New South Wales Government

GC21 (Edition 2)

General Conditions of Contract

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Acknowledgments

This New South Wales Government GC21 (Edition 2) General Conditions of Contract was developed by the NSW Construction Consultative Committee based on experience in the use of Edition 1.

GC21 (Edition 2) General Conditions of Contract was developed in consultation with representatives of:

- Department of Finance & Services
- Land and Housing Corporation
- Roads and Maritime Services
- Health Infrastructure
- Sydney Water Corporation

Government Codes and Guidelines

Copies of the Codes and Guidelines referred to in the GC21 (Edition 2) General Conditions of Contract may be obtained from the ProcurePoint website. These are as follows:

- NSW Government Code of Practice for Procurement
  www.procurepoint.nsw.gov.au
- Work Health and Safety Management Systems and Auditing Guidelines (Edition 5)
- Quality Management Systems Guidelines for Construction
- Environmental Management Systems Guidelines (Edition 3)
- Training Management Guidelines
- Policy on Aboriginal Participation in Construction
- NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines)
  www.industrialrelations.nsw.gov.au
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Preface

The GC21 Edition 2 General Conditions of Contract

The GC21 Edition 2 General Conditions of Contract build on the experience and project success delivered with Edition 1 which had a highly effective emphasis on co-operative contracting and enhanced communication between the parties.

Edition 2 focuses on streamlining, updating and improving the operation of the contract to reflect experience and practice.

The requirement for Contractors to use the GC21 Subcontract has been discontinued in Edition 2, and replaced with a short list of mandatory requirements to give the Contractor and subcontractors flexibility in their commercial arrangements.

Using this document

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- Valuer
- Works

Attachments 1, 2, and 3 do not form part of the Contract.
Contract framework

This section deals with the purpose and structure of the Contract. It allocates responsibilities and sets up the procedures for making the Contract work. Underlying it are the basic principles of GC21: co-operative contracting, enhanced communication, clear definition of roles, responsibility for outcomes, and promoting best practice.

Roles and relationships

Although the parties have different responsibilities, co-operation is a key element of the Contract.

1 General responsibilities

.1 The Contractor must:

.1 design and construct the Works in accordance with the Contract; and

The extent of the Contractor’s Design obligations is specified in clause 39.

.2 perform and observe all its other obligations under the Contract.

.2 The Principal must:

.1 pay the Contractor the Contract Price for its performance, in accordance with and subject to the Contract; and

.2 perform and observe all its other obligations under the Contract.

.3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

2 Authorised persons

Contractor’s Authorised Person

.1 The Contractor must ensure that, at all times, there is a person appointed to act as the Contractor’s Authorised Person. The Contractor’s Authorised Person acts with the Contractor’s full authority in all matters relating to the Contract. The Contractor must promptly notify the Principal of the name and contact details of the Contractor’s Authorised Person and of any change in those details. If the Principal reasonably objects to the Contractor’s Authorised Person at any time, the Contractor must replace that person.

Principal’s Authorised Person

.2 The Principal must ensure that, at all times, there is a person appointed to act as the Principal’s Authorised Person. The Principal must promptly notify the Contractor of the name and contact details of the Principal’s Authorised Person and of any change in those details.

.3 The Principal’s Authorised Person does not act as an independent certifier, assessor or Valuer. The Principal’s Authorised Person acts only as an agent of the Principal.

.4 The Principal’s Authorised Person may delegate any of its contractual functions and powers to others by written notice to the Contractor.

3 Co-operation

.1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

4 Duty not to hinder performance

.1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.
5 Early warning

.1 Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for Completion, or the cost or quality of the Works. The parties must then investigate how to avoid or minimise any adverse effect on the Works and Scheduled Progress.

.2 Information provided by a party under clause 5.1 must not be used against that party in any Claim or Issue resolution proceedings.

6 Evaluation and monitoring

As the Contract proceeds, regular meetings (usually monthly) allow the parties and selected stakeholders to evaluate performance and identify priorities for improvement.

.1 The parties must meet regularly to evaluate and monitor performance of the Contract. Performance Evaluation and Performance Evaluation Record forms are provided at Attachments 2, 2A and 3. They do not form part of the Contract and the parties may amend them to suit the specific attributes of the Contract.

.2 The parties must decide jointly who will participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.

.3 Nothing concerning or in connection with completed evaluation forms changes either party’s rights and responsibilities, or can be relied on or used by one party against another in any proceedings.

.4 Participants in the evaluation and monitoring meetings must meet their own costs for attendance, and the parties must share equally the other costs.

The Contract

7 The Contract

The Contract is formed by the Principal sending a Letter of Award to the Contractor, unless the Principal requires the Contract to be formed by execution of a formal agreement or deed.

.1 The Contract is made up solely of the Contract Documents, which supersede all understandings, representations and communications made between the parties before the Date of Contract in relation to the subject matter of the Contract. The Contract Documents are:

.1 these GC21 General Conditions of Contract;
.2 the Contract Information;
.3 the annexed Schedules;
.4 the Principal’s Documents as at the Date of Contract;
.5 the other Contract Documents listed in Contract Information item 26; and
.6 the Deed of Contract Agreement.

.2 The Contract Documents must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents must be read as included in all other documents, unless the context requires otherwise.

.3 The terms of the Contract cannot be amended or waived unless both parties agree in writing.

.4 The Principal must give the Contractor the number of copies of the Principal’s Documents stated in Contract Information item 27.

8 Scope of the Works, Temporary Work and work methods

.1 The Works are described in brief in Contract Information item 3 and in more detail in the Contract Documents, and include:

.1 all work specifically referred to in or contemplated by the Contract;
.2 all work and items necessary to achieve the effective and efficient use and operation of the Works; and
.3 all work and items necessary for the Works to be fit for the purposes required by the Contract.

.2 Other work required in connection with the Contract includes:
.1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
.2 all work and items necessary to carry out and complete the Works properly; and
.3 all work and items reasonably inferred from the Contract Documents as necessary to properly perform the other obligations of the Contractor under the Contract.

.3 The Contractor acknowledges that:
.1 it is both experienced and expert in work of the type, complexity and scale of the Works;
.2 it has made full allowance in the Contract Price for the matters referred to in clauses 8.1 and 8.2; and
.3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor’s own cost.

.4 The Contractor acknowledges that Variations instructed by the Principal may change the scope of the Works.

.5 Unless the Contract specifies, or the Principal instructs, that the Contractor use a particular work method or perform particular Temporary Work, the Contractor is solely responsible for determining the work methods and the requirements for all Temporary Work.

.6 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
.1 its price (excluding all costs of delay or disruption) for any proposal by the Principal to use a particular work method or perform particular Temporary Work proposed by the Principal or to change a work method or Temporary Work specified in the Contract;
.2 the anticipated effect of the Principal’s proposal on achieving Completion; and
.3 the effect of the Principal’s proposal on any other matter specified by the Principal.

.7 If the parties agree in writing on the effects of the Principal’s proposal and the Principal instructs the Contractor to carry out the proposal, any affected Contractual Completion Dates and the Contract Price must be adjusted as agreed.

.8 Subject to clause 8.9, if the Principal instructs the Contractor to use a particular work method or perform particular Temporary Work or to change a specified work method or Temporary Work without first agreeing in writing with the Contractor the effects of the instruction, 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 costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

.9 If the need for the instruction given under clause 8.8 arises from the Contractor’s own act or omission, the Contractor is not entitled to any extension of time or adjustment to the Contract Price.

9 Assignment

.1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal’s written consent.

10 Governing law of the Contract

.1 The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
11 Notices and instructions

.1 Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11 or 52, or at the address for service most recently notified in writing by the addressee.

.2 All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.

Statutory and Government Requirements

12 Statutory Requirements

.1 The Principal must ensure that the licences, authorisations, approvals and consents listed in Contract Information item 14 are obtained and paid for.

.2 The Contractor is responsible for:

   .1 compliance with all Statutory Requirements, subject to clause 49, except if, because of the nature of the requirement, only the Principal can comply or the Principal advises in writing that it will comply with those requirements;

   .2 giving all notices necessary to comply with Statutory Requirements;

   .3 obtaining all licences, authorisations, approvals and consents necessary to carry out the work in connection with the Contract, including any licence from the NSW Department of Primary Industries and/or Roads and Maritime Services New South Wales, other than those listed in Contract Information item 14; and

   .4 the payment of all necessary fees and charges, other than those listed in Contract Information item 14.

.3 As a condition of achieving Completion, the Contractor must give to the Principal originals of all licences, authorisations, approvals and consents and other documents issued by authorities or providers of services in connection with the Works or the Site.

13 Codes of Practice and Implementation Guidelines

Terminology

.1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government’s Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

.2 The parties must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (NSW Code) and the NSW Guidelines.

.3 The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

.4 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

.5 The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

.6 The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.

.7 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
.1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
.2 inspect any work, material, machinery, appliance, article or facility;
.3 access information and documents;
.4 inspect and copy any record relevant to the project;
.5 have access to personnel; and
.6 interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.

.8 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

.9 The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.

.10 If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

.11 Where a sanction is imposed:
   .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
   .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
      .1 record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
      .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

.12 The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.

.13 Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any Defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

.14 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
   .1 the circumstances of the proposed change;
   .2 the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
   .3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety (WHS) Management Plan); and the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.
Commonwealth Building Code 2016

.15 If required by Contract Information item 16A, the Contractor must comply with the requirements of the Building Code 2016 and Schedule 12 (Compliance with Building Code 2016) applies

14 No collusive arrangements

.1 The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract.

.2 Without limiting any other right or remedy, the Principal may recover from the Contractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association in breach of the warranty in clause 14.1.

15 Compliance with NSW Government Requirements

.1 The Contractor must implement and maintain the systems, strategies and plans required to comply with the following NSW Government Policy and Guidelines, and meet other obligations as specified in Contract Information item 15:

.1 NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines)

.2 the Work Health and Safety Management Systems and Auditing Guidelines;

.3 the Quality Management Systems Guidelines for Construction;

.4 the Environmental Management Systems Guidelines;

.5 the NSW Government Procurement Guideline Skills and Training in the Construction Industry; and

.6 the NSW Government Policy on Aboriginal Participation in Construction.

.2 The requirements of relevant NSW Government Guidelines are additional to any other requirements of the Contract and Statutory Requirements.

.3 The Contractor must submit and implement the plans identified in Contract Information item 15 by the times stated there. Those plans must comply with all requirements of the relevant NSW Government Guidelines and the Contract.

.4 The Contractor must:

.1 systematically manage its obligations under the Contract and applicable Statutory Requirements according to the systems, plans and procedures required under clauses 15.1 and 15.3;

.2 review and update its systems, plans and procedures to ensure ongoing compliance with the Contract;

.3 control non-conformances and undertake corrective and preventive action as and when necessary; and

.4 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow the Principal to carry out reviews and audit of the Contractor’s plans and procedures and confirm compliance with the Contract.

16 Appointment of principal contractor for WHS

.1 Unless otherwise stated in the Contract the Contractor:

.1 is engaged as principal contractor for the construction project in accordance with Clause 293 of the Work Health and Safety (WHS) Regulation 2011 (NSW);

.2 is authorised to have management and control of the workplace as necessary to enable it to discharge the duties of a principal contractor and of a person having management or control of a workplace;

.3 must perform the duties of:

.1 a principal contractor, as specified in the WHS Regulation 2011 (NSW), and

.2 a person with management or control of a workplace as specified in the Work Health and Safety Act 2011 (NSW) and the WHS Regulation 2011 (NSW); and
must notify the Principal promptly of any matter affecting WHS where consultation with the Principal is necessary.

16A Compliance with Principal's reporting requirements for WHS

.1 In addition to its obligations under clause 15 and clause 16, the Contractor must comply with the Principal's reporting requirements set out in Schedule 14.

17 Compliance with Australian Government Requirements

Building Code

.1 If Contract Information item 16A specifies that the Building Code applies, the Contractor must comply with the requirements of the Building Code and the obligations set out in Schedule 12.

The Australian Government Building and Construction WHS Accreditation Scheme

.2 If required by Contract Information item 16B, the Contractor must:
  .1 maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (Scheme) established by the BCII Act while carrying out Building Work;
  .2 comply with all conditions of Scheme accreditation; and
  .3 where any part of the Building Work meets one or more of the classifications described in the National Construction Code, comply with the National Construction Code performance requirements in relation to Materials whilst carrying out the Building Work which the National Construction Code requires.

Australian Industry Participation Plan (AIP Plan)

.3 If required by Contract Information item 16C, the Contractor must comply with and implement the Certified AIP Plan.

17A INSW WHS

.1 The Contractor must, in performing the Works, comply with the reporting and notification requirements in Schedule 14.

18 Working hours and working days

.1 The Contractor must observe:
  .1 Statutory Requirements which regulate working hours and working days; and
  .2 any requirements in Contract Information item 18.

19 Authorisation to release and use information

.1 The Contractor authorises the Principal to:
  .1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor’s performance, to other Commonwealth, State or local government agencies at any time or for any reason; and
  .2 take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.

.2 The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the Defamation Act 2005 (NSW) in making information available to others as contemplated by clause 19.1.1.

.3 The Contractor releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.

20 Long service levy

.1 Before starting construction work, the Contractor must:
pay to the Building and Construction Industry Long Service Corporation or the Corporation’s agent the amount of the long service levy payable under the Building and Construction Industry Long Service Payments Act 1986 (NSW) in respect of the building and/or construction work; and

give the Principal documentary evidence of payment of the levy.

21 Registration and licences

.1 All vehicles and plant used in carrying out work in connection with the Contract must be registered as required by law.

.2 All drivers who operate vehicles or plant in carrying out work in connection with the Contract must be licensed to operate those vehicles or plant as required by law.

.3 Whenever requested, the Contractor must promptly provide documentary evidence of compliance with clause 21.

Management duties

22 Time management

The Contractor must actively manage progress, anticipating and responding to events to stay on schedule and achieve the Contractual Completion Dates.

Contract Program

.1 The Contractor must submit a Contract Program to the Principal within 14 days after the Date of Contract. If the Principal so instructs, the program submitted by the Contractor with its tender is the Contract Program until the Contractor submits a Contract Program.

.2 The Contract Program must:

.1 reflect Scheduled Progress and show the Contractual Completion Dates for the whole of the Works and all Work Portions;

.2 show, and be consistent with, all constraints on access, performance and coordination;

.3 show the start and finish dates or, in the case of future activities, the intended start and finish dates, of all design and construction activities and other significant events;

.4 show the logical relationship between activities and events, the sequence of activities which constitute the critical path or paths, time leads and lags, and resource and other constraints;

.5 show the dates when the Contractor will require information, documents, instructions or materials from the Principal and the dates when the Contractor will provide information or documents to the Principal; these dates must be consistent with dates which the Principal could reasonably have anticipated at the Date of Contract;

.6 be accurate, comprehensive and complete;

.7 comply with any other specific requirements of the Contract, including any specified format or software; and

.8 comply with any reasonable requirements of the Principal.

.3 The Contractor must update the Contract Program at the following times:

.1 whenever there is a significant change in scheduling;

.2 within 7 days after receiving an instruction from the Principal to do so;

.3 when required to comply with clause 50.4; and

.4 following the granting of an extension of time under clause 50.

.4 Updated Contract Programs must take account of the Contractor's actual progress to the date of the update and must be submitted promptly to the Principal.

.5 The Principal need not respond to the Contractor about a Contract Program, but if the Principal advises the Contractor that the Contract Program submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the Contract Program so that it complies with the requirements
of the Contract and the instructions of the Principal, and must submit the revised *Contract Program* to the Principal within 7 days after receiving the Principal’s advice or instructions.

**Scheduled Progress**

.6 The Contractor must carry out all work in connection with the Contract so as to achieve *Scheduled Progress*.

.7 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.

.8 If the Contractor does not demonstrate to the Principal that it is achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress* at its own cost. An instruction under this clause is not an *Acceleration Notice*.

**Minimisation of delay**

.9 When there is any change in work in connection with the Contract, or the program or sequence of the work, the Contractor must take all reasonable steps to:

.1 carry out any additional work concurrently with other work; and

.2 otherwise minimise any effects on the time for *Completion*.

## 23 Intellectual property

.1 The Contractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Contract, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal.

.2 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract are assigned or otherwise transferred to the Principal upon their creation.

.3 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Data* for the purposes of the Contract.

.4 For *Data* not created specifically for the Contract but required to use, operate, maintain, modify and decommission the Works, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use that *Data* for those purposes, including a right to sub-licence.

.5 Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Data* has not then been created) from the date the *Data* is created.

.6 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.

.7 The Contractor indemnifies the Principal against any claims (including *Claims*), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to *Data* created or provided by the Contractor in connection with the Contract, including any related design, materials, documents or methods of working, or otherwise in the course of the Contractor’s performance of the Contract.

.8 The Contractor warrants that the *Data* created or provided by the Contractor under the Contract, including any related design, materials, documents and methods of working, will not infringe any *Intellectual Property Rights*.

.9 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.

.10 The Principal may grant the Contractor a royalty-free licence to use innovations developed during the course of the Contract for purposes agreed by the Principal.

