contract or other document or agreement;
- (d) any assignment, transfer, novation or discharge of or other dealing with any of the provisions, rights or obligations under the Contract or other document or agreement;

- (e) any compound, compromise, composition, release, abandonment, extinguishment, waiver, delay, failure, neglect or omission in the exercise or enforcement of any rights of the Principal;
- (f) the liquidation, insolvency or change in control of the Contractor or the Contractor being placed into administration;
- (g) any security or retention moneys; or
- (h) any act, matter or thing which, but for this clause 2.3, under the law relating to sureties would or may otherwise release the Guarantor from its obligations, or part of them, under this Deed.

3. Continuing obligation

This Deed-

- (a) creates a principal and independent liability of the Guarantor and is not to be treated as ancillary or collateral to any other obligation;
- (b) is a continuing obligation and will remain in full force and effect until completion of all of the Guaranteed Obligations or until completion of the obligations and undertakings in this Deed, whichever is the later to occur; and
- (c) will not be considered wholly or partially satisfied or discharged by the payment at any time of any sum of money, settlement of account or any other matter or thing.

4. Liquidation of the Contractor

In the event of the liquidation or insolvency of the Contractor or the Contractor being placed into administration, the Guarantor:

- (a) authorises the Principal to prove for all moneys which the Guarantor has paid under this Deed until the Principal has been paid in full in respect of the indebtedness of the Contractor to the Principal; and
- (b) in the Principal's favour waives all rights against the Principal and the Contractor and any other person or corporation estates and assets so far as necessary to give effect to anything contained in this Deed.

5. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor unconditionally indemnifies and will at any time and from time to time keep the Principal indemnified from and against all claims, losses, expenses or damages suffered or incurred by the Principal arising out of or in connection with-

- (a) any failure by the Contractor to observe or perform any of the Guaranteed Obligations;
- (b) any of the Guaranteed Obligations being void, voidable or otherwise unenforceable as a consequence of any act, error, omission, breach of contract by or incapacity of the Contractor;
- (c) any breach of this Deed by the Guarantor; or

- (d) the liquidation or insolvency of the Contractor or the Contractor being placed into administration.

6. Warranties

The Guarantor warrants to the Principal that:

- (a) it has full corporate power to enter into and give effect to this Deed and to complete the transactions contemplated by this Deed;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Deed;
- (c) at the date of this Deed, the execution, delivery and performance of this Deed by it does not contravene any contractual, legal or other obligations that apply to it; and
- (d) on execution of this Deed, its obligations under this Deed will be valid, binding and enforceable.

7. Avoided payments

If:

- (a) it is claimed that a payment or transaction affecting any one or more of the Guaranteed Obligations is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors); and
- (b) that claim is upheld, conceded or compromised,

then the Principal is entitled immediately as against the Guarantor to all rights in respect of the Guaranteed Obligations as it would have had if the payment or transaction had not occurred.

8. Suspension of Guarantor's rights

For so long as any obligation is required or may be required to be complied with in connection with this Deed, the Guarantor may not, without the Principal's prior written consent:

- (a) reduce its liability under this Deed by claiming that it or the Contractor or any other person has a right of set-off or counterclaim against the Principal; or
- (b) receive payment from or enforce a claim against the Contractor or another guarantor, to the extent that such payment or enforcement prejudices or may prejudice the rights of the Principal arising out of or in connection with this Deed.

This clause 8 survives the completion or expiry of this Deed.

9. Notices

Any demand or notice under this Deed shall be deemed to have been:

- (a) duly made if it is in writing signed for or on behalf of the Principal and delivered by hand or sent by prepaid post to the Guarantor's address for service; and

- (b) received:
 - (i) where delivered by hand, on delivery; and
 - (ii) where sent by prepaid post, 2 Business Days after the date of posting (or if outside Australia, 7 Business Days after the date of posting (by airmail)).

The Guarantor's address for service is the address given in this Deed. The Guarantor may change its address for service by giving written notice to the Principal.

10. GST

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act:

- (a) except as otherwise provided by this clause, all consideration payable under this Deed in relation to any supply is exclusive of GST;
- (b) if GST is payable in respect of any supply made by a supplier under this Deed, subject to clause 10(c) the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this; and
- (c) the supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 10(b).

11. Waiver

- (a) No conduct by the Principal shall operate as a waiver of any right, power or remedy arising under or in connection with this Deed, including any failure to exercise or delay in exercising a right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

12. Assignment and novation

- (a) The Guarantor must not assign, novate, transfer or otherwise dispose of any of its rights, title or interest in or under this Deed without the Principal's prior written consent.
- (b) The Principal may assign or novate its interest in or under this Deed to an assignee or novatee of the Contract and the Guarantor must do such things (including executing documents) as are necessary in order to give effect to any such assignment or novation.

13. Limitation

Notwithstanding any other provision of this Deed, the aggregate liability of the Guarantor to the Principal under this Deed is no greater than the liability of the Contractor to the Principal under the Contract.

