

Indemnity for IP infringement

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

Moral Rights

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

the *Project IP* or *Contractor Background IP* (or a substantial part of or adaptation of it) in any way it sees fit in any medium and in any context and with or without other text, data or images and may in any manner engage in conduct that would, absent the consent, infringe on author's moral rights in the *Project IP* or *Contractor Background IP*.

24 Confidentiality and Privacy

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

25 Media releases and enquiries

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

anything which, if done by the Contractor, would require the Principal's prior written consent.

- .4 The Principal may give or refuse its consent, in its absolute discretion.

25A Stakeholder Management and Community Relations

Stakeholder Management and Community Engagement

- .1 The Contractor:

- .1 acknowledges that:

- .1 the Works and the areas where the work in connection with the Contract are being carried out are of great importance to many people, including local residents, businesses and the travelling public; and
- .2 there are numerous stakeholders who have an interest in the successful delivery and ongoing operation of the Works; and

- .2 must manage and participate in all stakeholder management and community relations meetings, programs and activities as:

- .1 required by the Contract;
- .2 contained in the *Stakeholder Management and Community Engagement Plan*; or
- .3 directed by the Principal from time to time.

Complaints and notifications

- .2 The Contractor must immediately notify the Principal in writing if any:

- .1 complaint is made or any proceedings are instituted or threatened;
- .2 letter of demand is issued; or
- .3 order or direction is made,

by anyone (including any authority or any landowner, lessee or licensee near the Site) against the Contractor or any of the *Contractor's Personnel* in connection with the Works or the carrying out of the work in connection with the Contract including:

- .4 *Contamination* arising out of, or in any way in connection with, the work in connection with the Contract;
- .5 the Contractor's non-compliance with any *Approval* (or condition or requirement thereunder) or any *Environmental Statutory Requirement*;
- .6 the Contractor's use or occupation of the Site or the Works; or
- .7 loss of or damage to the Site, the Works or any adjacent property or the injury to or death of any person.

- .3 The Contractor must (at its own cost):

- .1 other than where clause 25A.4 applies, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 25A.2 in accordance with the *Planning Approval*;
- .2 other than where clause 25A.4 applies, take all measures to resolve those matters as soon as possible (including defending any proceedings); and
- .3 keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 25A.2, which:
 - .1 is in a form or uses a system approved by the Principal;
 - .2 contains full details of:
 - .1 each complaint, proceedings, letter of demand, order and direction; and
 - .2 the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - .3 is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and

- .4 may be inspected by the *Principal's Authorised Person* whenever the *Principal's Authorised Person* reasonably requires.
- .4 The Principal will (at its own cost) be responsible for handling all complaints, proceedings, demands, orders or directions that:
- .1 relate to the Principal's authority to carry out the Western Sydney Stadium Project; or
 - .2 provided the Contractor has complied with this Contract, arise under the *EPBC Act*.
- The Contractor must provide all reasonable assistance to the Principal in respect of such complaints, proceedings, demands, orders or directions.
- .5 The Contractor must notify anyone who may be adversely affected by the work in connection with the Contract before the relevant work is carried out including notification of:
- .1 the likely duration of that work; and
 - .2 the name and contact details of the Contractor's community relations manager in case any person wishes to make a complaint.

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

Obligations of care

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

Indemnities for property, personal injury or death

- .3 The Contractor indemnifies the *Indemnified Parties* against loss or damage to:
- .1 the Works, from the date the Contractor begins carrying out the work in connection with the Contract; and
 - .2 the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site, until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases to apply to that part when that part is occupied or taken into use and the indemnity in clause 26.4 then applies to that part of the Works as if the *Actual Completion Date* had been achieved with respect to that part.
- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the *Indemnified Parties* against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:

- .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
- .2 which occurred while the Contractor indemnified the *Indemnified Parties* under clause 26.3.
- .5 The Contractor's liability for loss or damage under clauses 26.3 and 26.4, and the Contractor's responsibility under clause 26.1 is reduced to the extent that the death, injury, loss or damage is contributed to or caused by:
 - .1 any negligent act or omission of the Principal or its agents or employees or any use or occupation of the Works prior to Completion under clause 64;
 - .2 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
 - .3 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Subcontractors, Consultants or Suppliers; or
 - .4 an Uninsurable Force Majeure Event.
- .6 The Contractor indemnifies the *Indemnified Parties* against the following where they arise in connection with carrying out the Works or the work in connection with the Contract:
 - .1 all damage to property other than property covered under clause 26.3.1;
 - .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3.1; and
 - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, or death.
- .7 The Contractor's liability to indemnify the *Indemnified Parties* under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by the Principal.