## 24 Confidentiality

.1 The Contractor must maintain all *Data* 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 *Data* which is generally available to the public or which is required to be disclosed by law.
25 Media releases and enquiries

.1 The Contractor must obtain the Principal’s prior written consent to:

.1.1 any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and

.1.2 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 enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media enquiry without the Principal’s prior written consent.

.3 The Contractor must ensure that all Consultants, Subcontractors and Suppliers 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.

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

Obligations of care

.1 The Contractor is responsible for all of the following:

.1.1 preventing personal injury or death;

.1.2 preventing loss or damage to the Site, the NGCC Site and the Works;

.1.3 preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;

.1.4 locating and caring for existing services;

.1.5 repairing or making good loss or damage to the Works, the NGCC Site and the Site; and

.1.6 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.

.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, and the Principal’s costs of doing so will be recoverable as a deduction from the Contract Price.

Indemnities for property, personal injury or death

.3 The Contractor indemnifies the Principal against loss or damage to:

.3.1 the Works, from the date the Contractor begins carrying out the Works; and

.3.2 the Site and the NGCC Site and anything brought onto the Site or the NGCC Site for the purposes of the Contract from the date the Contractor is given access to the Site or the NGCC Site, or the relevant part of the Site or the NGCC 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 when that part is occupied or taken into use and the indemnity in clause 26.4 then applies 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 Principal against loss or damage to the Works, the Site, the NGCC Site, and anything brought onto the Site or the NGCC Site for the purposes of the Contract:

.4.1 arising out of carrying out its obligations under the Contract, including carrying out Variations, making good Defects and removing Materials from the Site or the NGCC Site; or

.4.2 which occurred while the Contractor indemnified the Principal under clause 26.3.

.5 The Contractor’s liability for loss or damage under clauses 26.3 and 26.4 is reduced to the extent that the loss or damage is contributed to or caused by:
any act or omission of the Principal;
2. any risk specifically excepted in the Contract;
3. 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; or
4. 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.

.6 The Contractor indemnifies the Principal against the following where they arise in connection with carrying out the Works:
1. all damage to property other than property covered under clause 26.3;
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; 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 Principal 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 The Contractor's liability to the Principal in connection with loss or liability other than for personal injury or death, in respect of any one occurrence arising in connection with the Contract 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 negligent or 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; or
6. the Contractor’s obligation to pay liquidated damages under the Contract.

.10 The Contractor’s liability may be further limited to the extent that the Professional Standards Act 1994 (NSW), or any equivalent statutory provision in any other state or territory, applies.

Consequential loss

.11 The Contractor is not liable to the Principal 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 or any indirect or consequential losses or damages not in the reasonable contemplation of the parties at the Date of Contract, arising in connection with the Contract, other than:
1. loss in connection with any of the matters referred to in clause 26.9; or
2. loss that is or should be covered by insurance required under the Contract to be held by the Principal or the Contractor, or which would have been covered but for an act or omission of the Contractor or any of its employees, agents, Subcontractors, Suppliers or Consultants.

Exclusion of proportionate liability

.12 If Contract Information item 20 states that proportionate liability is excluded from the Contract then, 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.

27 Insurance

The Contract Information states whether the Principal or the Contractor is to provide Works and public liability insurance. All other insurance required must be provided by the Contractor.

.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 comprehensive motor vehicle/mobile plant insurance as specified in Contract Information item 25A, and where possible in the joint names of the Principal, the Contractor and all Subcontractors employed from time to time in relation to the Works for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Contract; and

.5 asbestos liability insurance as specified in Contract Information item 25B as required by law.

.4 The party that is required to effect insurance 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 and Consultant is 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 make and manage all insurance claims.

.7 The Contractor must meet the costs of all excesses or deductibles.

.8 All policies must:
.1 require the insurer to notify the Principal (other than in relation to workers compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and

.2 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.

.9 Each policy referred to in clauses 27.2 and 27.3.3 must:

.1 name or otherwise identify the Principal and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends; and

.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 proof 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 give the Principal copies of all insurance policies it is required to effect and maintain (other than the workers compensation insurance policy referred to in clause 27.3.1 and the professional indemnity insurance policy referred to in clause 27.3.2) whenever requested in writing by the Principal. The Contractor must give the Principal a certificate of currency in respect of the workers compensation insurance policy referred to in clause 27.3.1 and the professional indemnity insurance policy referred to in clause 27.3.2 whenever requested in writing by the Principal.

.13 If the Principal has a reasonable objection to an insurer or 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 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.

.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; and
.3 the Contractor must reinstate the Works if instructed to by the Principal and, except as otherwise provided in the Contract, may only make a Claim for payment for reinstatement of the Works up to the amount of any insurance settlement.

### Subcontractors, Suppliers and Consultants

Contractual relationships between the Contractor and Subcontractors, Suppliers and Consultants must be on a similar basis to those between the Principal and Contractor. Clause 31 specifies which requirements apply to Consultants and Suppliers.

#### 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 73.6.3; 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 If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with the name and address of the proposed Subcontractor. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.

.3 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.
.4 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.

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 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.
Carrying out the Works

This section deals with design and construction activities. It contains provisions that apply to the physical carrying out of the Works and also covers procedures for payment.

Starting

32 Start-up workshop

The start-up workshop is held to encourage the parties and others concerned with the Works to work co-operatively towards achieving a successful Contract. Start-up workshop guidance material is provided at Attachment 1 and does not form part of the Contract.

.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. Clause 6.4 applies to the costs of 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.

33 Security

The Contractor is required to provide security to the Principal in the form of unconditional Undertakings to pay on demand, provided by financial institutions on the Contractor’s behalf.

.1 Within 14 days after the Date of Contract (and before starting work on the Site or the NGCC Site), the Contractor must give the Principal a Completion Undertaking in respect of each of Work Portion 1 (Water Mains) and Work Portion 2 (Road Upgrade) and the Post-Completion Undertaking in respect of each of Work Portion 1 (Water Mains) and Work Portion 2 (Road Upgrade) 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 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.

.3 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 Works in respect of Work Portion 1 (Water Mains) or Work Portion 2 (Road Upgrade), as relevant; and

.2 the Post-Completion Undertaking at the end of the period stated in Contract Information item 35 after the Actual Completion Date of the Works in respect of Work Portion 1 (Water Mains) or Work Portion 2 (Road Upgrade), as relevant 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.

.4 When any of the circumstances in clause 33.3.2 apply, the Post-Completion Undertaking will be returned when those circumstances no longer apply.

.5 Not used.

.6 Undertakings must be provided by a bank, building society, credit union or insurance company acceptable to the Principal.

.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.
Cash Security - Subcontracts

The Contractor may require Subcontractors to provide security for Subcontracts in the form of cash security, retention money or unconditional undertakings to pay on demand provided by financial institutions on the Subcontractor’s behalf.

.8 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.

.9 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.

.10 The Contractor must deposit all money it receives in trust, as described in clauses 33.8 and 33.9, 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.

.11 If the Contract Price is $20 million or more at the Date of Contract, clauses 33.8 and 33.10 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 33.8 and 33.10 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.

Schedule 13 sets out the general effect of Part 2 of the Regulation. The Contractor acknowledges that the summary is general in nature and cannot be relied on as legal advice concerning the Contractor’s obligations under the Regulation.

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 when the Contractor has complied with relevant requirements of the Contract; and

.2 the time stated in Contract Information item 13.

.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 permit the CVC, including its authorised employees and agents, to have access to the Site and to the premises of the Contractor at all reasonable times.

34A NGCC Site and other Neighbouring Land

.1 The Contractor acknowledges and agrees that:

.1 the NGCC Site and Neighbouring Land are not controlled by the Principal; and
.2 accordingly, access to the NGCC Site:
  .1 is at the discretion of the NGCC Principal Contractor; and
  .2 is subject to compliance with the NGCC Site Access and Delivery Protocols.

Subject to the Contractor complying with its obligations under clause 34A.3, the Principal will procure:
  .1 that the NGCC Principal Contractor will grant access for the Contractor and the Contractor's Associates to the NGCC Site; and
  .2 access for the Contractor and the Contractor's Associates to the Neighbouring Land, to the extent necessary for the Contractor to perform the Works.

The Contractor must, and must procure that the Contractor's Associates:
  .1 comply with:
    .1 the NGCC Site Access and Delivery Protocols when the Contractor or its Associates access the NGCC Site;
    .2 the terms of any relevant Neighbouring Land Consent to Enter when the Contractor or its Associates access the Neighbouring Land;
    .3 without limiting clause 34A.2.1.2:
      .1 prior to commencing work on the Site or on any Neighbouring Land, carry out a Dilapidation Report, in consultation with the Principal;
      .2 lodge with the Principal five copies of that Dilapidation Report;
      .3 carry out the Works with due skill and diligence and after completion of the Works, restore the Site as nearly as possible to its original condition having regard to the Neighbouring Land Consent to Enter; and
      .4 restore all areas affected by the Works as near as possible to their pre-existing condition, at no cost to the Principal; and
  .2 do not do anything that will result in:
    .1 a non-compliance with the NGCC Site Access and Delivery Protocols when the Contractor or its Associates access the NGCC Site; or
    .2 non-compliance with the terms of any Neighbouring Land Consent to Enter when the Contractor or its Associates access the Neighbouring Land.

If the Principal does not give the Contractor access to the NGCC Site, 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.

34B NGCC Works and Utilities Works

.1 The Parties acknowledge and agree that the Principal and its Associates will be executing the NGCC Works and the Utilities Works on the NGCC Site and the land adjacent to the NGCC Site at the same time as the Contractor is carrying out the Works.

.2 The Contractor acknowledges and agrees that:
  .1 delays in carrying out the Works or a failure to comply with the Contractor's other obligations under this Contract may impact on, interfere with, or delay the execution of the NGCC Works and/or the Utilities Works; and
  .2 it has taken the NGCC Works and the Utilities Works into account in preparing the Contract Program.

.3 The Contractor must:
  .1 permit the Principal and its Associates to access the Site to the extent necessary to perform the Utilities Works;
  .2 cooperate with the Principal and its Associates in relation to the performance of the NGCC Works and the Utilities Works;
  .3 co-ordinate the performance of the Works with the performance by the Principal and its Associates of the NGCC Works and the Utilities Works; and
.4 not do anything that will cause or contribute to the NGCC Works or the Utilities Works being delayed or damaged.

34C Contractor’s responsibilities

.1 Except as expressly identified in the Contract, the Contractor is responsible for the management, in a timely manner so as to comply with the Contract Program, of all issues arising in respect of Neighbouring Land.

.2 Without prejudice to the Contractor's obligation not to breach the Law, the Contractor agrees to use reasonable endeavours to:

.1 during the execution of the Works:
   .1 minimise any disturbance; and
   .2 not cause any inconvenience;

.2 not create any nuisance and trespass to the Neighbouring Land, any owner or occupier of the Neighbouring Land (each a Neighbouring Owner) and the public from dust, debris, noise, obstruction, vibration or from any other cause and howsoever caused;

.3 maintain, at all times, the amenity of the area during the performance of the Works and not do anything to reduce that amenity; and

.4 minimise the cost incurred in complying with its obligations under this clause 34C.

.3 The Contractor shall indemnify the Principal against any costs, loss, expense, damage or liability suffered or incurred by the Principal as a result of a breach of clause 34C.2 by the Contractor.

.4 The Contractor agrees to act reasonably in dealing with Neighbouring Owners.

.5 The Contractor shall keep the Principal informed at all times in relation to all negotiations with Neighbouring Owners concerning the matters referred to in this clause 34C.2.

35 Engagement and role of Valuer

Refer to Schedule 4 (Agreement with Valuer), under which the Valuer makes determinations about value and time under clauses 47 and 50.

.1 If Contract Information item 50A states that a Valuer must be engaged or if the parties agree to engage a Valuer, then:

.1 the parties, acting reasonably, must endeavour to agree in writing on the identity of the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 50B to select the Valuer;

.2 within a further 21 days after the date of selection of the Valuer, the Principal and the Contractor must jointly engage the Valuer using the form in Schedule 4 (Agreement with Valuer); and

.3 a Valuer’s certificate will be final and binding unless the net amount of the Valuer’s determination (excluding any amount for interest) exceeds the amount stated in Contract Information item 50C, in which case either party may commence litigation in respect of the matters referred to the Valuer, but only within 56 days after receiving the determination.

.2 The parties may agree at any time to engage a Valuer in accordance with this clause, either for a single valuation or on an ongoing basis. When the parties agree to engage a Valuer after the Date of Contract, “Date of Contract” for the purposes of clause 35.1.1 refers to the date the parties agree to appoint the Valuer.

The Site

36 Site information

.1 The parties acknowledge that:

.1 at the Date of Contract, the Principal has provided in good faith the information concerning the Site and the NGCC Site identified in Contract Information items 36A and 36B;
the information identified in Contract Information items 36A and 36B does not form part of the Contract;

3. the Principal does not guarantee the completeness of the information identified in Contract Information item 36A;

4. the Principal does not guarantee the accuracy, quality or completeness of the information identified in Contract Information item 36B; and

5. the Principal has no duty of care in connection with information identified in Contract Information item 36B, or with having provided it.

Other information concerning the Site may be included in the Contract.

The Contractor warrants that it:

1. has made its own inquiries concerning the Site and the NCGG Site, including checking information provided by the Principal;

2. has examined the Site, the NGCC Site and surrounds and satisfied itself through its own investigation as to the Site Conditions which might reasonably be expected;

3. has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the Contract Price (subject to clause 37);

4. did not in any way rely on the completeness of the information identified in Contract Information item 36A other than as a guide for ascertaining what further information the Contractor considers it needs to obtain;

5. did not rely on the accuracy, quality or completeness of information identified in Contract Information item 36B; and

6. has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

37 Site Conditions

1. The Contractor is solely responsible for dealing with any adverse 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.

2. Clauses 37.3 to 37.8 do not apply if it is stated in Contract Information item 37 that the Contractor is to bear the risk of adverse Site Conditions.

3. If the Contractor becomes aware of adverse Site Conditions that differ materially from those it should reasonably have expected at close of tenders, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of those Site Conditions. Where practicable, the notification should be given before the Site Conditions are disturbed. The notification must include details of:

   1. the Site Conditions the Contractor claims are adverse;

   2. the manner in which the Contractor contends they differ materially from the Site Conditions the Contractor should reasonably have expected at close of tenders (having regard to the warranty in clause 36.2), including any information supporting this contention;

   3. the effect on the Works;

   4. the effect on achieving Completion;

   5. the additional work and resources involved and the Contractor’s estimate of its entitlement to any adjustment to the Contract Price; 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 37.3.

5. After considering the Contractor’s notification under clause 37.3, the Principal must notify the Contractor whether it agrees with the Contractor’s contentsions under clause
37.3.1. and 37.3.2 as to the nature of the conditions encountered and whether or not the Contractor should reasonably have expected them.

.6 If the Principal agrees that there are adverse Site Conditions that differ materially from those the Contractor should reasonably have expected at the close of tenders and the Contractor has given the notice required by clause 37.3 then:

.1 the parties may agree in writing on the effects of the unexpected adverse Site Conditions (including any Variation instructed by the Principal), and any affected Contractual Completion Dates and the Contract Price must be adjusted as agreed; or

.2 if the parties have not agreed as to the effects of the unexpected adverse Site Conditions:

.1 if the Principal instructs a Variation in connection with the adverse Site Condition, 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 unexpected adverse Site Conditions 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 any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse Site Conditions, but excluding any costs included in the valuation of the Variation; or

.2 if no Variation in connection with the adverse Site Condition 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 as a result of the unexpected adverse Site Conditions.

.7 If the Principal does not agree with the Contractor’s contentions under clauses 37.3.1 and 37.3.2, the Contractor may notify an Issue under clause 69.

.8 Costs and delay incurred by the Contractor as a result of unexpected adverse Site Conditions before it gave the notice required by clause 37.3 must not be counted in any valuation or extension of time.

### Design

The Contractor always has some design, design coordination and design management responsibility no matter whether the nature of the Contract is described as fully documented; construct only; design, development and construct; design and construct, lump sum or some similar description is given to it. The extent of design by the Contractor may be as little as shop detailing, as much as the full design of the Works, or something in between.

#### 38 Faults in Contract Documents

.1 The Contractor must check the Contract Documents. At least 21 days before the Contractor proposes to use a Contract Document, the Contractor must notify the Principal of any Fault in that Contract Document and any related Contract Documents.

.2 The Principal must resolve any Fault notified under clause 38.1.

.3 If the Principal resolves a Fault in the Contract Documents, then, subject to clause 38.4:

.1 to the extent that the Principal resolves the Fault by instructing a Variation, clause 48 applies; and

.2 to the extent that the Principal resolves the Fault other than by instructing a Variation:
.1 if the resolution has an effect on the time to achieve Completion, the Contractor may make a Claim for an extension of time under clause 50 and delay costs in accordance with clause 51, or the Principal may assess a reduction of time in accordance with clause 50; and

.2 if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders, the parties may agree in writing on an adjustment to the Contract Price or if not agreed the Contractor may make a Claim for an adjustment to the Contract Price to be valued in accordance with clause 47.

.4 If the Principal resolves a Fault in the Contract Documents that was not notified in accordance with clause 38.1, the Contractor is not entitled to any costs for delay or the cost of any aborted work.

