

GENERAL CONDITIONS OF CONTRACT - CONSTRUCTION CONTRACT (MEDIUM WORKS)

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1 AGREEMENT

- (a) The parties to this Agreement are the statutory authority entitled 'Zoos Victoria' established and governed by the *Zoological Parks and Gardens Act 1995* (Vic) (the **Principal**) and **[#insert name of Contractor]** (the **Contractor**).
- (b) The parties agree that this Agreement comprises the following documents set out in decreasing order of precedence:
 - (i) the terms and conditions of this document;
 - (ii) Annexure 1;
 - (iii) Attachment 4: Victorian State Government Policy Requirements;
 - (iv) Attachment 1: PPR;
 - (v) Attachment 2: approved form of security; and
 - (vi) the remaining Attachments (if any).
- (c) If there is any inconsistency, ambiguity or discrepancy between the requirements of the documents listed in clause 1(b), the higher or more onerous requirement will apply. If there remains any inconsistency, ambiguity or discrepancy between the documents comprising the Agreement, the order of precedence in clause 1(b) will apply to the extent of that inconsistency, ambiguity or discrepancy.
- (d) The terms of the Agreement apply to any Works even if they were performed prior to the date of this Agreement. Any amounts paid by the Principal to the Contractor for such work is deemed to be paid on account of the Contract Price.

2 THE WORKS AND CONTRACT PRICE

- (a) The Contractor must carry out the Works for the Contract Price to a high standard of skill and care and to the Principal's reasonable satisfaction in accordance with:
 - (i) the PPR;
 - (ii) all standards, codes, Statutory Requirements applicable to the Works including all Environmental Obligations; and
 - (iii) the provisions of this Agreement, so that the Works are fit for their intended purpose.
- (b) The Contract Price:
 - (i) is fixed and may only be adjusted in accordance with this Agreement; and
 - (ii) is not subject to adjustment due to rise or fall in the price of materials, services or labour.
- (c) The Contractor warrants that it has calculated the Contract Price with due care and skill and taken into account all risks and costs reasonably identified in relation to the Works and made full allowance for them in the Contract Price.
- (d) The Contractor must provide, at its own cost, all supervision, labour, equipment and materials necessary to undertake and complete the Works,

unless otherwise specified in the PPR.

3 CONTRACTOR'S WARRANTIES

- (a) The Contractor warrants that:
 - (i) the Works will be performed with all due skill, care, judgment and diligence to be expected of an appropriately qualified and experienced contractor with experience in performing works of a similar size, type, nature and complexity to the Works;
 - (ii) the Works will be performed in a timely and professional manner in accordance with this Agreement; and
 - (iii) it has done everything that would be expected of a prudent, competent and experienced Contractor in:
 - (A) assessing the risks which the Contractor is assuming under this Agreement; and
 - (B) ensuring that the Contract Price contains allowances to protect the Contractor against any of these risks eventuating.

4 SECURITY AND SET OFF

- (a) The Contractor must provide Security for performance of the Works in accordance with Annexure 1. Security in the form of unconditional undertaking(s) must be provided within 5 Business Days of the Contractor commencing the Works and must remain valid and enforceable until the date for its expected return in accordance with clause 4(d).
- (b) Without limiting clause 4(d), if any Security will expire prior to the date for its return in accordance with clause 4(d), the Contractor agrees that it will, not less than 20 Business Days prior to the expiry of any Security, procure the issue to the Principal of replacement Security which:
 - (i) is for a term of at least 1 year or such lesser period as the Principal determines;
 - (ii) is in the form and in the amount of the Security that it is replacing; and
 - (iii) otherwise satisfies and is governed by the terms and the requirements of this Agreement for the provision of the Security that it is replacing.
- (c) In addition to any other right of the Principal to draw on any Security, the Principal may draw on the Security if the obligation to provide replacement Security pursuant to clause 4(b) is not satisfied by 15 Business Days prior to the expiry of that Security, in which event the Principal may draw the full face value of that Security and hold that amount as Security, in accordance with this Agreement.
- (d) The Principal's entitlement to Security is reduced to 50% from the Date of Practical Completion of the Works as certified pursuant to clause 20(b) and the Principal must return that portion of Security to which it is no longer entitled within 10 Business Days of issuing a certificate pursuant to clause 20(b)(i).

- (e) The Principal's entitlement to the balance of Security ceases 10 Business Days after the issue of the Final Certificate.
- (f) The Principal may at any time:
 - (i) have recourse to Security and without prior notice to the Contractor if the Principal reasonably considers that the Contractor is in substantial breach of its obligations under this Agreement, the Principal has become entitled to be indemnified by the Contractor under this Agreement or an event described in clause 30(a) has occurred in relation to the Contractor; or
 - (ii) deduct any moneys which the Principal, acting reasonably, asserts are due from the Contractor to the Principal (whether under this Agreement or otherwise at law) from either the Security or from any moneys due from the Principal to the Contractor.

5 DIRECTIONS

- (a) Subject to clause 5(b), the Principal may, acting reasonably, give the Contractor directions in connection with the subject matter of this Agreement, which must be in writing. Subject to clause 24(e), the Contractor must comply with all reasonable directions.
- (b) Where a direction is of an urgent nature, the Principal may give that direction verbally, provided that the Principal confirms the verbal direction with a written direction as soon as practicable.
- (c) The Contractor must comply with all of the Principal's directions under clauses 5(a) and 5(b).
- (d) The Contractor must maintain an on-Site log task for the purpose of recording all of the Principal's directions under clauses 5(a) and 5(b).

6 COOPERATION, OTHER WORKS AND PROTECTION

- (a) The Contractor must cooperate with all other persons who supply goods, services or works for or in connection with the Project or otherwise in the vicinity of the Site and must coordinate and undertake its Works to ensure no delay or damage is caused to the Works, the Project, other property or the supply of goods, services or works by others.
- (b) The Contractor must do whatever is necessary to protect:
 - (i) the Site;
 - (ii) Adjoining Property;
 - (iii) improvements to the Site or the Adjoining Property, including any overhead or underground works on the Site or in the vicinity of the Site; and
 - (iv) all work and materials, against damage that may be caused by:
 - (v) the Works; or
 - (vi) the Contractor including any plant and equipment used by the Contractor.

7 ACCESS

- (a) Provided the Contractor has complied with clauses 4(a) and 28(c) and any conditions of access set out in the PPR, the Principal must give the Contractor within the period stated in Annexure 1 access to sufficient of the Site as may reasonably be required for commencement of the Works on Site. If the Principal has not given the Contractor access to the whole Site, the Principal must give the Contractor access to such further portions of the Site as may, from time to time, be necessary for carrying out the Works. Delay by the Principal in giving access will not be a breach of the Agreement but may entitle the Contractor to an extension of time in accordance with clause 18(g).
- (b) The Contractor acknowledges and agrees that it does not have exclusive possession of the Site and that its rights of access are subject to this Agreement including the work and access requirements of other persons who supply goods, services or works for or in connection with the Project and the Principal's reasonable requirements as notified to the Contractor from time to time.
- (c) The Contractor is responsible for all activities on the Site in connection with the Works including providing access for authorised persons and restricting access by unauthorised persons. The Contractor must take all necessary precautions to secure assets of the Principal. The Contractor must closely liaise with the Principal regarding the timing of all Works. Workers must be restricted to areas where the Works are being undertaken or access is required to the Site for the purpose of undertaking the Works.
- (d) The Contractor must control and manage the delivery and storage of materials required in the performance of the Works and ensure adequate space is available for building sheds and all necessary amenities.
- (e) The Contractor must not store waste, building materials or flammable liquids on the Site.
- (f) The Contractor must take proper precautions to keep poisons and other injurious substances in places secured against access by unauthorised persons.
- (g) The Contractor must ensure that no animals or pets are brought onto the Zoo Grounds.
- (h) In the event that heavy machinery is required to be brought through the Zoo Grounds to the Site, which includes but is not limited to excavators and cranes, it must be done under the Contractor's supervision and in compliance with any rules and regulations relating to the Zoo Grounds.

8 APPROVALS, LAWS, SAFETY AND THE ENVIRONMENT

- (a) The Contractor must obtain and pay for all Contractor Approvals.

- (b) The Principal must obtain and pay for the Principal Approvals.
- (c) In performing its obligations under this Agreement, the Contractor must, and must ensure that all personnel and subcontractors:
 - (i) comply with all Environmental Laws;
 - (ii) demonstrate careful, prudent and professional consideration of environmental protection and sustainability;
 - (iii) comply with any applicable Environmental Obligation and the Principal's ISO 14001:2004 Environmental Management System;
 - (iv) conduct any remedial works to rectify or prevent further damage to the environment caused by the Contractor's acts or omissions;
 - (v) promptly notify the Principal of any environmental incident which occurs during the performance of its obligations under this Agreement; and
 - (vi) upon the Principal's request, demonstrate compliance with this clause 8(c).
- (d) In performing its obligations under this Agreement, the Contractor must, and must ensure that all personnel and subcontractors:
 - (i) conduct the Works and maintain a workplace safely and without risk to the health, safety or welfare of any person and in accordance with the requirements of all OHS Laws and enable the Principal to comply with OHS Laws;
 - (ii) if required by Annexure 1, accept the appointment as 'Principal Contractor' for the Works and discharge the relevant duties of the Principal Contractor under OHS Laws;
 - (iii) provide such information, instruction, induction, training or supervision to any person as necessary to enable that person to perform their work in a way that is safe and without risks to health;
 - (iv) provide or comply with an occupational health and safety system of work in accordance with Annexure 1;
 - (v) at the Contractor's own expense, repair and restore any structure, service or property damaged in any way by the Contractor's acts or omissions;
 - (vi) promptly notify the Principal's Representative of any incident as required by the OHS Laws and any other injury, near miss, safety related incident, act, fact or circumstance associated with the Works including any matters set out in the PPR relevant to the ability of the Contractor to conduct the Works in a manner that is safe and without risks to health;
 - (vii) comply with any further safety requirements set out in the PPR; and
 - (viii) upon the Principal's request, demonstrate compliance with this clause 8(d).
- (e) Unless otherwise specified in this Agreement, the

Contractor must observe, in the absence of any Statutory Requirement to the contrary, any relevant current Australian Standard published by Standards Australia.

- (f) The Contractor must do everything prudent and necessary to avoid damage, or interference of all the Adjoining Property and land, whether public or private, and of persons at any time in the vicinity of the Site. The Contractor must carry out and provide at its own cost whatever form of protective and precautionary measures as may be necessary to comply with this clause.
- (g) The Contractor must take all necessary steps to minimise nuisance to staff and others (including nuisance from noise, dust, debris and obstructions) arising from the Works and must promptly comply with all reasonable requests from such persons for the cessation of such nuisance.
- (h) The Contractor may only work on the Site during Permitted Work Hours. If the Contractor wishes to work on the Site at other times, it must obtain written consent from the Principal (which must not be unreasonably withheld), and any other Government Authority whose consent is or may be necessary.

9 INDUSTRIAL MATTERS

- (a) The Contractor must:
 - (i) comply with its obligations with respect to its employees under any relevant Statutory Requirement or industrial instrument or award that is binding on the Contractor;
 - (ii) manage all Industrial Action, disputes, issues and matters which affect or may affect its subcontractors, employees, officers or agents;
 - (iii) immediately report any threatened or actual Industrial Action or dispute in relation to the Works to the Principal;
 - (iv) comply with the further industrial relations requirements set out in the PPR; and
 - (v) use its best endeavours to ensure that the Contractor and its subcontractors maintain a good industrial relations record.
- (b) Except for any entitlement to an extension of time that the Contractor may have under clause 18(g), the Contractor acknowledges and agrees that it has no entitlement to claim any additional payment, adjustment to the Contract Price or extension to the Date for Practical Completion whether under this Agreement or otherwise at law in connection with this clause 9.

10 SITE CONDITIONS

- (a) The Contractor is deemed to have inspected all documents provided to the Contractor relating to the Site, and, where requested by the Principal prior to the date of contract, the Site, including its surroundings and local conditions, access to it, facilities on or near it and physical conditions above

and below the surface (**Site Conditions**) and made reasonable inquiries expected of an experienced and competent contractor in relation to those Site Conditions before commencing the Works.

- (b) Subject to clause 11(c), the Contractor acknowledges and agrees that it has no entitlement to claim any additional payment, adjustment to the Contract Price or extension to the Date for Practical Completion whether under this Agreement or otherwise at law in connection with any Site Conditions.
- (c) The Principal does not warrant or make any representation about the accuracy or adequacy of any information, data or documents made available to the Contractor as to the existing conditions at the Site. Such information, data or documents do not form part of this Agreement.
- (d) Unless otherwise stated or agreed to by the parties, the Contractor must undertake all necessary pre-commencement inspections of the underground services at the Site.