14. Miscellaneous**14.1 Governing Law**

This Deed is governed by and is to be construed in accordance with the laws of Victoria and 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.

14.2 Survival

This Deed shall survive the expiration or termination of the Contract.

14.3 Severability

Any provision of this Deed which is illegal, void or unenforceable in any jurisdiction will be read down so as to be valid and enforceable and if not capable of being read down, will be ineffective as to that jurisdiction to the extent only of such illegality, voidness or unenforceability and the provision will not invalidate the other provisions of the Deed which shall continue to have full force and effect.

14.4 Amendment

This Deed may only be varied or replaced by a document duly executed by the parties.

Signing Page

Executed by the parties as a deed on _____ / _____ /20____

The Common Seal of the Wangaratta Rural City)
Council was hereunto affixed on the _____ day)
of _____ 2026 in the presence of: _____)
_____)
_____)

..... Councillor
..... Councillor
..... Chief Executive Officer

Alternative 1 – use where the Guarantor has more than one director

Executed by [## Note to Tenderers: name and ACN of Guarantor to be tendered] in
accordance with s 127(1) and s 127(3) of the
Corporations Act 2001: _____)
_____)

.....
Signature of Director Signature of Director/Company Secretary
.....
Print full name Print full name

Alternative 2 – use where the Guarantor only has one director

Executed by [## Note to Tenderers: name and ACN of
Guarantor to be tendered] in accordance with s 127(1) and s 127(3))
of the *Corporations Act 2001*: _____

..... Signature of Sole Director and Sole Company
Secretary
..... Print full name

Annexure Part K Proforma Statutory Declaration

(Clause 43(a))

Project: The Wangaratta Sports and Aquatic Centre (WSAC) Amenities Upgrade

Contract No.: 110938

Principal: Wangaratta Rural City Council

Contractor: **## Note to Tenderers: Name and ACN to be tendered**

I, **## name, address and occupation of person making the statutory declaration**, make the following statutory declaration under the *Oaths and Affirmations Act 2018*:

1. I am **## insert title and relevant authority**
2. I am in a position to know the facts attested to in this Statutory Declaration.
3. To the best of my knowledge and belief, having made all reasonable enquiries, as at the date of making this Statutory Declaration:
 - 3.1 all employees of the Contractor who are or at any time have been engaged in relation to the carrying out of work under the contract dated **## insert** between Wangaratta Rural City Council and **## Note to Tenderers: Name and ACN of the proposed Contractor is to be tendered** dated **## insert** (Contract) have been paid in full all amounts which have become payable to them by virtue of their employment on the work under the Contract all wages and allowances of every kind required to be paid by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgement or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the state in which work under the Contract have been carried out to the latest date at which such wages and allowances are payable;
 - 3.2 the Contractor has complied with all legal requirements in relation to all employees of the Contractor engaged in the carrying out of work under the Contract;
 - 3.3 all subcontractors, consultants and suppliers of goods or materials who are or at any time have been engaged in relation to carrying out work under the Contract have been paid all moneys which have become payable under the terms of each subcontract, consultancy agreement and supplier agreement;
 - 3.4 all insurances required to be obtained and maintained by the Contractor under the Contract are current; and
 - 3.5 the Contractor has claimed for all entitlements arising as at the date of this Statutory Declaration relating to the performance of the work under the Contract, whether due under the terms of the Contract or otherwise, including all claims for payment, extensions of time and damages.

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

signature of person making this statutory declaration in the presence of the authorised statutory declaration witness]

Declared at **## place]** in the State of Victoria on **## date]**

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

signature of authorised statutory declaration witness] on ## date]

full name and personal or professional address of authorised statutory declaration witness in legible writing, typing or stamp]

qualification as an authorised statutory declaration witness]

A person authorised under section 30(2) of the *Oaths and Affirmations Act 2018* to witness the signing of a statutory declaration.

*I confirm that reasonable modifications were used in preparing this statutory declaration and that the contents of this statutory declaration were read to the person making the statutory declaration in a way that was appropriate to the person's circumstances.

signature of authorised statutory declaration witness]

*delete if not applicable

Annexure Part L **Principal's Policies and Procedures**

(Clause 15A)

Clause 15A shall prevail over this Annexure Part L to the extent of any inconsistency.

Part 1: Sun Protection Policy



Rural City of
Wangaratta

Sun Protection Policy

Responsible Officer	Adoption Date	October 2020
Manager People and Culture	Approved By	CEO
Authorising Officer	Review Date	October 2023
Chief Executive Officer	Policy Type	Corporate Policy

Statement and Purpose

Australia has one of the highest rates of skin cancer in the world. Despite being an almost entirely preventable disease, at least two in every three Australians will develop skin cancer before they reach the age of 70. Of all new cancers diagnosed in Australia each year, 80% are skin cancers.