Limitation of liability

- .8 Subject to clause 26.9, the Contractor's aggregate liability to the Principal in connection with loss or liability arising in connection with the Contract (other than for personal injury or death) is limited to the amount stated in Contract Information item 19.
- .9 Clause 26.8 does not limit or affect any liability of the Contractor in respect of claims, actions, costs, losses, damages or liability in connection with:
 - .1 liability which cannot be limited at law;
 - .2 intellectual property and indemnities given by the Contractor in connection with intellectual property;
 - .3 conduct of the Contractor which is carried out with wilful or reckless disregard for the consequences to the Principal, the public or the *Environment*;
 - .4 fraudulent or criminal conduct;
 - .5 the Contractor's abandonment of its obligations under the Contract;
 - .6 the Contractor's failure to comply with clauses 26A.24 or 26A.25 or the disposal of *Contamination* other than in accordance with the Contract and all applicable *Statutory Requirements*;
 - .7 amounts recoverable under an insurance policy required under the Contract; or
 - .8 amounts which would have been recoverable under an insurance policy required to be effected and maintained under the Contract but for:
 - .1 the Contractor failing to take out and maintain any insurance it is required to take out and maintain pursuant to the Contract;
 - .2 the Contractor vitiating or prejudicing any insurance policy;
 - .3 the Contractor failing to make a claim under an insurance policy;
 - .4 the insurer becoming insolvent; or

.5 the inclusion of clause 26.8 or clause 26.10 in the Contract, and any liability of the Contractor in respect of the matters referred to in clause 26.9.1 to clause 26.9.8 (inclusive) shall not be taken into account in determining whether the Contractor's liability limit has been reached.

Consequential loss

- .10 Neither party is liable to the other party for any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers other than:
- .1 loss in connection with any of the matters referred to in clause 26.9; or
 - .2 the Contractor's obligation to pay liquidated damages under the Contract or, where clause 51.15 applies, the Contractor's liability for general damages.

Exclusion of proportionate liability

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

Contractor jointly and severally liable

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

26A Environmental Liability

Compliance

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

Environmental Management Plan

- .5 The Contractor's high level draft *Environmental Management Plan* at the Date of Contract is included in Schedule 21.
- .6 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 40 *Business Days* before first mobilising to the Site, prepare and submit an *Environmental Management Plan* to the Principal under clause 32A.3.
- .7 The *Environmental Management Plan* must:
 - .1 be consistent with the high level draft *Environmental Management Plan* in Schedule 21;

- .2 set out in detail how the Contractor proposes to comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract;
- .3 comply with:
 - .1 the Contract and the environmental requirements set out in section 6 of the *Preliminaries*; and
 - .2 the *Project Brief*;
- .4 include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.
- .8 The Contractor acknowledges that:
 - .1 the *Environmental Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Environmental Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .9 The Contractor must not commence any work on the Site unless and until the *Environmental Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4.

Remediation Action Plan

- .10 The Contractor's high level remediation strategy at the Date of Contract is included in Schedule 33.
- .11 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 40 *Business Days* before first carrying out any remediation works on the Site, prepare and submit a *Remediation Action Plan* to the Principal under clause 32A.3.
- .12 The *Remediation Action Plan* must:
 - .1 be consistent with the high level remediation strategy in Schedule 33;
 - .2 comply with and include all conditions required by the *Planning Approval*;
 - .3 set out in detail how the Contractor proposes to:
 - .1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to *Contamination*;
 - .2 remediate and dispose (if applicable) of all *Contamination* as required by this Contract;
 - .4 comply with and include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal; and
 - .5 if required by a *Statutory Requirement* or the *Planning Approval (Stage 1)*, be submitted as part of the *Planning Approval (Stage 2)* application.
- .13 The Contractor acknowledges that:
 - .1 the *Remediation Action Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Remediation Action Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .14 The Contractor must ensure that the *Remediation Action Plan* is approved by the *Site Auditor* prior to the Contractor submitting the *Remediation Action Plan* to the Principal in accordance with clause 26A.11.
- .15 Subject to clause 26A.20, the Contractor must not commence any work on the Site unless and until:
 - .1 the *Remediation Action Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4; and
 - .2 the *Remediation Action Plan* has been approved by the *Site Auditor*.