39 Design by Contractor and Contractor's Documents

Design responsibilities

.1 The Contractor warrants to the Principal that the Contractor has carefully examined the Principal's Documents and warrants that the Principal's Documents are suitable, appropriate and adequate for the intended purpose of the Works and to carry out the Works.

.2 The Contractor must carry out and complete the Works with due diligence in accordance with the Principal's Documents, so that the Works, when completed will be fit for the purposes required by the Contract and comply with the other requirements of the Contract.

.3 The Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works. The Contractor’s design obligations include, but are not limited to:

.1 completion of design, documentation and workshop detailing for design provided by the Principal, including coordination of design activities and the interaction of the various disciplines;

.2 development of the preliminary design provided by the Principal for elements referred to in Contract Information item 38A.1; and

.3 full design by the Contractor of elements referred to in Contract Information item 38A.2.

.4 Subject to clause 39.6, design or design development does not cause a Variation or reduce the Contractor's design responsibilities under clause 39.

Departures from the design provided by the Principal

.5 Subject to clause 39.7, the Contractor must not depart from the design provided by the Principal in the Principal’s Documents unless instructed in writing by the Principal.

.5A The Principal may, by notice in writing to the Contractor, provide a design that is different from that set out in the Principal’s Document and instruct the Contractor to proceed on the basis of that revised design as a Variation under clause 48.

.6 If the Contractor considers that some departure from the design provided by the Principal in the Principal's Documents is desirable to ensure the effectiveness and efficiency of the Works, then the Contractor may propose a Variation under clause 48. Where a departure is necessary for the Works to be fit for the purposes required by the Contract, the Contractor must notify the Principal in accordance with clause 48.7.

.7 In carrying out the design and design development of the elements referred to in Contract Information item 38A.3, the Contractor may depart from the design provided by the Principal, but only:

.1 to the extent that any such departure does not adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract; and

.2 provided that the Contractor has notified the Principal in writing of the proposed departures and the Principal has not notified the Contractor of any objection within 7 days after receiving the notification.
Design review

.8 To the extent specified in the Contract, the Contractor must review its design in consultation with persons nominated by the Principal, and develop the design and the Contractor’s Documents allowing for any matters identified in the review.

Contractor's Documents

.9 The Contractor must produce Contractor’s Documents which:

.1 will ensure that the Works are fit for the purposes required by the Contract; and

.2 meet the requirements of all of the following:

.1 the Contract;

.2 Statutory Requirements;

.3 the Principal’s instructions;

.4 the Building Code of Australia (if stated in Contract Information item 38B) and relevant Australian Standards; and

.5 if no other standard is specified in the Contract, good industry standards applicable to the Works.

.10 The requirements of clause 39.9 are not affected by any Variation.

40 Submitting Contractor's Documents

.1 Unless the Contract provides otherwise, the Contractor must submit Contractor’s Documents to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. Contractor’s Documents must be submitted progressively with sufficient detail to demonstrate what is proposed. The number of copies must be as stated in Contract Information item 28.

.2 The Principal need not respond to the Contractor about the Contractor’s Documents.

.3 If the Principal objects to the Contractor’s Documents, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any Fault, error or omission in the Contractor’s Documents.

.4 Nothing the Principal does or omits to do in connection with the Contractor’s Documents makes the Principal responsible for the Contractor’s Documents, or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.

41 Innovation

Clause 41 provides an incentive to the Contractor to improve its service to the Principal by innovation. If the Principal accepts the Contractor’s proposal, the Contractor benefits from the Variation and the Principal benefits from the value added to the Works through reduced operating or maintenance costs or other savings.

.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.

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**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 and the NGCC Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site and the NGCC 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;

.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 if no other standard is specified in the Contract, good industry standards applicable to the Works.

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
45 Defects

The Principal considers the Contractor to be an expert in the design and construction of the Works and holds the Contractor responsible for its work. The Principal requires Completion to be defect-free.

These Defects provisions are to ensure that the Works are constructed to the standards required by the Principal. The Principal can also rely on its common law rights. Also refer to clause 67 which deals with Defects after Completion.

.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. A similar provision applies after Completion under clause 67.1.

.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:
   .1 if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation;
   .2 if a Valuer is engaged, the Principal may request the Valuer to determine the value of the deductions in accordance with clause 47.7, taking into account any increased future costs, loss of income or reduction in asset life, and the Contract Price will be adjusted accordingly; or
   .3 if no Valuer is engaged and the parties do not agree to engage a Valuer 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.
Changes to work and time

47 Valuation of changes

.1 If the Contractor submits a Claim complying with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the Contract Price or Contractual Completion Date(s), then the parties must endeavour to reach agreement on the adjustments. If agreement cannot be reached then:

.1 if a Valuer is engaged, either party may by giving notice to the other party and to the Valuer, request the Valuer to determine the adjustment;
.2 if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation; or
.3 if no Valuer is engaged and the parties do not agree to engage a Valuer then, within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.

.2 The Principal is not required to assess a Claim nor is a Claim to be referred to the Valuer until the Contractor provides all the information specified in clause 68.3.

.3 If an event entitles the Contractor to adjustments to both the Contract Price and any Contractual Completion Date, these adjustments are to be dealt with together.

.4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

Valuation principles

.5 When the Contract requires an adjustment to the Contract Price to be valued in accordance with clause 47, the principles set out below apply.

.6 Subject to clause 47.8, if the Contractor is entitled to an increase in the Contract Price for additional work or for unavoidable additional costs, the value of the increase is to be assessed or determined as the sum of:

.1 the additional reasonable direct cost to the Contractor including labour, Materials and plant (not including the Contractor’s Margin);
.2 the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional work or in responding to the unavoidable circumstances (not including the Contractor’s Margin);
.3 an additional amount for the Contractor’s Margin, calculated as the percentage stated in Contract Information item 44 of the total of the costs under clauses 47.6.1 and 47.6.2; and
.4 any delay costs due in accordance with clause 51, subject to the requirements of clause 50.

The Contractor is entitled to claim unavoidable additional costs under clauses 8.8, 37.6, 38.3, 49.4, 52.4 and 53.3 when the conditions of those clauses are satisfied.

.7 The value of decreased or omitted work or of any reduction in costs under clause 38, is to be assessed or determined on the basis of rates and lump sums in the Contract or, if there are no applicable rates or lump sums in the Contract, based on reasonable rates and prices applying at the close of tenders. The deduction must include a reasonable amount for any time-dependent costs which will not be incurred by the Contractor and any profit on the decreased or omitted work.

.8 A valuation under clause 47.6 must not include:

.1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
.2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
.3 any amount that the Contractor is not entitled to claim under clause 37.8, 38.4, 49.6 or 68.2.
A valuation under clause 46 must take into account the specific matters required by that clause.

**Application of adjustments**

The Contract Price and any relevant Contractual Completion Date(s) must be adjusted as agreed, assessed or determined under clause 47.

### 48 Variations

The Principal will normally obtain, and seek to settle by negotiation, the Contractor’s price and allowance for effect on time for a proposed Variation before instructing the Variation in writing, and clauses 48.2 to 48.3 provide for this. This does not prevent the Principal from instructing a Variation at any time.

**Instructing and commencing Variations**

The Principal may instruct a Variation in writing at any time before Completion of the whole of the Works (and after Completion in accordance with clause 67.1.3) and the Contractor must comply.

1. The parties agree that:
   1. the Contract Price does not include any allowance for:
      1. excavation of rock; or
      2. removal of spoil to any location that is more than 5km distance from the Site; and
   2. to the extent that the Contractor is required to undertake any of the activities referred to in clause 48.1A.1, that will be deemed to be a Variation.

2. If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
   1. its price (excluding all costs of delay or disruption) for a proposed Variation;
   2. the anticipated effect of the proposed Variation on achieving Completion; and
   3. the effect of the proposed Variation on any other matter specified by the Principal.

3. If the parties have agreed in writing on the effects of a proposed Variation, and the Principal instructs the Contractor to carry out the Variation, any affected Contractual Completion Dates and the Contract Price must be adjusted as agreed.

4. If the parties have not agreed in writing on the effects of a proposed Variation or the Principal has not made a request under clause 48.2, the Principal may:
   1. instruct the Contractor to carry out the Variation, in which case the Contractor may make a Claim for:
      1. an extension of time under clause 50 and delay costs in accordance with clause 51, or the Principal may assess a reduction in time in accordance with clause 50; and
      2. an adjustment to the Contract Price to be valued in accordance with clause 47, or the Principal may assess a deduction from the Contract Price to be valued in accordance with clause 47; or
   2. alternatively, instruct the Contractor to carry out any additional work as Daywork, in which case the requirements of Schedule 8 (Daywork) apply.

**Variations proposed by the Contractor**

The Contractor may make a written proposal for a Variation for the Contractor’s convenience.

6. The Principal may accept the Contractor’s proposal but is not obliged to do so. The Principal’s acceptance may be subject to conditions, including that the Variation is at the Contractor’s risk. If the Principal accepts the Contractor’s proposal, the Principal must instruct a Variation, stating any conditions, and make any agreed adjustments to the affected Contractual Completion Dates and the Contract Price.
.7 If the Contractor considers that a Variation is necessary but the Principal has not instructed a Variation, the Contractor must notify the Principal within 7 days after the Contractor should reasonably have known that a Variation was necessary.

.8 If the Principal does not agree that a Variation is necessary, all issues relating to the claimed Variation must be dealt with under clauses 68 to 71.

.9 The Contractor acknowledges that development of the design by the Contractor does not constitute a Variation.

49 Changes to Statutory Requirements

.1 If the Contractor becomes aware of changes in Statutory Requirements that require a change to work in connection with the Contract (not including changes that the Contractor should reasonably have expected at close of tenders), the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the changes in Statutory Requirements. The notification must include details of:

.1 the changes to Statutory Requirements;
.2 why the changes to Statutory Requirements should not reasonably have been expected by the Contractor at close of tenders;
.3 the changes to work in connection with the Contract that the Contractor considers necessary;
.4 any delays in achieving Completion;
.5 any additional work and resources involved and the Contractor’s estimate of its entitlement to any adjustment to the Contract Price; and
.6 any other matters the Contractor considers relevant.

.2 The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.

.3 After considering the Contractor’s notification under clause 49.1, the Principal must notify the Contractor whether it agrees with the Contractor’s contentsions under clause 49.1.1 and 49.1.2 as to the change in Statutory Requirements and whether or not the Contractor should reasonably have expected them.

.4 If the Principal agrees that there are changes in Statutory Requirements that require changes to the work in connection with the Contract (that the Contractor should not reasonably have expected at the close of tenders) and if the Contractor has given the notice required by clause 49.1 then:

.1 the parties may agree in writing on the effects of the change in Statutory Requirements (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 unexpected change in Statutory Requirements:

.1 if the Principal instructs a Variation, in connection with the change in Statutory Requirements, 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 unexpected change in Statutory Requirements 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 unexpected change in Statutory Requirements, but excluding any additional or increased work included in the Variation; or

.2 if no Variation in connection with the change in Statutory Requirements 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
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 unexpected change in Statutory Requirements.

.5 If the Principal does not agree with the Contractor’s contentions under clauses 49.1.1 and 49.1.2, the Contractor may notify an Issue under clause 69.

.6 Costs and delay incurred by the Contractor as a result of changes in Statutory Requirements before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

50 Changes to Contractual Completion Dates

The Contractor is responsible for managing progress to achieve Contractual Completion Dates for Work Portions (if any) and for the Works. The initial Contractual Completion Dates are stated in the Contract Information and these may be adjusted under the Contract.

Clause 50 sets out the conditions under which the Contractor may claim an extension of time for a delay event. It also entitles the Principal to extend time for any reason, at its sole discretion.

Extensions of time

.1 Subject to clause 50.1.A, the Contractor is entitled to an extension of time for Completion and an adjustment to the related Contractual Completion Dates if:

.1 the Contractor is or will be delayed in achieving Completion by any of the following:

.1 any act, default or omission of the Principal in connection with the Works, other than an act or omission which is authorised under this Contract, by any Law or by any standard, code, specification, policy, requirement, guideline, procedure, protocol or plan of any Authority;

.2 a fraudulent, reckless, unlawful or malicious act or omission of the Principal in connection with the Works;

.3 cessation or suspension of any part of the Works because of:

.1 a Commonwealth, State or NSW Government direction;

.2 an order of a court or tribunal of competent jurisdiction; or

.3 a requirement of any Law;

.4 industrial action which occurs only at the Site or the NGCC Site which is the direct result of any act or omission of the Principal or any of its Associates at the Site or the NGCC Site and in connection with the Works;

.5 a blockage or embargo that directly affects the Site, the NGCC Site or the Works (other than industrial action);

.6 a Force Majeure Event; or

.7 inclement weather for more than twenty days;

.2 the delay is to an activity or activities on the critical path of the then current Contract Program and work is proceeding in accordance with this program;

.3 the Contractor has given the Principal an initial notice in writing within 7 days after the start of the delay, setting out the cause of the delay, any relevant facts and including a copy of the Contract Program, current at the start of the delay, which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and

.4 the Contractor has given the Principal the Claim and other information required by clauses 50.3 and 50.4;

.1A The Contractor is not entitled to an extension of time for Completion or any adjustment to the related Contractual Completion Dates:

.1 to the extent the delay arises directly or indirectly in connection with any act or omission of the Contractor or its Associates; and

.2 for any cause which the Contract expressly states is at the Contractor’s risk or for which the Contract expressly precludes an entitlement for extension of time.

Refer to clause 22 for Contract Program requirements
The Contractor must take all reasonable steps to avoid delay and its effects.

If the Contractor is delayed, it may make a Claim for an extension of time in accordance with clause 50. The Claim must:

1. identify the extension of time claimed and include other information sufficient for the Principal to assess the Claim; and
2. be submitted within 28 days after the start of the delay; and
3. be updated every subsequent 28 days while the delay continues.

With every claim made under clause 50.3 the Contractor must submit a copy of the then current Contract Program which shows the effects of the delay on the critical path and to the time required to achieve Completion.

The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.

When concurrent events cause a delay in achieving Completion and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for Completion notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.

The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 37.8 or 49.6.

The Principal may, in its absolute discretion but without any obligation to do so, extend any Contractual Completion Date at any time and for any reason, whether or not the Contractor has claimed an extension of time.

If the initial notice referred to in clause 50.1.3 is provided later than 7 days after the start of the delay, any entitlement to an extension of time applies only to the period of delay from the date 7 days prior to the date of provision to the Principal of the initial notice.

Reductions in time

If a Variation or resolution of a Fault under clause 38 leads to less time being required for Completion, the Principal may assess a reasonable adjustment to the affected Contractual Completion Date.

Adjustment to Contractual Completion Dates

The relevant Contractual Completion Dates must be adjusted in accordance with clause 47 to account for any extension or reduction of time assessed under clause 50.

51 Delay costs and liquidated damages

Delay costs

The Contractor is entitled to delay costs only for delay or disruption caused by:

1. a Variation (other than a Variation for the Contractor’s convenience or a Variation that is deemed in accordance with clause 48.1A.2);
2. failure to give the Contractor access to:
   1. the NGCC Site; or
   2. the Site within the time stated in Contract Information item 13;
3. subject to clause 8.9, an instruction under clause 8.8;
4. adverse Site Conditions that differ materially from those the Contractor should reasonably have expected at the close of tenders (subject to clause 37.8 and Contract Information item 37);
5. resolution of a Fault notified in accordance with clause 38.1;
6. changes in Statutory Requirements that the Contractor should reasonably have expected at the close of tenders and that require changes to work in connection with the Contract (subject to clause 49.6);
7. a suspension instruction under clause 53 if the need for the suspension arises from the Principal’s act or omission; or
8. a breach of the Contract by the Principal.
.2 Delay costs are calculated at the applicable rate in Contract Information item 49A for the number of days by which the time for achieving Completion is extended because of a cause listed in clause 51.1, subject to the limitations in clause 37.8, 38.4 and 49.6.

.3 The rate or rates stated in Contract Information item 49A1 apply where the delay is caused by the Principal’s failure to give the Contractor access to sufficient of the Site to allow the Contractor to start work, in accordance with clause 34.

.4 The rate or rates stated in Contract Information Item 49A2 apply for any other delays for which the Contractor is entitled to delay costs. Where a delay costs rate is stated for the whole of the Works, it does not apply to delays to any individual Work Portion. If delay costs rates are stated for Work Portions, no separate delay costs rate applies for delays to the whole of the Works.

.5 Notwithstanding clause 51.2, the Contractor is not entitled to delay costs for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs.

.6 The applicable rate of delay costs will be reduced where any part of the Works is being used or occupied prior to Completion under clause 64. The reduced rate of delay costs will be in the same proportion to the original rate as the value of the remaining work is to the Contract Price (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.

.7 The Contractor has no remedy or entitlement connected with delay or disruption other than:

1. the amounts to be paid in accordance with clause 51;

2. an extension of time to any Contractual Completion Date to which it is entitled under clauses 48 or 50; or

3. any remedy it may have under clause 74 or 75.

**Liquidated damages**

.8 If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve Completion of the Works or any Work Portion by its Contractual Completion Date.