Employees who work outdoors for all or part of the day have a higher than average risk of skin cancer. This is because ultraviolet radiation (UVR) in sunlight is a known carcinogen. All skin types can be damaged by exposure to UVR. Damage is permanent, irreversible and increases with each exposure.

Scope

This procedure applies to Councillors, employees and associates of Council. Associates of Council include contractors/sub-contractors, labour hire, volunteers and any other person who carries out work for, or on behalf of, Council.

Policy

Council and its agents have a duty of care to take appropriate actions to minimise the impact of working in the sun. This is a scientifically recognised hazard to all Australians and control actions must be implemented. Council requires Councillors, employees and associates of Council to comply with the controls specified in this policy and procedure to protect themselves from the known effects of UVR exposure.

While all employees are responsible for identifying and reporting health and safety hazards encountered throughout the course of carrying out work, managers and supervisors are accountable for identifying employees who have a high risk of exposure to solar UVR, or work processes where high exposure to solar UVR occurs in conjunction with heat discomfort.

In the following situations, solar UVR hazards can be identified by using the Sun Smart App:

- when conducting a safe work method statement (SWMS)
- before making a change to either the task or work environment
- investigating or reviewing an incident.

Control Measures for UVR and Heat Exposure Hazards

Managers are responsible for ensuring that appropriate and effective control measures to reduce the risk of exposure to solar UVR and heat hazards are implemented in consultation with employees.

You must always aim to **eliminate** a hazard. If this is not reasonably practicable, you must justify why the hazard cannot be eliminated and minimise the risk by working through the other alternatives in the hierarchy of risk control.

A comprehensive sun and heat protection program should include the introduction of protective measures in line with occupational hazard controls which could include:

1. Elimination – Where possible, eliminate the particular task proposed to be carried out in high UVR and heat. For example – change the month of the year to a cooler, less UVR producing month.
2. Isolation – Isolate sources of UVR/heat – could be achieved by –
 - Use of shaded facilities where possible – workshops etc.
 - Organise worksite to separate people from hot or reflective equipment
 - Shield or enclose hot processes or sources of heat/UVR and limit access during the hottest parts of the day where possible.

3. Substitution –

- Change the time of day the work is normally undertaken to reduce exposure to heat and UVR (start earlier in the day, complete heavy physical tasks earlier)

4. Engineering controls - which are measures that reduce exposure to solar UVR by a physical change to the work environment.

- Use of shade facilities where possible

5. Modifying or shielding workers from reflective surfaces.

6. The provision of shade is one of the most effective forms of sun protection for outdoor employees. Shade can come naturally from trees and shrubs, or artificially from permanent or portable structures, which can be easily erected and adapted to suit different types of equipment and worksites. Even if it is difficult for work to occur in the shade, utilisation of existing shaded areas during breaks, especially lunch breaks, will support efforts to reduce UVR exposure as well as heat stress.

When considering shade as an Engineering Control to reduce the risk of exposure to solar UVR, keep in mind that:

- The quality of shade from natural sources such as vegetation depends on the density of the foliage, the size of the canopy, the shape of the vegetation and how far the canopy is from the ground.
- There are different types of shade materials. Check the UPF rating of shade material used. Look for UPF 15 or more to ensure at least 93% of solar UVR is blocked.
- You can never rely on shade alone. Always combine shade with personal sun protection measures.

The following table provides an estimate of the reflectiveness of certain surfaces and should be used as a guide in determining the level of exposure to solar UVR. The higher the reflectiveness, the higher the exposure to indirect solar UVR.

Surface	Level of reflected UV Radiation
Lawn grass, summer/winter	2.0% – 5.0%
Grasslands	0.8% – 1.6%
Soil, clay/humus	4.0% – 6.0%
Asphalt Roadway	4.1% – 8.9%
House Paint, white	22.0%
Timber deck, wood/fibreglass	6.6% – 9.1%
Open Water	3.3%
Beach Sand, wet/dry	7.1% – 8%
Concrete Footpath	8.2% – 12.0%

Cancer Council Victoria (2007) Skin Cancer and Outdoor Work: A Guide for Employers