Asbestos Management Plan

- .16 The Contractor must, within 10 *Business Days* after the Date of Contract and at least 10 *Business Days* before first mobilising to the Site, prepare and submit an *Asbestos Management Plan* to the Principal under clause 32A.3.
- .17 The *Asbestos Management Plan* must:
 - .1 comply with and include all conditions required by any *Statutory Requirement* and the *Planning Approval (Stage 1)*;
 - .2 set out in detail how the Contractor proposes to:
 - .1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to asbestos management and disposal (if applicable);
 - .2 remediate and dispose (if applicable) of all asbestos as required by this Contract; and
 - .3 comply with and include any other information required by the Contract.
- .18 The Contractor acknowledges that:
 - .1 the *Asbestos Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Asbestos Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .19 The Contractor must not commence any work on the Site unless and until the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4.
- .20 Provided that:
 - .1 the pre-conditions to Site access under clause 34.1 have been satisfied;
 - .2 the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4;
 - .3 the Contractor is permitted to commence demolition works on Site in accordance with all applicable *Statutory Requirements* and the *Planning Approval (Stage 1)* prior to finalising its *Remediation Action Plan*; and
 - .4 the Contractor has complied with any other obligation under the Contract relating to Site access,

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

Environment Audits

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

at the Site or any premise (including the Contractor's premises) for the purposes of determining whether the Contractor is complying with its obligations under this clause 26A.

- .23 The Contractor must procure a *Site Audit Statement* is prepared and provided to, and for the benefit of, the Principal and Venues NSW as a condition to *Completion*.

Contamination

- .24 The Contractor must remediate the Site and all *Contamination*:
- .1 on, in or under the Site (regardless of whether such *Contamination* is caused or contributed to by the Contractor or the *Contractor's Personnel*);
 - .2 that migrates off the Site as a result of the performance of the work in connection with the Contract; and
 - .3 that migrates on to or under the Site from outside the Site,
- in accordance with:
- .4 the requirements of the Contract, including the *Project Brief* and the *Preliminaries*;
 - .5 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
 - .6 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).
- .25 Without limiting the Contractor's obligations under clause 26A.24, if the Contractor is required by:
- .1 *Asbestos Management Plan*, the *Remediation Action Plan* or the *Environmental Management Plan*; or
 - .2 any applicable *Statutory Requirements* or *Approvals* (including the *Planning Approval*),
- to remove from the Site and dispose of any *Contamination* referred to in clause 26A.24, the Contractor must remove from the Site and dispose of such *Contamination* in accordance with:
- .3 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
 - .4 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).
- .26 In performing its obligations in connection with this Contract, the Contractor must:
- .1 prevent any *Contamination* or the release, discharge or escape of any *Contamination* into the *Environment* by the Contractor or the *Contractor's Personnel*; and
 - .2 implement all necessary safety measures to avoid any such *Contamination*.
- .27 Without limiting clauses 26A.24 and 26A.25, the Contractor must only dispose of *Contamination* at sites where such disposal is permitted by *Statutory Requirements*.
- .28 The Contractor must:
- .1 immediately give notice to the Principal upon the discovery or release of any *Contamination*;
 - .2 take any urgent action required to protect people, property and the *Environment*.
- .29 The Contractor must procure that any *Contamination* report provided by a Consultant or Subcontractor in connection with the Works or the Site is provided for the benefit of the Principal and Venues NSW.
- .30 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 26A.

27 Insurance

- .1 If Contract Information item 21 or 22 states that the Principal is responsible to effect insurance covering the Works or public liability, the Principal must, not later than the Date of Contract, effect that insurance in accordance with the Contract Information item, on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by

- the Principal before the Date of Contract. The Principal must provide or make available to the Contractor a copy of the relevant insurance policy.
- .2 If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
 - .1 a Works policy of insurance to cover loss or damage to the Works; and
 - .2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.
 - .3 Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 23, 24 and 25 as follows:
 - .1 workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;
 - .2 if stated in Contract Information item 24, a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;
 - .3 if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 25;
 - .4 insurance for loss of or damage to equipment used by the Contractor in the performance of its obligations under the Contract, as specified in in Contract Information item 25A;
 - .5 comprehensive motor vehicle insurance covering compulsory third party bodily injury and third party property damage, as specified in in Contract Information item 25B; and
 - .6 asbestos liability insurance to cover the risks associated with asbestos decontamination work, as specified in in Contract Information item 25C.
 - .4 The Contractor must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
 - .5 The Contractor must ensure that every Subcontractor, Supplier, Consultant and all *Contractor's Personnel* are insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) at all times.
 - .6 Unless otherwise instructed by the Principal, the Contractor must:
 - .1 make and manage all insurance claims; and
 - .2 notify the Principal at the same time as the Contractor receives or gives any notice concerning a policy, and at least 7 days before any notified cancellation of a policy.
 - .7 The Contractor must meet the costs of all excesses or deductibles.
 - .8 All policies must:
 - .1 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured; and
 - .2 be placed with an insurer with a Required Rating or such other insurer as is approved by the Principal in its absolute discretion.
 - .9 Each policy referred to in clauses 27.2, 27.3.3 and 27.3.6 must:
 - .1 name or otherwise identify the Principal, Venues NSW and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends;

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

- .4 if the Principal elects to have the Works reinstated:
 - .1 to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled to receive from the settlement moneys received, payment in respect of the reinstatement Works carried out by the Contractor; and
 - .2 if the cause of the damage to or destruction of the Works was a cause listed in clause 26.5, the Principal shall pay to the Contractor the cost of the reinstatement work.

27A Third Party Agreements

- .1 The Contractor acknowledges and warrants that:
 - .1 it has reviewed the *Third Party Agreements*;
 - .2 it shall comply with the terms of the *Third Party Agreements* so far as they relate to the work in connection with the Contract, the Works or the Contract;
 - .3 it shall carry out its obligations under the Contract so as not to place the Principal in breach of the *Third Party Agreements*; and
 - .4 the Works will comply with the requirements of the *Third Party Agreements* so far as they relate to the Contract.
- .2 If:
 - .1 a draft *Third Party Agreement* is attached to this Contract;
 - .2 the terms of the executed version of the *Third Party Agreement* differ from the draft *Third Party Agreement* attached to the Contract;
 - .3 the Principal instructs the Contractor that it is required to comply with the executed version of the *Third Party Agreement*; and
 - .4 such changes in the terms of the executed version of the *Third Party Agreement*:
 - .1 could not have been reasonably anticipated by a competent and experienced Contractor at the Date of Contract; and
 - .2 will require a change to the Works,
 (a "*Change in TPA*"), the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after it receives the Principal's instruction to comply with the executed version of the *Third Party Agreement*.
- .3 The Contractor's notification must include details of:
 - .1 the *Change in TPA*;
 - .2 why the *Change in TPA* should not reasonably have been anticipated by the Contractor at the Date of Contract;
 - .3 the changes to Works that the Contractor considers necessary to comply with the *Change in TPA*;
 - .4 any delays in achieving *Completion* as a result of the change to the Works;
 - .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price* as a result of the change to the Works; and
 - .6 any other matters the Contractor considers relevant.
- .4 The Principal may request the Contractor to provide further information about the matters notified under clause 27A.3.
- .5 After considering the Contractor's notification under clause 27A.4, the Principal must notify the Contractor whether it agrees that there has been a *Change in TPA* that requires a change to the Works.
- .6 If the Principal agrees that there has been a *Change in TPA* that requires a change to the Works and if the Contractor has given the notice required by clause 27A.3 then:
 - .1 the parties may agree in writing on the effects of the *Change in TPA* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and

- .2 if the parties have not agreed in writing as to the effects of the *Change in TPA* within 10 Business Days after receipt of the Contractor's notice under clause 27A.3:
 - .1 if the Principal instructs a *Variation*, in connection with the *Change in TPA*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim* for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any delay incurred by it as a result of the *Change in TPA* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the *Change in TPA*, but excluding any additional or increased work included in the *Variation*; or
 - .2 if no *Variation* in connection with the *Change in TPA* is instructed, the Contractor may make a *Claim* for:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the *Change in TPA*.
- .7 If the Principal does not agree that there has been a *Change in TPA* that requires a change to the Works, the Contractor may notify an Issue under clause 69.
- .8 Costs and delay incurred by the Contractor as a result of a *Change in TPA* before it gave the notice required by clause 27A.3 must not be counted in any valuation or extension of time.

Contractor's Personnel

28 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must include in every Subcontract:
 - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
 - .2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
 - .3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.13.3; and
 - .4 when possible, a right of termination for convenience.
- .4 In addition, the Contractor must include:
 - .1 in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 29, written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements); and
 - .2 in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.

29 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 Subject to clause 29.3, the Contractor must not engage any Subcontractor in relation to the work in connection with the Contract without the prior written approval of the Principal. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.
- .3 The Contractor is entitled to engage:
 - .1 the *Approved Subcontractors* for their respective scope of work set out in Contract Information item 12A; and
 - .2 Subcontractors whose Subcontract has a value of less than [REDACTED] (provided such Subcontract is not with a design consultant), without requesting the Principal's further consent.
- .4 If Contract Information item 31 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.
- .5 If instructed by the Principal, the Contractor must accept novations of the contracts of specified Principal's consultants, contractors or suppliers, on the terms specified in the Contract.
- .6 The Contractor must ensure that each Subcontractor that will be responsible for handing and disposing of asbestos, holds all necessary qualifications, certificates, tickets and licences required to carry out such work.