.9 If Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve Completion of the Works or any Work Portion by a Contractual Completion Date to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 49B on the terms set out in Contract Information item 49B.

.10 If, however, the Contract is terminated before the Contractor achieves Completion, any liquidated damages will apply only up to the date of termination of the Contract.

.11 A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal’s rights and entitlements.

.12 If any Contractual Completion Date is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.

.13 The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied prior to Completion, under clause 64. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the Contract Price (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.

.14 The Contractor acknowledges that the rates for liquidated damages in Contract Information item 49B are a genuine pre-estimate of the Principal’s loss and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.

**52 Acceleration**

.1 The Principal may issue an Acceleration Notice instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
.2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
  .1 the price (excluding all costs of delay or disruption) for a proposed acceleration; and
  .2 the effect of a proposed acceleration on any other matter specified by the Principal.
.3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor’s costs for acceleration, before the Contractor takes those steps.
.4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the Contract Price must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

53 Principal’s suspension
.1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
.2 The Contractor must resume carrying out the Works when instructed by the Principal.
.3 If the need for the suspension arises from the Principal’s act or omission, and causes the Contractor delay, or unavoidable costs, additional to what the Contractor would have incurred had the suspension not been instructed, the Contractor may make a Claim for:
  .1 an extension of time in accordance with clause 50, without the Contractor meeting the preconditions required by clause 50 other than provision of an updated Contract Program demonstrating the delays caused by the suspension;
  .2 delay costs in accordance with clause 51; and
  .3 an increase in the Contract Price, to be valued in accordance with clause 47.
.4 The Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

54 Contractor’s suspension
.1 If the Contractor suspends work at any time in accordance with the Building and Construction Industry Security of Payment Act 1999 (NSW), it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption.
.2 Clause 54 is not intended to limit any rights of the Contractor under the Building and Construction Industry Security of Payment Act 1999 (NSW).

Payment
55 The Contract Price
.1 The Contract Price (at the Date of Contract) and the basis for payment are stated in Contract Information item 40.
.2 If stated in Contract Information item 41, the Contract Price (and the rates and/or lump sums it includes) will be adjusted for rise or fall in costs, on the terms set out in Schedule 7 (Costs Adjustment Formula).
.3 If the Contract includes Rate Items then, without limiting clause 8:
  .1 the Contract Price is determined by adding:
    .1 any lump sums in the Schedule of Rates or Schedule of Prices – Lump Sum, including Provisional Sums; and
    .2 the products of the quantity and the relevant rate for each Rate Item;
  .2 at the Date of Contract, all quantities for Rate Items are estimated, and none are guaranteed;
  .3 some of the Rate Items may be provisional (that is, they may not be required at all);
.4 before a Rate Item is completed, the estimated quantity is used in calculating the Contract Price and after it is completed, the actual quantity measured in accordance with the Contract is used:

.5 for each Rate Item, the Contractor will be paid for the measured quantity of work actually carried out in accordance with the Contract; and

.6 the Contractor will not be entitled to delay costs where the measured quantity of work for any Rate Item exceeds the estimated quantity.

**Provisional Sums**

.4 If Contract Information item 42 states that the Contract Price includes a Provisional Sum, then:

.1 the Contractor must not carry out the work specified against that Provisional Sum unless instructed by the Principal;

.2 if the Principal does not instruct the Contractor to carry out the work, the Provisional Sum for that work must be deducted from the Contract Price; and

.3 if the Principal instructs the Contractor to carry out the work:

.1 the Contractor must comply with the instruction; and

.2 the Contract Price must be adjusted by deducting the Provisional Sum and adding:

.1 the additional reasonable cost to the Contractor of the work specified against the Provisional Sum, being the direct costs of labour, Materials and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the Provisional Sum margin; and

.2 the Provisional Sum margin calculated by applying the percentage stated in Contract Information item 43 to the cost specified in clause 55.4.3.2.1.

**Provisional Quantities**

.5 If the Principal instructs the Contractor to carry out work which is the subject of a Provisional Quantity and that instruction requires the Contractor to carry out a greater or lesser quantity of work than the Provisional Quantity, the Contract Price must be adjusted by the amount calculated by multiplying the contract rate applicable to the Provisional Quantity work by the difference between the Provisional Quantity and the quantity of work carried out.

### 56 Goods and Services Tax (GST)

.1 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.

.2 The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.

.3 The Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.

.4 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a Payment Claim or otherwise invoices the Principal for that supply.

.5 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

**Reimbursable expenses**

.6 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
.1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
.2 to the extent that the other party’s recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

57 Prepayment

Prepayment is an advance payment against the Contract Price which provides early cash flow to the Contractor. The Prepayment is repaid by the Contractor progressively by deductions from amounts payable under the Contract. Prepayment is secured by Undertakings provided to the Principal in respect of the Prepayment. Prepayment may be utilised for any purpose related to the Contract.

.1 The Contractor may claim Prepayment, as an advance payment against the Contract Price (but not as a Payment Claim), at any time before achieving Completion of the whole of the Works if all the following apply:

.1 the total amount claimed for Prepayment is no more than the amount stated in Contract Information item 45;
.2 the Prepayment does not exceed the remaining balance of the Contract Price less any amount that the Principal considers payable by the Contractor to the Principal;
.3 no more than one-third of the Prepayment amount is retained by the Contractor and the balance is assigned directly to Subcontractors, Suppliers and Consultants in the proportions notified to the Principal;
.4 the Contractor has established to the Principal’s satisfaction that the Prepayment will be utilised for a purpose related to the Contract;
.5 the Contractor has provided Undertakings to the Principal for the amounts of the Prepayment; and
.6 the Contractor has assigned to Subcontractors, Suppliers and Consultants their respective shares of the Prepayment by effective written assignments, and has notified the Principal of the assignments, including the amounts assigned to each Subcontractor.

.2 The Principal must pay the amount claimed within 14 days after the Contractor provides evidence that all the conditions in clause 57.1 have been met.

.3 The Contractor must repay the Prepayment by way of progressive deductions from payments otherwise due under the Contract.

.4 The Principal must return Undertakings provided for Prepayment when the amount of the Prepayment has been fully repaid.

.5 The Principal may have recourse to the Undertakings provided for Prepayment if the Prepayment has not been fully repaid and:

.1 the unpaid balance of the Contract Price is insufficient to cover the outstanding balance of the Prepayment;
.2 the Contract is terminated; or
.3 the Contractor’s employment under the Contract is terminated.

58 Payment Claims

The Contract allows for progress payments by regular (usually monthly) payments or payments based on Work Portion Completion or both.

.1 Subject to clauses 58.2 and 58.3, the Contractor must submit a Payment Claim each month, on the date in the month specified in Contract Information item 46A, for work carried out up to that date.

.2 For Work Portions for which Contract Information item 46B states that payments will be made after they reach Completion, each Payment Claim may only include the value of work in those Work Portions if they reached Completion before the specified submission date.

.3 The Contractor must submit the Final Payment Claim within the time specified in clause 61.
.4 Payment Claims must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.

.5 Every Payment Claim must:
   .1 identify the work and Materials to which the Payment Claim relates;
   .2 state the value of that work and those Materials;
   .3 identify and state the amount the Contractor claims for any other Claim that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
   .4 state the amount of interest, if any, that the Contractor claims under clause 62; and
   .5 state the Claimed Amount, after allowing for retention of the Completion Amount specified in clause 60 and for payments already made.

.6 Every Payment Claim must be accompanied by:
   .1 a completed and true Combined Subcontractor’s Statement and Supporting Statement in the form of Schedule 6, executed on the date of the Payment Claim;
   .2 all relevant calculations;
   .3 all relevant Conformance Records; and
   .4 any other information specified in the Contract.

Unfixed Materials

.7 Payment Claims must not include any amount for Materials intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
   .1 the Principal has agreed in writing to pay the Contractor for the unincorporated Materials;
   .2 where the value of the unincorporated Materials is greater than $100,000, the Contractor provides before or with the Payment Claim:
      .1 an Undertaking equal to the value of the unincorporated Materials (to be returned when the Materials are incorporated into the Works); and
      .2 a statement in the terms in Schedule 11 (Statement regarding Materials);
   .3 the Contractor provides evidence before or with the Payment Claim that:
      .1 the unincorporated Materials are, or upon payment will become, the property of the Principal free of any Encumbrance; and
      .2 the unincorporated Materials are clearly identified as the property of the Principal and are insured for their full value; and
   .4 for any unincorporated Materials imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.

.8 The Contractor warrants that no Encumbrance exists over any Materials paid for by the Principal or incorporated into the Works.

.9 Upon the Materials becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.

.10 If the Contract or the Contractor’s employment under the Contract is terminated by the Principal, the Contractor must ensure that, in respect of any unincorporated Materials for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the Materials are stored and take possession of these Materials.

59 Payments

.1 Within 10 Business Days after being served a Payment Claim by the Contractor, the Principal must provide a Payment Schedule to the Contractor that:
   .1 identifies the Payment Claim to which it relates;
   .2 indicates the amount the Principal proposes to pay, as the Scheduled Amount; and
.3 If the Scheduled Amount is less than the Claimed Amount, provides reasons explaining why it is less and why any money is being withheld. Reasons why the Scheduled Amount is less than the Claimed Amount may include failure by the Contractor to comply with any outstanding obligations under:

1 clause 33 (Security);
2 clause 27 (Insurance);
3 clause 58.6.1 (Combined Subcontractor’s Statement and Supporting Statement - Schedule 6);

In accordance with the relevant legislation identified in Schedule 6, the Principal may withhold any payment to the Contractor until this Statement is provided.

4 clauses 58.6.2 to 58.6.4 (other items to accompany a Payment Claim); and
5 clause 58.7 (Unfixed Materials).

2 The Principal must pay the Contractor the Scheduled Amount within 15 Business Days after being served with the Payment Claim.

3 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor’s account notified to the Principal for that purpose. Changes to the Contractor’s account details must be notified in accordance with protocols established by the Principal.

4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement.

60 Completion Amount

The Completion Amount is intended to provide an incentive; the earlier the Contractor achieves defect-free Completion of the whole of the Works, the earlier the Completion Amount is paid.

1 If Contract Information item 47 specifies a Completion Amount, the Contractor may claim it in the next Payment Claim after Completion of the whole of the Works or, if applicable, a specified Work Portion, subject to the Principal’s right to set-off under clause 63.

2 The Principal will retain the Completion Amount from payments when the amount paid to the Contractor exceeds 50% of the Contract Price at the Date of Contract. Until the Completion Amount has been retained in full, the amount retained against each payment must not exceed 50% of the value of the payment. Thereafter, the Completion Amount will be held until the Contractor claims it in accordance with clause 60.1.

3 The Principal will own any interest earned on the monies retained for the Completion Amount.

61 Final payment

Clause 61 contains provisions which apply to the Contractor's Final Payment Claim and the Principal's Final Payment Schedule.

1 The Contractor must submit a Final Payment Claim within 13 weeks after achieving Completion of the whole of the Works. The Final Payment Claim must include any Claim not previously included in a Payment Claim. Any Claim not submitted before or with the Final Payment Claim is barred.

2 Within 10 Business Days after receiving the Final Payment Claim or, if the Contractor has not submitted a Final Payment Claim, within 15 weeks after the whole of the Works reaches Completion, the Principal must provide a Final Payment Schedule to the Contractor.

3 If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the Final Payment Schedule must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.

4 Payments identified in the Final Payment Schedule as due from the Contractor to the Principal must be made within 14 days after the Final Payment Schedule is provided.
Payments due from the Principal to the Contractor must be made in accordance with clause 59.

.5 The issue of the Final Payment Schedule is conclusive evidence that all necessary adjustments to the Contract Price have been made and all entitlements of the Contractor have been met, except for those required by:

.1 arithmetical error; or

.2 resolution of:

.1 any Claim made in accordance with clause 61.1;

.2 any Issue properly notified under clause 69 prior to the Final Payment Claim; or

.3 any Issue arising out of the Final Payment Schedule, but only if it is notified to the Principal within 28 days after the date of the Final Payment Schedule.

.6 The Contractor’s liability under the Contract or otherwise is not affected by the issue of the Final Payment Schedule. The Contractor’s liability continues until any limitation period under statute expires.

### 62 Interest on late payments

.1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

### 63 Set-off

.1 If the Principal claims a sum, including a debt due, in connection with the Contract or any other contract between the Principal and the Contractor, the Principal may:

.1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and

.2 make a demand against the Undertakings provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

### Completion

#### 64 Early use

.1 Before the Contractor achieves Completion, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete and then:

.1 the Contractor’s responsibilities are not affected, except if they are reduced under clauses 26.3 or 26.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor’s work to be hindered; and

.2 the Principal becomes responsible for any additional insurance required.

.2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves Completion, the Principal must give not less than 21 days notice in writing to the Contractor and must specify the date on which use or occupation is required and those parts to be used or occupied.

.3 The Contractor must assist and cooperate with those using or occupying the Works.

.4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of Completion that are relevant to the parts of the Works to be used or occupied.

#### 65 Completion

The Contract requires defect-free Completion. Completion applies to any Work Portion as well as to the whole of the Works.

.1 The Contractor must achieve Completion by the Contractual Completion Date.

.2 When the parties, each acting reasonably, agree that Completion has been achieved, the Principal must give the Contractor a notice stating the Actual Completion Date.
66 Close-out workshop

The close-out workshop is an opportunity to review the management of the Contract. It is also used to collect and provide feedback to the parties to enable them to improve the overall communication and management process for any possible future contract.

.1 The Principal must convene a close-out workshop within 21 days after Completion of the whole of the Works.

.2 The parties must attend the close-out workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.

67 Defects after Completion

.1 At any time after Completion:

.1.1 the Principal may instruct the Contractor to make good any Defect within the time specified in a Defect Notice;

.2 if the Contractor fails to make good the Defect in the time specified in the Defect Notice, the provisions of clauses 45.3 and 45.4 will apply; and

.3 the Principal may instruct a Variation in connection with any Defect instead of requiring the Defect to be made good under clause 67.1.1.

.2 Clause 67 does not reduce the Contractor’s liability, whether arising under the Contract or otherwise. The Contractor’s liability continues until any limitation period under statute expires.

.3 Clause 67 does not affect the Principal’s rights under clause 46.
Claim and Issue resolution
This section provides a step-by-step procedure for handling Claims and Issues.

Claim resolution

68 Contractor's Claims

.1 If the Contractor makes:
   .1 a Claim under a provision of the Contract that does not specify a time for making the Claim; or
   .2 a Claim in connection with the Contract or the Works, but not under a provision of the Contract, the Claim must be submitted within 28 days after the later of the start of the event giving rise to the Claim; and the time the event should have become known to the Contractor, with reasonable diligence on its part.

.2 If the Contractor fails to make a Claim within the applicable specified time, the Contractor will not be entitled to interest on any amount paid in relation to the Claim for the period before the Contractor made the Claim. However, any Claim not made within the time specified in clause 68.1 is barred.

.3 Each Claim must include information sufficient for the Principal to assess the Claim, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The Claim must also include the effect of the event giving rise to the Claim on both the Contract Price and Contractual Completion Date(s).

.4 If a Claim does not comply with clause 68.3, the Principal may, but is not obliged to, give the Contractor an opportunity to make the Claim compliant. Clause 68.7 applies to a claim that does not comply with clause 68.3.

.5 If a Claim complies with clause 68.3 and the Principal agrees that the Contractor is entitled to a money adjustment or an adjustment to Contractual Completion Date(s):
   .1 if the Claim involves money it must be valued in accordance with clause 47; and
   .2 if the Claim involves adjustment to Contractual Completion Date(s) it must be dealt with under clause 50.

.6 If the Principal agrees to a Claim involving money, the Contractor may claim the agreed amount only by including it in a Payment Claim.

.7 If a Claim is rejected, not agreed or has not been referred to a Valuer within 28 days after the Contractor has provided the information specified in clause 68.3 it will become an Unresolved Claim, and the Contractor may notify the Principal of an Issue under clause 69.1.

.8 The provisions of clauses 68.2 to 68.7 apply generally to all Claims, whether made under clause 68 or under another provision of the Contract, unless determination of the Claim is regulated by a separate procedure under any applicable legislation.

Issue resolution

Generally, the aim of the Contract is for the parties to resolve matters through discussions as soon as possible and within the times specified. Further steps are only needed if the representatives of the parties who are involved in day to day management of the Contract are unable to resolve matters themselves.

69 Notification of Issue

.1 The Contractor may dispute an assessment or instruction of the Principal, or seek resolution of an Unresolved Claim, by giving notice to the Principal (with a copy to the Principal’s senior executive named in Contract Information item 7) of an Issue within 28 days after notification of the assessment or instruction, or within 28 days after it becomes an Unresolved Claim.
Either party may give notice to the other (with a copy to that party’s senior executive) of an Issue (excluding an Issue referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the Issue.

Subject to clause 69.6, the parties must follow the Issue resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.

If notice of an Issue under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.

The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.

The Issue resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

### 70 Resolution by senior executives

1. If a party gives notice of an Issue under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the Issue.

2. A party is not entitled to refer an Issue to Expert Determination until 28 days after giving notice of an Issue.

3. A party may only refer an Issue to Expert Determination by giving a notice specifying the Issue to the other party (with a copy to that party’s senior executive) within the time stated in Contract Information item 51.