11 LATENT CONDITIONS

- (a) If, during the execution of the Works, the Contractor becomes aware of a Latent Condition, the Contractor must give written notice to the Principal as soon as possible, and where possible, before the Latent Condition is disturbed.
- (b) If required by the Principal, the Contractor must provide to the Principal a statement in writing specifying:
 - (i) the Latent Condition encountered and in what respects it differs materially from what could have been anticipated by the Contractor having regard to what an experienced and competent contractor in the position of the Contractor would have anticipated;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
 - (iv) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (v) other details reasonably required by the Principal.
- (c) Delay caused by a Latent Condition may justify an extension of time under clause 18(g). If a Latent Condition causes the Contractor to:
 - (i) carry out more work;
 - (ii) use more plant; or
 - (iii) incur more cost (including but not limited to extra costs for delay or disruption),

than the Contractor could reasonably have anticipated at the time of tendering, a valuation will be made under clause 24.

12 PERSONNEL AND REPRESENTATIVES

- (a) The Principal may, at any time during the Works, remove or exclude from the Site or direct the Contractor to remove or exclude from the Site, any person the Principal considers may adversely affect the Works, the Project or the way in which the Works have been or may be carried out. The Contractor must promptly comply with any direction given under this clause 12(a) at its own cost.
- (b) The Contractor must superintend the Works personally or by a competent representative. The current Contractor's Representative is the person named in Annexure 1. The Contractor warrants that the Contractor's Representative:
 - (i) is responsible, competent and conversant with the Works and will co-ordinate and supervise all of the Contractor's employees and subcontractors while working on the Site; and
 - (ii) has authority to act on behalf of and bind the Contractor in all matters relating to the Works.
- (c) The Contractor must not change its Contractor's Representative without the Principal's prior written consent which consent must not be unreasonably withheld.
- (d) The Principal may from time to time appoint, and remove or alter the appointment of, a person to exercise any functions of the Principal under this Agreement. At the date of the Contract, the Principal's Representative is the person named in Annexure 1. There may be no more than one Principal's Representative at any one time. The appointment of a Principal's Representative does not prevent the Principal from exercising any function. The Principal must promptly notify the Contractor in writing of:
 - (i) the appointment and the name of any Principal's Representative and the functions delegated to the Principal's Representative; and
 - (ii) the termination of the appointment of a Principal's Representative.
- (e) The Contractor must ensure that the Key Personnel are dedicated to the Works and:
 - (i) are available at all times requested by the Principal's Representative;
 - (ii) are appropriately qualified, trained, instructed and skilled to carry out their respective roles and responsibilities;
 - (iii) attend all meetings requested by the Principal's Representative; and
 - (iv) properly perform their respective roles and responsibilities.
- (f) If any of the Key Personnel leave or give notice of their intention to leave the Contractor or become incapacitated, the Contractor must discuss

appropriate replacements with the Principal's Representative. The Contractor must obtain the Principal's Representative's prior written consent to any replacement of the Key Personnel.

13 DOCUMENTS AND INTELLECTUAL PROPERTY RIGHTS

- (a) The Contractor grants to the Principal an irrevocable, non-exclusive, perpetual, transferable, royalty-free licence to use Intellectual Property Rights in the Design Documents and any other documents produced by the Contractor in connection with this Agreement, which licence may be exercised by the Principal for any reason whether or not related to this Agreement or the Principal's use of the Works. The licence granted under this clause 13(a) must include the right for the Principal to sub-licence such rights to a third party.
- (b) The Contractor agrees to procure the irrevocable and unconditional consent of and waiver by the holder of any Moral Rights not to enforce any and all Moral Rights that such individual may have, presently or in the future, arising from the Intellectual Property Rights assigned to the Principal under clause 13, including by executing any Moral Rights consent and waiver required by the Principal.
- (c) The Contractor must provide the Principal with all calculations, certificates and other Approvals and any other information relating to the Works upon request and within the time specified by the Principal.
- (d) The Principal is not required to review, comment upon or check any of the documents provided by the Contractor as part of this Agreement. Any review or comment does not relieve the Contractor from responsibility for its errors, omissions or departures from the requirements of this Agreement.
- (e) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, sub-licensable, transferrable, royalty free licence to use, modify, enhance, alter or decompile any Intellectual Property Rights owned or held by the Contractor prior to the date of, or otherwise than in connection with, the Agreement (**Contractor's Existing IP**) which is reasonably required by the Principal for or in connection with the Works or the Principal's use of the Works.

14 QUALITY AND SAMPLES

- (a) All materials used by the Contractor must be new, unless otherwise directed by the Principal.
- (b) The Principal may request the Contractor to submit samples of any work or materials for its prior approval. All work or materials must be of at least equal quality to the approved sample otherwise

such work or material is deemed to be a Defect.

15 TESTING

- (a) At any time before the expiry of the Defects Liability Period, the Principal may direct that the Works be tested. The Contractor must give such assistance and samples and make accessible such parts of the Works as may be directed by the Principal.
- (b) The Principal may direct that any part of the Works will not be covered up or made inaccessible without the Principal's prior written direction.
- (c) Tests must be conducted by the Principal or a person (which may include the Contractor) approved by the Principal.
- (d) The Principal or the Contractor (whichever is to conduct the test) must give reasonable written notice to the other of the date, time and place of the test. If the other does not attend, the test may nevertheless proceed.
- (e) On completion of the tests, the Contractor must make good the Works so that they fully comply with the Contract.
- (f) Results of tests must be promptly made available by each party to the other.
- (g) Subject to clause 15(i), costs in connection with testing in accordance with clauses 15(a) to 15(f) will be borne by the Contractor. The Contractor warrants that it has made an allowance in the Contract Price in respect of such costs and acknowledges and agrees that it is not entitled to claim any additional cost or expense or any adjustment to the Contract Price in connection with testing.
- (h) The inspection and examination of materials and work by the Principal, and any consent to proceed resulting from such inspections, will not be taken as preventing the Principal from making further inspection and examination of the materials and work, and subsequently rejecting the materials and work if shown by such further inspection and examination to be in non-compliance with this Agreement. In deciding to carry out any further inspection and examination the Principal must act reasonably.
- (i) Costs in connection with further testing pursuant to clause 15(g) will be borne by the Principal and valued by the Principal in accordance with clause 24(h) except where the test is consequent upon, or reveals a failure of the Contractor to comply with this Agreement (including clauses 15(a) to 15(f)).

16 INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY

- (a) The parties acknowledge that nothing in this Contract transfers ownership of any Indigenous Cultural and Intellectual Property, and all rights and interests in the ICIP, including in relation to the Project, remain with the traditional owners of the ICIP. In the event that the Contractor becomes

aware of any ICIP in the course of carrying out the Works, the Contractor agrees to identify and provide written notice to the Principal of that ICIP.

17 WARRANTIES

- (a) Where warranties for materials incorporated into the works are commercially available from the manufacturers, agents and suppliers of the materials, the Contractor must provide or procure the warranties for the items listed in the Warranty Schedule for the period of time required for each item as stated in the Warranty Schedule and provide such warranties to the Principal and which must either be given for the benefit of, or must be directly enforceable by, the Principal no later than ten days before Practical Completion.
- (b) The provision by the Contractor of the warranties required to be provided under clause 17(a) does not limit, or relieve the Contractor of, any warranty, obligation or liability under this Agreement.

18 TIME AND PROGRESS

- (a) Within 5 Business Days after the date of this Agreement, the Contractor must submit to the Principal for approval a program for the performance of the Works. The program must:
 - (i) show the duration, sequence and dependencies of all major activities;
 - (ii) show the dates for provision of all drawings, manuals and other information and documents to the Principal under this Agreement;
 - (iii) highlight the critical path;
 - (iv) be in a hard copy and an electronic form approved by the Principal; and
 - (v) contain any other information reasonably required by the Principal.
- (b) Once approved by the Principal, the program is the **'Program'** for the Works.
- (c) The Contractor must update the Program at intervals as set out in Annexure 1 and provide a copy of this updated program to the Principal for approval.
- (d) If the Principal does not approve the program provided under clause 18(a) or any updated Program provided under clause 18(c), the Contractor must rectify any deficiencies and keep resubmitting it until it is approved.
- (e) The Principal must not unreasonably withhold its approval of the Program.
- (f) The Contractor must:
 - (i) carry out the Works in accordance with the Program as updated in accordance with this Agreement and the directions of the Principal;
 - (ii) notify the Principal of any interface activities or sequence of activities which may affect the progress of any part of the Works; and
 - (iii) complete the Works by the Date for Practical

Completion.

- (g) The Principal may grant an extension of time to the Date for Practical Completion if the Contractor provides notice of the delay within 5 Business Days of the delay commencing and demonstrates:
 - (i) in reasonable detail, the cause of the delay;
 - (ii) that the Contractor has:
 - (A) taken all reasonable steps to anticipate, minimise, mitigate or prevent the delay or the effect of the delay;
 - (B) demonstrated that the delay has caused or will cause delay to the critical path of the Works; and
 - (C) otherwise complied with its notice obligations under this clause 18(g); and
 - (iii) that the delay is due to:
 - (A) any act, default or omission by the Principal, its consultants or agents;
 - (B) a variation directed under clause 24(a) (other than in respect of a Defect), provided that the Contractor has otherwise complied with its obligations under this Agreement in respect of variations;
 - (C) state-wide Industrial Action that is not specific to the Site and that is not caused by, contributed to or involving the Contractor or its Subcontractors;
 - (D) a Latent Condition; or
 - (E) a Change in Statutory Requirement which is not reasonably foreseeable at the date of this Agreement,
 in each case except to the extent the delay is caused or contributed to by the Contractor, its employees, agents or subcontractors.
- (h) If some causes of delay fall within clause 18(g)(iii) and some do not, the Contractor is not entitled to an extension of time to the extent that the delays are concurrent.
- (i) Any extension of time to the Date for Practical Completion granted by the Principal under clause 18(g) must be in writing.
- (j) With the exception of any entitlement that the Contractor may have under clause 18(l) in respect of a Change in Statutory Requirement or clause 24(g) in respect of a variation, the Contractor acknowledges and agrees that it is not entitled to claim any additional payment or adjustment to the Contract Price under this Agreement or otherwise at law for or in connection with any cost, loss, damage or expense suffered or incurred by the Contractor by reason of any delay, disruption or loss of productivity.
- (k) A delay or failure by the Principal to grant an extension of time in accordance with this clause 18 does not cause the Date for Practical Completion to be set at large.
- (l) If a Change in Statutory Requirement occurs, the

Contractor must, within 5 Business Days of becoming aware of the Change in Statutory Requirement, give a written notice to the Principal which contains;

- (i) details of the Change in Statutory Requirement; and
- (ii) the Contractor's estimate of the impact (if any) on the Contract Price and the Works.

Should a Change in Statutory Requirement cause the Contractor to incur more or less cost than otherwise would have been incurred in respect of the Works, the difference in cost shall be assessed by the Principal and added to or deducted from the Contract Price.

19 FORCE MAJEURE

- (a) If either party is wholly or partially unable to perform its obligations (**Affected Party**) under this Agreement because of a Force Majeure Event, then:
 - (i) as soon as reasonably practicable after the Force Majeure Event arises, the Affected Party must notify the other party of the extent to which the Affected Party is unable to perform its obligations;
 - (ii) the Affected Party must take all reasonable steps (without having to incur any costs) to mitigate the effect of the Force Majeure Event; and
 - (iii) the Affected Party will not be liable to the other party for the losses the other party suffers or incurs as a result of that Force Majeure Event.
- (b) If a Force Majeure Event occurs and continues for a period of **[#90]** days, either party, at any time thereafter, by notice to the other party, terminate the Agreement.

20 PRACTICAL COMPLETION

- (a) The Contractor must give the Principal written notice as soon as it considers that Practical Completion has been achieved. This notice must be accompanied by a document which lists all Defects in the Works (**Contractor's Defects List**).
- (b) Within 10 Business Days after receiving that notice, the Principal must issue to the Contractor in writing:
 - (i) a certificate that Practical Completion has been achieved and stating the date on which it was achieved and a Defects list which incorporates all of the Defects on the Contractor's Defects List (**Principal's Defect List**); or
 - (ii) a notice setting out what remains to be done before Practical Completion will be achieved.
- (c) If the Principal issues a notice under clause 20(b)(ii), the Contractor must repeat the process in clause 20(b) until the Principal issues a certificate under clause 20(b)(i).

21 LIQUIDATED DAMAGES

- (a) If the Contractor fails to complete the Works by the Date for Practical Completion, the Contractor must

pay the Principal Liquidated Damages at the rate set out in Annexure 1 until the earlier of the Date of Practical Completion or termination of this Agreement. The Principal may recover all Liquidated Damages from the Contractor as a debt.

- (b) The parties agree that the rate of Liquidated Damages is a genuine pre-estimate of the loss and damage that the Principal will suffer if Practical Completion is not achieved by the Date for Practical Completion.
- (c) The Principal's entitlement to be paid Liquidated Damages under clause 21(a) does not limit the Principal's right to enforce any other remedy the Principal may have against the Contractor.