30 Subcontractor warranties

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

31 Consultant and Supplier relationships

- .1 Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.
- .3 Where a Consultant is to carry out design work, the Contractor must, within 5 *Business Days* of the engagement of the Consultant provide the Principal with a deed of covenant (duly stamped) executed by the Consultant in the form of Schedule 37.

31A Key Personnel

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

31B Contractor's Personnel

Personnel

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

Replacement of Personnel

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

Industrial Relations

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

Carrying out the Works

Starting

32 Start-up workshop

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

32A Contractor's Project Plans

Requirements

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

Compliance

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

Submission

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

Comments

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

Resubmission

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

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

Revisions

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

33 Security

- .1 Within 10 *Business Days* after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) the *Undertakings* shall be paid by the Contractor.
- .3 If the Contractor does not comply with clause 33.1 the Principal may withhold from any payment to the Contractor an amount up to the total amount of *Unconditional Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Unconditional Undertakings* to the Principal or the Principal is required to return the *Unconditional Undertakings*, whichever is earlier.
- .4 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
- .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
 - .2 the *Post-Completion Undertaking* at the time stated in Contract Information item 35 provided that at that time:
 - .1 there are no outstanding *Defects* or unresolved *Issues*; and
 - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal or claimed by the Principal to be payable.
- .5 When any of the circumstances in clause 33.4.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.
- .6 *Undertakings* must be provided by a bank acceptable to the Principal in its absolute discretion.
- .7 The Contractor must not take any steps to prevent the Principal making a demand against the *Undertakings*, or to prevent the provider of an *Undertaking* from complying with the *Undertaking* or any demand by the Principal.
- .8 Where the Principal has converted an *Undertaking* into money, any interest earned on such monies shall be retained by the Principal.
- .9 The Principal is not obliged to hold amounts realised on the calling of an *Undertaking* in any definable account.
- .10 The Principal does not hold retention monies or amounts realised on the calling of an *Undertaking* on trust for the Contractor and the Contractor does not have ownership of, or any proprietary interest in, such amounts.

Cash Security - Subcontracts

- .11 If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.
- .12 If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.

- .13 The Contractor must deposit all money it receives in trust, as described in clauses 33.11 and 33.12, into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:
 - .1 the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;
 - .2 the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and
 - .3 any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.
- .14 If the *Contract Price* is \$20 million or more at the Date of Contract, clauses 33.11, 33.12 and 33.13 do not apply to security of the type referred to in clause 33.8 ('Security') and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2008* ('the Regulation') applies instead. Where after the Date of Contract the *Contract Price* reaches \$20 million as a result of adjustments and/or re-calculations made under the Contract:
 - .1 clauses 33.11, 33.12 and 33.13 will apply to Subcontracts entered into before the *Contract Price* reached \$20 million; and
 - .2 Part 2 of the Regulation will apply to Subcontracts entered into after the *Contract Price* reached \$20 million.

34 Site access

- .1 The Principal must give the Contractor access to sufficient of the Site to allow the Contractor to start work by the later of:
 - .1 the date on which each of the following conditions have been satisfied:
 - .1 the Contractor's *WHS Plan* and *Environmental Management Plan* have been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4;
 - .2 the Contractor has provided reasonable evidence to the Principal that it has procured the insurances it is required to take out and maintain pursuant to the Contract;
 - .3 the Contractor has obtained all *Approvals* required to be obtained by the Contractor that required to access the Site and commence Works;
 - .4 all *Contractor's Personnel* that require access to the Site have completed site inductions; and
 - .5 the Contractor has provided the *Contract Program* in accordance with clause 8.5 and the *Principal's Authorised Person* has not provided any comments on that *Contract Program* pursuant to clause 32A.4; and
 - .2 the relevant *Site Access Date*.
- .2 If the Principal does not give the Contractor access to the Site as required by clause 34.1, the Contractor has no remedy or entitlement other than:
 - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51; and
 - .2 when an entitlement arises under clause 75, to terminate the Contract.
- .3 The Contractor must permit the Principal, including its authorised employees and agents, to have access to the Site and to the premises of the Contractor at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. The Principal may require access for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.
- .4 The Contractor must, and must ensure that the *Contractor's Personnel*, comply with all *Site Access Conditions* when carrying out any work in connection with the Contract on the Site.
- .5 The Contractor must:
 - .1 construct all temporary access required to access the Site;

- .2 control and manage the use of, and access to and through, the Site (but nothing in this clause 34.5.2 affects or limits the Principal's rights under the Contract);
- .3 only authorise vehicles and persons directly connected with the Works to enter the Site;
- .4 keep and maintain comprehensive details of all visitors authorised to enter the Site (including full name, employer and purpose of entering the Site) and, upon request by the *Principal's Authorised Person*, provide such details to the *Principal's Authorised Person*; and
- .5 provide for the continuous safe passage of the public, service providers and road users on existing roads and access ways affected by the work in connection with the Contract in accordance with this Contract, which passage must, unless otherwise consented to in writing by the *Principal's Authorised Person*, be provided at a standard not less than that provided to the public, service providers and road users prior to the commencement of the work in connection with the Contract.

35 Not used

The Site

36 Not Used

37 Site Conditions

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

37A Interface with Separate Contractors

- .1 The Contractor acknowledges that *Separate Contractors* will be performing works on, or in the vicinity of, the Site at the same time as the Contractor is carrying out the work in connection with the Contract.
- .2 The Contractor must:
 - .1 permit *Separate Contractors*, and provide *Separate Contractors* with sufficient access to the Site, to execute their works;
 - .2 fully cooperate and liaise with *Separate Contractors*;
 - .3 carefully plan, coordinate, program and integrate the work in connection with the Contract with the work carried out or to be carried out by *Separate Contractors*;
 - .4 not delay the work being performed by *Separate Contractors*;
 - .5 monitor the progress of work being performed by *Separate Contractors* and notify the *Principal's Authorised Person* of any interference or sequence activities which may affect the commencement, progress or completion of the work in connection with the Contract;
 - .6 attend all co-ordination meetings with *Separate Contractors* as required by the *Principal's Authorised Person*;

- .7 take all necessary action to avoid loss or damage to the Works by *Separate Contractors*;
 - .8 not damage the works being carried out by the *Separate Contractors*; and
 - .9 advise the *Principal's Authorised Person* if the Contractor becomes aware of any matter arising out of a *Separate Contractor's* activities that may have an adverse effect on the work in connection with the Contract, the works of a *Separate Contractor* or the safety of any persons.
- .3 The Contractor:
- .1 is not entitled to any *Claim* as a result of compliance with this clause 37A or the presence of any *Separate Contractor*; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to comply with this clause 37A.

37B Interface with Site Infrastructure

- .1 The Contractor must ensure that the Works integrate with the *Site Infrastructure*.
- .2 The Contractor acknowledges and agrees that:
 - .1 the Contractor will be performing works on, in, or around, *Site Infrastructure*;
 - .2 the Contractor is solely responsible for liaising with the relevant authority, owner or operator of the *Site Infrastructure* and obtaining any access to the *Site Infrastructure* required to perform its obligations under the Contract;
 - .3 the relevant authority may be operating the *Site Infrastructure* at the same time as the Contractor's performance of the work in connection with the Contract on or around the *Site Infrastructure*; and
 - .4 any shutdown of the *Site Infrastructure* outside of the agreed shutdown must only be undertaken with the prior written consent of the relevant authority.
- .3 The Contractor must:
 - .1 coordinate, cooperate and liaise with the relevant authority and the *Principal's Authorised Person* with respect to any potential interface required with the *Site Infrastructure*;
 - .2 not interfere with the relevant authority's operation of the *Site Infrastructure*;
 - .3 only carry out works that interface with the *Site Infrastructure* during the agreed shutdown periods;
 - .4 take all necessary actions to avoid loss or damage to the *Site Infrastructure*;
 - .5 comply at all times with the relevant authority's safety standards and policies; and
 - .6 immediately notify the *Principal's Authorised Person* and the relevant authority if it considers a change is or will be required to the agreed shutdown schedule.
- .4 The Contractor must not, in performing the work in connection with the Contract, interfere with or damage the *Site Infrastructure*. The Contractor must promptly report to the *Principal's Authorised Person* and the relevant authority any interference with or damage to the *Site Infrastructure* and promptly remedy any damage to the *Site Infrastructure* caused by the Contractor.
- .5 The Contractor:
 - .1 is not entitled to any *Claim* as a result of compliance with this clause 37B; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with any interference with, loss of or damage to the *Site Infrastructure* that is caused or contributed to by the Contractor or the *Contractor's Personnel*.

37C Artefacts

- .1 All *Artefacts* found on the Site will, as between the parties, belong to the Principal.
- .2 The Contractor must:

- .1 notify the Principal promptly if it discovers an *Artefact* on the Site;
- .2 take every reasonable precaution to prevent the *Artefact* from being damaged, lost or removed until appropriate arrangements for dealing with, or removing, the *Artefact* have been made;
- .3 continue to perform its obligations in accordance with the Contract, except to the extent otherwise:
 - .1 directed by the Principal;
 - .2 ordered by a court or tribunal; or
 - .3 required by a *Statutory Requirement*; and
- .4 comply with any directions of the Principal in respect of the *Artefact*.