4. Subject to clause 69.6, an Issue for which notice has not been given in accordance with clause 70.3 is barred from Expert Determination or litigation or similar action.

### 71 Expert Determination

1. The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the Principal’s Authorised Person.

2. If an Issue is to be referred to Expert Determination under clause 70, the parties must endeavour to agree on the Expert to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the Expert will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
   
   1. an employee of the Principal or the Contractor;
   2. a person who has been connected with the Works or the Contract; or
   3. a person who the Principal and the Contractor have already considered and not been able to agree on.

3. When the person to be the Expert has been agreed or nominated, the Principal, on behalf of both parties, must engage the Expert by a letter of engagement (with a copy to the Contractor) that sets out:
   
   1. the Issues referred to the Expert for determination;
   2. the Expert’s fees;
   3. the procedure for Expert Determination in Schedule 5 (Expert Determination Procedure); and
   4. any other matters which are relevant to the engagement.

4. The Principal and the Contractor must share equally the Expert’s fees and out-of-pocket expenses for the determination, and bear their own costs.

5. The procedure for Expert Determination is set out in Schedule 5 (Expert Determination Procedure).

6. In response to any Issue referred to the Expert by a party, the other party may raise any defence, set-off or cross-claim.

7. Subject to clauses 71.8 and 71.9, the parties must treat each determination of an Expert as final and binding and a party that owes money to the other pursuant to the
determination must pay that amount to the other party within 28 days after receiving the
determination.

.8 Neither party may commence litigation in respect of the matters determined by the Expert
unless the determination:
  .1 does not involve paying a sum of money; or
  .2 requires one party to pay the other an amount in excess of the amount stated in
  Contract Information item 54, calculated without having regard to:
    .1 any interest that may be payable; and
    .2 any amount that has been paid pursuant to the Building and Construction

.9 Neither party may commence litigation in respect of the matters determined by the Expert
unless they do so within 56 days after receiving the determination.

72 Parties to perform the Contract

.1 The parties must continue to perform their obligations under the Contract at all times,
regardless of any Claim or Issue or the conduct of any Issue resolution procedures under
clauses 69 to 71.
Termination

73 Termination for Contractor’s Default or Insolvency

.1 The Principal may terminate the Contractor’s employment under the Contract for Contractor’s Default or Contractor’s Insolvency by giving notice in accordance with clause 73.

.2 Nothing in clause 73 affects or negates the Principal’s common law rights to terminate or for damages.

.3 In the case of Contractor’s Default, the Principal must first give the Contractor notice that it has 7 days after receipt of that notice to remedy the Contractor’s Default.

.4 If the Contractor fails to:

.1 give the Principal a notice containing clear evidence that it has remedied a Contractor’s Default; or

.2 propose steps reasonably acceptable to the Principal to remedy the Contractor’s Default,

the Principal may give the Contractor a notice terminating its employment under the Contract.

If a right to terminate exists at common law, a notice to terminate at common law may be given without first giving notice to remedy a Contractor’s Default.

.5 In the case of Contractor’s Insolvency, the Principal may give the Contractor a notice terminating its employment under the Contract.

.6 If the Principal terminates the Contractor’s employment under clause 73 it may, at its sole discretion, employ others to complete the Works and all the following will then apply:

.1 The Contractor must leave the Site and the NGCC Site as soon as reasonably practicable and remove all Temporary Work and Materials it has brought onto the Site or the NGCC Site, apart from any Temporary Work and Materials identified by the Principal as being necessary to have the Works completed.

.2 The Contractor must assign to the Principal the Contractor’s rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract.

.3 The Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any Undertakings given on the Contractor’s behalf.

.4 The Contractor must do everything and sign all documents necessary to give effect to clause 73, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.

.5 If, on Completion, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete the Works, then the difference will be a debt due from the Contractor to the Principal.

.6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 73.6.5 and may, without limiting any other right of recourse, demand them against the Undertakings.

74 Termination for Principal’s convenience

.1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

.2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
The Contractor must leave the Site and the NGCC Site by the date stated in the termination notice and remove all Temporary Work, Materials and other unfixed things it has brought onto the Site or the NGCC Site apart from Materials for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site or the NGCC Site.

After termination under clause 74.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:

1. the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any Prepayments and any deductions, retentions or set-offs under clauses 59, 60 and 63;

2. the cost of Materials reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated Materials become the property of the Principal, free of any Encumbrance;

3. the reasonable, direct costs incurred by the Contractor for the removal of the Temporary Work and other things from the Site and the NGCC Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;

4. an amount of 2% of the unpaid portion of the Contract Price, less the amounts payable under clauses 74.4.1 and 74.4.2; and

5. the costs reasonably incurred by the Contractor prior to receiving notice of termination in the expectation of completing the Works, where those costs have not been recovered through any other payment by the Principal, but only to the extent that the Contractor complies with a strict duty to mitigate costs.

The Principal must return the Undertakings, subject to its rights under the Contract.

The payments referred to in clause 74.4 are full compensation for termination under clause 74 and the Contractor has no Claim for damages or other entitlement, whether under the Contract or otherwise.

75 Termination for Principal’s default

1. If the Principal:

1. fails to pay the Contractor any amount in accordance with the Contract which is not in dispute;

2. commits any fundamental breach of the Contract; or

3. fails to give the Contractor access to the Site sufficient to start work required by the Contract within 3 months after the Date of Contract (or longer period specified in the Contract or agreed by the parties),

the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.

2. If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor’s sole remedy for the Principal’s breach will be the applicable amounts referred to in clause 74.4.

76 Termination notices

1. Notices under clauses 73, 74 and 75 must be in writing and be delivered by hand, registered post or equivalent, or facsimile.

77 Survival

1. Without limiting the survival of any clause by operation of law, clauses 23, 24 and 25 and all indemnities in the Contract survive termination.
Meanings

78 Interpretation
.
1 Words in the singular include the plural, and vice versa.
.
2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the Contract Documents, or any part of them.
.
3 “Including” and similar words are not words of limitation.
.
4 The word “day”, unless qualified, for example as “Working Day” or “Business Day”, has its common English meaning according to context, namely a period of 24 hours or a calendar day.
.
5 Headings and notes are provided to guide the parties and form part of the Contract.

79 Definitions

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don’t normally apply. In order to understand the Contract, you need to take these special meanings into account.

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- Valuer
- Works

.1 Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 79.

**ABC Commissioner**

Has the meaning given in the BCIIP Act.

**Acceleration Notice**

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an “Acceleration Notice”.

**Actual Completion Date**

The date on which Completion of the Works or a Work Portion (as applicable) is achieved by the Contractor.

**Associate**

In relation to a person, a Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) of the person, and any officer, agent, adviser, consultant, joint venture partner, contractor or employee of that person or that Related Body Corporate.

**Authority**

Any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

**BCII Act**


**Building Code**

**Building Code Entity**

Each of:
.1 the Contractor;
.2 the Contractor’s Subcontractors; and
.3 the Contractor’s related entities (as contemplated by section 3(2) of the Building Code).

**Building Work**

For the purposes of:
.1 clause 17.1, Contract Information item 16A and Schedule 12, has the meaning given in the Building Code; and
.2 clause 17.2 and Contract Information item 16B, has the meaning given in the BCIIP Act.

**Business Day**

Any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

**Certified AIP Plan**

An Australian Industry Participation Plan drafted by the Principal, updated with the Contractor's details (where relevant) and certified by the relevant authority.

**Claim**

A claimed entitlement of the Contractor in connection with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of contract by the Principal, but excludes any claimed entitlement that arises directly or indirectly from any act or omission of the Contractor or its Associates, whether under this Contract or otherwise.

**Claimed Amount**

The amount claimed by the Contractor in a Payment Claim.

**Commonwealth**

The Commonwealth of Australia.

**Completion**

The state of the Works or a Work Portion being complete, with no Defects or omissions, except for Defects not known.

This includes:
.1 the supply to the Principal of:

.1 all Subcontractor’s Warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
.2 certificates, authorisations, approvals and consents from statutory authorities and service providers;
.3 those certificates required for the occupation, use and maintenance of the Works; and
.4 all other documents;

.2 Testing required by the Contract;
.3 the provision of all training required by the Contract; and
.4 all other requirements specified in the Contract.

**Completion Amount**

An amount stated in Contract Information item 47 and included in the Contract Price, which becomes payable only after Completion of the whole of the Works or, if applicable, a specified Work Portion.
Completion Undertaking
The Undertaking required under clause 33.1, for the percentage of the Contract Price (at the Date of Contract) stated in Contract Information item 33.

Conformance Records
Records which show conformance by the Contractor with particular requirements of the Contract.

Consultant
A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to the Contractor.

Contract
The agreement between the Contractor and the Principal constituted by the Contract Documents.

Contract Documents
All the documents listed or referred to in clause 7.1.

Contract Information
The document described as such in the Contract Documents, which sets out information for the purposes of the Contract.

Contract Price
The amount stated as such in Contract Information item 40, subject to adjustment in accordance with the Contract and re-calculation where the Contract includes Rate Items.

Contract Program
The program described in clause 22.

Contractor
The party named in Contract Information item 8, including its successors and permitted assignees.

Contractor's Authorised Person
The person appointed to act on behalf of the Contractor under clause 2, named in Contract Information item 9 or as subsequently notified to the Principal.

Contractor's Default
A substantial breach of the Contract by the Contractor, including any of the following:
.1 abandoning the carrying out of the Works;
.2 suspending progress of the carrying out of the Works in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
.3 significantly failing to achieve Scheduled Progress;
.4 failing to comply with an instruction in writing or confirmed in writing by the Principal;
.5 failing to carry out the Works with professional skill, care and competence;
.6 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
.7 failing to provide Undertakings as required under clause 33; or
.8 failing to effect and maintain insurance policies as required under the Contract.

Contractor's Documents
Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to design and construct the Works in accordance with the Contract.
**Contractor's Insolvency**
Any of the following applying to the Contractor:

- the Contractor is insolvent;
- the Contractor indicates it does not have the resources to perform the Contract;
- an application for winding up is made which is not stayed within 14 days;
- a winding-up order is made;
- a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- a mortgagee enters into possession of any property of the Contractor;
- notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- any actions having a similar effect are taken.

**Contractor's Margin**
An amount added to the costs calculated under clauses 47.6.1 and 47.6.2, to allow for profit and overhead costs, but not overhead costs relating to delay or disruption.

**Contractual Completion Date**
The last day of the period stated in Contract Information item 13, by which the Contractor must achieve Completion of the Works or of a Work Portion (as applicable), as adjusted under the Contract.

**CVC**
Clarence Valley Council.

**Data**
The Contractor’s Documents and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Contract.

**Date of Contract**

- If a specific date is nominated in Contract Information item 12, Date of Contract means that date.
- If no specific date is nominated in Contract Information item 12, Date of Contract is to be determined as follows:
  - Not used.
  - If the Principal has expressly stated that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date the formal agreement or deed is signed by the Principal after the Contractor has executed it.

**Daywork**
Work carried out by the Contractor for which payment is made on the basis of daily time and cost records for labour, plant, Materials, services and other items as provided in Schedule 8 (Daywork).

**Deed of Contract Agreement**
A deed entered into by the Principal and the Contractor pursuant to which each of the Principal and the Contractor undertake to perform and observe all of their obligations under the Contract.

**Defect**
An error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, resulting from a failure of the Contractor to comply with the Contract.

**Defect Notice**
A notice issued by the Principal under clause 45.2 or 67.1.

**Dilapidation Report**
A report:

- in a form required by the Principal, acting reasonably;
.2 that complies with the requirements of the dilapidation report required under any approval (if any);
.3 in written, drawn and photographic form; and
.4 that records and describes the physical condition, at the time the report is prepared, of the Site and Neighbouring Land.

**Encumbrance**

A mortgage, charge, lien, title retention, trust, power or other encumbrance.

**Expert**

A person engaged to determine *Issues* under clause 71.

**Expert Determination**


**Fault**

Ambiguity, inconsistency or discrepancy.

**Final Payment Claim**

A *Payment Claim* given by the Contractor to the Principal under clause 61.1.

**Final Payment Schedule**

A *Payment Schedule* given by the Principal to the Contractor under clause 61.2.

**Force Majeure Event**

Any of the following events occurring:

.1 bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation which occurs at, or directly in the vicinity of the Site or the NGCC Site;
.2 a flood which might at the date of this Contract be expected to occur no more frequently than once in 100 years, which occurs at, or directly in the vicinity of the Site or the NGCC Site; or
.3 fire or explosion at, or directly in the vicinity of the Site or the NGCC Site, caused by events referred to in paragraphs .1 or .2 above,

and which:

.4 was not caused by the Contractor or its *Associates*;
.5 is beyond the reasonable control of the Contractor or its *Associates*; and
.6 could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent contractor would have taken using the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional carrying out design, supply, construction, installation, commissioning and repair work similar to the Works (including the expenditure of reasonable sums of money).

**Intellectual Property Rights**

Any copyright, patent right, registered design or other protected right.

**Issue**

Any issue, dispute or difference raised by either party under clause 69.

**Law**

A requirement of any legislation, including statutes, rules, regulations, by-laws, ordinances and subordinated legislation of:

.1 the Commonwealth;
.2 the State of NSW;
.3 any *Authority*; or
.4 any other person having jurisdiction over, or ownership of any relevant asset.
**Materials**
Includes materials, plant, equipment and other goods.

**National Construction Code**
The National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

**Neighbouring Land**
Land forming part of the Site which is not owned or controlled by the Principal or the CVC.

**Neighbouring Land Consent to Enter**
Any easement or consent granted by an owner of Neighbouring Land in favour of CVC in respect of the use of the Neighbouring Land.

**NGCC Contractor**
The person appointed to undertake the NGCC Works.

**NGCC Principal Contractor**
Any person appointed as principal contractor for the NGCC Works in accordance with the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW).

**NGCC Site**
The land adjacent to part of the Site, on which the New Grafton Correctional Centre project is being developed by the Principal, together with the Minister of Corrections on behalf of the Crown in right of the State of New South Wales and the Commissioner of Corrective Services.

**NGCC Site Access and Delivery Protocols**
The Site Access and Delivery Protocols for the NGCC Site during the delivery phase of the NGCC Works in the form set out in attachment 4 to this Contract.

**NGCC Works**
The works to be undertaken in respect of the design, supply, construction, installation, production, commissioning and completion of the New Grafton Correctional Centre project.

**Payment Claim**
A claim for payment made by the Contractor to the Principal under clauses 58 or 61.

**Payment Schedule**
A schedule containing the Principal’s assessment of a Payment Claim and stating the amount the Principal proposes to pay, as referred to in clauses 59 and 61.

**Post-Completion Undertaking**
The Undertaking required under clause 33.1, for the percentage of the Contract Price (at the Date of Contract) stated in Contract Information item 34.

**Preferred Subcontractor**
A Subcontractor, Supplier or Consultant listed in Contract Information item 31 for a specified trade or area of work.

**Prepayment**
The amount to be advanced by the Principal in accordance with clause 57 and Contract Information item 45.

**Principal**
The entity named in Contract Information item 4, including its successors and assignees.

**Principal's Authorised Person**
The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.
Principal's Documents
The drawings, specifications and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works.

Provisional Quantity
The quantity of an item of work specified in the Contract for which it is not known, at the Date of Contract, whether the work will be required or what the actual quantity will be.

Provisional Sum
A sum included in the Contract Price and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

Rate Item
An item of work for which payment will be calculated by multiplying the measured quantity of work, carried out in accordance with the Contract, by the rate accepted for that work. A Rate Item may appear in the Schedule of Rates or be identified in the Schedule of Prices – Lump Sum.

REF Road Upgrade

REF Water Main

Schedule of Rates
Any document included in the Contract identified as a Schedule of Rates, or which shows rates payable for carrying out items of work described in that document.

Scheduled Amount
The amount of payment (if any) stated in a Payment Schedule, that the Principal proposes to make in relation to a Payment Claim, as referred to in clause 59.1.2.

Scheduled Progress
The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works and all Work Portions will be completed by their respective Contractual Completion Dates.

Site
The lands and other places to be made available by the Principal to the Contractor for the purpose of executing the Works, including any existing buildings, services or other improvements, as briefly described in Contract Information item 2.

Site Conditions
Any physical conditions of the Site or the NGCC Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in carrying out work in connection with the Contract.

Statutory Requirements
The laws relating to the Works, the Site, the NGCC Site or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, the NGCC Site, the environment or the Contract, or anyone or anything connected with the Works, the Site, the NGCC Site or the Contract, including the REF Water Main and the REF Road Upgrade.

Subcontract
An agreement between the Contractor and a Subcontractor or a Supplier.
Subcontractor
An entity (including one engaged in accordance with clause 29.3) engaged by the Contractor to carry out part of the Works or the Temporary Work, or both, other than a Consultant or a Supplier.

Supplier
An entity engaged by the Contractor to supply Materials in connection with the Works.

Temporary Work
Temporary structures, amenities, physical services and other work, including Materials, plant and equipment used to carry out the Works but not forming part of the Works.

Test
Examine, inspect, measure, prove and trial, including uncovering any part covered up, if necessary; Testing and other derivatives of Test have a corresponding meaning.