22 DEFECTS

- (a) Where the Principal, acting reasonably, directs the Contractor to rectify any defect, omission, error, fault, damage or work or material otherwise not in accordance with this Agreement (**Defect**), including by listing such Defect in the Principal's Defects List, the Contractor must rectify or procure the rectification of that Defect, within 7 Business Days or such longer period as is reasonably directed by the Principal.
- (b) In rectifying Defects in accordance with clause 22(a), the Contractor must undertake rectification:
 - (i) during the Permitted Work Hours or the work hours otherwise advised by the Principal; and
 - (ii) without inconvenience to the operation of the Zoo Grounds, and in doing so, co-ordinate with relevant subcontractors or suppliers (as the case may be) and conduct any necessary Site meetings.
- (c) Instead of a direction under clause 22(a) the Principal may instead direct the Contractor that it accepts a Defect. In this case, the Defect is deemed to be a variation and any resulting decrease in the value of the Works will be valued under clause 24(g).
- (d) If the Contractor fails to rectify any Defect to the Principal's reasonable satisfaction within the required time, the Principal may carry out the rectification work itself or by another contractor and the actual reasonable cost incurred by the Principal in so doing is a debt due from the Contractor to the Principal.
- (e) The Defects Liability Period commences on the Date of Practical Completion and continues for the period set out in Annexure 1. Clauses 22(a) to 22(d) apply whether the Defect is discovered prior to, at the time of or after the certificate of Practical Completion but before the end of the Defects Liability Period.
- (f) If a Defect is identified and rectified, the Defects Liability Period in respect of the rectification works associated with that Defect will commence on the date that rectification work is completed and continue for the period set out in Annexure 1.

23 DAMAGE TO PROPERTY

- (a) In relation to property on the Site:
- (i) the Contractor must immediately rectify any obstruction or damage to roadways and footpaths, drains and watercourses and other existing services in use on the Site caused by the Contractor. The Contractor must also provide temporary services while repairs are being carried out; and
 - (ii) the Contractor must immediately rectify or repair any interference with or damage to property caused by the Contractor.
- (b) The Contractor must clean and repair damage caused by installation or use of temporary work and restore existing facilities used during construction of the Works, to their original condition.
- (c) In relation to Adjoining Property:
- (i) the Contractor must immediately rectify any obstruction or damage to roadways and footpaths, drains and watercourses and other existing services adjacent to the Site caused by the Contractor. The Contractor must provide temporary services while repairs are carried out;
 - (ii) the Contractor must immediately rectify or repair any interference with or damage to Adjoining Property caused by the Contractor;
 - (iii) prior to commencing any work on Adjoining Properties, the Contractor and Principal must inspect any Adjoining Properties with the owner or occupiers of Adjoining Properties and make a record in writing of the condition the Adjoining Property at that time, signed by each of the Contractor and the relevant owner or occupant; and
 - (iv) as a pre-condition of Practical Completion of the Works, the Contractor and Principal must inspect any Adjoining Properties with the owners and occupants of those Adjoining Properties, recording any damage that has occurred since the pre-commencement inspection referred to in clause 23(c)(iii).
- (d) The Contractor must as agent for and on behalf of the Principal and the owner of the Adjoining Property provide all things, assume all risks and perform all necessary works in connection with protection works required under the *Building Act 1993* (Vic).

24 VARIATIONS

- Contractor must comply with any such direction after receipt of written approval from the Principal to proceed.
- (b) Subject to clause 24(d), within 5 Business Days of issue of a Variation Order and in any event before commencing work the subject of the Variation Order, the Contractor must provide the Principal with a detailed estimate of:
- (i) the cost of the variation including the time cost (if any); and
 - (ii) the time impact on the Date for Practical Completion (if any) of the variation, together a "**Variation Estimate**".
- (c) Subject to clause 24(d), notwithstanding that the Principal has issued a Variation Order, the Contractor must not undertake any variation unless it has:
- (i) provided a Variation Estimate in accordance with clause 24(b); and
 - (ii) received a written direction from the Principal to proceed with the work the subject of the Variation Order.
- (d) If work the subject of a Variation Order is urgent, the Principal may direct the Contractor in writing to proceed immediately and without the need to provide a Variation Estimate before proceeding with the work. In this case, the Contractor must provide the Principal with details of the cost of the variation including the cost (if any) and any impact on the Date for Practical Completion as soon as possible after receiving the written direction to proceed. The cost of the variation will be valued under clause 24(h).
- (e) If the Contractor considers that a direction issued by the Principal which is not otherwise described as a 'Variation Order' will or may give rise to a variation, it must notify the Principal of this in writing within 3 Business Days of issue and in any event, before commencing such work. Following receipt of a notice under this clause 24(e), the Principal must promptly issue a notice advising whether or not the subject direction is a Variation Order. If the Contractor fails to provide a notice in accordance with this clause 24(e), it has no entitlement to claim any additional payment, adjustment to the Contract Price or extension to the Date for Practical Completion whether under this Agreement or otherwise at law in connection with that work.
- (f) The Contractor may request that the Principal direct a variation for the convenience of the Contractor. The Principal may, but is not obliged to approve or direct a variation for the convenience of the Contractor. Any such direction approved by the Principal must be written and the Principal may impose any reasonable conditions it thinks fit. A variation for the convenience of the Contractor that is approved by the Principal will be valued in accordance with clause 24(h).
- (g) Provided the Contractor has complied with its

obligations under clauses 24(b) to 24(f), the Principal must:

- (i) value the cost impact of the variation under clause 24(h) and the Contract Price will be accordingly increased or decreased; and
 - (ii) assess the time impact (if any) under clause 18(g).
- (h) Where this Agreement provides for a valuation under this clause 24(h), the Principal must value the relevant work by reference to:
- (i) prior agreement;
 - (ii) applicable rates or prices in this Agreement;
 - (iii) rates or prices in any priced bill of quantities or schedule of rates to the extent that it is reasonable to use them; or
 - (iv) reasonable rates or prices as otherwise determined by the Principal.
- (i) The Contractor must provide any details and measurements to assist in the valuation of a variation upon the Principal's request.

25 PAYMENT

- (a) The Contractor is not entitled to claim payment under this Agreement unless it has returned an executed copy of this Agreement to the Principal, provided satisfactory evidence that it has effected and maintained all Required Insurances and complied with its obligations with respect to Security.
- (b) Subject to clause 25(a), the Contractor may submit a payment claim to the Principal by the time set out in Annexure 1 in respect of the part of the Works completed to the end of that period or milestone. The Contractor must provide further details and information in support of its payment claims upon the Principal's request.
- (c) Within 10 Business Days of receipt of the payment claim, the Principal must assess the claim and issue a payment schedule. The payment schedule must set out the amount which the Principal considers is due and payable to the Contractor and where this amount is less than the amount claimed, include the reasons for this difference.
- (d) If the amount set out in a payment schedule issued by the Principal in accordance with clause 25(c) is different to the amount claimed by the Contractor in its payment claim, the Contractor must issue a tax invoice to the Principal for the amount set out in the payment schedule within 2 Business Days of receipt of the payment schedule.
- (e) The Principal must pay the amount set out in the payment schedule:
- (i) where the Contract Price is less than \$3 million, within 30 Business Days of receipt of a valid tax invoice; or
 - (ii) within 30 Business Days after the date of the payment schedule subject to receipt of a valid tax invoice.
- (f) Any payment by the Principal is on account only and is not evidence that the Principal has approved the Works or any part of them.
- (g) The Contractor is only entitled to claim payment for unfixed plant or materials with the Principal's prior written consent, which consent may be conditional. Without limiting the foregoing, if requested by the Principal, the Contractor must provide additional security in the form specified in Annexure 1 and in an amount nominated by the Principal as a condition to the Principal giving such consent.
- (h) The Contractor warrants that, upon payment to the Contractor for unfixed plant and materials in accordance with clause 25(g), the unfixed plant and materials will be the unencumbered property of the Principal.
- (i) A payment claim must:
- (i) be addressed to the Principal's Representative, and may be posted or emailed to the address specified in Annexure 1 (as applicable);
 - (ii) be calculated in accordance with the Agreement;
 - (iii) be set out in a manner that enables the Principal to ascertain the Works to which it relates and the part of the Contract Price payable in respect of those Works;
 - (iv) contain a valid purchase order number, name and phone number of the Principal's Representative identified in Annexure 1;
 - (v) attach a statutory declaration (in the form attached to Attachment 5) that all workers and subcontractors who have at any time been employed by the Contractor on the Works have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment or engagement on the Works; and
 - (vi) include a tax invoice for the amount claimed in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (j) 10 Business Days after the later of:
- (i) the end of the Defects Liability Period; or
 - (ii) rectification of all Defects to the satisfaction of the Principal,
- the Contractor must give the Principal a written final payment claim being a progress claim together with all other claims under or in connection with this Agreement (**Final Payment Claim**). Any claims not included in the Final Payment Claim will be barred.
- (k) A Final Payment Claim must:
- (i) be endorsed 'Final Payment Claim'; and
 - (ii) meet the requirements for a payment claim set out in clause 25(i).
- (l) Within 10 Business Days of receipt of the Final Payment Claim or, where the Contractor fails to make such claim, the expiration of the period specified in clause 25(j) for the lodgement of the Final Payment Claim by the Contractor, the Principal must assess the claim and issue a final

certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of this Agreement.

- (m) The Principal must set out in the Final Certificate (**Final Certificate**) the calculations employed to arrive at the amount. Where a Final Payment Claim has been given in accordance with clause 25(j), and the amount of the Final Certificate is more or less than the amount claimed by the Contractor, the Principal must also set out in the Final Certificate the reasons for the difference.
- (n) Within 2 Business Days of receipt of the Final Certificate, the Contractor must submit a tax invoice to the Principal for the amount set out in the Final Certificate.
- (o) All moneys certified as due and payable must be paid by the Principal or the Contractor, as the case may be, within:
 - (i) where the Contract Price is less than \$3 million, within 30 Business Days, of receipt of a valid tax invoice; or
 - (ii) 30 Business Days of the end of the calendar month in which the tax invoice was submitted.
- (p) The Final Certificate is conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of this Agreement except for:
 - (i) fraud or dishonesty relating to the Works or any part thereof or to any matter dealt with in the Final Certificate;
 - (ii) any Defect or omission in the Works or any part thereof which was not apparent at the end of the last Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate;
 - (iii) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
 - (iv) unresolved issues the subject of any notice of dispute pursuant to clause 32(a), served before the 5th Business Day after the issue of the Final Certificate.
- (q) Notwithstanding anything else contained in this Agreement, the Principal may retain any Security provided by the Contractor to the Principal until final resolution of any dispute regarding the Contractor's entitlement to the issue of the Final Certificate and payment to the Principal of any amount determined to be payable to the Principal by the Contractor in connection with the resolution of such dispute.
- (r) Any tax invoice required to be issued under this Agreement must:
 - (i) be addressed to Zoos Victoria's Accounts Payable Department, and may be posted or emailed to the address specified in Annexure 1

(as applicable);

- (ii) be for the scheduled amount (or where no scheduled amount is issued, the claimed amount); and
- (iii) be in the form of a valid tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (s) If any money due to either party remains unpaid after the last date upon which they should be paid, interest at the rate set out under the *Penalty Interest Act 1983* (Vic) will be due and payable on that sum after the date of default in payment until such time as the sum is paid.
- (t) The Contractor's entitlement to interest for late payments under clause 25(s) is conditional on the Contractor providing written notice in relation to the late payment to the Principal.
- (u) In the event that a tax invoice issued under clause 25(d) or 25(n) is disputed:
 - (i) the parties must use best endeavours to co-operatively resolve the dispute otherwise clause 32 applies;
 - (ii) the time period in clause 25(e) or 25(o) (as applicable) is suspended until the amount payable under the tax invoice is agreed between the parties; and
 - (iii) once resolved, the Contractor must issue an updated tax invoice within 2 Business Days and the Principal must make payment for the updated amount on the tax invoice within 30 Business Days.

26 GST

- (a) Unless otherwise stated, all amounts and values referred to in this Agreement are exclusive of GST.
- (b) To the extent that any supply from one party (**Supplier**) to another party (**Recipient**) under this Agreement constitutes a taxable supply for GST purposes (**Taxable Supply**), an amount equal to the GST chargeable on that Taxable Supply, as between the Supplier and the Recipient, will be payable by the Recipient to the Supplier in addition to the amount payable for the Taxable Supply. The Recipient will pay the GST amount at the same time and in the same manner as payment for the Taxable Supply is required, provided that on or before that time the Supplier has issued to the Recipient a GST Invoice.

27 SECURITY OF PAYMENT

- (a) If the Contractor is entitled to suspend the whole or part of the Works under the Security of Payment Act and does in fact suspend under that Act, the suspension does not affect the Date for Practical Completion, but the Contractor may be entitled to an extension of time if such extension is otherwise permitted under clause 18(g).
- (b) The Contractor must immediately notify the Principal in writing if any of its subcontractors are

or may be entitled to exercise a right to suspend work, whether under the Security of Payment Act or otherwise.

- (c) The Contractor must recommence work after any suspension under the Security of Payment Act on the day after the next clear Business Day following the Contractor receiving payment of the relevant amount or as otherwise agreed in writing between the parties.
- (d) The Contractor must give the Principal a copy of any communication or determination given to the Contractor by an adjudicator or by a Subcontractor of the Contractor under the Security of Payment Act on the same day as such communication or determination is given to the Contractor.
- (e) If the Contractor applies for adjudication under the Security of Payment Act it must apply to an Authorised Nominating Authorities.

28 INSURANCE

- (a) Before commencing the Works, the Contractor must at its own cost arrange:
 - (i) public liability insurance in respect of personal injury, death and property damage as set out in 'Insurance Limits' in Annexure 1;
 - (ii) contract works insurance in respect of loss and damage to the Works resulting from any cause for an amount as set out in 'Insurance Limits' in Annexure 1;
 - (iii) workers compensation and employer's liability insurance for all of the Contractor's employees and anyone else treated as an employee of the Contractor under any Statutory Requirement or at general law;
 - (iv) insurance of motor vehicles, plant and equipment covering loss, damage, theft and third party injury for cover not less than their full reinstatement value and otherwise as required by any Statutory Requirement or at general law; and
 - (v) any other insurance required under any Statutory Requirement, including under the *Building Act 1993* (Vic).
 (each a **Required Insurance**).
- (b) Both the insurer and the terms of the Required Insurance must be acceptable to the Principal, acting reasonably. The public liability and the contract works policy must be in the name of the Contractor and note the interests of the Principal and such other persons as notified in writing by the Principal. The Contractor must notify the Principal immediately of any cancellation of a Required Insurance policy and of any change to the policy which affects the Principal's interests. The Contractor must maintain the Required Insurance until the end of the Defects Liability Period.
- (c) The Contractor must, prior to the commencement of the Works and at any other time upon the Principal's request, provide in respect of the Required Insurance:

- (i) a copy of the insurer's policy document;
- (ii) a certificate of currency; and
- (iii) evidence that all premiums have been paid.

- (d) If the Contractor fails to provide satisfactory evidence of compliance with its insurance obligations under this Agreement, the Principal may effect and maintain the relevant Required Insurance and the cost of doing so is a debt due from the Contractor to the Principal.

29 INDEMNITIES

- (a) The Contractor continually indemnifies the Principal against any liability, loss, damage, cost or expense suffered or incurred by the Principal which arises out of or in connection with the Contractor's, or any of the Contractor's personnel's or subcontractor's, breach of this Agreement, negligent act or omission, fraud or wilful misconduct.
- (b) The Contractor's liability under clause 29(a) will be reduced in proportion to the extent that an act or omission of the Principal contributed to the claim, demand or proceeding or any liability, cost, loss or expense, as the case may be.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the Contractor's other obligations and survives termination of this Agreement.

30 TERMINATION

- (a) If either party is or becomes insolvent or steps are taken to make that party insolvent or execution is levied against that party, or a mortgagee, administrator or controller (as defined in the *Corporations Act 2001* (Cth)) seeks to exercise any right of possession, management or control over any of that party's property or is appointed to that party, the other party may, without prejudice to its other rights or remedies by written notice effective immediately terminate this Agreement.
- (b) If the Contractor commits a substantial breach of this Agreement, the Principal may give the Contractor a written notice to show cause. Substantial breaches include, but are not limited to where the Contractor:
 - (i) wrongfully suspends the Works;
 - (ii) fails to proceed with the Works regularly, with due expedition, diligently and in a competent manner;
 - (iii) fails to comply or unreasonably delays in complying with a direction from the Principal;
 - (iv) fails to achieve Practical Completion by the Sunset Date;
 - (v) provides a statutory declaration pursuant to clause 25(i)(v) that is false; or
 - (vi) commits any other substantial or material breach of this Agreement.
- (c) A notice under this clause must state that:

- (i) it is a notice under clause 30(b) of this Agreement;
 - (ii) the alleged substantial breach;
 - (iii) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in clause 30(d);
 - (iv) the date and time by which the Contractor must show cause (which must not be less than 7 clear days after the notice is received by the Contractor); and
 - (v) the place at which cause must be shown.
- (d) If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:
- (i) take out of the Contractor's hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable; or
 - (ii) terminate this Agreement.
- (e) If the Principal commits a substantial breach of this Agreement, the Contractor may give the Principal a written notice to show cause. Substantial breaches include where the Principal:
- (i) fails to make a payment due and payable under this Agreement after the time for payment and which is not the subject of a bona fide dispute; or
 - (ii) fails to provide access in accordance with the requirements of this Agreement.
- (f) A notice under this clause must state that:
- (i) it is a notice under clause 30(f) of this Agreement;
 - (ii) the alleged substantial breach;
 - (iii) that the Principal is required to show cause in writing why the Contractor should not exercise a right referred to in clause 30(g);
 - (iv) the date and time by which the Principal must show cause (which must not be less than 7 clear days after the notice is received by the Principal); and
 - (v) the place at which cause must be shown.
- (g) If the Principal fails to show reasonable cause by the stated date and time, the Contractor may by written notice to the Principal suspend the whole of any part of the Works until such time as the Principal remedies the breach or, if the breach is not capable of remedy, makes other arrangements to the reasonable satisfaction of the Contractor. If the Principal fails to remedy the breach or, if the breach is not capable of remedy, make other arrangements to the reasonable satisfaction of the Contractor, within 20 Business Days of the date of suspension, then the Contractor may terminate the Agreement.
- (h) Upon the Principal taking over the Works or any part of them under clause 30(d)(i) or following termination of this Agreement, whether under clause 30(d)(i) or otherwise at law, the Contractor

must, without entitlement to further payment:

- (i) cease performance of the Works within the time directed by the Principal;
 - (ii) promptly:
 - (A) assign to the Principal the benefit of all agreements in relation to the Works for hire or supply of materials or execution of work; and
 - (B) give the Principal possession of any equipment, plant or other things owned by the Contractor that are on or in the vicinity of the Site and any documents, information or other materials produced by the Contractor, which the Principal reasonably requires for completion of the Works;
 - (iii) otherwise demobilise its equipment and personnel from the Site; and
 - (iv) in all circumstances mitigate its costs,
- (i) The Principal may for any reason whatsoever, in its absolute discretion, terminate this Agreement by providing to the Contractor 30 Business Days written notice of its intention to terminate. If this Agreement is terminated pursuant to this clause 30(i), then the Contractor will be entitled to payment for:
- (i) the value of Works completed up to the date of receipt of the notice of termination; and
 - (ii) the Contractor's reasonable costs associated with demobilisation of the Work.

31 SUSPENSION

- (a) The Principal may, acting reasonably, at any time suspend performance of the Contractor's obligations under this Agreement or restart the Works by giving the Contractor notice.
- (b) Subject to clause 31(c), when the Contractor receives a notice of suspension from the Principal in accordance with clause 31(a), the Contractor must suspend performance of the relevant obligations until such time as the Principal directs the Contractor to resume performance of those obligations by notice in writing. At such time, the Contractor must promptly recommence the performance of those obligations in accordance with this Agreement.
- (c) The Contractor may terminate this Agreement by providing the Principal with 30 Business Days' written notice if:
 - (i) the Principal suspends the performance of the Supplier's obligations pursuant to clause 31(a);
 - (ii) such suspension was not caused by or arising from the Contractor's breach of its obligations under this Agreement; and
 - (iii) the suspension has exceeded a period of 3 months from the date of suspension set out in a notice sent pursuant to clause 31(a).
- (d) The Contractor acknowledges and agrees that it has no entitlement to claim any additional payment, adjustment to the Contract Price or extension to the

Date for Practical Completion whether under this Agreement or otherwise at law in connection with such suspension to the extent such suspension was caused or contributed to by any act, omission or breach of the Contractor.

32 DISPUTE RESOLUTION

- (a) If a dispute arises under this Agreement, either party may within 20 Business Days give written notice setting out the nature of the dispute and requesting that a settlement meeting take place.
- (b) Senior representatives of each party (who must have authority to settle the dispute) must meet within 5 Business Days of the notice and endeavour to resolve the dispute in good faith.
- (c) In the event that the meeting does not resolve the dispute within a further 20 Business Days or the dispute is not otherwise resolved within this time, the parties are free to pursue their rights at law.
- (d) Nothing in clauses 32(a) to (c) prevents a party from taking any steps to enforce payment due under this Agreement or to seek injunctive or urgent relief in respect of a dispute or any other matter arising under this Agreement.
- (e) Despite the existence of a dispute, the Contractor must continue to carry out the Works in accordance with this Agreement.

33 CONFIDENTIAL INFORMATION

- (a) Each party must keep all Confidential Information absolutely confidential and undertakes to the other party that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:
 - (i) as is necessary for the party to perform its obligations under this Agreement;
 - (ii) as required by any Statutory Requirement, Victorian government policy, court order or the listing rules of the Australian Stock Exchange to be disclosed;
 - (iii) if the party is the Principal, any disclosure the Principal determines in the Principal's discretion to release to, or in order to comply with a decision or request for information made by the Victorian Freedom of Information Commissioner, the IBAC, the Ombudsman Victoria, the Victorian Inspectorate or the Victorian Auditor General's Office; or
 - (iv) as is permitted under this Agreement, or otherwise agreed in writing by the other party, except that this does not permit disclosure under section 275 (1) of the PPS Act unless section 275 (7) of the PPS Act applies.
- (b) Clause 33(a) constitutes a confidentiality agreement within the meaning of the PPS Act. Each of the Principal and Contractor agrees not to authorise or request disclosure of information for the purposes of sections 275(7)(c) or (d) of the PPS Act and waives any right it may have, or but for this

clause may have had, to authorise or request such disclosure.

34 PERSONAL PROPERTY SECURITIES ACT

(a) If:

- (i) the Principal determines that the PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
- (ii) in the reasonable opinion of the Principal, the PPS Law:
 - (A) adversely affects or would or may adversely affect the Principal's security position or the rights or obligations of the Principal under or in connection with the Transaction Documents or any of the transactions contemplated by them; or
 - (B) enables or would enable the Principal's security position to be improved without adversely affecting the Contractor in a material respect,

the Principal may give notice requiring the Contractor do anything (including amending any Transaction Document or executing any new Transaction Document), and ensure that its employees, agents and subcontractors do anything, that in the Principal's reasonable opinion is necessary to ensure that, to the maximum possible extent, the Principal's security position (and rights and obligations) are not adversely affected as contemplated by clause 34(a)(ii)(A) (or that any such adverse effect is overcome), or that the Principal's security position is improved as contemplated by clause 34(a)(ii)(B).

- (b) To the extent the Principal believes it is necessary to protect its interests, the Principal may register any Security Interest the Principal acquires or receives in relation to the Works immediately upon title in those Works passing to the Principal or the Security Interest arising (as applicable).
- (c) The Contractor must:
 - (i) provide the Principal with details of the construction plant and material owned by the Contractor used in connection with the Works to enable the Principal to search the PPS Register;
 - (ii) comply with the requirements of a notice given by the Principal under clause 34(a) within the time stipulated in the notice;
 - (iii) in respect of any Security Interest with a value in excess of the amount set out in Annexure 1 which the Contractor acquires or receives the benefit of under or in respect of the Transaction Documents or any of the transactions contemplated by them:
 - (A) identify, protect and perfect with the highest priority available in that Security Interest; and
 - (B) register that Security Interest in the name of the Contractor immediately upon it being entitled to register the Security Interest on the PPS Register; and

- (iv) assist the Principal to register and improve any Security Interest by:
 - (A) removing any Security Interest which the Contractor previously had in the relevant Works from the PPS Register; and
 - (B) ensuring that all subcontractors remove any Security Interest which the subcontractors previously had in the relevant Works from the PPS Register.
- (d) The parties agree that:
 - (i) the Contractor may not exercise rights under sections 96 (retention of an accession), 142 (redemption of collateral) or 143 (reinstatement of security agreement) of the PPS Act to the extent the law permits those rights to be excluded;
 - (ii) the Principal need not comply with any provisions of the PPS Act that the parties may contract out of in relation to collateral subject to a Security Interest;
 - (iii) the Principal need not give the Contractor any notice required under the PPS Act (including a notice of verification statement) unless the notice cannot be excluded; and
 - (iv) nothing in clauses 34(a) to 34(c) affects (or will require a party to amend any Transaction Document so as to affect) the time at which title passes in accordance with clause 25(h).

35 AUDIT AND OTHER ACCESS TO RECORDS

- (a) The Contractor must permit an accountant or auditor authorised by 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 this Agreement and the Contractor and its personnel and any Subcontractor must give 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 35(a) must be treated as confidential information and must not be used other than for the purposes of this Agreement or disclosed other than as required to comply with the written request of the Auditor General for Victoria.
- (b) The confidentiality obligations of the parties in clauses 33(a) to 33(b) does not extend to the circumstances listed in clause 35(a), and does not extend to information reasonably required in order to publish appropriate and comprehensive performance data relating to the Works.

36 CONFLICTS OF INTEREST

- (a) The Contractor warrants to the Principal that neither it, nor any contractor, consultant or employee of the Contractor has, at the date of this Agreement, any conflict of interest or duty in relation to the Works.
- (b) If the Contractor becomes aware of any

circumstances, arrangements, corporate relationships or understandings that constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest or duty of the Contractor or any contractor, consultant or employee of the Contractor, the Contractor must immediately notify the Principal and describe how it proposes to manage any such actual, potential or perceived conflict of interest or duty.

- (c) The Principal may direct the Contractor in relation to a conflict of interest or duty of the Contractor in relation to the Works. The Contractor must comply with any direction of the Principal given under this clause 36. The Contractor will not be entitled to make any claim (including a claim for an extension of time or a variation) against the Principal for complying with the requirements of, or a direction given under, this clause 36.
- (d) This clause 36 survives the termination of this Agreement.