37D Site Security, Lighting and Fencing

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

37E Site Clean-up

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

37F Extra Land

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

- owner, occupier or other person having an interest in the *Extra Land* following the proper completion of the work on that *Extra Land*.
- .2 The Contractor must ensure that the use and rehabilitation of *Extra Land* is to the satisfaction of the owner, lessee or occupier (as applicable) of the *Extra Land* and all relevant authorities.
 - .3 The Contractor acknowledges that the Principal will not be liable for any *Claim* by the Contractor arising out of or in any way in connection with:
 - .1 identifying and obtaining access to *Extra Land*; or
 - .2 any delay, additional costs or other effects on the work in connection with the Contract related to the ability of the Contractor to obtain access to *Extra Land*.

Design

38 Faults in Contractor's Documents

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

39 Design by Contractor and Contractor's Documents

Design responsibilities

- .1 The Contractor must carry out all design necessary in connection with the Works.
- .2 The Contractor must carry out its design responsibilities so that the Works are fit for the purposes required by the Contract and comply with the other requirements of the Contract.
- .3 Design or design development does not cause a *Variation* or reduce the Contractor's design responsibilities under clause 39.
- .4 The Contractor warrants to the Principal that:
 - .1 the Contractor has checked and carefully considered the *Project Brief*, the *Planning Approval* and the other *Contract Documents* and that:
 - .1 the *Concept Design* has been prepared by the Contractor and will be fit for its intended purpose; and
 - .2 each are accurate, suitable and adequate for their intended purpose;
 - .3 it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the *Project Brief*, the *Planning Approval* and the other *Contract Documents*; and
 - .4 the design, engineering and construction of the Works in accordance with such documents will enable the Contractor to carry out the work in connection with the Contract and to comply with the requirements of the Contract; and
 - .2 the *Design Documentation* will:
 - .1 satisfy the requirements of the *Project Brief* and the other requirements of this Contract including:
 - .1 *Statutory Requirements*;
 - .2 the Principal's instructions;
 - .3 the Building Code of Australia (if stated in Contract Information item 38B) and relevant Australian Standards; and
 - .4 if no other standard is specified in the Contract, good industry standards applicable to the Works;
 - .2 be in accordance with the *Concept Design* subject to such changes as may be necessary to ensure compliance with this Contract or may be necessitated by any of the factors referred to in clause 39.7.2;

- .3 be fit for its intended purpose such that the Works will, if constructed in accordance with the *Design Documentation*, be fit for their intended purpose and comply with this Contract;
- .4 be prepared by appropriately accredited and experienced personnel;
- .5 be completed in accordance with the requirements of this Contract; and
- .6 integrate all the design elements;
- .3 construction in accordance with the *Design Documentation* will satisfy the requirements of the *Project Brief* and the other requirements of this Contract;
- .4 the Works will:
 - .1 be completed in accordance with, and satisfy the requirements of, this Contract; and
 - .2 upon *Completion*, be fit for their intended purposes;
- .5 at and after the *Actual Completion Date*, the design life of each part of the Works will meet or exceed and continue to meet or exceed the design life standards specified in the *Project Brief*;
- .5 The Contractor, in preparing the *Design Documentation*, if any change in accordance with clause 39.4.2.2 is necessary from the *Concept Design*, must ensure that the change does not reduce the:
 - .1 durability;
 - .2 aesthetics and visible features;
 - .3 whole of life performance;
 - .4 design life;
 - .5 user benefits; or
 - .6 functional performance,
 of any part of the Works or increase the whole of life user or maintenance costs of the Works;
- .6 The Contractor agrees that its obligations under, and the warranties given in, this clause 39 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Works and notwithstanding:
 - .1 any design work, including design work carried out by others, prior to the date of this Contract and incorporated in this Contract; or
 - .2 any *Variation* the subject of a direction by the Principal,
 and that the development of the *Design Documentation* in accordance with clause 39 does not amount to a *Variation*.
- .7 The Contractor is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor, third parties or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
 - .1 the design of the Works in accordance with the *Concept Design* and the construction of the Works in accordance with the *Design Documentation*, including costing more or taking longer than anticipated; and
 - .2 any differences between the Works which the Contractor is required to design or construct and the *Concept Design* including:
 - .1 differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Site, the *Environment* or their surroundings; and
 - .2 differences required to ensure that the Works will be fit for their intended purposes and satisfy the requirements of this Contract; and
 and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 39.4 to 39.6.

Design review

- .8 The Contractor must prepare and submit:

- .1 the *Design Documentation*; and
 - .2 the documents which the *Document Submission Schedule* requires the Contractor to submit to the *Principal's Authorised Person* for review,
- to the *Principal's Authorised Person* for review:
- .3 as soon as practicable after the document is complete;
 - .4 before the Contractor commences any part of the work in connection with the Contract which is dependent on that document; and
 - .5 where the Contract or the *Document Submission Schedule* sets out a date for submission, on or before that date.
- .9 Any *Design Documentation* submitted for review must be prepared to a level of detail sufficient to permit the *Principal's Authorised Person* to determine if the *Design Documentation* complies with the Contract.
- .10 Each document submitted by the Contractor pursuant to clause 39.8 must be accompanied by a certificate:
- .1 provided by the Consultant responsible for preparing the relevant document;
 - .2 that certifies that the design and engineering contained in such documents complies with the Contract, including the *Project Brief* and is appropriate for construction; and
 - .3 in the form set out in Part A of Schedule 34.
- .11 The *Principal's Authorised Person* may request additional information to assist it in reviewing any *Design Documentation*. The Contractor must promptly provide such information.
- .12 The *Principal's Authorised Person* may review each document submitted in accordance with clause 39.8 within the later of:
- .1 10 *Business Days* after receipt by the *Principal's Authorised Person* of any such document; or
 - .2 10 *Business Days* after receipt by the *Principal's Authorised Person* of the additional information requested under clause 39.11,
- (the "**Design Review Period**").
- .13 If any such document does not comply with the Contract or is not complete, the *Principal's Authorised Person* may, within the *Design Review Period*, give the Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.
- .14 Within 5 *Business Days* of receipt of the *Principal's Authorised Person's* notice under clause 39.13, the Contractor must modify the document to take the *Principal's Authorised Person's* comments under clause 39.13 into account and re-submit the document to the *Principal's Authorised Person*. Clauses 39.12, 39.13 and 39.14 shall apply to the resubmitted document.
- .15 The Contractor must not depart from any approved document unless the Contractor has first submitted to the *Principal's Authorised Person* an amended document, the process in clause 39.12 has been followed and no non-compliance notice has been given under clause 39.13 in respect of that amended document.
- .16 The Contractor must deliver to the *Principal's Authorised Person*:
- .1 one electronic copy in the form specified in the *Document Submission Schedule*; and
 - .2 three hard copies,
- of each document required to be submitted under clause 39.8.
- .17 The Contractor must not use for construction purposes any *IFC Design Documentation* unless the *IFC Design Documentation* has been prepared and reviewed in accordance with clauses 39.8 to 39.17.
- .18 The Contractor:
- .1 is solely responsible for obtaining approval from all relevant authorities in respect of any *Design Documentation* that relates to utilities or infrastructure that are owned or operated by that authority;

- .2 must make appropriate allowance in the *Contract Program* for any review of the *Design Documentation* required by an authority; and
- .3 is not entitled to any *Claim* against the Principal arising out of or in connection with any review of the *Design Documentation* by a relevant authority, including in respect of the time taken by an authority to review the *Design Documentation*.

40 Innovation

- .1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:
 - .1 the proposed change to the Works and the proposed change in the *Contract Price*;
 - .2 potential risks to the Principal and the Contractor if the proposal is accepted;
 - .3 any changes required to *Contractual Completion Dates*;
 - .4 projected changes in operating and maintenance costs;
 - .5 projected changes in whole-of-life costs;
 - .6 any other benefit the Principal will receive; and
 - .7 any benefit the Contractor will receive.
- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.
- .3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
- .4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the proposal, subject to any conditions imposed by the Principal, in writing.
- .5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in Contract Information item 39 unless the parties otherwise agree.

41 Principal's Documents

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

Construction

42 Setting out the Works and survey

- .1 The Contractor must set out the Works in accordance with the Contract.
- .2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 14 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
 - .1 the Contractor must notify the Principal; and
 - .2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.
- .4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.
- .5 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain

matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

43 Construction

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

Utilities and consumables

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

Materials

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

Construction warranties

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

- .2 fit for their intended purpose; and
- .3 free from *Defects* and of a merchantable quality.

44 Testing

- .1 The Contractor must *Test* all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
- .3 If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim* for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test*. Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.
- .4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects

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

46 Acceptance with Defects not made good

- .1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
- .2 Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.
- .3 If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.
- .4 If the Contractor agrees with the proposed terms but not with the proposed deductions then the Principal is to assess the value of the adjustment in accordance with clause 47.7 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 69.
- .5 If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the specified *Defects*.
- .6 The Contractor remains liable for all *Defects* (whether known or not known) other than the specific *Defects* identified in a written agreement made under clause 46 as not to be made good.