7. Administrative controls - which are measures that reduce exposure to solar UVR and heat by a change in work procedure.
 - Scheduling of outdoor work to times of the day where solar UVR is lower.
 - Planning work routines to ensure that indoor or shaded work tasks are done in the middle of the day (i.e. between 10am to 2pm) when solar UVR and heat is strongest.
 - Where appropriate, moving the job indoors or into a shaded area.
 - Where appropriate, rotating employees to ensure that the same employee is not always in the sun.
 - Providing information, training and instruction on Sun Smart practices.
 - Create awareness of daily solar UVR levels by encouraging access to daily Sun Smart Alerts on the free App available
 - Enforcing Sun Smart practices and the use of appropriate PPE through effective monitoring and supervision of employees.
 - Allowing more frequent rest breaks utilising shaded areas
 - Ensuring availability of water to encourage good hydration practises.
8. Personal protective equipment and clothing - are measures that reduce exposure to solar UVR by providing a personal barrier between individual employees and the hazard. These items are minimum requirement to comply with this procedure. They are compulsory and must be provided, maintained and worn at all times when the Sun Smart App indicates a rating of 3 or above, and at all times between 1 September and 30 April.
9. Council's outdoor uniforms are made from cool weave lightweight materials that are rated to a minimum of UPF30+. Clothing or equipment shall not be defaced or altered in any way. This includes the removal of collars and sleeves from shirts. Laundering and maintenance of clothing is the responsibility of the employee.
 - PPE/C and clothing should not be solely relied upon to reduce the exposure to direct and indirect sources of solar UVR. PPE/C prescribed by this policy are as follows:
 - Long sleeved shirts and long trouser/skirts which factor in heat comfort elements whilst still complying with Australian Standards. Shirt sleeves must remain rolled down at all times to protect arms from sun exposure.
 - Staff from WSAC, operating in their primary role as potential emergency responders, are exempt from wearing long trousers. In potential drowning situations, long trousers may impinge on safely performing a rescue. Sunscreen lotions should be used as an alternative on legs, following the approved method of application.
 - Approved wide brim hats - wear either a Council approved broad brimmed hat (min. a 7.5cm brim) or legionnaire style hat (with neck flap are more suitable when work involves a lot of bending).

- Under no circumstances are Peak Caps to be worn during the sun protection period.
- During cooler periods when the Sun Smart App will have readings below 3 (usually May – August) employees are permitted to wear a Council approved beanie.
- Sunglasses - can provide excellent protection for the eyes from solar UVR in conjunction with a wide brim hat.
 - When considering sunglasses as a control to reduce the risk of exposure to solar UVR, keep in mind that the selection of sunglasses must not create a secondary hazard such as some categories of dark tinting makes the sunglasses unsuitable for certain tasks (for example driving).
 - Sunscreen lotion (including lip protection balms or zinc creams) should always be used with other sun protection measures as no sunscreen offers 100% protection from solar UVR. Sunscreen should be applied 20 minutes before going outdoors so that it can be absorbed into the skin properly and should be re-applied every 2 hours. Sunscreen must be applied if the Sun Smart App is 3 or above.

Managers must ensure that sunscreen provided to employees has a UVR rating of a minimum of SPF 50+.

Skin Cancer Checks

Skin cancer can usually be cured if detected and treated early.

Employees (particularly outdoor) should be encouraged to check their own skin often and look for spots that are new or have changed colour, size or shape. They should see a doctor as soon as possible if they notice anything unusual.

Information on how to perform these checks is readily available from the Cancer Council and Sun Smart organisations.

Management can (at the Unit's cost) provide skin cancer checks as part of regular workplace medical examinations and in pre-employment medical checks.

While, there is no evidence that regular screening for skin cancer will reduce the incidence of the disease, the benefits of regular skin checks by a medical practitioner are to:

- Raise awareness of the risk,
- Promote the 'early detection' message,
- Provide information on how employees can check their own skin for cancer signs,
- Detect evidence of skin damage,
- Refer employees with skin damage to their own doctor or a skin specialist.

NOTE: Having regular skin checks to detect skin cancer is **not** an alternative to using sun protection.

For more information: - Sun Smart has workplace educators available to assist employers and their workers with information and advice on sun protection methods (Tel. 03 9635 5148).

Roles and Responsibilities

Councillors, Employees and associates of Council MUST:

- Follow all procedures and controls to ensure their own health and safety.
- Monitor and report own and fellow worker's health and safety hazards when exposed to UVR and heat throughout the course of carrying out work, and report to Supervisor if there are any signs of ill health.
- Wear and use sun protection PPE and clothing (PPE/C) during work hours as specified in this policy.
- Wear all required PPE/C as set out in this policy in the following events (PPE/C required times):
 - at all times from 1 September to 30 April; and
 - at all times when the Sun Smart App indicates a rating of 3 or above from 1 May to 31 August. *Please refer to the Definitions section for an explanation of this App.*
- During the PPE/C required times (set out above) the PPE/C must be worn where the person will be exposed to UV radiation for 15 minutes or more in a working day. *Example – an indoor worker walking outdoors to meetings in nearby locations will be required to wear PPE/C where the accumulated time outside is 15 minutes or more, even if this is in shorter blocks that in total add up to 15 minutes.*
- Be aware of the Sun Smart App rating for the day, as communicated by Coordinators and Team Leaders, and comply with PPE/C requirements. All staff are encouraged to download the free App onto their personal and work devices, and set the Sun Smart App push notifications to 'on' to get daily UV level reports.
- Inform their manager of any damage to, defect in, or need to clean or decontaminate, any sun protection PPE/C.