Undertaking
An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking).

Unresolved Claim
A Claim rejected or not agreed under clause 68.7.

Utilities Works
The works to be undertaken on behalf of the Principal in respect of the delivery of:

1. 12MVA of permanent electricity supply to the boundary of the NGCC Site, including the construction of a new 1kV substation facility on the NGCC Site; and
2. telecommunications to the boundary of the NGCC Site with a capacity of the fibre connection of 1 Gigabit,


to facilitate the delivery of the New Grafton Correctional Centre project.

Value Completed
The value of work (including design work) carried out by the Contractor and included in a Payment Claim, as referred to in Schedule 3 (Payment Claim Worksheet).

Valuer
The entity engaged to determine time and value matters under clause 35.

Variation
Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including such changes in respect of the development by the Contractor of the design for the Works (including development of shop drawings and other Contractor’s Documents) in accordance with the requirements of the Contract.

Water Mains – Sections A and D
That part of the works in the areas identified in Attachment 5 as Section A and Section D, and as described in Attachment 7..

Water Mains Sections B and C
That part of the works generally in the areas identified in Attachment 5 as Sections B and Section C.

Water Mains Section E
That part of the works generally in the area identified in Attachment 5 as Section E, commencing at the North Eastern Boundary of the NGCC Site and terminating at a location advised by the Principal in writing.

Work Portion
A part of the Works specified as such in Contract Information item 13.

Work Portion 1 (Water Main)
**Work Portion 1.A**
That part of the Works specified as such in Contract Information item 13.

**Work Portion 1.B**
That part of the Works specified as such in Contract Information item 13.

**Work Portion 1.C**
That part of the Works specified as such in Contract Information item 13.

**Work Portion 2 (Road Upgrade)**
That part of the Works specified as such in Contract Information item 13.

**Works**
The works to be designed, constructed and handed over to the Principal on *Completion* by the Contractor, including all work and items of the types referred to in clause 8.1 and *Variations*, but excluding *Temporary Work*. The term applies to the Works as a whole and also to any part of the Works unless the context requires otherwise. Contract Information item 3 briefly describes the Works, which is being performed to facilitate the New Grafton Correctional Centre project.
# Contract Information

The Contract Information is part of the Contract. Words and phrases are defined in clause 79.

## Contract

### Item

<table>
<thead>
<tr>
<th>1</th>
<th>Contract name</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contract name is:</td>
<td>New Grafton Correctional Centre – Early Works – Road and Water infrastructure</td>
</tr>
<tr>
<td>The Contract number is:</td>
<td>20170686</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Site is:</td>
<td><strong>Work Portion 1 (Water Mains)</strong></td>
</tr>
</tbody>
</table>

**Work Portion 2 (Road Upgrade)**

Avenue Road is located within the CVC approximately 13 km south east of Grafton. All works will be delivered within the CVC road reserve. The section of road upgrade runs adjacent to the NGCC Site from Old Six Mile Lane to the Northern Boundary of the NGCC Site. The site is between chainage CH2824.945 and CH4962.4. The southern end of the
3 Description of the Works

The Works are:

Work Portion 1 (Water Mains):
Connection of water from the existing CVC water reticulation system main located underground at the intersection of the existing Pacific Highway and George Street Ulmarra. The route then extends to the East and South for approximately 13km to connect within the NGCC Site. Includes under boring at various locations, clearing of vegetation, supply, trench and lay pipe, supply and installation of fittings, as outlined in the Principal's Documents.

Work Portion 2 (Road Upgrade):
Avenue Road, pulverise and recompact existing sealed pavement including stabilisation and binding work to type ‘P2’, install new chip sealed pavement type ‘P1’ pavement from chainage CH2824.945 and CH4962.41, including clearing and grubbing of verge-side grass/weeds/regrowth, excavation of unsuitable shoulder material, construction of new catch and table drains along length of road, reconstruction of driveways, pavement construction and line marking and sign installation as outlined in the Principal's Documents.

Works for both Water Mains and Road Upgrade generally including:
(a) Site establishment;
(b) Traffic Control;
(c) Project accommodation;
(d) Protecting public utility services;
(e) Upgrade and maintenance of the existing roadway;
(f) Construction and maintenance of haul roads;
(g) Temporary drainage works;
(h) Installation and maintenance of temporary erosion and sediment controls;
(i) General earthworks including clearing and grubbing, removal and stockpiling of topsoil, excavation of cuttings to the extent as required by your approved

upgraded section will tie into the upgraded section of Avenue Road being undertaken as part of the Woolgoolga to Ballina Pacific Highway Upgrade Project, as generally depicted in Attachment 6.
Principal’s details

4 Principal

The Principal is: Infrastructure New South Wales (ABN 85 031 302 516)

5 Principal’s Authorised Person

The Principal’s Authorised Person is: [Name]

6 Notices to the Principal

Notices must go to the Principal’s Authorised Person named above, at the address or number shown here.

Office address: Infrastructure NSW
Level 15, 167 Macquarie Street
Sydney, 2000

Postal address: PO Box R220
Royal Exchange NSW, 1225

Facsimile number: N/A

e-mail address: [Email]

7 Principal’s Senior executive

The Principal’s senior executive is: [Name]
Office address: Level 15, 167 Macquarie Street
(for delivery by hand)
Sydney, 2000

Postal address: PO Box R220
(for delivery by post)
Royal Exchange NSW, 1225

Facsimile number: N/A

e-mail address: [HIDE] [HIDE]

Contractor’s details

8 Contractor

The Contractor is: Seymour Whyte Constrictions Pty Ltd
ABN 48 105 493 187

9 Contractor’s Authorised Person

The Contractor’s Authorised Person is:

Mentioned in clause 2

10 Notices to the Contractor

Notices must go to the Contractor’s Authorised Person named above, at the address or number shown here.

Office address: Level 2, 12 Electronics Street, Eight Mile Plains QLD 4113
(for delivery by hand)

Postal address: PO Box 4436, Eight Mile Plains QLD 4113
(for delivery by post)

Facsimile number: 07 3340 4811

e-mail address: [HIDE] [HIDE]

11 Contractor’s senior executive

The Contractor’s senior executive is:

Mentioned in clause 70

Office address: Level 2, 12 Electronics Street, Eight Mile Plains QLD 4113
(for delivery by hand)

Postal address: PO Box 4436, Eight Mile Plains QLD 4113
(for delivery by post)
Dates and times

12 Date of Contract

The Date of Contract is: The date of the Deed of Contract Agreement………………………………………………

13 Times for Site access and Completion

Site access: Mentioned in clause 34
Contractual Completion Date and Completion: Mentioned in clause 65

Time periods for Site access and for calculating Contractual Completion Dates are as shown.

<table>
<thead>
<tr>
<th>Work Portion number</th>
<th>Description</th>
<th>Date for giving Site access</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.A</td>
<td>Water Mains – Sections A and D</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.B</td>
<td>Water Mains – Sections B and C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.C</td>
<td>Water Mains – Section E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Road Upgrade - Upgrade and construct of Avenue Road;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Statutory and Government requirements

14 Fees, charges and approvals

Mentioned in clause 12

Approvals that have been obtained or will be obtained, and fees and

1. Work Portion 1 (Water Mains)-REF Water Main.
charges that have been paid or will be paid, by the Principal are:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Work Portion 2 (Road Upgrade):-REF Road Upgrade.</td>
</tr>
<tr>
<td>3.</td>
<td>Neighbouring Land Consent to Enter</td>
</tr>
</tbody>
</table>

**15 Compliance with NSW Government guidelines**

**A - Work Health and Safety (WHS)**

Mentioned in clause 15

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the Contractor required to implement a Corporate WHS Management System acceptable to the Principal? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the Contractor required to submit a WHS Management Plan in accordance with the WHS Regulation 2011 (NSW)? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>If required, the WHS Management Plan must be provided:</td>
<td>Within 14 days of the Deed of Contract Agreement</td>
</tr>
</tbody>
</table>

**B - Workplace Relations**

Mentioned in clause 15

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the Contractor required to submit a Workplace Relations Management Plan? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>If required, the Workplace Relations Management Plan must be provided:</td>
<td>Within 14 days of the Deed of Contract Agreement</td>
</tr>
</tbody>
</table>

**C - Quality Management**

Mentioned in clause 15

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the Contractor required to implement a certified Quality Management System? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the Contractor required to submit a Quality Management Plan? (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>If required, the Quality Management Plan must be provided:</td>
<td>Before starting construction work associated with the Contract</td>
</tr>
</tbody>
</table>

**D - Environmental Management**
**E – Skills Development and Training**

Is the Contractor required to meet and report on commitments for engaging apprentices and trainees for the Contract work? (Yes/No)  
Yes

**F - Aboriginal Participation**

The Aboriginal Participation Project Category is:  
» Category 3  
(“Category 3” applies if not filled in).

An Aboriginal Participation Plan must be provided:  
within 60 days after the Date of Contract 
An Aboriginal Participation Report must be provided:  
when the Contract is 90% complete.  
Is the Contractor required to submit copies of the Aboriginal Participation Plan and Participation Report to the NSW Procurement Board? (Yes/No)  
No

**16 Requirements for Commonwealth Funded projects**

**A - Building Code 2016**

Does the Building Code apply to the works as there is Commonwealth funding for the project which the Works form part of?  
No  
*If ‘yes’ applies, each Building Code Entity must comply with the Building Code*

Has the Contractor or a related entity of the Contractor submitted a
response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by the Principal or whether or not the Contractor or the Contractor’s related entity were successful?

Is a Workplace Relations Management Plan (Commonwealth) required?

*If ‘yes’ applies, the Contractor and each of the Contractor’s related entities must comply with the Building Code

*’no’ applies if not filled in

**B - Australian Government Building and Construction WHS Accreditation Scheme**

Is the Contractor required to maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme?

Yes

**C - Australian Industry Participation Plan**

Is the Contractor required to implement the Certified Australian Industry Participation Plan?

No

17 Principal contractor

Is the Contractor appointed as principal contractor? (Yes/No)

Yes

18 Working hours and working days

Working hours and working days are:

Construction activities will be undertaken in accordance with standard construction and work hours,

Monday to Friday: 7:00 am to 6:00 pm and Saturday 8:00 am to 1:00 pm.
Liability

19 Limitation of liability
Subject to clause 26.9, the limit of the Contractor’s liability to the Principal in respect of any one occurrence in connection with loss or liability other than personal injury or death is: 

20 Proportionate liability
Is proportionate liability excluded from the Contract? (Yes/No)
Yes

Insurance

1. Works insurance
The party responsible for effecting Works insurance is: Contractor.
Minimum cover is: 
Period of cover is: until issue of the Final Payment Schedule

22 Public liability insurance
The party responsible for effecting public liability insurance is: Contractor
Minimum cover is: $20 million
Period of cover is: until issue of the Final Payment Schedule

23 Workers compensation insurance
Minimum cover is: as required by law.
Period of cover is: until issue of the Final Payment Schedule

24 Professional indemnity insurance
Mentioned in clause 27.3.2
Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No)  Yes

Minimum cover is:  $10 million
Period of cover is:  until 6 years after the issue of the Final Payment Schedule.

25 Marine liability insurance

Minimum cover is:  N/A
Period of cover is:  

25A Motor Vehicle Fleet/ Mobile Plant Insurance

Minimum cover (Third Party Property Damage)  $20 million
Insurer:  
Policy number:  
Period of cover is:  Until issue of the Final Payment Schedule.

25B Asbestos liability insurance

Minimum cover is:  as required by law.
Period of cover is:  until issue of the Final Payment Schedule.

Contract Documents

26 Other Contract Documents

Other Contract Documents (not listed in clause 7) are:

1. any formal agreement or deed constituting the Contract; and
2. the Principal's Documents referred to in Schedule 15 which are included in the USB delivered together with this Contract.

Principal’s Documents

27 Copies of Principal's Documents

The number of copies of the Principal’s Documents to be provided to the Contractor is:  1 electronic copy
Contractor's Documents

28 Copies of Contractor's Documents

The number of copies of the Contractor’s Documents to be provided to the Principal is: 1 electronic copy in a format acceptable to the Principal

Subcontract work

29 Inclusion of consistent requirements in Subcontracts

The Subcontract value requiring inclusion of the provisions set out in Schedule 9 (Subcontract requirements) is:

30 Payment period for Subcontracts

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 29, is:

31 Preferred Subcontractors

The Preferred Subcontractors referred to in clause 29 are: Not applicable

32 Subcontractor's warranty

Trades or areas of work requiring a Subcontractor’s warranty are: (“Not required” applies if not filled in).

Undertakings

33 Completion Undertaking

A - For Contractors selected to tender for the Contract from the Office of Finance & Services ‘Best Practice’ Contractor Accreditation Scheme

The amount of the Completion Undertaking is: N/A
### B - For All Other Contractors

The amount of the **Completion Undertaking** is:

<table>
<thead>
<tr>
<th>Work Portion 1</th>
<th>2.5% of the Contract Price for Work Portion 1 at the Date of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work Portion 2</td>
<td>2.5% of the Contract Price for Work Portion 2 at the Date of Contract</td>
</tr>
</tbody>
</table>

### 34 Post-Completion Undertaking

The amount of **Post-Completion Undertaking** is:

<table>
<thead>
<tr>
<th>Work Portion 1</th>
<th>2.5% of the Contract Price for Work Portion 1 at the Date of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work Portion 2</td>
<td>2.5% of the Contract Price for Work Portion 2 at the Date of Contract</td>
</tr>
</tbody>
</table>

### 35 Return of Post-Completion Undertaking

The period at the end of which the **Post-Completion Undertaking** must be returned is:

### Site Information

#### 36 Site Information

Information contained in the documents identified in Contract Information items 36A and 36B does not form part of the Contract.

**A - Documents not guaranteed for completeness**

Documents not guaranteed for completeness are:

- Work Portion 1 (Water Mains): REF Water Main
- Work Portion 2 (Road upgrade): REF Road Upgrade
- Road Drawings, including those referred to in Schedule 15
- Water Drawings, including those referred to in Schedule 15

**B - Documents not guaranteed for accuracy, quality or completeness**

Documents not guaranteed for accuracy, quality or completeness are:

- [GEO TECH – if available]
- Any drawings
37 Site Conditions

Is the Contractor to bear the full risk, including cost and time implications, of encountering and dealing with materially adverse Site Conditions other than carrying out Variations instructed by the Principal? (Yes/No)  Yes

Design and documentation

38 Scope of design activities

A - Design by the Contractor

.1 Items and components of the Works for which the Contractor is responsible for developing the preliminary design provided by the Principal (clause 39.1.2):

All necessary design for or in respect of the Works not already performed by the Principal, including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Contract Documents. Refer also to clause 39.

Under no circumstances may the Contractor change the Principal’s design without the Principal’s prior written approval.

If the Principal’s design is required to be changed with the Principal’s approval, the Variation is to be valued under clause 48.

.2 Items and components of the Works which the Contractor must fully design (clause 39.1.3):

Coordination drawings
Construction details

.3 Items, services and components of the Works in respect of which the Contractor may depart from the design provided by the Principal (clause 39.7):

Nil

B - Building Code of Australia

Mentioned in clauses 39 & 43
### Innovation

**39 Innovation**  
*Mentioned in clause 41.5*

The percentage of financial benefit to be allocated to the Contractor is:  

** Payments **

**40 Contract Price at the Date of Contract**  
*Mentioned in clauses 55.1 and 55.3*

The *Contract Price* at the Date of Contract is:  

$10,475,721.90 (Ten million, four hundred seventy five thousand, seven hundred and twenty one dollars and ninety cents)

** Basis of payment **

The basis of payment is:  

(Lump sum / Schedule of Rates / Lump sum with Rate Items)

**41 Rise or fall adjustments**  
*Mentioned in clause 55.2*

Are rise or fall adjustments applicable to the Contract (excluding *Daywork*)? (Yes/No)

No

**42 Provisional Sums**  
*Mentioned in clause 55.4*

*Provisional Sum* items referred to in clause 55.4 are:

1. **Fullers Land to Cassons Creek Rd (Section B)** (approx. 6190m)  
   - $1,762,294.00 (based on $284.70/Lm)

2. **Underbore at Deep Creek** (approx. 150m, PE, no enveloper pipe)  
   - $98,915.00 (based on $659.43/Lm)

3. **Underbore along Deep Creek** (approx. 500m, PE, no enveloper pipe)
43 Provisional Sum margin

The Provisional Sum margin includes profit and off site overheads:

The Provisional Sum margin is:

44 Contractor's Margin

The Contractor’s Margin includes profit and off site overheads:

The percentage for Contractor’s Margin is:

45 Amount of Prepayment

The amount of Prepayment is:

46 Payment date and method

A - Date for Payment Claims

Mentioned in clause 55.4

Mentioned in clauses 47 and 79

Mentioned in clause 57.1.1

Mentioned in clause 58.1
The date in the month for making Payment Claims is: the last Business Day prior to the end of each calendar month

**B - Method of payment**

Work Portions for which payment will not be made until after they reach Completion: Monthly progress payment

**47 Completion Amount**

The Completion Amount is: Nil

The Completion Amount is payable after: (Completion of the whole of the Works/Completion of Work Portion »)

(“Completion of the whole of the Works” applies if not filled in).