37 SITE MEETINGS

- (a) The Principal's Representative and the Contractor's Representative must attend Site meetings throughout the term of this Agreement and must ensure attendance of appropriate subcontractors and other personnel. These Site meetings are to be held every 1 to 2 weeks and chaired by the Contractor.
- (b) The Contractor must keep minutes of Site meetings, and within 2 Business Days after each meeting, submit to the Principal a copy of the minutes for their review. If an error has occurred in the transcribing of the minutes, the minutes may be amended by mutual agreement.
- (c) At the first Site meeting, the parties are to submit names and all relevant contact details of responsible persons who may be contacted after Permitted Work Hours during the course of this Agreement.

38 SITE REPORT

- (a) The Contractor must provide the Principal with a Site report in accordance with Annex 1. This report must include a video of the Site Conditions recording the condition of the Site generally with particular attention to the existing trees. The Contractor must take colour progress photographs within 7 days before each Site meeting which must be provided to the Principal prior to that Site meeting, clearly identifying the Project name, date, time, location and orientation.

39 SIGNAGE

- (a) Project signage is to be in the form as agreed with the Principal at the first Site meeting between the parties.

40 MODERN SLAVERY

- (a) The Contractor acknowledges that the Principal

has obligations to comply with Modern Slavery Laws, and represents and warrants to the Principal that, at the date of entering into this Agreement, the Contractor:

- (i) will comply with Modern Slavery Laws; and
 - (ii) takes and will continue to take reasonable steps to identify, assess and address the risk of, and prevent and mitigate the occurrence of, Modern Slavery Offences within its operations and supply chains.
- (b) Without limiting clause 40(a), the Contractor represents and warrants to the Principal that in relation to any services or goods procured from, or subcontracted or outsourced to, third parties for the provision of the services or goods under this Agreement, the Contractor has taken, or will, prior to procuring, sub-contracting or outsourcing any such services or goods from or to a third party, take all reasonable steps to conduct due diligence and implement remediation processes to confirm that such third party is complying with its obligations under the Modern Slavery Laws.

41 MISCELLANEOUS

(a) In this Agreement:

- (i) all references to days are to calendar days except where otherwise provided; and
- (ii) the word 'include' in any form is not a word of limitation.

(b) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

(c) The parties' addresses and representatives for written notices are specified in Annexure 1. Subject to the paragraph below, a notice delivered or sent to such address (or substitute address that has been notified in writing to the other party) is to be treated as given:

- (i) if sent by hand, at the time of delivery;
- (ii) if sent by mail, 5 Business Days after the day of posting; and
- (iii) if sent by email, at the time the sender sends the email.

(d) If delivery or receipt of a notice sent by hand, fax or email is not on a Business Day or is after the ordinary business hours of the party to whom it is sent, it is to be treated as given at 9 am on the next Business Day.

(e) A waiver by the Principal is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given.

(f) The Contractor must not assign this Agreement or subcontract any part of the Works to any other contractor without the Principal's prior written

consent, which may be conditional (including a condition that the subcontract include terms which are consistent with Agreement), unless in the case of subcontracting, the Subcontractor is a Preapproved Subcontractor in respect of that part of the Works. No such consent relieves the Contractor from any of its obligations under this Agreement or impose any liability upon the Principal to any assignee or subcontractor. The Contractor is liable to the Principal for the acts, defaults and omissions of its subcontractors and the employees and agents of subcontractors as if they were those of the Contractor.

(g) This Agreement is governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of its courts and courts of appeal from them.

(h) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives the expiry or termination of this Agreement.

(i) If any law making unfair contract terms void could apply to a term in this Agreement, the following rules of interpretation apply to interpreting that term:

(i) if the law would make the term void because the term permits the Principal to exercise a right or discretion in a way or to an extent that would cause detriment to the Contractor, the term will be read down and construed so as not to permit the Principal to exercise the right or discretion in such a way or to such an extent but otherwise the term will be construed as permitting the Principal to exercise the right or discretion in all ways and to any extent consistent with the term;

(ii) if the law would make the term void because the term imposed a particular amount for a fee or change, the term will be read down and construed as authorising the maximum amount for the fee or change which would not cause the term to be void;

(iii) if the law would make the term void because it authorised the Principal to recover costs or losses or damages to be calculated by the Principal in a specified way or in a way the Principal chooses, the term will be read down and construed as authorising the Principal to recover the maximum reasonable costs, losses and damages to be calculated in a reasonable way that did not cause the term to be void; and

(iv) if despite the application of the rules in clauses 41(i)(i), 41(i)(ii) or 41(i)(iii) to the term, the law would make the term void, the term is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term is not void.

These reading down rules apply before any other reading down or severance rule in this Agreement.

(j) The parties acknowledge that the Contractor is the Principal's contractor but not the Principal's

employee, agent or partner.

- (k) Any provision of this Agreement which a court holds to be void or is otherwise invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the voidness, invalidity or unenforceability, without affecting the remaining provisions.
- (l) No amendment to or variation of this Agreement is valid or binding on a party unless made in writing and signed by both parties.
- (m) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

42 ELECTRONIC SIGNING AND COUNTERPARTS

- (a) Each party agrees that this Agreement may be executed by electronic signature (regardless of the form of electronic signature utilised) and that this method of signature is conclusive of the parties' intention to be bound by this Agreement as if the physical signing had occurred.
- (b) This Agreement may be executed in any number of counterparts and by the parties on separated counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each party may communicate its execution of this Agreement by successfully transmitting an executed copy of the Agreement by an electronic method to each party.

43 SUPPLIER CODE OF CONDUCT OBLIGATIONS

Code compliance

- (a) The Contractor acknowledges that the Supplier Code of Conduct applies to the Agreement and undertakes that throughout the duration of the Agreement it will comply with the Supplier Code of Conduct, all applicable laws and regulations, and all obligations under this clause 43.
- (b) The Contractor must:
 - (i) establish all necessary policies and systems to monitor compliance by the Contractor with the Supplier Code of Conduct; and
 - (ii) monitor its compliance with the Supplier Code of Conduct on a regular basis throughout the duration of the Agreement in accordance with the policies and systems established under clause 43(b)(i).
- (c) The Contractor must promptly provide any information requested by the Principal related to:
 - (A) the compliance by the Contractor with the Supplier Code of Conduct; and
 - (B) any policies or systems established to monitor the compliance by the Contractor

with the Supplier Code of Conduct.

- (d) The Contractor must ensure that its personnel engaged in the performance of the Agreement:
 - (i) comply with clauses 43(a) and 43(b)(ii) as though those requirements apply directly to them;
 - (ii) provide to the Contractor, on request by the Principal, a declaration of their compliance with the Supplier Code of Conduct, and with any policies or systems established to monitor the compliance by the Contractor with the Supplier Code of Conduct in the form required by the Principal from time to time; and
 - (iii) who have, or are suspected of having, breached the Supplier Code of Conduct do not remain engaged in the performance of the Agreement and return, or where directed by the Principal, destroy all of the Principal's Confidential Information in their possession, custody or control.
- (e) Where used in clause 43, the term "**Compliance Event**" means a failure to comply with this clause 43.

Code Investigation

- (f) The Contractor agrees that:
 - (i) the Principal may from time-to-time conduct an investigation into the character, integrity, honesty or other aspects of compliance with the Supplier Code of Conduct of the Contractor or any of its personnel ("**Code Investigation**"), which may include:
 - (A) investigations into commercial structure and ownership, business and credit history, prior contract compliance or any criminal records or pending charges; and
 - (B) interviews of any person or research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation; and
 - (ii) if the Principal requests in writing that the Contractor or a third party nominated by the Principal to carry out the Code Investigation, the Contractor must carry out, or have carried out as requested, the investigation and provide a full report to the Principal; and
 - (iii) the Contractor must procure all relevant consent from people who will be the subject of a Code Investigation.

Notice – Compliance Event

- (g) The Contractor must immediately notify the Principal in writing on becoming aware that a Compliance Event has occurred or is likely to have occurred, describing the circumstances giving rise to the actual or likely occurrence of the Compliance Event, when it occurred or is likely to have occurred and any of the Contractor's personnel involved.
- (h) Upon delivery of a notice under clause 43(g) or if the Principal otherwise becomes aware of a Compliance Event or likely Compliance Event,

without prejudice to any other rights the Principal may have in relation to the Compliance Event, then:

- (i) the Contractor must take any action directed by the Principal to remedy or otherwise address the Compliance Event;
- (ii) without limiting clause 43(h)(i), the Principal and the Contractor must meet within 5 Business Days and use reasonable endeavours to agree a course of action that will be taken by the Contractor to remedy the Compliance Event (including timing) and to ensure that it does not reoccur; and
- (iii) the Contractor must comply with any agreement made under clause 43(h)(ii) and provide any reports or other information about the Contractor's progress in implementing any agreement made under clause 43(h)(ii) as may reasonably be requested by the Principal from time to time.

Additional rights of Principal

- (i) The occurrence of a Compliance Event or a breach of 43 will constitute a material breach of the Agreement, and the Principal may, without prejudice to other remedies under the Agreement, in its sole and absolute discretion suspend or terminate the Agreement, immediately by written notice to the Contractor, upon receipt of which the Contractor must immediately cease all work under the Agreement.
- (j) The Contractor acknowledges that a failure to comply with this clause 43 may be considered by the Principal and other Victorian public entities in any future approach to market or their respective procurement processes, and that such information may be shared with those Victorian public entities.
- (k) The reasonable costs incurred by the Principal in connection with this clause 43 will be a debt due and payable by the Contractor to the Principal on demand.
- (l) The Contractor will comply with its obligations under this clause 43 at its cost and without any additional charge to the Principal.

44 REPORTING CRIMINAL CONDUCT AND UNLAWFUL CONDUCT OBLIGATIONS

The Contractor:

- (a) must comply with and ensure that its officers, employees and subcontractors comply with the RCUC Policy in connection with performing the work under the Contract on the basis that a reference to a contractor in the RCUC Policy is a reference to the Contractor;
- (b) acknowledges that the RCUC Policy applies to the Contract and does not limit in any way the Contractor's or its officers', employees', agents' and subcontractors' obligations under this Contract, at law or under any other policy;
- (c) must report Criminal Conduct and Unlawful Conduct in accordance with the RCUC Policy;

- (d) must, and must ensure that each of its subcontractors, immediately advise the Principal of any report made by the Contractor or its subcontractors to the WIV or a Relevant Regulator under the RCUC Policy unless prohibited by law;
- (e) agrees that notwithstanding any other clause in this Contract, if the Contractor does not comply with the requirements of this clause 44, the Principal may, in its absolute discretion, do any or all of the following:
 - (i) require the Contractor to implement any corrective or remedial action to rectify the breach, including the removal of any individual or subcontractor involved with the Criminal Conduct or Unlawful Conduct;
 - (ii) request or recommend the suspension or removal of the Contractor from pre-qualification schemes and panel arrangements related to Victorian public construction procurement;
 - (iii) share information about the Contractor with other departments, agencies and the Construction Supplier Register;
 - (iv) suspend the Contract until such time as the breach has been remedied to the satisfaction of the Principal;
 - (v) by written notice immediately terminate the Contract; and/or
 - (vi) exercise any other rights under the Contract or at law.

45 DEFINITIONS

In this Agreement all defined terms have the meaning given in this document, unless the context otherwise requires and:

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

'Approvals' means permits, licences, certificates, registrations, approvals and authorisations;

'Authorised Nominating Authority' means the person authorised by the Building Commission pursuant to section 42 of the Security of Payment Act to nominate persons to determine adjudication applications as set out on the ANR Register published by the Victorian Building Association; **'Business Day'** means Monday to Friday inclusive, excluding statutory and public holidays applicable in the Jurisdiction, save that where the Security of Payment Act applies, it means what it means under the Security of Payment Act; **'Change in Statutory Requirement'** means any amendment, repeal, modification or enactment of any Statutory Requirements that:

- (i) is beyond the reasonable control of the Contractor; and
- (ii) could not reasonably then have been anticipated by a prudent, competent and experienced contractor;

'Confidential Information' means any information or data, whether or not in a material form, which is

confidential to a party including confidential information acquired, collected or developed for the purpose of the carrying out of the Works under this Agreement or this Agreement except that which is:

- (i) already in the public domain otherwise than as a result of a breach of this Agreement; or
- (ii) disclosed pursuant to legal requirement or order, except for information which is required by the Victorian Freedom of Information Commissioner, the IBAC, the Victorian Inspectorate or the Ombudsman Victoria to be disclosed;

'Contract Price' means the amount specified in Annexure 1;

'Contractor' means the party named in Annexure 1; **'Contractor Approvals'** means all Approvals, including any Approvals set out in Annexure 1, other than the Principal Approvals;

'Contractor's Representative' means the person appointed by the Contractor as its representative under clause 12(b);

'Criminal Conduct' has the same meaning as under the RCUC Policy;

- (i) RCUC Policy means the Reporting Criminal and Unlawful Conduct on Public Construction Projects policy of the Victorian Government dated December 2025 as updated from time to time and available at <https://www.vic.gov.au/reporting-criminal-and-unlawful-conduct-public-construction-projects-policy> (or such other location as notified by the Principal).
- (ii) Relevant Regulator includes each of the regulatory authorities or law enforcement agencies described in the RCUC Policy;
- (iii) Unlawful Conduct has the same meaning as under the RCUC Policy;
- (iv) WIV means Workforce Inspectorate Victoria, or any successor body responsible for receiving, referring or coordinating reports of Criminal Conduct and Unlawful Conduct in connection with Public Construction.