Managers (including Coordinators, Supervisors and Team Leaders) MUST:

- Ensure there are methods in place to check the Sun Smart rating daily during the period 1 May to 31 August to confirm UVR rating for all affected workers and communicate this to all team members.
- Identify employees that have at high risk of exposure to solar UVR, or work processes where high exposure to solar UVR occurs.
- Ensure that appropriate and effective control measures are implemented, in consultation with employees, to reduce the risk of exposure to solar UVR and heat stress.
- Ensure that the Sun Smart PPE/C provided to employees meets a rating of UPF30+ or above; is of suitable size and fit; and complies with Australian Standards

- Arrange for the supply of sun protection PPE/C for employees upon the commencement of employment.
- Provide the employee with information, training and instruction in the proper use and wearing of Sun Smart PPE/C, storage and maintenance. Maintain, repair or replace any damaged Sun Smart PPE/C ensuring it remains clean, hygienic, in good working order and is worn at all times as required.

Health and Safety Team MUST:

- Provide advice to managers and supervisors in regards to Council's sun protection and risk reduction strategy for the exposure of employees to ultraviolet radiation (UVR).
- Maintain this policy in accordance with legislation and best practice.

Employees MUST NOT:

- intentionally misuse or damage sun protection PPE/C.

Breaches

Any employees or managers found to have knowingly breached this policy may be subject to a disciplinary process related to misconduct. Failure to wear all PPE/C required based on the identified compulsory period along with the Sun Smart App and to follow OH&S instructions, constitutes a breach of this policy.

Misconduct will be addressed, where appropriate by disciplinary action, ranging from behavioural counselling, or a written warning, to termination of employment, depending on the seriousness of the misconduct. Disciplinary action will, where practicable, emphasise correcting the cause of the misconduct, explaining why the behaviour is inappropriate and unacceptable, and assisting employees to change their behaviour

Monitoring and Evaluation

The implementation of this Policy and evaluation of its effectiveness will be undertaken by the OHS Officer.

Definitions

Ultraviolet Radiation (UVR) – a form of energy that is powerful, invisible and cannot be felt, it can pass through clouds and loosely worn material, it can bounce off reflective surfaces such as sand, concrete, metal, grass, water and snow.

Personal Protective Equipment and Clothing (PPE/C) – specific to sun protection includes, but is not limited to; clothing, protective hats, sunglasses, sunscreen.

Sun Smart PPE/C – PPE/C that has been specifically chosen on the basis of certain characteristics (for example the closeness of the weave in a fabric) which provide excellent protection from direct and indirect sources of solar UVR.

Sun Smart App – Cancer Council free sponsored phone/device app that provides a live up-to-date UV rating for the district, giving instruction on protection requirements. Any rating of 3 and above requires sun protection methods outlined in this procedure.

WSAC- Wangaratta Sports and Aquatic Centre

References

Occupational Health and Safety Act 2004 Occupational Health and Safety Regulation 2017

The Cancer Council Australia – Policy Guidelines, and Guide for Employers Sun Smart Victoria Web Site

Sun Smart publication: Skin Cancer and Outdoor Work, A guide for employers WorkSafe; Sun protection for construction and other outdoor workers, Version 2. WorkSafe publication: Guidance Note, Working in heat

Protection of Workers from the Ultraviolet Radiation in Sunlight SafeWork Australia Guidance Note 2008

AS/NZ 4399 – Sun protective clothing: evaluation and classification AS 1337.1: 2010 - Eye protectors for occupational applications AS/NZ 2604 – Sunscreens: evaluation and classification AS/NZ1067 – Sunglasses and fashion spectacles

AS/NZ4174 – Synthetic Shade Cloth

Council's Occupational Health and Safety Policy Council's Thermal Comfort Policy

Review

Any change or update which materially impacts and alters this policy must be by the Director Corporate Services. Otherwise, this policy will be reviewed, every four years, at a detailed level, by the Occupational Health and Safety Committee.

Part 2: North East Council Contractor Induction (NECCI)



Memo To: All Contractors

Re: Online Contractor Induction

As part of our OH&S Policy, the North East Councils require that all contractors working on our facilities undertake an Online Health & Safety Induction Training Course prior to entry.

Please arrange for ALL relevant staff/workers to undertake the induction prior to their next visit.

Taking an online induction course is easy and takes about 15 to 20 minutes. Being online, courses can be taken from anywhere using a standard Web Browser.

Instructions:

1. Open your Web Browser to the website – <https://linksafe.com.au/necci/>
2. Select “Contractor PIN Registration” to register a PIN the first time induction is completed. Please keep PIN and password for future reference.
3. Once PIN is registered, select “Contractor Induction” and follow instructions
4. If PIN or password is forgotten, select Contractor Induction and press “Forgot you Pin or Password?” for retrieval.

At the end of the course you will receive an email with an attached Certificate/ID which must be cut out and signed. This completed card must be shown on each visit and will be checked to see it is valid.



NOTE:

Please note that a **No Induction ID, No Entry policy will apply.**

Failure to comply with this requirement will be treated as a breach of OH&S Policy and may result in the cancellation of works and/or contract.

Please contact the undersigned if you need any help or have any questions. Yours

sincerely,

Health Safety and Risk Officer
Rural City of Wangaratta

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Attachment B Drawings

(Clause 2.1)

##Note to Tenderers: See the Request for Tender for details of the drawings. The final version of the drawings will be inserted into the execution copy of the Contract in due course]

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Attachment C Specification

(Clause 2.1)

##Note to Tenderers: See the Request for Tender for details of the Specifications. The final version of the Specifications will be inserted into the execution copy of the Contract in due course]

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Attachment D Schedule of Rates

(Clauses 3.4, 3.5 and 40.5)

There is no Schedule of Rates

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Attachment E Tender Program

(Clauses 2.1 and 33.3)

Note to Tenderers: To be tendered]

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Attachment F Tender Construction Management Plan

Note to Tenderers: To be tendered

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Attachment G Redacted Funding Agreement

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Attachment H Information Only Documents

Note to Tenderers: The below table will be completed in the execution version of the Contract so as to list any and all geotechnical reports, existing as-built documentation, underground survey, 3D point cloud survey and all other information provided to tenderers during the tender period which are not Contract Documents]

Author	Title	Date	Revision No

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Attachment I Operational Areas, Special Events and Restricted Times

Part 1: Operational Areas and Restricted Works

Operational Area	Stakeholders (being third party operators or clubs etc using the relevant Operational Area)	Restricted Times (being the hours and/or days during which Restricted Works cannot be undertaken)	Restricted Works (being the types of works which cannot be undertaken during Restricted Times)	Other constraints on the work under the Contract in relation to the Operational Areas
Existing Netball Courts (except Court 8)	Wangaratta Netball Association	All times	All works	No access, including parking on or driving over Operation Area, allowed at any time except for Court 8 which will be within the site possession area. Refer to Site Plan.
Existing Netball Facilities	Wangaratta Netball Association	All times before the Contractor is entitled to commence the demolition of the existing netball facilities	The Contractor is not entitled to (and must not) commence the demolition of the existing netball facilities unless and until the Superintendent has notified the Contractor in writing that the balance of the Works have achieved a stage which is equivalent to Practical Completion	Existing light towers (and lighting) must remain operational at all times
Show Court 1	WSAC stadium users	All times	All works	No storing of equipment or materials on Operation Area at any time including blocking emergency services access to the WASC First Aid Room.
WSAC foyer	General public, WSAC users	All times	All works	No access allowed at any time. Contractor access for all works as per Site Plan.
WSAC Gymnasium	WSAC users	All times	All works	No access allowed at any time. Minimise disruption to gymnasium users during construction of new connecting doorway.
Aquatic Centre (including rear of	WSAC users	All times	All works	No access, including parking, allowed at any time.

Operational Area	Stakeholders (being third party operators or clubs etc using the relevant Operational Area)	Restricted Times (being the hours and/or days during which Restricted Works cannot be undertaken)	Restricted Works (being the types of works which cannot be undertaken during Restricted Times)	Other constraints on the work under the Contract in relation to the Operational Areas
the aquatic plant room and bin collection area)				

Part 2: Additional Restricted Times for which the Contractor must make an allowance

For the purposes of Clause 52.4(b)(ii), the Contractor must make an allowance of 5 further Working Days during which Restricted Works may not be undertaken.

Part 3: Special Events

The following list of Special Events is not exhaustive and only states the events of which the Principal is aware as at the Execution Date:

Special Event	Time and date
Netball Junior Competition – outdoor netball courts	8:30am, 2nd May – 29th August 2026 (Saturdays)
Net Set Go Competition – outdoor netball courts	4:30pm, 1st May – 26th June 2026 (Fridays)
Under 11 Competition – outdoor netball courts	5:45pm, 1st May – 26th June 2026 (Fridays)
Netball Autumn Competition – outdoor netball courts	18:30pm, 6th May – 24th June 2026 (Wednesdays)
Net Set Go Competition – outdoor netball courts	4:30pm, 17th July – 18th September 2026 (Fridays)
Under 11 Competition – outdoor netball courts	5:45pm, 17th July – 18th September 2026 (Fridays)
Netball Winter Competition – outdoor netball courts	18:30pm, 29th July – 16th September 2026 (Wednesdays)
Netball Spring Competition – outdoor netball courts	18:30pm, 21st October – 9th December 2026 (Wednesdays)
Wangaratta Netball Association Tournament – outdoor netball courts (73 NSW/VIC teams)	8:00am – 4:00pm, 18 April 2027

Special Event	Time and date
Net Set Go Competition – outdoor netball courts	16:30pm, April - June 2027 (Fridays)
Under 11 Competition – outdoor netball courts	5:45pm, April – June 2027 (Fridays)
Netball Junior Competition – outdoor netball courts	April – August 2027 (Saturdays)
Netball Summer Competition - outdoor netball courts	18:30pm, Feb – Mar 2027
Netball Autumn Competition – outdoor netball courts	18:30pm, May – June 2027 (Wednesdays)
Net Set Go Competition – outdoor netball courts	18:30pm, July – September 2027 (Wednesdays)
Under 11 Competition – outdoor netball courts	5:45pm, July – September 2027 (Fridays)
Netball Winter Competition – outdoor netball courts	18:30pm, July – September 2027 (Wednesdays)
Netball Spring Competition – outdoor netball courts	18:30pm, October – December 2027 (Wednesdays)
Allow for 8 major WSAC/HP Barr Reserve events between September 2026 and 2027	Various – September 2026 until 2027

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Attachment J Not Used

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Attachment K Pre-Agreed Variations

(Clause 40A)

Note to Tenderers: Please refer to the tender pricing schedule for details of tender options. The below table will be completed to insert any Tender Options which Council (at its absolute discretion) is not able to take up on the date of execution of the Contract but for which Council wishes to pre-agree the consequences of such tender options if Council is able to direct them as a variation after execution of the Contract.]

No.	Categories of Pre-agreed Variations	Addition / Deletion	Last date (or period of time) by which the Principal may issue a notice directing the undertaking of the relevant Pre-agreed Variation without the Contractor being entitled to an extension of time	Pre-agreed Variation Adjustment Amount (GST exclusive)
				## Note to Tenderers: To be tendered] (GST exclusive)
				## Note to Tenderers: To be tendered] (GST exclusive)
				## Note to Tenderers: To be tendered] (GST exclusive)
				## Note to Tenderers: To be tendered] (GST exclusive)
				## Note to Tenderers: To be tendered] (GST exclusive)

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Attachment L Local Jobs First Policy

(Clause 50)

1. Definitions

In this Attachment L:

Agency means the organisation with which the Supplier has entered into this Agreement.

Agreement means this Contract.

Apprentice means a person (other than a Cadet or Trainee) who is employed to undertake training in a trade under a Training Contract. The Local Jobs First Policy requires employers to employ apprentices under a National Training Contract registered with VRQA which combines structured training with paid employment related to a Local Jobs First applicable project. For an Apprentice to be counted towards the MPSG requirement (where the MPSG requirement applies) for a project they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract.

Cadets means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Local Jobs First applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification. Cadetships are different to professional traineeships (an employee who is not in an entry level role and is undertaking professional development training), which cannot count towards MPSG (where the MPSG applies).

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

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

Guidelines means Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

ICN Analytics is a cloud based secure online platform that enables the collection, analysis and reporting of local content and jobs data, including supply chain monitoring and reporting.

Industry Capability Network (Victoria) means Industry Capability Network (Victoria) Limited of Level 11, 10 Queens Road, Melbourne VIC 3004 ACN 007 058 120.

LIDP means the Local Industry Development Plan set out in Schedule 1 to this Attachment L.

LIDP Monitoring Table means the table included at Schedule 2 to this Attachment L.

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 this Agreement.

Practical Completion means:

- (a) Practical Completion as defined in the main body of this Agreement; or
- (b) If not defined in the main body of this Agreement it means when the Supplier has completed the delivery of the goods and/or services to be provided under this Agreement (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 Attachment L as notified by the Agency.

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

Supplier means the Contractor.

Trainee means an employee engaged by an employer (other than an Apprentice or Cadet) employed under a Training Contract registered with VRQA that combines training with paid employment in an entry level role related to a Local Jobs First applicable project. For a Trainee to be counted towards the MPSG requirement (where MPSG applies) for a project they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract. Professional Traineeships (an employee who is not in an entry level role and is undertaking professional development training) cannot count towards MPSG (where MPSG applies).

Training Contract has the meaning given in the *Education and Training Reform Act 2006*. **Victorian Management Centre (VMC)** means the 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, MPSG (if applicable) and, supply chain monitoring and reporting.

VRQA means the Victorian Registration and Qualification Authority.

2. Local Jobs First Policy

2.1 Local Industry Development Plan

- (a) The Supplier must, in performing its obligations under this Agreement:
 - (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; and
 - (iii) comply with the Local Jobs First Policy.
- (b) The Supplier acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Agreement, any extensions to the term and until all of its Reporting obligations as set out in clause 2.3 of this Attachment L are fulfilled.
- (c) The Supplier's failure to comply with this clause 2.1 will constitute a material breach of this Agreement.

2.2 Revised LIDP

- (a) If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any LIDP commitments, the Supplier 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 Supplier must provide the Revised LIDP to the Agency.
- (c) The Revised LIDP must be agreed by the parties before any variation to the Agreement 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 Agreement.

2.3 Reporting

- (a) The Supplier must prepare and maintain records demonstrating its compliance with the LIDP.
- (b) The Supplier must provide a six monthly report demonstrating its progress towards implementing the LIDP in the form of the LIDP Monitoring Table.
- (c) If the Agreement is for a project valued at \$20 million or more, the Supplier must use the ICN Analytics for LJF monitoring and reporting.
- (d) Prior to Practical Completion, the Supplier 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 in Schedule 3 to this Attachment L 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 Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Contract Manager, the Supplier must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
- (f) The reporting obligations in this Attachment L are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

2.4 Verification of Supplier's compliance with LIDP Plan

- (a) The Supplier 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 Supplier 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 Supplier for the purposes of this Agreement;

- (ii) permit the Agency or the Department from time to time to undertake a review of the Supplier'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 Supplier 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 Supplier'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 Agreement.

2.5 Use of information

The Supplier acknowledges and agrees that:

- (a) Industry Capability Network (Victoria) will assess the Supplier's performance against the LIDP;
- (b) the statistical information contained in the LIDP and the measures of the Supplier'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 Agreement or as otherwise required by Law.

3. Subcontracting

- (a) The Supplier must ensure that any subcontracts entered into by the Supplier in relation to work under this Agreement 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 Supplier to comply with its reporting obligations under clause 2.3 of this Attachment L; and
 - (iii) to permit the Agency and the Department to exercise their inspection and verification rights under clause 2.4 of this Attachment L.
- (b) The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this Agreement.
- (c) The Supplier's failure to comply with this clause 3 will constitute a material breach of this Agreement.

4. Local Jobs First Commissioner

- (a) The Supplier 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 Supplier's compliance with the Local Jobs First Policy and the LIDP.
- (b) The Supplier acknowledges that the Commissioner may recommend that the Agency take enforcement proceedings against the Supplier if the Supplier 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 Agreement.

Schedule 1 to Attachment L – Local Industry Development Plan

Note to Tenderers: To be tendered]

Schedule 2 to Attachment L – LIDP Monitoring Table

Note to Tenderers: To be tendered]

Schedule 3 to **Attachment L – Statutory Declaration**

I, (Full name)
of [address]
[occupation], do solemnly and sincerely declare that: -
[contracted company]

achieved the Local Jobs First outcomes relating to local content; employment; skills and technology transfer; and apprentices/ trainees reflected in the Local Jobs First Monitoring Table (or ICN Analytics report) for

[name and tender number of procurement activity]

as submitted to [agency] on ____/____/____
[date]

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at
this ____ day of ____ 20__

Signature of person making this declaration
[to be signed in front of an authorised witness]

Before me,

Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the Evidence (Miscellaneous Provisions) Act 1958 (as of 1 January 2010), (previously Evidence Act 1958), (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

Attachment M Work Standards

The Contractor must ensure that works comply with the standards described below that apply to the sport for which the works are intended to be used:

(a) Netball Victoria's Facilities Manual available at: Netball Victoria Facilities Manual

(b) Netball Australia National Facilities Policy available at: Netball Australia National Facilities Policy 3.2

The Contractor must provide evidence to the reasonable satisfaction of the Principal that the Works comply with the standards under this Attachment M.

Attachment N Authorities and Headworks Matrix

Subject matter	Authority	Responsibility for applying for and obtaining the relevant Approval (as between the Principal and the Contractor)	Where the Contractor is responsible for making the application for the relevant Approval, the time period within which such application must be made	Responsibility for paying relevant fees and charges (as between the Principal and the Contractor)	Responsibility for complying with the conditions of the relevant Approval (as between the Principal and the Contractor)
Building Permit	Relevant Building Surveyor	Contractor	## Note to Tenderers: To be tendered]	Principal	Contractor
All other Approvals	All other relevant Authoirities	Contractor	## Note to Tenderers: To be tendered]	Contractor	Contractor

Attachment O Programming requirements

(Clause 33.2 and Clause 33.3)

Minimum allowances for the Superintendent to review documents or items to be shown in each Construction Program

Document / Item	Minimum allowance
Shop Drawings	As specified in Clause 8.2A
Samples and prototypes	10 Business Days
Manufacturers' or suppliers' recommendations	10 Business Days
Product Data	10 Business Days
Product/design substitution or modification	20 Business Days

Minimum commissioning period

All commissioning must be completed by the Contractor as a precondition to Practical Completion.

Additional information to be shown in the Construction Program

None

Times for the provision of, and the intervals to be covered in, the look-ahead programs

Every 10 Business Days, showing anticipated activities on the Project for the following 15 Business Days.

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Attachment P Technical clarifications and exclusions

Note to Tenderers: Council will NOT be inserting the tender or any tender correspondence in this Attachment. Rather, this Attachment will be limited to inserting any agreed clarifications, assumptions, qualifications or exclusions which are of a technical nature only and which do not conflict with the Conditions of Contract. Any clarifications, assumptions, qualifications or exclusions which have the potential to be inconsistent with the Conditions of Contract (including, without limitation, any clarifications or exclusions relating to site conditions, unfixed plant and material, payment stages, security legal requirements or grounds for additional time and/or cost need to be tendered as a legal departure and will be considered by Council separately.]