**48 Interest on late payments**

Mentioned in clause 62


The rate of interest per annum is: 8%

**Delay costs**

**49 Delay costs and liquidated damages**

Mentioned in clauses 34 & 51

**A1 - Delay costs for delay in access to the Site**

The rate in item 49A1 applies only if the Principal fails to give initial access to the Site as required by clause 34. The rate does not apply where the Principal fails to give Site access for a Work Portion by the required time, unless that Work Portion is the first to proceed after the Contractor has established on the Site.
A2 - Delay costs for delay other than in access to the Site

The rate or rates in item 49A2 apply when the rate in item 49A1 is not applicable, in accordance with clause 51.

B - Liquidated damages

Do liquidated damages apply to this Contract? (Yes/No)

N/A

The rate per day for liquidated damages for the whole of the Works only applies where there are no rates specified for Work Portions and is:

Work Portion 1.A (Water Mains): $5,000 per day for failure to achieve Completion of Work Portion 1.A (Water Mains) for every day during the period commencing on the later of:

(a) the Contractual Completion Date for Work Portion 1.A; and
(b) 5 March 2018 and ending on the Actual Completion Date for Work Portion 1.A (Water Mains).

Work Portion 1.B (Water Mains): $5,000 per day for failure to achieve Completion of Work Portion 1.B (Water Mains) for every day during the period commencing on the later of:

(a) the Contractual Completion Date for Work Portion 1.B; and
(b) 5 March 2018 and ending on the Actual Completion Date for Work Portion 1.B (Water Mains).
Work Portion 1.C (Water Mains): $5,000 per day for failure to achieve Completion of Work Portion 1.C (Water Mains) for every day during the period commencing on the later of: (a) the Contractual Completion Date for Work Portion 1.C; and (b) 5 March 2018 and ending on the Actual Completion Date for Work Portion 1.C. The cumulative aggregate liquidated damages payable in respect of failure to achieve Completion of Work Portion 1.A (Water Mains), Work Portion 1.B (Water Mains) and/or Work Portion 1.C (Water Mains) by the Contractual Completion Date for the relevant Work Portion is $5,000 per day.

Work Portion 2 (Road Upgrade): $5,000 per day for failure to achieve Completion of Work Portion 2 (Road Upgrade) for every day during the period commencing on the later of: (a) the Contractual Completion Date for Work Portion 2; and (b) 5 March 2018, and ending on 31 July 2019. General damages will be payable for failure to achieve Completion of Work Portion 2 for the period commencing on 1 August 2019 and ending on the Actual Completion Date.

*The rate for each Work Portion is separate and distinct from the others.

---

Engagement of Valuer

50 Engagement of Valuer

A - Engagement of Valuer

Must a Valuer be engaged? (Yes/No)

Yes

B - Person to select the Valuer

The person is:

The President, Australian Institute of Quantity Surveyors

*The rate for each Work Portion is separate and distinct from the others.*
C - Litigation Threshold

Mentioned in clause 35

The threshold amount for litigation following a Valuer’s determination is:

$500,000

Expert Determination

51 Time to refer Issue to Expert Determination

Mentioned in clause 70

The time within which either party may refer an Issue to Expert Determination is:

(“28 days after becoming entitled under clause 70.2” applies if not filled in).

52 Expert Determination representative

Mentioned in clause 71

The representative of the Principal for all of the purposes in clause 71, and under Schedule 5 (Expert Determination Procedure) is:

(“the Principal’s senior executive shown in Contract Information item 7 until the Principal notifies otherwise” applies if not filled in).

Office address: (for delivery by hand)

(“as shown in Contract Information item 7” applies if not filled in).

Postal address: (for delivery by post)

(“as shown in Contract Information item 7” applies if not filled in).

Facsimile number:

(“as shown in Contract Information item 7” applies if not filled in).

e-mail address:

(“as shown in Contract Information item 7” applies if not filled in).

53 Person to nominate an Expert

Mentioned in clause 71

The person is:

Chief Executive Officer
Australian Disputes Centre
Level 16
54 Threshold amount for litigation

The threshold amount for litigation following an Expert’s determination is: $500,000.
### Schedules

| Schedule 1 | Subcontractor’s Warranty |
| Schedule 2 | Undertaking |
| Schedule 3 | Payment Claim Worksheet |
| Schedule 4 | Agreement with Valuer |
| Schedule 5 | Expert Determination Procedure |
| Schedule 6 | Combined Subcontractor’s Statement and Supporting Statement |
| Schedule 7 | Costs Adjustment Formula |
| Schedule 8 | Daywork |
| Schedule 9 | Subcontract requirements |
| Schedule 10 | Principal Arranged Insurances |
| Schedule 11 | Statement regarding Materials |
| Schedule 12 | Compliance with Building Code 2016 |
| Schedule 13 | Retention Money Trust Account Obligations |
| Schedule 14 | WHS Action Tracking and Reporting requirements |
| Schedule 15 | Water Mains and Road Upgrade drawings |
Schedule 1

Subcontractor’s Warranty

The Contractor has entered into the Contract with the Principal for the carrying out of the Works.

The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work or Products, which are to be used by the Contractor in performing the Contract.

In return for the Principal allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Principal against the Contractor or the Subcontractor.

Refer to clause 30.1 of the GC21 General Conditions of Contract.

Definitions

Deed dated: .................................................................

between

Subcontractor or Supplier: .................................................................

ABN .................................................................

And

The Principal: Infrastructure New South Wales ABN 85 031 302 516

concerning

The Contract: The contract between the Principal and the Contractor

Contract Name: New Grafton Correctional Centre – Early Works – Road and Water infrastructure

Contract Number: »

Works: The works to be designed (to the extent specified) and constructed by the Contractor, as described in the Contract.

The Contractor: Seymour Whyte Constructions Pty Ltd ...

Subcontract Work or Products: .................................................................

Warranty Period: ........... years from the Actual Completion Date of the whole of the Works.

Other words and phrases in this Deed have the meanings given in the Contract.

In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assignees.

Terms of Deed

1 Warranty

.1 The Subcontractor warrants that all work performed and all Materials supplied by the Subcontractor as part of the Subcontract Work or Products will:
.1 comply in all respects with the requirements of the Contract;
.2 to the extent that the quality of Materials or standard of workmanship is not specified in the Contract, comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any applicable Australian Standards; and
.3 be fit for the purposes for which they are required.

2 Replacement or making good

.1 The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
.1 be of a lower standard or quality than referred to in clause 1 of this Deed; or
.2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.

.2 The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
.1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
.2 normal wear and tear;
.3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
.4 any other cause beyond the control of the Subcontractor.

.3 Nothing in this Deed affects the Subcontractor’s liability with respect to the Subcontract Work or Products.

3 Costs

.1 The Subcontractor promises to undertake, and meet the reasonable cost of, any work necessary to:
.1 carry out any part of the Works to enable the requirements of clause 2 of this Deed to be met; or
.2 restore or make good the Works after meeting those requirements, whichever the Principal requires.

4 Indemnity

.1 The Subcontractor indemnifies the Principal against claims (including Claims, actions and loss or damage) arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed.

5 Notice of Defects

.1 The Principal may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 1 of this Deed or if the Principal requires the Subcontractor to replace or make good any of the Subcontract Work or Products under clause 2 of this Deed.

6 Time to remedy

.1 The Subcontractor must do everything to remedy any breach notified to it, or to carry out any replacement or making good required under clause 5 of this Deed, within a reasonable time after receiving the Principal’s notice.

7 Failure to remedy

.1 If the Subcontractor fails to complete the work specified in the Principal’s notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
2 If the Subcontractor fails to complete the work by the date specified in clause 7.1 of this Deed, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

8 Urgent action by Principal

.1 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.

.2 The Subcontractor agrees that the Principal taking such action does not affect the warranty or any other obligation of the Subcontractor under this Deed.

.3 The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

9 Assignment

.1 The Principal may assign its rights and benefits under this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

10 Operation of Deed

.1 This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

Executed as a deed

The common seal of the Subcontractor was affixed in accordance with its Articles of Association in the presence of:

Signature of Director/Secretary: ............................................................

Name of Director/Secretary: ............................................................

Signature of Director: ............................................................

Name of Director: ............................................................

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

Signature of Authorised Person: ............................................................

Name of Authorised Person: ............................................................

and witnessed by:

Signature of witness: ............................................................

Name of witness (in full): ............................................................

Signed, sealed and delivered on behalf of the Principal by:

Signature of Authorised Person: ............................................................

Name of Authorised Person: ............................................................

and witnessed by:

Signature of witness: ............................................................

Full name of witness: ............................................................

Place: ............................................................
Schedule 2

Undertaking

Refer to clauses 33, 57 and 58 of the GC21 General Conditions of Contract.

On behalf of the Contractor

Name of Financial Institution: ............................................................
The Principal: Infrastructure New South Wales
The Contractor: Seymour Whyte Constructions Pty Ltd

ABN 48 105 493 187

Security Amount: $ .................................................................
The Contract: The contract between the Principal and the Contractor
Contract Name: New Grafton Correctional Centre – Early Works – Road and Water infrastructure

Undertaking

.1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.

.2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.

.3 The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.

.4 This Undertaking continues until one of the following occurs:

.1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
.2 this Undertaking is returned to the Financial Institution; or
.3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.

.5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated at

........................................................ .................................................................

Execution by the Financial Institution:
## Schedule 3

### Payment Claim Worksheet

Refer to clause 58 of the GC21 General Conditions of Contract.

The Contractor: Seymour Whyte Constructions Pty Ltd  
ABN 48 105 493 187

The Contract: The contract between the Principal and the Contractor  
Contract Name: New Grafton Correctional Centre – Early Works – Road and Water infrastructure  
Contract Number: »

<table>
<thead>
<tr>
<th>Activity (Work Portion) to suit schedule of prices and/or activities</th>
<th>Work Portion &amp; Item number</th>
<th>Value of activity (or Work Portion) $</th>
<th>Activity (or Work Portion) completed %</th>
<th>Activity (or Work Portion) completed value $ (col 3 x col 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount brought forward from previous sheet</td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item or activity to suit Schedule of Rates</th>
<th>Item or activity number</th>
<th>Price or rate for item or activity $</th>
<th>Quantity completed</th>
<th>Item or activity completed value $ (col 3 x col 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount brought forward from previous sheet</td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

| Amount carried forward to next sheet | | | | $ |

Complete this section on the last sheet only

| Subtotal for any Schedule of Rates items | $ |
| Subtotal for any lump sum items | $ |
| Value Completed | $ |
| Less payments already made | $ |
| Less retention for the Completion Amount under clause 60, if applicable | $ |
| Claimed Amount | $ |
Schedule 4

Agreement with Valuer

Refer to clause 35 of the GC21 General Conditions of Contract.

Definitions

Agreement dated: ......................................................................................
between:

The Valuer: ..............................................................................................
ABN .................................................................................................
and:

The Principal: Infrastructure New South Wales »
and:

The Contractor: Seymour Whyte Constructions Pty Ltd
ABN 48 105 493 187
......................................................................................
concerning:

The Contract: The contract between the Principal and the Contractor
Contract Name: New Grafton Correctional Centre – Early Works – Road and Water infrastructure »
Contract Number: »
Dated: ..............................................................................................
The Works: The works to be designed and constructed by the Contractor, as described in the Contract.

Unless the context requires otherwise, other words and phrases in this agreement have the meanings given in the Contract.
The terms Contractor and Principal include their successors and permitted assignees.

Terms of agreement

1 Request to determine and acceptance

.1 The parties request the Valuer to determine the value and time associated with Variations and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.

2 Determination by Valuer

.1 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days (or another period agreed by the parties) after the matter is referred to the Valuer.

.2 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

3 Principles for valuation

.1 The Valuer must determine all matters referred to it in accordance with the principles and procedures set out in the Contract.
4 Meeting
.1 The Valuer may meet with the parties together to discuss a matter referred under this agreement. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

5 Documents
.1 The Valuer must take into consideration:
   .1 documents, information and other written material which has been exchanged by the parties before the request to the Valuer;
   .2 any submission or submission in reply made by a party to the Valuer (which must be copied to the other party); and
   .3 information or material provided under clause 6.1.2 of this agreement.
.2 The Valuer must fix appropriate times for the provision of any submissions and submissions in reply.
.3 The parties acknowledge that when a matter referred to the Valuer involves a claim from a Subcontractor, Supplier or Consultant’s, the Valuer will give the relevant Subcontractor, Supplier or Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate details of the entitlement determined for each Subcontractor, Supplier or Consultant.

6 Role of Valuer
.1 The Valuer:
   .1 acts as an expert and not as an arbitrator;
   .2 is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
   .3 must issue a certificate in a form the Valuer considers appropriate, stating the Valuer’s determination, with reasons.

7 Certificate final
.1 Subject to clause 35.1.3 of the GC 21 General Conditions of Contract Edition 2, the parties agree to accept the determination in the Valuer’s certificate as final and binding.

8 Liability of Valuer
.1 The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

9 Fees and expenses
.1 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any Variation which the Principal proposes but does not later instruct.
.2 The fees payable to the Valuer under this agreement are:
   .1 An administration fee of $” for reviewing the Contract Documents
   .2 An amount for the time involved in performing the Valuer’s duties under this agreement based on these hourly rates:
      Director $…………./hour
      Associate $…………./hour
      Senior Quantity Surveyor / Engineer $…………./hour
      Quantity Surveyor / Engineer $…………./hour
      Technician $…………./hour
   .3 Substantiated out-of-pocket expenses.
10 Confidentiality

.1 The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the prior written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

11 Termination of agreement

.1 This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer’s outstanding fees and expenses in accordance with clause 9 of this agreement.

12 Payment

.1 The Principal and the Contractor must pay the Valuer within 14 days after receiving an invoice which complies with this agreement.

.2 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

13 Period of engagement of Valuer

.1 Unless this agreement is terminated under clause 11 of this agreement, the Valuer is engaged until the time of issue of the Final Payment Schedule, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time the Final Payment Schedule is issued.

Signed by the Contractor: 

Signature of Authorised Person: ..........................................................

Name of Authorised Person: ..........................................................

Date: ..........................................................................................

Signed by the Principal: 

Signature of Authorised Person: ..........................................................

Name of Authorised Person: ..........................................................

Date: ..........................................................................................

Signed by the Valuer: 

Signature of Valuer: ..........................................................

Name of Valuer: ..........................................................

Date: ..........................................................................................
Schedule 5

Expert Determination Procedure

Refer to clause 71 of the GC21 General Conditions of Contract.

1 Questions to be determined by the Expert

.1 For each Issue, the Expert must determine the following questions, to the extent that they are applicable to the Issue and unless otherwise agreed by the parties:

.1 Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the Issue if no compensation is claimed:

.1 under the Contract,
.2 for damages for breach of the Contract, or
.3 otherwise in law?

.2 If so:

.1 what is the event, act or omission?
.2 on what date did the event, act or omission occur?
.3 what is the legal right which gives rise to the liability to compensation or resolution otherwise of the Issue?
.4 is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim or other legal right?

.3 In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:

.1 what compensation, if any, is payable by one party to the other and when did it become payable?
.2 applying the rate of interest specified in the Contract, what interest, if any, is payable when the Expert determines that compensation?
.3 if compensation is not claimed, what otherwise is the resolution of the Issue?

.2 The Expert must determine, for each Issue, any other questions identified or required by the parties, having regard to the nature of the Issue.

2 Submissions

.1 The procedure for submissions to the Expert is as follows:

.1 The party to the Contract which referred the Issue to Expert Determination must make a submission in respect of the Issue, within 15 Business Days after the date of the letter of engagement of the Expert referred to in clause 71.3 of the GC21 General Conditions of Contract.

.2 The other party must respond within 15 Business Days after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the Issue and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the Expert, within the time specified by the Expert, and the Expert will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.

.3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 Business Days or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.

.4 The other party may comment on the reply, but must do so within 10 Business Days or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.
The Expert must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.

The Expert may request further information from either party. The request must be in writing, with a time limit for the response. The Expert must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.

All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the Expert, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 52.

3 Conference

The Expert may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.

The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4 Role of Expert

The Expert:

acts as an Expert and not as an arbitrator;

must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert’s own expertise; and

must issue a certificate in a form the Expert considers appropriate, stating the Expert’s determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the Expert referred to in clause 71.3 of the GC21 General Conditions of Contract.

If a certificate issued by the Expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the certificate.
Schedule 6

Combined Subcontractor’s Statement and Supporting Statement

Refer to clause 58.6.1 of the GC21 General Conditions of Contract

For the purposes of this Statement the terms “principal”, “head contractor”, “subcontractor” and “construction contract” have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.


This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).


Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

Main Contract

Contractor: ABN : (Business name of the Contractor) (Note 2)

of (Address of the Contractor) (Note 3)

has entered into a contract with ABN : (Business name of the Principal) (Note 4)

Contract number/identifier (Note 5)

Subcontracts

The Contractor has entered into contracts with the subcontractors listed in the attachment to this Statement.

Period

This Statement applies for work between: and inclusive, (Note 4) (Note 5)

I, a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

(a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☑ if true and comply with (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete (e) to (h) below. You must mark one box.