'Date for Practical Completion' means:

- (i) the date or period of time specified in Annexure 1 for achievement of Practical Completion of the Works; or
- (ii) where another date is determined in any arbitration or litigation as the date for achievement of Practical Completion for the Works, that other date,

as may be adjusted in accordance with clause 18(g);

'Date of Practical Completion' means:

- (i) the date evidenced in a certificate of practical completion as the date upon which practical completion was reached under clause 20(a); or
- (ii) where another date is determined in any arbitration or litigation as the date upon which practical completion was reached, that other

date;

'Defect' has the meaning in clause 22(a);

'Defects Liability Period' means the defect liability period(s) for the Works determined in accordance with clauses 22(e) and 22(f);

'Design Documents' means any plan, model, sketch, drawing, calculation, specification or any other document whatsoever prepared by or on behalf of the Contractor;

'Environmental Law' means the *Environmental Protection Act 2017* (Vic), any relevant regulation and ancillary legislation in respect of the environment or any similar environmental legislation in another jurisdiction of which the Principal is required to comply;

'Environmental Obligation' means any Law concerning the environment that pertains to the Zoo Grounds or the Site, or, if applicable, any environmental management plan that is required to be prepared;

'Final Certificate' has the meaning in clause 25(l);

'Final Payment Claim' has the meaning in clause 25(j);

'Force Majeure Event' means any:

- (i) fire, flood, earthquake or act of God; or
- (ii) riot, civil disorder, rebellion or revolution,

and excludes the COVID-19 pandemic, but in each case only if and to the extent that the Contractor is without fault in causing or contributing to the event, and the event, or its effect, could not have been prevented by reasonable precautions (without requiring the Contractor to incur any costs) including:

- (iii) invoking any relevant disaster recovery plan;
- (iv) appropriate workload management practices; and
- (v) any other prudent back up or recovery procedures;

'Government Authority' means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, authority, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Works, the Site or the Project including any entity which has responsibility for the provision of utility services to the Project including but not limited to electricity and water;

'IBAC' means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission;

'Indigenous Cultural and Intellectual Property' or **'ICIP'** means rights in the cultural heritage belonging to Australian Aboriginal and Torres Strait Islander (Indigenous) peoples, including but not limited to:

- (i) all objects, sites and knowledge, the nature or use of which has been transmitted or continues

to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory;

- (ii) literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
- (iii) scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and phenotypes of flora and fauna);
- (iv) traditional knowledge of culture, climate and ecosystem that shape and inform design principles, including processes of community consultation and evaluation of housing design;
- (v) items of movable cultural property and immovable cultural property (including sacred and historically significant sites and burial grounds);
- (vi) human remains and tissues; and
- (vii) documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

'Industrial Action' means either of the following types of actions if that action also constitutes a 'protected industrial action' under the *Fair Work Act 2009* (Cth):

- (i) the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work; or
- (ii) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work,

provided that the action was not caused or contributed by the Contractor or the performance of the Works;

'Intellectual Property Rights' means any patent, registered design, trademark or name, copyright or other protected right, including any Moral Rights;

'Key Personnel' means those persons (if any) identified in Annexure 1;

'Latent Condition' means:

- (i) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's tender if the Contractor had:
 - (A) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering;
 - (B) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - (C) inspected the Site and its surroundings including through pre-commencement Site

inspections of the underground services; and

- (ii) any other conditions which this Agreement specifies to be Latent Conditions;

'Law' means any legislation and includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation;

'Liquidated Damages' means the delay liquidated damages as specified in the Annexure 1;

'Modern Slavery Laws' means the *Modern Slavery Act 2018* (Cth) and any relevant regulations or ancillary legislation published in respect of the above or any similar modern slavery legislation in another jurisdiction of which the Principal is required to comply;

'Modern Slavery Offence' means:

- (i) any conduct which would constitute 'modern slavery' under the *Modern Slavery Act 2018* (Cth); and
- (ii) any other conduct or practices which amount to an offence under any of the Modern Slavery Laws;

'Moral Rights' has the meaning set out in section 189 of the *Copyright Act 1968* (Cth);

'OHS Laws' means the *Occupational Health and Safety Act 2004* (Vic), its associated regulations and all applicable occupational health and safety, dangerous goods and electricity safety legislation and regulations made thereunder together with any directions on safety or notices issued by any Government Authority or any code of practice or compliance code appropriate or relevant to the Works;

'Ombudsman Victoria' means the ombudsman appointed under the *Ombudsman Act 1973* (Vic) and includes any other person that may, from time to time, perform the functions of that office;

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

'PPS Law' means:

- (i) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time;
- (ii) any relevant amendment made at any time to any other legislation as a consequence of paragraph (i); or
- (iii) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPS Act;

'PPS Register' means the personal property securities register established under section 147 of the PPS Act;

'Permitted Work Hours' means the hours where the Contractor is allowed to conduct the Works as set out in Annexure 1;

'Practical Completion' means the stage of the Works when:

- (i) the Works are practically complete, except for minor omissions or Defects which:
 - (A) do not prevent the Works from being reasonably capable of being used for their intended purpose;
 - (B) the Principal, acting reasonably, determines the Contractor has reasonable grounds for not promptly rectifying;
 - (C) the existence or rectification of which will not prejudice the convenient use of the Works by the Principal or others taking into account the use or intended use of that part of the Works affected and the use of the areas in which the minor defects occur;
 - (D) the immediate making good of which is not practicable; and
 - (E) which do not cause any legal or physical impediment to the use of the Works by the Principal or others;
- (ii) any tests and commissioning required by this Agreement have been carried out and passed;
- (iii) the materials, shop drawings, maintenance manuals, as-built drawings, as-installed drawings, documents and other information (including completion certificates and other Approvals from all relevant Government Authorities) required under this Agreement or otherwise required by the Principal, and which are reasonably necessary for the Project, including for the lawful use, operation and maintenance of the Works, have been provided to the Principal in electronic or hard copy and signed-off by the responsible party, as specified by the Principal;
- (iv) the Contractor has provided a complete Contractor's Defects List for the Works;
- (v) the Contractor has received sign off from the responsible party for all operational, maintenance and hand-over manuals for the Works required by the Principal;
- (vi) any Approvals which the Contractor is required to provide under this Agreement have been supplied to the Principal in an acceptable form;
- (vii) any warranties and guarantees which the Contractor is required to provide under this Agreement, including relevant warranty expiry dates, have been supplied to the Principal in an acceptable form;
- (viii) all rubbish, surplus material and items of plant and equipment have been removed from the Site so as to leave the Site in a clean and tidy condition, excepting those items which the Principal consents in writing to remain on the Site for the purpose of performing work during the Defects Liability Period; and
- (ix) any other conditions precedent to Practical Completion as set out in the Agreement (including the PPR) have been met.

'Preapproved Subcontractor' means those

subcontractors (if any) identified in Annexure 1 that have been preapproved to perform a specific part of the Works;

'Principal' means the party named in Annexure 1;

'Principal Approvals' means the Approvals listed in Annexure 1 for which the Principal will be responsible for obtaining;

'Principal Contractor' has the meaning given to that term under the OHS Laws;

'Principal's Project Requirements' or **'PPR'** means the Principal's written requirements for the Works described in the documents stated in Attachment 1 which includes any preliminaries document, plans and drawings, and specifications listed in that attachment.

'Principal's Representative' means the person appointed by the Principal as its representative under clause 12(d);

'Program' has the meaning given in Annexure 1;

'Project' has the meaning given in clause 18(b), and includes an updated program intended to take the place of an earlier Program which is submitted to and approved by the Principal;

'Required Insurance' is any insurance required under this Agreement as described in clause 28(a) or the PPR;

'Security' means the security described in Annexure 1 and required under clause 4(a);

'Security Interest' has the meaning given to it in section 12 of the PPS Act;

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

'Site' means the area described in Annexure 1;

'Site Conditions' has the meaning in clause 10(a);

'Statutory Requirement' means any Laws, ordinances, regulations, bylaws, local laws, orders, proclamations, Approval, authorisation, code of conduct (including the Supplier Code of Conduct), government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver and conditions attaching to any of them (as applicable) by any Government Authority and includes any renewal of, or variation to, any of them;

'Subcontractor' includes any consultant, appointee or supplier of the Contractor and any consultant, appointee or supplier appointed by a Subcontractor and for the purposes of the Security of Payment Act includes a person who undertakes to carry out construction work or supply related goods and services;

'Sunset Date' This date is the latest date by which the Contractor must complete the Works, failing which, it will be a default event which can lead to termination;

'Supplier Code of Conduct' means the document titled 'Procurement – Supplier Code of Conduct' published by the Victorian State Government, a copy

of which can be downloaded from:
<http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>;

'Transaction Document' means:

- (i) this Agreement;
- (ii) any guarantee by which any person guarantees the Contractor's compliance with its obligations under any of the Transaction Documents;
- (iii) any subcontracts;
- (iv) any agreement which the parties agree is a Transaction Document for the purposes of this Agreement;
- (v) any agreement or instrument created under any of the above documents; and
- (vi) each document entered into for the purpose of amending, novating, restating or replacing any of the above documents;

'Variation Order' means a written direction to vary the Works issued under clause 24(a);

'Victorian Auditor General's Office' means the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic);

'Victorian Freedom of Information Commissioner' means the freedom of information commissioner appointed under the *Freedom of Information Act 1982* (Vic) and includes any other person that may, from time to time, perform the functions of that office;

'Victorian Inspectorate' means the inspectorate established under the *Victorian Inspectorate Act 2011* (Vic) and includes any other person that may, from time to time, perform the functions of that office;

'Warranty Schedule' means the document contained in Attachment 6;

'Works' means the work to be carried out by the Contractor in accordance with this Agreement, as more particularly described in Annexure 1; and

'Zoo Grounds' means the Principal's zoo grounds specified in Annexure 1.

'Victorian Auditor General's Office' means the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic);

'Victorian Freedom of Information Commissioner' means the freedom of information commissioner appointed under the *Freedom of Information Act 1982* (Vic) and includes any other person that may, from time to time, perform the functions of that office;

'Victorian Inspectorate' means the inspectorate established under the *Victorian Inspectorate Act 2011* (Vic) and includes any other person that may, from time to time, perform the functions of that office;

'Warranty Schedule' means the document contained in Attachment 6;

'Works' means the work to be carried out by the Contractor in accordance with this Agreement, as

more particularly described in Annexure 1; and

'Zoo Grounds' means the Principal's zoo grounds specified in Annexure 1.

46 LOCAL JOBS FIRST

- (a) The *Local Jobs First Act 2003* (including any regulations made under that Act) establishes and implements the LJF Policy, which supports businesses and workers by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including for Apprentices, Trainees and Cadets. Local Jobs First is implemented by Victorian Government departments and agencies to help drive local industry development.
- (b) Local Jobs First comprises the Victorian Industry Participation Policy (VIPP) and the Major Projects Skills Guarantee (MPSG).
 - (i) VIPP seeks to ensure that small and medium-sized businesses are given full and fair opportunity to compete for government contracts.
 - (ii) MPSG is a policy that provides job opportunities for Apprentices, Trainees and Cadets on high value construction projects.
- (c) Local Jobs First applicable projects include but are not limited to:
 - (i) purchase of goods and/or services, regardless of the method of procurement (including individual project tenders, State Purchase Contracts, supplier panels);
 - (ii) construction projects (incorporating design and construction phases and all related elements), including individual projects, Public Private Partnerships, Alliance Contracts, Market Led Proposals, supplier panels and auctions; and
 - (iii) grant and loan projects, including grant agreements or loan arrangements to private, non-government and local government organisations for a single or group of projects.
- (d) Local Jobs First applies to standard projects above the threshold values of:
 - (i) \$3 million or more for statewide projects or for projects in metropolitan Melbourne, and
 - (ii) \$1 million or more in regional Victoria, or
 - (iii) any project valued at less than \$3 million that the Minister has declared to be a standard project.
- (e) This approach to Market is for a standard Local Jobs First Standard Project.

For further information: www.localjobsfirst.vic.gov.au

'Annexure 2 forms part of the terms and conditions of this Agreement/Contract.' The Supplier in performing its obligations under this Agreement/Contract must comply with Annexure 2.

#Drafting Note: **Option 1** is to be used when the Contractor is signing under s 127 of the Corporations Act, meaning that 2 directors/company secretaries must sign. **Option 2** is only to be used when the Contractor has authorised an individual to sign on its behalf as an authorised representative - this will then only require their signature and a witness.

If signing through Secured Signing, please chose Option 3

ZV should enquire with the Contractor to confirm each of their execution methods and delete the non-applicable execution block.

Executed as an agreement on **[#insert date]**

SIGNED for and on behalf of **ZOOLOGICAL PARKS AND GARDENS BOARD** ABN 96 913 959 053 by its authorised representative **[#insert]** in the presence of:

.....
Signature of authorised
representative

.....
Signature of Witness

.....
Name of authorised
representative (print)

.....
Name of Witness

[OPTION 1 – EXECUTION under section 127 of the Corporations Act.]

Executed by **[#insert full name and ACN of Contractor]**
acting by the following persons in accordance with s 127
of the *Corporations Act 2001* (Cth):

.....
Signature of director

.....
Signature of
director/company
secretary

.....
Name of director (print)

.....
Name of
director/company
secretary (print)

[OPTION 2 – EXECUTION by Authorised Representative. Note that witnessing can be by any person and is not limited to those with certain qualifications. Where this document is being witnessed electronically, the witness must see this take place through audio visual link,]

Executed for and on behalf of **[#insert full name and ACN of Contractor]** by its authorised representative in the presence of:

.....
Signature of Witness Signature of Authorised Representative

.....
Name of Witness (print) Name of Authorised Representative (print)

[OPTION 3 – EXECUTION by electronic signature, please delete above and insert information below. Leave everything else blank and Secured Signing will insert the relevant information including requiring witness below. Provide email address for the contractor if it is not provided in the Schedule below.]

Signed for and on behalf of **ZOOLOGICAL PARKS AND GARDENS BOARD** ABN 96 913 959 053 by its authorised representative:

Leave this area blank so Secured Signing will insert the signature template.

Executed for and on behalf of **[#insert full name and ACN of Contractor]** by its authorised representative in the presence of:

Leave this area blank so Secured Signing will insert the signature template.

ANNEXURE 1 – Construction Contract (Medium Works) Details

Address for invoices (clause 25(i))	[#insert address, including email address of ZV's Accounts Payable Department] ap.invoices@zoo.org.au	
Additional security for unfixed plant and materials (clause 25(g))	[#insert, e.g. 100% of the value of the unfixed plant and materials]	
Agreement No.	[#insert]	
Contract Price (clause 2)	\$[#insert] plus \$[#insert] GST, a total of \$[#insert], which includes all relevant Site and industry allowances, safety equipment, scaffolding, hoisting, other plant and materials and anything else of an incidental nature which is required to complete the Works.	
Contractor (clause 1)		
Contractor Approvals (clause 8)	includes the building permit, [#insert list of additional items which may include: clearance certificates from subcontractors and suppliers and the certificate of occupancy].	
Contractor's details for Service of Notices (clause 41(c))	[#insert address] Phone: [#insert] Email: [#insert]	
Contractor's Representative (clause 12(b))	[#insert]	
Date for Practical Completion (clause 18)	[#insert date]	
Defects Liability Period (clause 22(e))	[#insert : e.g. 52 weeks]. If nothing stated, 52 weeks.	
Insurance Limits: (clause 28(a))		
- Public Liability:	\$[#insert: e.g. 20 million] If nothing stated, \$20,000,000 per occurrence and unlimited in the aggregate Underwriter: Policy Number: Expiry Certificate of currency is to be maintained throughout the duration of this agreement	
- Contract Works:	Will be taken out by Zoos Victorias under VMIA insurer	
- Professional Indemnity:	\$[#insert if required] If nothing stated, \$20,000,000 per occurrence and unlimited in the aggregate Underwriter: Policy Number: Expiry Certificate of currency is to be maintained throughout the duration of this agreement	
Key Personnel (clause 12(f))	Name	Title
	[#insert one of the following *[Name of 'Key Personnel'] / *Not applicable].	[#insert one of the following *[Title of 'Key Personnel'] / *Not applicable].
Liquidated Damages (clause 21)	\$[#insert] per day. If nothing stated, the Contractor indemnifies the Principal for its losses suffered or incurred	

	as a result of late Practical Completion	
Occupational health and safety system of work (clause 8(d))	The Contractor [#insert one of the following: *must provide and comply with an AS4901:2001 (or equivalent) certified occupational health and safety system of work / * must comply with the Principal's occupational health and safety system of work.]	
Permitted Work Hours (clause 8(h))	[#insert e.g.: Monday to Sunday: 7:00am to 6:00pm]	
Preapproved Subcontractor (clause 41(f))	Subcontractor [#insert one of the following *[Name of 'Preapproved Subcontractor'] / *Not applicable].	Part of the Works [#insert one of the following *[Title of 'Preapproved Subcontractor'] / *Not applicable].
Principal (clause 1)		
Principal Approvals (clause 8(b))	[#insert one of the following *means [#insert Approvals] and any other Approvals which the Principal directs in writing. / *Not applicable]	
Principal Contractor (clause 8(d)(ii))	[#insert one of the following *The Contractor must accept the appointment as 'Principal Contractor' / *Not applicable].	
Principal's details for service of notices (clause 41(c))	[#insert address] Phone: [#insert] Email: [#insert]	
Principal's Representative (clause 12(d))	[#insert]	
Program updates (clause 18(c))	The Program is to be updated [#insert timeframe for updating e.g. every month, specific calendar date etc.]	
Security (clause 4)	[#2 unconditional undertakings each for [insert e.g. 2.5%] of the value of the initial Contract Price which are issued by a financial institution approved by the Principal and in the form set out in Attachment 2 OR Cash retention (10% to be deducted from each progress payment until [5%] of the Contract Price is retained)] [#Delete as applicable]	
Security Interest threshold for PPSA (clause 34(c)(iii))	The Contractor's obligations under clause 32(c)(ii) apply to any Security Interest with a value in excess of [#insert dollar amount/amount as percentage of initial Contract Price].	
Site	[#insert specific description of area where the Works are to be undertaken on the Zoo Grounds]	
Site report (clause 38)	[#insert date for provision of Site report]	
Time for payment claims (clause 25(b))	[#insert, e.g. monthly on the 25 th day of each month OR set out details of milestones]. If nothing stated, on the last Business Day of the month for all work performed in that month	
Time for Access (clause 7)	[insert e.g. within xx Business Days of execution of this Agreement]	
Works (clause 45)	[#insert summary of work to be carried out under this Agreement] as further described in the PPR and Attachment 1, including disposal of Site rubbish, commissioning and testing, provision of documentation, the supply of construction plant and temporary works, variations and remedial work and all things necessary or incidental to the Works and the performance by the Contractor of its obligations under this Agreement, whether or not specifically referred to in this Agreement.	

Zoo Grounds (clause 45)	means the grounds of the [#insert relevant Zoo premises]
Sunset Date (clause 45)	[#insert date] <i>[#This date is the latest date by which the Contractor must complete the Works, failing which, it will be a default event which can lead to termination.]</i>

ATTACHMENT 1 - PRINCIPAL'S PROJECT REQUIREMENTS

Documents comprising the Principal's Project Requirements

The Principal's project requirements comprise, in descending order of precedence:

[Note to ZV: Please reorder this so that the documents which are of the highest importance are listed at the top.]

- the preliminaries document referenced in Part A of this Attachment;
- the specifications listed in Part C of this Attachment;
- the plans and drawings listed in Part B of this Attachment; and
- any other documents referred to in Part D of this Attachment

PART A - PRELIMINARIES DOCUMENT

A copy of the preliminaries document entitled "[#insert]" and dated "[#insert]" is attached to this Part A

PART B - PLANS AND DRAWINGS

The plans and drawings are as follows:

[illegible]

PART C - SPECIFICATIONS

The specifications are as follows:

[illegible]

ATTACHMENT 2 - APPROVED FORM OF SECURITY

At the request of

ACN..... ABN (the "**Contractor**") and in consideration of

ACN..... ABN (the "**Principal**") accepting this undertaking

in respect of the Contract for

ACN..... ABN (the "**Financial Institution**") unconditionally

undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of

..... (\$)

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

Should the Financial Institution be notified in writing, purporting to be signed by

..... for and on behalf of the Principal that the Principal desires

payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of

..... (\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder immediately ceases.

Dated at this day of 20

ATTACHMENT 3 – AUSTRALIAN SUPPLIER PAYMENT CODE

Application

This Attachment only applies if the Contractor is an eligible Small Business, where the Principal is able to verify the Contractor's eligibility.

In this Attachment, **Small Business** means an Australian business with fewer than 20 employees (exceptions may be applied for businesses that are a part of a consolidated group of companies).

If the Contractor is eligible, it must, prior to execution of the Contract, provide the Principal with a written notice confirming that it is an Australian business with fewer than 20 employees.

Introduction

The Australian Supplier Payment Code is a voluntary, industry-led initiative to enshrine the importance of prompt and on-time payment for suppliers through a set of best practice standards.

The Principal is a signatory to the Australian Supplier Payment Code, and is committed to the payment practices and policies set out in the Code.

A copy of the Code can be downloaded from:

https://d3n8a8pro7vhmx.cloudfront.net/bca/pages/6632/attachments/original/1636926131/Australian_Supplier_Payment_code_-_Booklet.pdf?1636926131

Commitments

Pursuant to the Code, the Principal is required, among other things, to:

- (a) pay the Contractor within 30 days of receipt of a correct invoice or receipt of a correct product from the Contractor (whichever is the later) or on mutually agreed terms, or on terms that are consistent with a standard industry practice; and
- (b) pay correct invoices from the Contractor on time.

The parties each acknowledge and agree that the payment terms set out in the General Conditions of Contract are mutually agreed.

Complaints

Pursuant to the Code, the Principal is required establish clear, fair and efficient processes to deal with complaints and disputes about payment times and practices.

Accordingly, should the Contractor have any disputes or complaints about the payment times and practices, these complaints should be issued by notice in writing (**Notice**) to:

Chief Financial Officer
c/o procurement@zoo.org.au

The Principal will respond to the Notice within 14 days after receipt of the Notice by the Principal.

ATTACHMENT 4 – Victorian State Government Policy Requirements

1 Privacy

- (a) The Contractor agrees that in respect of Personal Information held in connection with this Agreement:
- (i) that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of this **Agreement**, in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal; and
 - (i) immediately notify the Principal's Representative if the Contractor becomes aware of a breach or possible breach of the obligations referred to in **this** clause S31 by the Contractor or any of its officers, employees, subcontractors, consultants or agents.
- (b) This clause S31 survives termination of this Agreement.

2 Freedom of Information

- (a) The *Freedom of Information Act* 1982 (Vic) (**FOI Act**) gives members of the public rights of access to official documents of the State government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the [State](#) government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (b) The [Contractor](#) acknowledges that [State](#) requirements and policies will require certain identifying details of this Agreement to be made available to the public via the internet.

3 Data

- (a) In this clause **3**, Data means all point and array information, text, drawings, statistics, tests, analysis and other materials (including geological, geotechnical and environmental information, reports, maps, images, survey results, drill core and drill cutting samples, and associated materials) embodied in any form which is:
- (i) supplied by or on behalf of the Principal in connection with this Agreement (**Input Data**); or
 - (ii) generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or for the purpose of this Agreement.
- (b) All Data hereby vests in the Principal, and the Principal grants to the Contractor an irrevocable licence with the right to sub-license to its contractors the right to use Data for the Works.
- (c) The Contractor must do everything possible to perfect such vesting including assign to the Principal from the date of creation all Intellectual Property Rights in Data.
- (d) The Contractor must only use, copy or supply Data to the extent necessary to perform its obligations under this Agreement.
- (e) The Contractor acknowledges and agrees that the Principal may be required under Statutory Requirements to make Data and other information relating to the Agreement available to the public.

4 Shared Reporting Process

This clause 4 applies if the Contract Price exceeds \$750,000.

- (a) The Contractor must:
- (i) submit written reports regarding the Contractor's performance under this Agreement (**Regular Performance Reports**) to the Principal's Representative regularly, and at least monthly at the end of each calendar month (or as otherwise directed by the Principal) while the Works are being undertaken in such form as the Principal or the Principal's Representative requires from time to time;
 - (ii) cooperate with, and provide any assistance reasonably required by, the Principal's Representative in relation to the Shared Reporting Process; and
 - (iii) without limiting clause 4(a)(i) above, provide to the Superintendent any information required by the Principal's Representative from time to time, within the time requested, for the purposes of the Shared Reporting Process (**Shared Reporting Information**).
- (b) The Contractor acknowledges and agrees that details of the Contractor's performance under this Agreement, including the Regular Performance Reports and the Shared Reporting Information, may be made available by the Principal to other government departments or agencies or municipal, public or statutory authorities (**Shared Reporting Process**), and taken into account by the Principal or those other government departments or agencies or authorities when considering the Contractor for future tendering and contracting opportunities.

5 Cladding

(a) The Contractor must:

- (i) to the extent the Works include design, ensure that any design solution must not include the installation of Prohibited Cladding Products into any building work in connection with buildings of Type A or Type B Construction;
- (ii) not install Prohibited Cladding Products into any building work in connection with buildings of Type A or Type B Construction;
- (iii) indemnify the Principal from and against any loss, damage, expense or claim (including any third party claim against the Principal) arising out of or in connection with any breach by the Contractor of its obligations under clause 5(a)(i) or clause 5(a)(ii); and
- (iv) if it becomes aware of the use of any Prohibited Cladding Products on the project, immediately notify the Superintendent.

(b) Where used in this clause 5:

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.

6 Minimum rate of pay for Tip Truck Owner Drivers

(a) In this clause S36:

- (i) **Freight Broker** means a broker or agent in the business of procuring or arranging the engagement of independent contractors by hirers including a person who provides an online platform that facilitates the engagement of contractors by hirers; and
- (ii) **Tip Truck Owner Driver** means an independent contractor who drives a tip truck in connection with excavation work in the building and construction industry.

(b) Irrespective of who engages them, the Contractor must ensure that any Tip Truck Owner Driver carrying out the Works is paid according to the following:

- (i) an hourly rate that is at least at the relevant rate in the Rates and Cost Schedules for Tip Truck Owner Drivers developed by the Transport Industry Council (**Relevant Rate**) plus any road tolls and Freight Broker fees;
- (ii) a per load rate based on a reasonable estimate of the number of hours likely to be required to complete the specific job, taking into account all relevant circumstances and based on what a competent and experienced person in the position of the person engaging the Tip Truck Owner Driver would consider to be reasonable, multiplied by the Relevant Rate, plus any agreed incentive component which may be reduced in proportion to any shortfall in the load moved, plus any road tolls and Freight Broker fees; and
- (iii) if the Tip Truck Owner Driver is underpaid, the Contractor must make good that underpayment or otherwise ensure that it is paid.

7 Victorian Protective Data Security Standards

- (a) The Contractor acknowledges that the Principal is required to comply with the Victorian Protective Data Security Standards.
- (b) The Contractor must not breach, or do anything that may cause or contribute to the Principal breaching, a Victorian Protective Data Security Standard, in respect of any data held, used, managed, disclosed or transferred by the Contractor on behalf of the Principal.

8 Definitions

Capitalised terms have the meaning given in this Attachment, unless the context otherwise requires:

- (a) **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.
- (b) **Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).
- (c) **Commonwealth** means the Commonwealth of Australia.
- (d) **FOI Act** has the meaning in clause 2.
- (e) **Freight Broker** has the meaning in clause S36.
- (f) **Information Privacy Principles** means the principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic).
- (g) **Personal Information** means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

(h) **Prohibited Cladding Products** means:

- (i) 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
- (ii) expanded polystyrene products used in an external insulation and finish (rendered) wall system.

(i) **Regular Performance Reports** has the meaning in clause 4.

(j) **Relevant Rate** has the meaning clause S36.

(k) **Shared Reporting Information** has the meaning in clause 4.

(l) **Shared Reporting Process** has the meaning in clause 4.

(m) **Tip Truck Owner Driver** has the meaning in clause 6.

(n) **Victorian Protective Data Security Standards** means the Victorian Protective Data Security Standards Version 2.0 March 2019 issued under the *Privacy and Data Security Act 2014* (Vic) on 28 October 2019.

All other capitalised terms have the meaning given in the General Conditions of Contract.

ATTACHMENT 5 – FORM OF STATUTORY DECLARATION

STATUTORY DECLARATION

Project Name: [insert project name]

Contract Number: [insert contract number]

To: [insert name] (ACN [insert ACN]) of [insert address] ("Principal")
and

[insert name] (ACN [insert ACN]) of [insert address] ("Superintendent")

From: [insert name] (ACN [insert ACN]) of [insert address] ("Contractor")

In the matter of: the contract for the construction of the [insert description of the project] ("Contract")
entered into between the *Principal* and the *Contractor* dated [insert date of Contract]

Period covered by this progress payment claim: from: _____ to: _____ ("Payment Period")

I, [insert name] of [insert address], [insert occupation], do solemnly and sincerely declare as follows:

1. I am an employee duly authorised to make this statutory declaration on behalf of the *Contractor*;
2. all employees who are, or have been, engaged by the *Contractor* in connection with the *Contract* have been paid their full remuneration for work done during the *Payment Period* including any superannuation or redundancy payments (if applicable) and in accordance with any applicable award or industrial agreement;
3. subject to clause 4(d), all consultants, suppliers and subcontractors who are, or have been, engaged by the *Contractor* in connection with the *Contract* have been paid in full all amounts that have become payable to them under the terms of their agreement with the *Contractor* during the *Payment Period*;
4. as at the end of the *Payment Period*:
 - (a) the total amount payable by the *Contractor* to all subcontractors in respect of work under the *Contract* is: \$ _____
 - (b) the amount paid by the *Contractor* to all subcontractors in respect of work under the *Contract* is: \$ _____
 - (c) the amount claimed by all subcontractors in respect of work under the *Contract* which is disputed by the *Contractor* as being due and payable is: \$ _____
 - (d) the amount referred to in paragraph 4(c) of this statutory declaration is disputed as, at the date of this statutory declaration, on the following grounds:
[insert grounds for dispute]

And I acknowledge that this declaration is true and correct, and I make it in the belief that a person making a false declaration is liable to the penalties for perjury.

Declared at

this _____ day of _____ 20

Before me:

Signed _____

Signature of person before whom the declaration is made

Name of Declarant

Name, qualification and contact address of person before whom the declaration is made

ATTACHMENT 6 – WARRANTY SCHEDULE

Item Description	Design Life	Minimum Warranty Period
BUILDING ELEMENTS		
FINISHES AND FIXTURES		
MECHANICAL SERVICES		
ELECTRICAL SERVICES		
SECURITY SERVICES		
COMMUNICATIONS		
FIRE SERVICES		
HYDRUALIC SERVICES		

ANNEXURE 2 - Local Jobs First

1. Definitions

In this Schedule:

Agency means the organisation with which the Supplier has entered into this Agreement.

Agreement means this project agreement.

Apprentice means a person (other than a Cadet or Trainee) who is employed to undertake training in a trade under a Training Contract. Local Jobs First requires employers to employ apprentices under a Training Contract registered with VRQA which combines structured training with paid employment related to a Local Jobs First applicable project.

Cadet means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at a Tertiary Education Provider 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.

Completion Report has the meaning given in clause (d) of this Schedule.

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 LJF Act.

Guidelines means the *Local Jobs First Supplier Guidelines*, available at www.localjobsfirst.vic.gov.au.

ICN means the Industry Capability Network (Victoria) Limited (ACN 007 058 120).

LIDP means the Local Industry Development Plan submitted by the Supplier at the time of the proposal and certified in accordance with the process outlined in the Guidelines.

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

LIDP Variation has the meaning given in clause (a)a.i.1(ii).

LJF Contingency Amount means [insert either a fixed dollar amount; or percentage of the total agreement price], being the portion of the total purchase price of this Agreement agreed by the parties to be designated as an amount to be paid only upon the Supplier meeting the completion requirements set out in clause 2.5 of this Schedule.

Local Content has the meaning given in s 3(1) of the LJF Act.

Local Jobs First means:

- (a) the scheme established under *Local Jobs First Act 2003* and associated regulations (**LJF Act**); which incorporates
- (b) the Local Jobs First Policy (**LJF Policy**) as established under s 4 of the LJF Act, available at www.localjobsfirst.vic.gov.au.

Local Jobs First Commissioner means the person appointed under s 12 or s 14 of the LJF Act.

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 (d) of this Schedule as notified by the Agency.

Responsible Minister means the Minister with responsibility for administering the LJF Act.

Revised LIDP has the meaning given in clause 1.1(a) of this Schedule.

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

Tertiary Education Provider has the meaning given in the LJF Policy.

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.

Training Contract has the meaning given in the *Education and Training Reform Act 2006*.

VMC means the Victorian Management Centre, which is 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, Major Projects Skills Guarantee (if applicable) and, supply chain monitoring and reporting.

VRQA means the Victorian Registration and Qualification Authority, or any successor organisation that regulates education and training providers under the *Education and Training Reform Act 2006*.

2. Local Jobs First

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 Local Jobs First.
- (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 2.4 of this Schedule are fulfilled.
- (c) For the purposes of assessing the Supplier's performance of its obligations under clause (a)a.i.1(ii), the Agency may evaluate the Supplier's LIDP Commitments in the aggregate. The Supplier acknowledges and agrees that:
 - (i) the Agency may determine, acting reasonably, the metrics, methodology and evaluation criteria to be applied in conducting the assessment; and
 - (ii) the Supplier must provide all information reasonably required by the Agency to enable the Agency to conduct the assessment.
- (d) 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 of the LIDP Commitments, the Supplier must prepare a revised LIDP in collaboration with and certified by the ICN (**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 Significant diversion

- (a) If at any time, the Supplier believes that it is, or is likely to be unable to meet the Local Content commitment resulting in a significant diversion from the LIDP; the Supplier must
 - (i) immediately notify the Agency and provide such further information as the Agency requests with regard to the reason for the diversion; and
 - (ii) if required, submit a proposed variation to the LIDP in accordance with the LJF Policy and LJF Act (**LIDP Variation**).
- (b) The Agency has absolute discretion to approve or reject any LIDP Variation.
- (c) Failure to comply with this clause 2.3 is a material breach of this Agreement and may result in the Agency exercising its rights under this Agreement, including withholding any LJF Contingency Amount payments in accordance with clause 2.5.
- (d) This clause operates alongside the LJF Act and LJF Policy, which govern the obligations of the Agency, including to comply with any Ministerial determination under section 7B of the LJF Act and the significant diversion process.

2.4 Reporting

- (a) The Supplier must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.
- (b) The Supplier must use the VMC for Local Jobs First monitoring and reporting.
- (c) If the Agreement is for a project valued at \$20 million or more, the Supplier must provide a report, at a minimum of 6-month intervals, demonstrating its progress towards implementing the LIDP through reporting on the VMC.
- (d) Prior to or at Practical Completion, the Supplier must provide to the Contract Manager:
 - (i) a report identifying LIDP Commitments and actual achievements. The report must identify and explain any departures from the LIDP Commitments and the aggregated outcomes reported; and
 - (ii) a declaration in the form set out as part of the online LIDP to confirm that the project information and report provided is true and accurate.

(together the **Completion Report**)

- (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 as set out in the LIDP Commitments.
- (f) The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

2.5 Contingent payment mechanism

- (a) The parties agree that the LJF Contingency Amount specified in clause 1 of this Schedule will be held by the Agency and will not be paid to the Supplier unless and until the Supplier has:
 - (i) complied with all obligations of this Schedule;
 - (ii) met all LIDP Commitments (from the LIDP or any Revised LIDP, if applicable); and
 - (iii) completed all reporting obligations, including submission of the Completion Report.
- (b) The Supplier acknowledges and agrees that if it fails to meet these obligations, it will not receive the LJF Contingency Amount, and the Agency will have no liability to pay that amount.
- (c) This clause operates subject to the *Building and Construction Industry Security of Payment Act 2002*.

2.6 Verification of Supplier's compliance with the LIDP

- (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 the ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier's compliance with the LIDP.
- (d) Failure to comply with this clause constitutes a material breach of this Agreement and may result in the Agency exercising its contractual remedies, including withholding the LJF Contingency Amount.
- (e) The obligations set out in this clause 2.6 are in addition to and do not derogate from any other obligation under this Agreement.

2.7 Deprioritisation

- (a) The Supplier acknowledges and agrees that failure to comply with its LIDP Commitments or Completion Report obligations may (in accordance with Part 2A of the LJF Act) result in deprioritisation for consideration in future Victorian Government procurement processes.
- (b) Any such deprioritisation is in addition to any other rights or remedies available to the Agency under this Agreement or at law.

2.8 Use of information

- (a) The Supplier acknowledges and agrees that:
- (b) the Supplier's performance against the LIDP will be assessed in accordance with the processes outlined in the Guidelines;
- (c) The statistical information contained in the LIDP and the measures of the Supplier's compliance with the LIDP as provided in the Completion Report 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 Local Jobs First 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 Local Jobs First 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 2.4 of this Schedule, and
 - (iii) to permit the Agency and the Department to exercise their inspection and verification rights under clause 2.6 of this Schedule.
- (b) The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this 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 must comply with any inspection notice issued under s 18C of the LJF Act, including providing reasonable access to premises, systems, records, and personnel;
 - (ii) it must comply with any information notice issued under s 24 of the LJF Act;
 - (iii) it must comply with any compliance notice issued under s 26 of the LJF Act;
 - (iv) a failure to comply with a notice issued under s 24 of the LJF Act may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the LJF Act; and
 - (v) the Local Jobs First Commissioner may:
 - A. monitor, investigate and report on compliance with Local Jobs First and LIDPs;
 - B. request the Agency to conduct an audit in relation to the Supplier's compliance with Local Jobs First and the LIDP;
 - C. issue deprioritisation notices, notices of intention or deprioritisation determinations in accordance with Part 2A of the LJF Act;
 - D. apply to a court for a civil penalty order under Part 5 Division 3, if the Supplier fails to comply with an inspection or information notice issued under s 18C or s 24 of the LJF Act; and
 - E. recommend that the Agency take enforcement proceedings against the Supplier if the Supplier has failed to comply with Local Jobs First or the LIDP by:
 - I. applying to a court to obtain an injunction; or

II. exercising any contractual rights under this Agreement (including but not limited to, withholding the LJF Contingency Amount or termination).

(b) The Supplier and Agency agree that:

- (i) where either party is of the reasonable opinion that there is non-compliance or potential non-compliance with the LJF Act, LJF Policy, or the LIDP, they may refer the matter to the Local Jobs First Commissioner for advice and support under s 18(ca) of the LJF Act; and
- (ii) such referral is for the purpose of facilitating compliance and does not limit any other rights or remedies available under this Agreement or at law.