(b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated . (Note 6) (Note 7)
(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(d) Where the Contractor is required to be registered as an employer under the Payroll Tax Act 2007, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement.

(e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above.

(f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(g) The Contractor is complying with the requirements of clauses 33.8 to 33.11 (as applicable) and has deposited all cash security and retention moneys held under Subcontracts into a trust account.

(h) Signature

(i) Position/Title

Date

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

**Attachment**

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Payment claim dated (head contractor claim)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Payment claim dated (head contractor claim)</th>
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</tbody>
</table>

(Note 8)

(Note 9)

(Note 10)
Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the subcontractor) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor’s business.

2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration ‘as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’

Section 127(11) of the *Industrial Relations Act 1996* states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor’s Statements from your subcontractors.

**Statement Retention**

The principal contractor receiving a Subcontractor’s Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

**Offences in respect of a false Statement**

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

(a) the person is the subcontractor;
(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

**Further Information**

Schedule 7

Costs Adjustment Formula

Refer to clause 55.2 of the GC21 General Conditions of Contract.

Not used.
Schedule 8

Daywork

Refer to clause 48.4 of the GC21 General Conditions of Contract.

1 Daywork procedure and determination

.1 If the Principal instructs that a Variation be carried out as Daywork, the Principal and Contractor must agree the amount, type and conditions of use of labour, plant and materials to be used in the Variation.

.2 Contractor must record the particulars of all resources used by the Contractor each day in carrying out the Variation. The method of recording the resources and their hours must be agreed by the Contractor and Principal.

.3 When submitting a claim for payment for the Variation in a Payment Claim under clause 58, the Contractor must submit records including all time sheets, wages sheets, invoices, receipts and other documents that are necessary to support this Payment Claim.

.4 The Principal must assess the value of the Variation amount to be paid to the Contractor in respect of each Payment Claim and in making its assessment under clause 59 must have regard to the following:

1. the amount of wages and allowances for labour paid or payable by the Contractor at the rates obtaining on the Site at the time, as approved by the Principal;

2. the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under 1.4.1 of this Daywork procedure;

3. the amount of hire charges for construction plant approved by the Principal for use on the work;

4. the reasonable actual mobilisation and demobilisation costs of construction plant and vehicles (where brought for the sole purpose of the instructed Daywork);

5. the reasonable amounts paid by the Contractor for Subcontracts and for Consultant work involved in carrying out the Variation;

6. the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the Variation work.

.5 In addition to the amounts assessed for the items under clause 1.4 above, the value of the Variation will include an additional amount for overheads, administrative costs, site supervision, establishment costs, attendance and profit calculated as 22.5% of the total of the assessed costs under clause 1.4.

.6 The amounts payable for Daywork will not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

2 Amounts included in and excluded from Daywork

.1 Assessment by the Principal of the valuation of a Variation carried out as Daywork will include valuation of all reasonable and necessary costs incurred of personnel, plant, vehicles, Subcontractor, Consultant and Materials used by the Contractor in carrying out the Variation as instructed by the Principal, subject to:

1. the valuation of the Variation will only include costs for actual time of any resources which are employed on the Variation; and

2. the costs of supervisory, technical and administrative personnel that are normally engaged on the Works and continue to be so during the Daywork will not be included in the Principal’s assessment of the valuation of the Variation.

3 Principles for calculating time

.1 If the parties do not agree on the effect on the time for Completion of the Variation carried out as Daywork, the extension of time for Completion due if any, must be dealt with under clauses 68 to 71 based on the principles contained in clause 50.
Schedule 9

Subcontract requirements

Refer to clause 28.4.1 of the GC21 General Conditions of Contract.

1 General requirements for specified subcontracts

In addition to its obligations under clause 28.3, for all Subcontracts valued at or over the amount stated in Contract Information item 29, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 3 - Co-operation
2. clause 4 - Duty not to hinder performance
3. clause 5 - Early warning
4. clause 6 - Evaluation and monitoring
5. clause 10 - Governing law of the Contract
6. clause 13 - Compliance with Code of Practice for Procurement
7. clause 14 - No collusive arrangements
8. clause 15.1.1 - Work Health and Safety management, except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the Contractor as principal contractor for work health and safety matters.
9. clause 15.1.6 - Aboriginal Participation in Construction
10. clause 23 - Intellectual Property
11. clause 24 - Confidentiality
12. clause 25 - Media releases and enquiries
13. clause 26 - Care of people, property and the environment, indemnities and limitations
14. clauses 27.5, 27.10.1.1, 27.10.1.2, 27.10.1.5 and 27.10.1.6 - Insurances
15. clause 28 - Subcontractor relationships
16. clause 58 - Payment Claims
17. clause 59 - Payments
18. Schedule 1 (Subcontractor’s Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
19. Schedule 9 (Subcontract requirements)
Schedule 10

Principal Arranged Insurances

Details of the Principal Arranged Insurances are shown below.

Not applicable.
Schedule 11

Statement regarding Materials

Refer to clause 58.7 of the GC21 General Conditions of Contract.

I am a representative of [name of company/entity with custody of the Materials or on whose land the Materials are stored] in the capacity of [insert position] and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other encumbrance over the Materials listed in the schedule to this statement (“Materials”). I acknowledge that the Materials are the property of the Principal named in the schedule to this statement (“Principal”) and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the Materials are stored at any reasonable hour to inspect or remove the Materials. I undertake to make no claim or charge against the Principal in respect of the storage of the Materials.

SCHEDULE

Materials
[list the Materials]

Principal
[insert name of the Principal]

SIGNED...........................................

DATE:..............................................
Schedule 12

Compliance with Building Code 2016

Refer to clause 13.15 of the GC21 General Conditions of Contract.

.1 The Contractor must comply, and ensure that each other Building Code Entity complies, in the performance of the Contract, with the requirements of the Building Code and the BCIIIP Act, including by ensuring that no Subcontractor:

.1 where Contract Information item 16A specifies that the Building Code applies because Commonwealth funding has been obtained for the project which the Works form part of:

.1 is subject to an ‘enterprise agreement’ (as that term is defined in the Fair Work Act 2009 (Cth)) that does not meet the requirements of section 11 of the Building Code;

.2 is subject to an ‘exclusion sanction’ (as that term is defined in section 3(3) of the Building Code) or is excluded from undertaking work funded by a state or territory government, unless approval to engage that Building Code Entity has been obtained from the ABC Commissioner (as defined in the BCIIIP Act); and

.3 without limiting any other obligation on the Contractor under the Contract, uses any Materials in the performance of the Works that do not, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); or

.2 has failed to fully comply with any adverse decision, direction or order made by a court or tribunal for a breach of the BCIIIP Act, a Designated Building Law (as defined in the BCIIIP Act), a work health and safety law (including, but not limited to, the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW)) or competition and consumer and consumer law (including, but not limited to, the Competition and Consumer Act 2010 (Cth)).

.2 Compliance with the Building Code will not relieve the Contractor from its responsibility to perform the Contract, or from liability for any Defect in the Works arising from compliance with the Building Code.

.3 Where Contract Information item 16A states that a Workplace Relations Management Plan (Commonwealth) (as defined as the ‘WRMP’ in the Building Code) is required, the Contractor must comply, and must ensure that each of its Subcontractors complies, with the version of the Workplace Relations Management Plan (Commonwealth) provided by the Contractor that the Principal notifies the Contractor has been approved by the ABCC.

.4 The Contractor must maintain adequate records of the compliance with the Building Code by each Building Code Entity.

.5 The Contractor must notify the ABCC (as defined in the Building Code) of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

.6 The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and will ensure that each Building Code Entity complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act, requests to produce records or documents under sections 74 and 77 of the BCIIIP Act and requests for information concerning matters relating to the Building Code under section 7(c) of the Building Code.
If the Contractor does not comply with the requirements of the Building Code or the BCIIP Act in the performance of the Contract such that a sanction is applied by the ABC Commissioner, the ABCC or the Minister for Employment, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

The Contractor agrees that it and each other Building Code Entity will agree to a request from the Principal, the Commonwealth (or any person authorised by the Commonwealth) or any person contemplated by the BCIIP Act or the Building Code as having a right to obtain information from a Building Code Entity, to provide such information as is relevant to confirming whether a Building Code Entity has complied with the Building Code within a specified period, in person, by fax, by post or other means.

Without limiting the Contractor's obligations under clause 34, prior to allowing a Building Code Entity to obtain access to the Site, the Contractor must obtain, and must require each other Building Code Entity to obtain, a completed 'collection notice' (as required by privacy legislation) from all employees, independent contractors, consultants or agents which they engage to carry out the Works. Each 'collection notice' must contain a consent to the collection, use and disclosure of the individuals' personal information for the purposes of monitoring compliance with the Building Code.

Where Contract Information item 16A specifies that Commonwealth funding has been obtained for the project which the Works form part of, the Contractor must, prior to engaging any Subcontractor, obtain and retain from each proposed Subcontractor a copy of a 'Declaration of Compliance', substantially in the form set out in the document titled 'Code for the Tendering and Performance of Building Work 2016 – Model Clauses Type B: Model Clauses for Tender and Contract Documentation for Contractors and Subcontractors'.

The Contractor must require each of its Subcontractors to:

1. prior to entering into a Subcontract with that person; and
2. every six months during the term of the relevant Subcontract, provide the Contractor with confirmation that the Subcontractor has not, within the preceding three year period:
3. had an adverse decision, direction or order made by a court or tribunal for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW)) or the Migration Act 1958 (Cth); or
4. been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments (including, but not limited to, the Building and Construction Industry Security of Payment Act 1999 (NSW)), that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any related entity (as contemplated by section 3(2) of the Building Code)) to a Building Contractor or a Building Industry Participant.

Without limiting any other obligation on a Building Code Entity under the Building Code, the Contractor must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this Schedule 12.
Schedule 13

Retention Money Trust Account Obligations

Refer to clause 33.11 of the GC21 General Conditions of Contract.

Part 2 of the Building and Construction Industry Security of Payment Regulation 2008 ("the Regulation") in effect:

1. requires “retention money” (as defined in the Regulation) to be paid into and retained in a trust account with an approved authorised deposit-taking institution ("ADI");
2. specifies requirements for establishing a trust account, including notifying NSW Fair Trading of the details of the trust account;
3. prohibits withdrawals from the trust account, except in the circumstances permitted by Part 2 of the Regulation;
4. generally requires interest earned on the trust account to be held on the same trust as the retention money;
5. makes retention money held by a head contractor unavailable for the payment of the head contractor’s debts; and
6. requires a head contractor:
   (a) after becoming aware of the trust account becoming overdrawn, to notify NSW Fair Trading of details of the trust account, the amount by which it is overdrawn and the reason for it becoming overdrawn;
   (b) after closing the trust account, to notify NSW Fair Trading;
   (c) to keep records of deposits into and withdrawals from the trust account and retain those records for the prescribed period after the trust account is closed; and
   (d) after the end of the financial year, to provide NSW Fair Trading with an annual report for the trust account and a statement for the trust account in the prescribed form.

Schedule 14

WHS Action tracking and reporting requirements

The Contractor is expected to report monthly on the items listed in the following table:

<table>
<thead>
<tr>
<th>WHS Statistics for the Entire Contract</th>
<th>Previous Period</th>
<th>Current Period</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Lost Time Injuries</td>
<td></td>
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</tr>
<tr>
<td>Total Number of Hours Worked</td>
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<td>Lost Time Injury Frequency Rate (LTIFR)</td>
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</tr>
<tr>
<td>Total Number of Hours Lost due to Injury</td>
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<tr>
<td>Number of WHS Management Audits</td>
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<td>Number of WHS Inspections</td>
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<td>Number of WHS Corrective Actions</td>
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<td>Number of WHS Corrective Actions Closed</td>
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<td>Number of WorkCover Visits/Inspections</td>
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<td>Number of Notifications to WorkCover</td>
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<td>No. of Improvement Notices or Fines from WorkCover</td>
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<tr>
<td>Average workers on site per week</td>
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</table>

In addition, for any event deemed to be a High or Extreme Event (as defined below), the Contractor as part of its WHS reporting requirements will be required to notify:

- the appropriate authorities as per its WHS plan, and
- the Executive Program Director – Projects NSW.

The incident reporting requirement may be updated over the contract period.

Consequences which may lead to High or Extreme Events is defined as:

<table>
<thead>
<tr>
<th>Consequences</th>
<th>General</th>
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<tbody>
<tr>
<td><strong>Catastrophic</strong></td>
<td>Loss of ability to sustain ongoing operations. An event that would cause operations to be substantially disrupted resulting in severe impact upon public image and reputation such as:</td>
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<tr>
<td></td>
<td>• External Agency Inquiry with adverse finding(s)/ adverse media coverage to such a level that key stakeholders including NSW Government and NW public have no confidence in INSW’s operations – reputation damaged beyond repair</td>
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<tr>
<td></td>
<td>• &gt;$15 million. Extreme financial loss</td>
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<td></td>
<td>• Fatal loss of life</td>
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</table>

| **Major** | Significantly reduced ability to achieve corporate objectives, impacting our overall business operations e.g. short-term loss of service such as: |
|           | • >$5 million to $15 million. Major financial loss |
|           | • Reputation damaged but recoverable in time – significant effort, time, resources to |
|           | • External Agency Inquiry with adverse finding(s)/ adverse media coverage restores confidence |
|           | • Serious/multiple injuries resulting in hospitalisation, long-term partial disability |
## Schedule 15

### Water Mains and Road Upgrade Drawings

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<th>Water drawings</th>
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<tbody>
<tr>
<td>WSAA Wat-1202_2_1</td>
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<td>WSAA Wat-1201_2_1</td>
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<tr>
<td>Water Main Design Email overview</td>
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<tr>
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<tr>
<td>2736-410 Notes</td>
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<td>SHEET 7</td>
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</tbody>
</table>
Attachments

Attachments 1, 2, 2A and 3 do not form part of the Contract.

Attachment 1  GC21 Start-up Workshop
Attachment 2  Performance Evaluation (Example)
Attachment 2A Performance Evaluation
Attachment 3  Performance Evaluation Record
Attachment 4  NGCC Site Access and Delivery Protocols
Attachment 5  Work Portion 1 (Water Mains) Site
Attachment 6  Work Portion 2 (Road Upgrade) Site
Attachment 7  Sections A and D
Attachment 1:  

The GC21 Start-up Workshop  

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Attachment 1 is intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants  

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Agenda  

The agenda should include:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose and guidelines;
- review of the proposed workshop agenda;
- overview of the Contract;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- identification of key concerns and solutions;
- opportunities for innovation;
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide GC21 meetings and workshops may be obtained from the NSW Government Procurement System for Construction on the ProcurePoint website.
Attachment 2:  
Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 1 and 2 provide a structure for evaluation and discussion.

Attachment 2 indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds.

They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract. Use Attachment 2A on the next page to develop a Contract-specific Performance Evaluation form.

### Performance Evaluation

<table>
<thead>
<tr>
<th>Topic</th>
<th>Objectives</th>
<th>Your rating (this period)</th>
<th>Team rating (this period)</th>
<th>Main Issue &amp; Agreed Action</th>
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</thead>
<tbody>
<tr>
<td>Communication</td>
<td>• co-operation between parties</td>
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<td>• duty not to hinder performance</td>
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<td>• early warning</td>
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<td>• evaluation and monitoring</td>
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<td>Time</td>
<td>• issues affecting time</td>
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<td>• extensions of time</td>
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<td>• expected completion dates</td>
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<td>• fitness for purpose, innovation</td>
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<td>• Faults, Defects rectification</td>
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<td>• safety risks</td>
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<td>• noise and dust issues</td>
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<td>• Subcontractor and Supplier issues</td>
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<td>• workplace relations and Site amenities</td>
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<td>• interaction of workers with others</td>
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</table>

**IMPORTANT**: During each meeting, the evaluation team should decide on an action plan for items needing improvement.
**Attachment 2A: Performance Evaluation**

Insert in the form below topics that are important to the Contract.

<table>
<thead>
<tr>
<th>Contract name:</th>
<th>Contract number:</th>
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<tbody>
<tr>
<td>…………………………</td>
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**Rating system**

5 excellent  
4 above expectation  
3 meeting expectation  
2 below expectation  
1 unsatisfactory

<table>
<thead>
<tr>
<th>Topic</th>
<th>Objectives</th>
<th>Your rating (this period)</th>
<th>Team rating (this period)</th>
<th>Main Issue &amp; Agreed Action</th>
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Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- **IMPORTANT**: During each meeting, the evaluation team should decide on an action plan for topics needing improvement.
## Performance Evaluation Record

Insert the Contract-specific topics. Record the participants' ratings for each topic to illustrate trends in the Team’s performance.

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**Rating system**

- 5 excellent
- 4 above expectation
- 3 meeting expectation
- 2 below expectation
- 1 unsatisfactory
Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

**Contract name:** ……………………

**Contract number:** ……………………

**Date:** ……………………..

**Rating system**

5 excellent
4 above expectation
3 meeting expectation
2 below expectation
1 unsatisfactory

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**Deteriorating Performance**

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**Improving Performance**

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Attachment 4:

NGCC Site Access and Delivery Protocols
Attachment 5:

Work Portion 1 (Water Mains) Site
Attachment 7: