

# Formal Instrument of Agreement

## **New Sydney Fish Market Main Works**

Dated *22 October 2020* .

Infrastructure New South Wales ABN 85 031 302 516 ("**Principal**")  
Multiplex Constructions Pty Ltd ABN 70 107 007 527 ("**Contractor**")

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## Details

Parties	Principal and Contractor	
Principal	Name	Infrastructure New South Wales
	ABN	ABN 85 031 302 516
	Address	Level 27, 201 Kent St, Sydney NSW 2000
	Attention	[REDACTED]
Contractor	Name	Multiplex Constructions Pty Ltd
	ACN	ABN 70 107 007 527
	Address	Level 22, 135 King Street, Sydney NSW 2000
	Attention	[REDACTED]
Recitals	A	The Principal has committed to building a new Sydney Fish Market at the Site (" <b>Project</b> ").
	B	The Project is to be completed in two stages: Stage 1 Early Works (defined as the 'Early Works' in the Contract) and Stage 2 Main Works (defined as the 'Works' in the Contract).
	C	Following completion of the Tender Process the Principal selected the Contractor as the successful proponent to deliver the Works.
	D	The Contractor represents and warrants that it has the experience and expertise to undertake the work in connection with the Contract in a reliable, safe, efficient and environmentally responsible manner in accordance with the Contract.
	E	In reliance on the representations in Recital D, the Principal wishes to engage the Contractor to perform the work in connection with the Contract on the terms set out in the Contract.

The parties agree as follows:

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## **1 Definitions and Interpretation**

### **1.1 Terms defined in the Contract**

Unless the contrary intention appears:

- (a) a term which has a defined meaning in the General Conditions has the same meaning when used in the Formal Instrument of Agreement; and
- (b) capitalised terms have the meaning set out below.

**Contract Documents** means:

- (a) the Formal Instrument of Agreement;
- (b) the Contract Information;
- (c) the General Conditions;
- (d) the Schedules;
- (e) the Details; and
- (f) the 'Other Contract Documents' listed in Contract Information item 25.

**Details** means the section of this document headed "Details".

**General Conditions** means the document titled "GC21 (Edition 2) General Conditions of Contract" attached at Schedule 1 to this Formal Instrument of Agreement.

**Formal Instrument of Agreement** means this formal instrument of agreement.

**Schedules** means the schedules attached to the General Conditions.

### **1.2 Interpretation**

In the Contract, unless the contrary intention appears:

- (a) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise) or any consolidation, amendment, re-enactment or replacement of it;
- (b) a reference to the Contract or another document or instrument includes any variation, amendment, novation or replacement of either of them;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;



- (d) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (e) a reference to an entity means a body corporate, an individual, a firm, a partnership, a joint venture, an unincorporated body or association, a trust or a Government Authority;
- (f) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (g) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (i) a reference to a time of day is a reference to Sydney time;
- (j) a reference to a Schedule, or attachment is a reference to a Schedule, or attachment to the General Conditions;
- (k) unless otherwise stated:
  - (i) in this Formal Instrument of Agreement, a reference to a clause is a reference to a clause in this Formal Instrument of Agreement; and
  - (ii) in the General Conditions, a reference to a clause is a reference to a clause in the General Conditions;
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (n) headings are for reference only and do not form part of the Contract;
- (o) the obligations of the Principal under and in connection with the Contract are limited to those expressly stated in the Contract;
- (p) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (q) references to the word "agreed" means agreed in writing;
- (r) references to A\$, \$ and AUD means Australian Dollars, the lawful currency of the Commonwealth of Australia; and
- (s) any measurement must be accurate to 3 decimal places and any calculation must be solved to 3 decimal places.

### 1.3 Next Business Day

If an event under the Contract must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.

#### **1.4 Next Day**

If an act under the Contract to be done by a party on or by a given day is done after 5.00pm (AEST time) on that day, it is taken to be done on the next day.

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## **2 Contract Documents**

### **2.1 Contract Documents**

The Contract Documents are intended to be correlative, complementary and mutually explanatory of one another. The Contract must be read as a whole.

### **2.2 Order of Precedence**

- (a) In the case of discrepancy, inconsistency or ambiguity in or between any of the Contract Documents, the following order of precedence shall apply:
  - (i) the Formal Instrument of Agreement;
  - (ii) the General Conditions and Schedule 7;
  - (iii) the Contract Information;
  - (iv) the Project Brief;
  - (v) Preliminaries;
  - (vi) Preliminary Design;
  - (vii) the remaining Schedules (other than the Project Brief, Preliminaries, Preliminary Design and Schedule 7); and
  - (viii) the other Contract Documents listed in Contract Information item 25.
- (b) To the extent that clause 2.2(a) does not resolve the discrepancy, inconsistency or ambiguity and the discrepancy, inconsistency or ambiguity is in relation to the quality or standard of the Works, the highest or most stringent standard shall prevail.
- (c) To the extent that clauses 2.2(a) or 2.2(b) do not resolve the ambiguity, inconsistency or discrepancy, the Principal shall direct the Contractor as to the interpretation to be followed. The Principal's direction pursuant to this clause 2.2(c) must not be inconsistent with the order of precedence set out in clauses 2.2(a) or 2.2(b) (as applicable).

### **2.3 Notice of Ambiguities**

- (a) The Contractor acknowledges and warrants that it has reviewed and understood the Contract Documents and it is satisfied that there is no ambiguity, inconsistency or discrepancy in or between the Contract Documents.
- (b) If the Contractor discovers any ambiguity, inconsistency or discrepancy in or between the Contract Documents, the Contractor must immediately notify the Principal of the ambiguity, inconsistency or discrepancy.

## **2.4 Compliance with Directions**

The Contractor:

- (a) must comply with any direction issued by the Principal pursuant to clause 2.2(c); and
- (b) shall not be entitled to any Claim arising out of or in connection with the resolution of any ambiguity, inconsistency or discrepancy pursuant to clauses 2.2(a), 2.2(b) or 2.2(c).

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## **3 Contract Price**

- (a) The Contractor must carry out the work in connection with the Contract for the Contract Price, which is not subject to escalation or any alteration whatsoever, except as expressly provided in the Contract.
- (b) The Contractor is deemed to have satisfied itself of the correctness and sufficiency of the Contract Price which, except as otherwise provided in the Contract, covers all its obligations under the Contract.

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## **4 General**

### **4.1 Cost**

- (a) The parties agree to pay their own legal and other Costs in connection with the preparation, execution and completion of the Contract and other related documentation except for stamp duty.
- (b) The Contractor must:
  - (i) pay all stamp duty (including fines and penalties) payable and assessed by legislation or by any revenue office in respect of the execution of the Contract and the performance of its obligations in respect of the Contract; and
  - (ii) indemnify on demand the Principal against any liability for that stamp duty (including fines and penalties).

### **4.2 Entire Agreement**

- (a) This Contract constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations in respect of that subject matter.
- (b) The parties agree that any pre-contractual representations and warranties, whether made orally or in writing, are of no effect, with the result that neither party is entitled to found any claim to damages in reliance upon any pre-contractual representations and warranties.

### **4.3 Amendment**

No amendment of the Contract is effective unless it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each party.

#### **4.4 Independent Contractor**

The Contractor is an independent contractor performing the Contract. This Contract does not create any agency, partnership, joint venture or other joint relationship between the parties.

#### **4.5 Non-Waiver**

- (a) Subject to clause 4.5(b), no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other prejudices, affects or restricts the rights of that party under the Contract, nor does any waiver by either party of any breach of the Contract operate as a waiver of any subsequent or continuing breach of the Contract.
- (b) Any waiver of a party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### **4.6 Discretion in exercising rights**

Unless the Contract expressly states otherwise, the Principal may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with the Contract in its absolute discretion (including by imposing conditions).

#### **4.7 Partial exercising of rights**

Unless the Contract expressly states otherwise, if the Principal does not exercise a right, power or remedy in connection with the Contract fully or at a given time, they may still exercise it later.

#### **4.8 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in the Contract given by the Contractor:

- (a) is a continuing obligation;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with the Contract.

#### **4.9 Conflicts of Interests**

- (a) The Contractor warrants that, to the best of its knowledge having made diligent enquiries, no conflict of interest exists in the performance of its obligations and the Principal's best interests.
- (b) The Contractor must use reasonable endeavours to prevent any actions or conditions which may conflict with the Principal's best interests. In the event that such a conflict arises, the Contractor shall immediately notify the Principal and takes such steps as the Principal reasonably requires to resolve or otherwise deal with the conflict.

#### **4.10 Counterparts**

This Contract may be executed in any number of counterparts. All counterparts when taken together are to be taken to constitute one instrument and the date on which the last counterpart is executed is the date of the Contract.

#### **4.11 Further Assurances**

The Contractor must do anything (such as obtaining consents, signing and producing documents and getting documents completed and signed by any person) which the Principal reasonably asks and considers necessary to:

- (a) to bind the Contractor and any other person intended to be bound under the Contract; or
- (b) to show that the Contractor is complying with the Contract.

#### **4.12 Severance**

If the whole or any part of a provision of the Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the Contract or is contrary to public policy.

#### **4.13 Survival**

- (a) The following clauses survive expiry or termination of this Contract and are enforceable at any time, together with any provisions or obligations which are expressed to or by their nature, survive expiry or termination of the Contract:
  - (i) clause 1;
  - (ii) clause 4.5;
  - (iii) clause 4.8;
  - (iv) this clause 4.13; and
  - (v) those clauses referred to in clause 77 of the General Conditions.
- (b) The provisions of the Contract survive expiry or termination of the Contract to the extent necessary to give effect to clause 4.13(a).

**EXECUTED** as a deed

## Schedule 1 General Conditions



# **New Sydney Fish Market Main Works Contract**

## **New South Wales Government GC21 (Edition 2)**

### **General Conditions of Contract**

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#### **Preface**

#### **GC21 (Edition 2) General Conditions of Contract**

- **Contract framework**
- **Carrying out the Works**
- **Claim and Issue resolution**
- **Termination**
- **Meanings**

#### **Contract Agreement**

#### **Contract Information**

#### **Schedules**

#### **Attachments**

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**GC21 (Edition 2) General Conditions of Contract  
(Modified)**

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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](http://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](http://www.industrialrelations.nsw.gov.au)

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# Preface

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## 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             | • Site                                 |
| • Contract Information | • Subcontract                          |
| • Contractor           | • Subcontractor                        |
| • Consultant           | • Supplier                             |
| • Date of Contract     | • work in connection with the Contract |
| • Principal            | • Works                                |

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

# Contract framework

## Roles and relationships

### A1 Background

- .1 The Principal has been selected by the NSW Government as the proponent for the development and delivery of the *nSFM*.
- .2 *TfNSW* is the owner of the *Land* on which the *nSFM* is being developed and has entered into the *Construction Licence* with the Principal to permit the Principal to commission the *nSFM*.
- .3 Upon completion of the *Ground Construction Slab*, the Principal will enter into the *Ground Lease* with *TfNSW* at which time:
  - .1 the *Construction Licence* will terminate and the terms of the *Ground Lease* shall apply to the *nSFM*;
  - .2 the *Contractor* will have no further obligations under the *Construction Licence Matrix* (without limiting obligations or liabilities of the *Contractor* which accrued up to the date of termination of the *Construction Licence*); and
  - .3 the *Contractor* must comply with the requirements of the *Ground Lease Matrix*.
- .4 The *Contractor* acknowledges the importance of:
  - .1 a whole of project approach to the *nSFM* and the importance of co-ordination and co-operation with the *Early Works Contractor*, other *nSFM* participants and *Third Parties*, in order to achieve the *Project Objectives*;
  - .2 the *Contractor's* compliance with the terms of the *Third Party Agreements* in accordance with the terms of the *Contract*;
  - .3 the safety of the public and all project participants during the construction of the *nSFM*;
  - .4 the minimisation of disruption to the community; and
  - .5 the need to approach the performance of the work in connection with the *Contract* in a co-operative and positive manner.
- .5 The *nSFM* is being delivered in the following packages:
  - .1 the design and construction of the *Early Works*, which are to be delivered under the *Early Works Contract*; and
  - .2 the design and construction of the *Works*, which are to be delivered under the *Contract*.
- .6 The *Contractor* has participated in the *Tender Process*, and as a consequence:
  - .1 has reviewed the *Project Brief*; and
  - .2 is aware of the Principal's reliance on the *Contractor's* completion and delivery of the *Works* in accordance with the *Project Brief* (including the *Key Architectural Details*).
- .7 Following completion of the *Tender Process*, the Principal selected the *Contractor* as the successful proponent to design and construct the *Works* in consideration of the *Contract Price* in accordance with the terms of the *Contract*.
- .8 The Principal has reposed trust in the *Contractor* to carry out the work in connection with the *Contract*:
  - .1 in accordance with the *Contract*;
  - .2 consistently with the matters set out in this clause A1; and
  - .3 consistently with the *Contractor's* representation that it has the resources and expertise to perform the work in connection with the *Contract* in accordance with the *Contract*.
- .9 In reliance on these representations made by the *Contractor* and on the basis of the trust reposed by the Principal in the *Contractor*, the Principal has engaged the *Contractor* to perform the work in connection with the *Contract* on the terms of the *Contract*.

## 1 General responsibilities

- .1 The Contractor must:
  - .1 if required by the Principal, provide such assistance as may be reasonably required by the Principal to enable the Principal to obtain the *Planning Approval*;
  - .2 without limiting clause 6C, negotiate, finalise and comply with the terms of the *Works Authorisation Deed*;
  - .3 comply with the requirements of the *Third Party Agreements* on the terms set out in the Contract;
  - .4 design and construct the Works in accordance with the Contract; and
  - .5 perform and observe all of 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 of its other obligations under the Contract.
- .3 Other than as expressly provided for in the Contract, the Contractor is not entitled to an adjustment to the *Contract Price*.
- .4 The Principal may give instructions to the Contractor concerning the Works and anything connected with the work in connection with the Contract, and the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

### 1A Authorities

- .1 This Contract will not in any way unlawfully restrict or affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any *Statutory Requirements*.
- .2 The Contractor acknowledges and agrees that, without limiting clause 1A.1, anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any *Statutory Requirements* will be deemed not to be an act or omission by the Principal for the purposes the Contract and the Contractor releases the Principal from any and all *Claims* which the Contractor might have against the Principal, whether under the Contract, for breach thereof, in negligence or otherwise, arising out of or in connection with such matters.
- .3 The Contractor acknowledges and agrees that:
  - .1 there are many authorities (other than the Principal) with jurisdiction over aspects of the work in connection with the Contract, parts of the Site and areas affected by the work in connection with the Contract;
  - .2 such authorities may from time to time exercise their functions and powers (whether statutory or otherwise) in such a way as to disrupt, interfere with or otherwise affect the work in connection with the Contract; and
  - .3 other than as expressly provided for in the Contract, it bears the full risk of all occurrences of the kind referred to in clause 1A.3.2 and any associated delay, disruption or interference and will have no *Claim* against the Principal arising out of or in any way in connection with such occurrences (including in circumstances where the Principal may have become involved in matters relating to the work in connection with the Contract with a relevant *Authority*).

## 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. Delegation of any functions or powers of the *Principal's Authorised Person* does not prevent the *Principal's Authorised Person* from exercising those functions or powers.

### **2A Independent Certifier**

- .1 As soon as practicable after the Date of Contract, the Principal and the Contractor must jointly appoint the *Independent Certifier* in accordance with the terms of the *Independent Certifier Deed*.
- .2 The Principal and the Contractor must equally bear all costs of and incidental to the performance of the tasks allocated to the *Independent Certifier* in connection with the Contract.

### **3 Cooperation**

- .1 The parties must do all they reasonably can to cooperate 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*, the cost or quality of the Works, cause loss or damage to property or the *Environment* or affect the health and safety of any person. The parties must then investigate how to avoid or minimise any adverse effect on the Works, *Scheduled Progress*, property, *Environment* or the health and safety of any person.

### **6 Evaluation and monitoring**

#### **Reports**

- .1 From the Date of Contract until the *Actual Completion Date*, the Contractor must give the Principal:
  - .1 weekly progress reports on the work in connection with the Contract covering such matters as the Principal shall require, including those matters described in clause 3.1(c) of the *Preliminaries*; and
  - .2 monthly progress reports on the work in connection with the Contract covering such matters as the Principal shall require, including those matters described in clause 3.1(d) of the *Preliminaries*.
- .2 The Contractor must provide:
  - .1 the weekly progress report under clause 6.1.1 at least 2 *Business Days* before each weekly site meeting under clause 6.5.2; and
  - .2 the monthly progress report under clause 6.1.2 within 5 *Business Days* after the end of each month.
- .3 From the *Actual Completion Date* until the end of the *Defects Liability Period*, the Contractor must give the Principal regular reports on the rectification of *Defects* and the completion of outstanding work in connection with the Contract.
- .4 The Contractor must undertake a dilapidation survey and produce a dilapidation report in accordance with the requirements of the *Preliminaries*.

### Meetings

- .5 The parties must meet:
  - .1 monthly for the project control group meeting, at a location agreed by the parties (or at the Site, if the parties fail to agree); and
  - .2 weekly at the Site,
 to evaluate and monitor performance of the Contract.
- .6 The Principal shall notify the Contractor who must participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government *Authorities*, stakeholders, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.
- .7 The Contractor must provide minutes of each meeting to all attendees within 2 *Business Days* of the date of the meeting.
- .8 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.
- .9 Participants in the evaluation and monitoring meetings must meet their own costs for attendance.

### Contractor's records

- .10 During the performance of the work in connection with the Contract, the Contractor must ensure that a complete set of:
  - .1 the Contract;
  - .2 the *Contractor's Documents*;
  - .3 the *Contractor's Project Plans*;
  - .4 *Approvals* obtained for the work in connection with the Contract; and
  - .5 all other written information supplied by or produced by the Principal and the Contractor in connection with the Contract,
 is kept at the Site and is available at all times for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.
- .11 During the manufacture or assembly of any *Materials* off-Site (if any), a set of the information and documents referred to in clause 6.10 relevant to that part of the work in connection with the Contract must:
  - .1 be kept at the place of manufacture or assembly; and
  - .2 be available for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.
- .12 The Contractor must, and must ensure all Subcontractors, Suppliers and Consultants keep and maintain complete and detailed records in respect of the Contract ("*Records*"). Such *Records* must be kept in accordance with generally accepted accounting principles.
- .13 The Contractor must provide the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them with access to the *Records*, allow them to take copies of the *Records* and allow them to extract *Records* from data stored on computer files to enable the Principal to verify, to its reasonable satisfaction:
  - .1 the proper performance of the work in connection with the Contract; and
  - .2 the Contractor's compliance with its obligations under the Contract.
- .14 The Contractor must allow the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them access to the *Contractor's Personnel* and provide reasonable assistance to the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them in accessing and reviewing the *Records*.
- .15 The Contractor must preserve the *Records* until 7 years after the expiry of the last *Defect Liability Period*.

**Early Works**

- .16 The Principal shall provide the Contractor with copies of the documents described in Schedule 35 promptly following receipt from the *Early Works Contractor*.
- .17 The parties acknowledge and agree that the Contractor shall be entitled to inspect the *Early Works* jointly with the Principal:
  - .1 at fortnightly intervals prior to *Early Works Completion*;
  - .2 immediately prior to *Early Works Completion*;
  - .3 at appropriate stages of exposure of the *Seawall* to enable the Contractor to examine the condition of the *Seawall*; and
  - .4 at such other intervals or milestones as may be agreed between the parties (each acting reasonably),
 for the purpose of identifying any aspects of the *Early Works* which:
  - .5 do not comply with the requirements of the *Early Works Contract*; and
  - .6 if not rectified, would materially detrimentally affect the *Contractor's* ability to complete the *Works* in accordance with the *Contract*,
 ("*EW Defect*").
- .18 The Principal will provide written notice of the dates upon which the parties are to jointly inspect the *Early Works* (including the terms of such access, which may be in addition to those provided for in clause 35).
- .19 If, having:
  - .1 undertaken an inspection pursuant to clause 6.17; or
  - .2 received information under clause 6.16,
 the Contractor reasonably believes that there is an *EW Defect*, the Contractor must:
  - .3 within 5 *Business Days* after the date of the relevant inspection or receipt of the relevant information (as applicable), provide the Principal with an initial written notice that it considers there to be an *EW Defect* (including a brief summary of the nature of the *EW Defect* alleged); and
  - .4 within 10 *Business Days* after the date of the relevant inspection or receipt of the relevant information (as applicable), provide the Principal with a detailed written notice outlining:
    - .1 the element of the *Early Works* which the Contractor reasonably considers to be an *EW Defect*, including its reasons for holding such an opinion;
    - .2 the cause of the alleged *EW Defect* (if known);
    - .3 details of how the alleged *EW Defect* would materially detrimentally affect the *Contractor's* ability to complete the *Works* in accordance with the *Contract* if left unrectified; and
    - .4 any other information reasonably requested by the Principal,
 ("*EW Defect Notice*").
- .20 The Principal shall notify the Contractor within 20 *Business Days* whether it agrees that there is an *EW Defect*.
- .21 To the extent that the Principal agrees that there is a *EW Defect*, the Principal will either:
  - .1 direct the *Early Works Contractor* to rectify the relevant *EW Defect* and will invite the Contractor to inspect the rectification works upon their completion, and the process in clause 6.18 to this clause 6.21 shall re-apply; or
  - .2 direct the Contractor to carry out a *Variation* to address or overcome the *EW Defect*.
- .22 If the Principal notifies the Contractor that it does not agree that there is an *EW Defect* and the Contractor does not agree with the Principal's view, the Contractor may, within 10 *Business Days* of receipt of the Principal's notice, refer the question as to whether there is an *EW Defect* to the *Independent Certifier* for determination.
- .23 If:

- .1 the Contractor does not strictly comply with the notice requirements in clause 6.19; and
  - .2 there are *EW Defects* that could have been identified:
    - .1 during the inspection under clause 6.17; or
    - .2 having undertaken a review of information provided under clause 6.16, by a competent and experienced contractor exercising *Best Industry Practice* in the position of the Contractor,
- or:
- .3 the Principal disagrees that there is an *EW Defect*, and either:
    - .1 the Contractor does not refer the matter to be determined by the *Independent Certifier*; or
    - .2 the *Independent Certifier* determines that there is no *EW Defect*,
- then the Contractor:
- .4 will not be entitled to any relief under the Contract (including under clauses 26.5.2 or 26.7) for any such *EW Defects* or alleged *EW Defects* and will be deemed to have released the *Principal* from all *Claims* arising out of or in connection with such *EW Defects* or alleged *EW Defects*; and
  - .5 is responsible for and must take such measures as may be required to overcome the *EW Defects* or alleged *EW Defects* (including, for example, undertaking any re-design or additional work as may be necessary).
- .24 If:
- .1 the Contractor submits an *EW Defect Notice*, and either:
    - .1 the Principal notifies the Contractor under clause 6.20 that it agrees that there is an *EW Defect*; or
    - .2 the Principal notifies the Contractor under clause 6.20 that it disagrees that there is an *EW Defect* and it is determined by the *Independent Certifier* that there is an *EW Defect*; and
  - .2 the Principal does not procure the rectification of the *EW Defect* or direct the Contractor to carry out a *Variation* under clause 6.21.2; and
  - .3 consequently, the relevant *EW Defect* materially detrimentally affects the Contractor's ability to complete the Works in accordance with the Contract,
- then any additional work required to be undertaken by the Contractor in order to overcome the effect of such *EW Defect* will be deemed a *Variation*.

## 6A Contractor's obligations unaffected

- .1 The Contractor's warranties and obligations under the Contract, including to perform the work in connection with the Contract in accordance with the Contract, remain unaffected notwithstanding:
  - .1 the performance of the *Preliminary Design* by any person;
  - .2 any receipt, review, comment, approval or silence by or on behalf of the Principal or the *Principal's Authorised Person* in relation to:
    - .1 the documents prepared or provided by the Contractor or the *Contractor's Personnel*, including the *Design Documentation* or the *Contractor's Project Plans*;
    - .2 the design, *Materials*, construction equipment and methods of working used by the Contractor;
    - .3 the Subcontractors, Suppliers and Consultants engaged by the Contractor;
    - .4 any work in connection with the Contract performed or the way any work in connection with the Contract is performed; or
    - .5 the Principal's consent to subcontract under clause 29;

- .3 any test or inspection witnessed by or carried out by or on behalf of the Principal or the *Principal's Authorised Person* or any failure to witness by the Principal or the *Principal's Authorised Person*; or
- .4 the Contractor's use of any information, design, *Materials*, construction equipment or work methods prepared, provided or suggested by or on behalf of the Principal or the *Principal's Authorised Person*.

## 6B Third Party Agreements

- .1 The Contractor acknowledges and agrees that the Principal has entered (or will enter) into the *Third Party Agreements* and has provided copies of the *Third Party Agreements* to the Contractor.
- .2 The Contractor must:
  - .1 comply with, satisfy, carry out and fulfil the conditions and requirements of the Principal under:
    - .1 the *Agreement for Lease*, to the extent that such conditions or requirements have been allocated as the Contractor's responsibility under the *AFL Matrix*;
    - .2 the *Construction Licence*, other than those conditions or requirements which are allocated as the Principal's responsibility under the *Construction Licence Matrix*; and
    - .3 the *Ground Lease*, to the extent that such conditions or requirements have been allocated as the Contractor's responsibility under the *Ground Lease Matrix*;
  - .2 comply with any directions of the *Principal's Authorised Person* in relation to compliance with *Third Party Agreements*;
  - .3 not do, or omit to do, anything in connection with the work in connection with the Contract which may cause the Principal to be in breach of any of its obligations under the relevant *Third Party Agreements*; and
  - .4 prepare and provide to the Principal all information that the Principal is required (or reasonably proposes to) provide to a *Third Party* in connection with the Works.
- .3 If:
  - .1 a draft *Third Party Agreement* is attached to this Contract; and
  - .2 the terms of the executed version of the *Third Party Agreement* differ from the draft *Third Party Agreement* attached to the Contract,
 or:
  - .3 the terms of an executed *Third Party Agreement* are amended after the Date of Contract,
 and:
  - .4 the Principal instructs the Contractor that it is required to comply with the executed or amended version of the *Third Party Agreement*, (*"Amended TPA"*),
 and:
  - .5 such changes in the terms of the *Amended TPA*:
    - .1 could not have been reasonably anticipated by a competent and experienced Contractor at the Date of Contract; and
    - .2 will require a change to the Works,
 (a *"Change in TPA"*), the Contractor must notify the Principal in writing as soon as possible and in any event within 5 *Business Days* after it receives the Principal's instruction to comply with the *Amended TPA*.
- .4 The Contractor's notification must include details of:
  - .1 the *Change in TPA*;
  - .2 why the *Change in TPA* could not reasonably have been anticipated by the Contractor at the Date of Contract;

- .3 the changes to Works that the Contractor considers necessary to comply with the *Change in TPA*;
- .4 any delays in achieving *Completion* as a result of the change to the Works; and
- .5 any other matters the Contractor considers relevant.
- .5 The Principal may request the Contractor to provide further information about the matters notified in accordance with clause 6B.4.
- .6 The Principal shall within 10 *Business Days* of the later of the Principal's receipt of the information under clause 6B.4 and the receipt of any information requested under clause 6B.5 (if applicable), notify the Contractor whether or not it agrees (acting reasonably) that there has been a *Change in TPA* that requires a change to the Works.
- .7 If the Principal agrees that there has been a *Change in TPA*:
  - .1 the Principal will issue a *Variation Order* in respect of the *Change in TPA*; and
  - .2 any such *Variation Order* issued under clause 6B.7.1 must not materially alter the Contractor's liability under the Contract, unless otherwise agreed in writing by the Contractor (acting reasonably).
- .8 Without limiting the Contractor's right to raise an *Issue* under clause 69, if the Principal does not agree that there has been a *Change in TPA* that requires a change to the Works, the Contractor must comply with any instruction given by the Principal pursuant to clause 6B.3.4 at the Contractor's cost.
- .9 Costs and delay incurred by the Contractor as a result of a *Change in TPA* before it gave the notice required by clause 6B.4 must not be counted in any valuation or extension of time.

## 6C Works Authorisation Deed

- .1 The Principal and the Contractor acknowledge and agree that:
  - .1 a *Works Authorisation Deed* must be entered into with TfNSW for the *WAD Works*, but has not been entered into as at the Date of Contract;
  - .2 once the *Works Authorisation Deed* is executed, responsibility for each obligation under the *Works Authorisation Deed* will be allocated to the Principal or the Contractor on the basis of the party which is best placed to discharge the relevant obligation, by way of a *WAD Matrix* to be developed having regard to and, insofar as practicable, consistently with the allocations of responsibilities contained in the *WAD Baseline Matrix*;
  - .3 the parties have developed the draft *WAD Baseline Matrix* in reference to the *WAD Baseline Conditions*; and
  - .4 the Principal will develop a finalised *WAD Matrix* in accordance with this clause 6C.
- .2 The Contractor:
  - .1 must provide such assistance as is required by the Principal in relation to the negotiation of the terms of the *Works Authorisation Deed* with TfNSW;
  - .2 without limiting clause 6C.2.1, must:
    - .1 prepare all submissions, documents and information required by the Principal for the purpose of developing the *Works Authorisation Deed*; and
    - .2 take all reasonable and proactive steps to assist the Principal to progress and conclude the *Works Authorisation Deed*, including, if required by the Principal, taking responsibility for coordinating meetings with TfNSW and attending such meetings with the Principal and TfNSW;
  - .3 acknowledges and agrees that:
    - .1 the *Principal* will enter into the *Works Authorisation Deed* once it is negotiated and finalised with TfNSW;
    - .2 the *WAD Works* will form *Separable Portion 2*; and

- .3 the *Works Authorisation Deed* will, once it is executed, include obligations relating to the practical completion of the *WAD Works* and that the completion of all such obligations are a condition precedent to the Contractor achieving *Completion* in respect of *Separable Portion 2*;
  - .4 accepts full responsibility for compliance with and the discharge of the Principal's obligations under the *Works Authorisation Deed*, other than those conditions or requirements which are allocated as the Principal's responsibility under the *WAD Matrix*; and
  - .5 further acknowledges and agrees that it shall not have any *Claim* whatsoever arising out of or in connection with:
    - .1 the Contractor's obligation to comply with and discharge obligations under the *Works Authorisation Deed* in the manner contemplated by clause 6C.2; or
    - .2 any delay to the execution of the *Works Authorisation Deed*, other than as provided in clauses 6C.3 – 6C.9.
  - .3 If:
    - .1 the *Works Authorisation Deed* is not executed by 25 May 2021; and
    - .2 the delay to the execution of the *Works Authorisation Deed* has not been caused or contributed to by any act or omission of the Contractor,
 the Contractor may make a *Claim* for an extension of time in accordance with clause 50, subject to the requirements of clause 50.
  - .4 Within 20 Business Days after the execution of the *Works Authorisation Deed*, the Principal shall prepare the *WAD Matrix* having regard to and, insofar as practicable, consistently with the allocations of responsibilities contained in the *WAD Baseline Matrix*.
- Terms of WAD are more onerous than baseline**
- .5 To the extent that:
    - .1 the responsibilities allocated to the Contractor under the *WAD Matrix* differ from the *WAD Baseline Matrix*; and/or
    - .2 the terms of the *Works Authorisation Deed* are different to the *WAD Assumptions* (other than the *Core WAD Assumptions*), and in either case, the differences could not have been reasonably anticipated by a competent and experienced Contractor at the *Date of Contract*; and/or
    - .3 the terms of the *Works Authorisation Deed* are different to the *Core WAD Assumptions*,
 and such differences will require a change to the work in connection with the Contract or will otherwise cause the Contractor to incur additional cost, (a "*Change in WAD Condition*"), the Contractor must notify the Principal in writing as soon as possible and in any event within 5 *Business Days* after it receives the *WAD Matrix*.
  - .6 The Contractor's notification must include details of:
    - .1 the *Change in WAD Condition*;
    - .2 why the *Change in WAD Condition* (other than in respect of the *Core WAD Assumptions*) could not reasonably have been anticipated by the Contractor at the *Date of Contract*;
    - .3 the changes to the work in connection with the Contract that the Contractor considers necessary to comply with the *Change in WAD Condition*;
    - .4 (if applicable) the additional costs the Contractor will incur as a result of the *Change in WAD Condition*;
    - .5 any delays in achieving *Completion* as a result of the *Change in WAD Condition*; and
    - .6 any other matters the Contractor considers relevant.

- .7 The Principal may request the Contractor to provide further information about the matters notified in accordance with clause 6C.6.
- .8 The Principal shall (acting reasonably) within 10 *Business Days* of the later of the Principal's receipt of the information under clause 6C.6 and the receipt of any information requested under clause 6C.7 (if applicable), notify the Contractor whether or not it agrees that there has been a *Change in WAD Condition* that requires a change to the work in connection with the Contract or otherwise should entitle the Contractor to an adjustment to the *Contract Price*.
- .9 If the Principal agrees that there has been a *Change in WAD Condition* the Contractor may make a *Claim* for:
  - .1 an extension of time in accordance with clause 50, subject to the requirements of clause 50; 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 there had not been a *Change in WAD Condition*.
- .10 Without limiting the Contractor's right to raise an *Issue* under clause 69, if the Principal does not agree that there has been a *Change in WAD Condition* that requires a change to the work in connection with the Contract or otherwise that should entitle the Contractor to an adjustment to the *Contract Price*, the Contractor must comply with the *WAD Matrix* at the Contractor's cost.
- .11 Costs and delay incurred by the Contractor as a result of a *Change in WAD Condition* before it gave the notice required by clause 6C.5 must not be counted in any valuation or extension of time.

**Terms of WAD are less onerous than baseline**

- .12 To the extent that:
  - .1 the responsibilities allocated to the Contractor under the *WAD Matrix* differ from the *WAD Baseline Matrix*; and/or
  - .2 the terms of the *Works Authorisation Deed* are different to the *WAD Assumptions* and such differences:
    - .3 impose less onerous obligations on the Contractor than were contained in the *WAD Baseline Matrix* and/or the *WAD Assumptions*;
    - .4 will enable a change to the work in connection with the Contract or the Works which means the Contractor is able to save cost; and/or
    - .5 will otherwise cause the Contractor to incur less cost,
 (a "*Beneficial Change in WAD Condition*"), the Contractor must notify the Principal in writing as soon as possible and in any event within 5 *Business Days* after it receives the *WAD Matrix*.
- .13 The Contractor's notification must include details of:
  - .1 the *Beneficial Change in WAD Conditions*;
  - .2 the matters under clause 6C.12.3, 6C.12.4 and/or 6C.12.5 that result from the *Beneficial Change in WAD Condition*;
  - .3 the costs the Contractor will save as a result of the *Change in WAD Condition*; and
  - .4 any other matters the Contractor considers relevant.
- .14 The Principal may:
  - .1 request the Contractor to provide further information about the matters notified in accordance with clause 6C.13; and
  - .2 if the Contractor fails to give a notice under clause 6C.12, provide a notice to the Contractor setting out the Principal's view as to the matters described in clause 6C.13.
- .15 Upon receipt of a notice under clause 6C.12 or 6C.14, the Principal and the Contractor must work collaboratively to agree any adjustment to the *Contract Price* as a result of the notified *Beneficial Change in WAD Conditions*.



- .16 If the parties cannot agree the adjustment to the *Contract Price* as a result of the *Beneficial Change in WAD Conditions*, the *Principal's Authorised Person* (acting reasonably) shall determine a reasonable adjustment to the *Contract Price*.

#### **Application of adjustments**

- .17 The *Contract Price* must be adjusted as agreed or determined under clause 6C.15 or 6C.16.

## **The Contract**

### **7 Separable Portions**

- .1 At the Date of Contract, the *Separable Portions* are as follows:
- .1 *Separable Portion 1*, comprising all the Works excluding the *WAD Works*, and which includes:
    - .1 the Building, fixed fishing wharves, western promenade and public domain/realms; and
    - .2 the floating eastern commercial and recreational wharf; and
  - .2 *Separable Portion 2*, comprising the *WAD Works*.
- .2 The interpretation and application of:
- .1 *Completion*;
  - .2 *Contractual Completion Date*; and
  - .3 *Actual Completion Date*,
- and clauses 50, 51, 64 and 67 apply separately to each *Separable Portion* and references to the Works and the work in connection with the Contract means those parts of the Works or the work in connection with the Contract comprised in the relevant *Separable Portion*.
- .3 *Separable Portions* may be directed by the *Principal's Authorised Person* (acting reasonably) from time to time who will clearly identify, for each *Separable Portion*, the:
- .1 scope of Works;
  - .2 *Contractual Completion Date*; and
  - .3 rate of liquidated damages,
- applicable to such *Separable Portions*.

### **8 Scope of the Works, Temporary Work and work methods**

- .1 The Works and the work in connection with the Contract 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 occupation of the Works; and
  - .3 all work and items necessary for the Works to be fit for the purposes required by the Contract.
- .2 The work 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 an 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 or the work in connection with the Contract.
- .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, and the Contractor must include in its advice its view as to whether the proposed instruction would, if given, have an effect as described in clause 8.9.1-3.
- .7 Subject to clause 8.9, if the parties agree in writing on the effects of the Principal's proposal under clause 8.6.1 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 and clause 8.10, 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 The Contractor will not be required to comply with an instruction to use a particular work method or perform particular *Temporary Work* or to change a specified work method or *Temporary Work* if compliance with the relevant instruction would:
  - .1 pose a risk to the safety of any person;
  - .2 likely result in damage to the Site, the Works and/or the *Environment*; or
  - .3 otherwise impair or prevent the Contractor's ability to comply with the Contract.
- .10 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 and Change in Control

### No assignment by Contractor

- .1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's written consent (which may be withheld in the Principal's absolute discretion).
- .2 Subject to clause 9.3, the Contractor must ensure that no *Change in Control* occurs in respect of the Contractor or the *Guarantor* without the Principal's prior written consent (which may be withheld in the Principal's absolute discretion). For the purposes of this clause, the Principal will not unreasonably withhold its consent where the *Change in Control* is constituted solely by a corporate restructure where there is no material adverse change to the ability of:

- .1 the Contractor to perform its obligations under the Contract and the Contractor remains a subsidiary of the *Guarantor*; and
- .2 the *Guarantor* to perform its obligations under the *Parent Company Guarantee*.
- .3 The consent referred to in clause 9.2 is not required for a *Change in Control* resulting from a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange.

## 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 Unless stated otherwise, notices must be sent via email to the relevant persons at the addresses in Contract Information items 6 to 10 or 50, 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.
- .3 Notices are taken to be received:
  - .1 if sent by post, 3 days after posting; or
  - .2 if sent by email:
    - .1 when the sender receives an automated message confirming delivery; or
    - .2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### 11AA Aconex

- .1 Despite any other provision of the Contract but subject to this clause 11AA and clause 76, the Principal and Contractor agree that notices under the Contract may be sent via Aconex.
- .2 Each party shall monitor the information systems on Aconex on a frequent and regular basis but no less often than once a day.
- .3 Each party shall immediately notify the other if it is unable to access Aconex for a period longer than one day.
- .4 Each party shall ensure that it is able to receive notices via Aconex, including by ensuring that sufficient storage capacity is available at all times.
- .5 A notice sent via Aconex under the Contract will be taken to be a notice in writing signed by the person identified as the sender of the electronic notice.

### 11A Benefit of indemnities

- .1 The Principal holds the benefit of any indemnity given by the Contractor in favour of an *Indemnified Party* (including the right to recover any *Loss*) for itself and on trust for each other *Indemnified Party* and is entitled to enforce the Contract in respect of any such indemnities to an *Indemnified Party*, whether by way of equitable, legal or statutory relief, for itself and on behalf of any *Indemnified Party*.
- .2 An *Indemnified Party* is not entitled to recover against the Contractor in respect of any *Loss* that has already been recovered from the Contractor by another *Indemnified Party* under or in respect of the Contract.

### 11B Information Documents

- .1 The parties acknowledge that:
  - .1 at the Date of Contract, the Principal has provided in good faith the *Information Documents*;
  - .2 the *Information Documents* do not form part of the Contract;
  - .3 the Principal does not guarantee or warrant the accuracy, quality or completeness of the *Information Documents*;

- .4 the Principal has no duty of care in connection with the *Information Documents*, or with having provided them; and
- .5 the Principal makes no representation, gives no warranty and assumes no duty of care, in respect of:
  - .1 the Site, the *Site Conditions* or the *Information Documents*; or
  - .2 the adequacy or suitability of the Site, *Site Conditions* or the *Information Documents* for the performance of the work in connection with the Contract.
- .2 The Contractor warrants that it:
  - .1 has made its own inquiries concerning the Site, *Site Conditions* and the *Information Documents*;
  - .2 has examined the 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*;
  - .4 did not, and will not, rely on the accuracy, quality or completeness of the *Information Documents*; and
  - .5 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.
- .3 The Contractor is not entitled to any *Claim* arising out of or in connection with, the inaccuracy, incompleteness or inadequacy of, or the reliance by the Contractor upon, any *Information Documents*.
- .4 The Contractor acknowledges that the Principal has entered into the Contract in reliance on the acknowledgments and warranties given by the Contractor in clause 11B.2.

## Statutory and Government Requirements

### 12 Statutory Requirements and Approvals

- .1 Subject to clause 12.6, the Principal must ensure that the *Approvals* listed in Contract Information item 14 are obtained and paid for.
- .2 The Contractor is responsible for:
  - .1 compliance with all *Statutory Requirements*;
  - .2 giving all notices necessary to comply with *Statutory Requirements*;
  - .3 providing the Principal with such assistance as may be reasonably required by the Principal and the *Principal's Authorised Person*;
  - .4 obtaining all *Approvals* necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and
  - .5 the payment of all necessary fees and charges, other than those listed in Contract Information item 14.
- .3 The Contractor must:
  - .1 carry out the work in connection with the Contract in accordance with, and ensure the Works comply with, all *Statutory Requirements* and *Approvals*, including the conditions and requirements attached to any *Approval*; and
  - .2 comply with and discharge the conditions and requirements of all *Approvals* (whether obtained by the Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the *Approvals* to comply with, carry out and discharge, other than those conditions listed in Contract Information item 14A.
- .4 The Contractor must:

- .1 give the Principal copies of all notices, reports and submissions it gives to authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, *Authorities*; and
- .2 give the Principal copies of all documents (including *Approvals* and other notices) that authorities issue to it.
- .5 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all *Approvals* and other documents issued by or to authorities or providers of services in connection with the Works or the Site.
- .6 The Contractor acknowledges and agrees that where:
  - .1 a modification to the *Planning Approval* is required as a result of an amendment to the *Preliminary Design* or any concept design or other *Design Documentation* which has been proposed by the Contractor; and
  - .2 the Principal has approved such amendment,
 the Contractor shall be responsible for procuring the relevant modification at its cost and shall not be entitled to make any *Claim* in respect of its compliance with this clause 12.6.

### 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 NSW Industrial Relations Guidelines: Building and Construction Procurement (as published by the NSW Treasury July 2013 and updated on September 2017) ("*NSW Guidelines*") and the NSW Government Code of Practice for Procurement ("*NSW Code*"). The *NSW Code* and *NSW Guidelines* are available at [www.industrial-relations.nsw.gov.au](http://www.industrial-relations.nsw.gov.au).

#### Primary obligation

- .2 The Contractor must comply with and meet any obligations imposed by the *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 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 *nSFM*;
  - .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 the 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),

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 *Code for the Tendering and Performance of Building Work 2016* (Cth) ("*Building Code 2016*").

### **Australian Industry Participation Plan**

- .16 The Contractor acknowledges and agrees that it has reviewed the Australian Industry Participation Plan for the project which has been approved by the AIP Authority under the *Australian Jobs Act 2013* (Cth) and provided by the Principal to the Contractor prior to the date of this Contract and will ensure that it complies with that plan in all respects in carrying out the work in connection with the Contract.

### **Infrastructure Skills Legacy Program**

- .17 The Contractor must comply with the 'Infrastructure Skills Legacy Program' and deliver the mandatory minimum targets as provided for in clause 4.3 of the *Preliminaries* and Schedule 33.

### **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 procedures required to comply with the following *NSW Government Policy and Guidelines*, and meet other obligations as specified in Contract Information item 15:
- .1 the *NSW Guidelines*;
  - .2 the Work Health and Safety Management Systems and Auditing Guidelines;
  - .3 the Quality Management Systems Guidelines for Construction (including any requirements set out in clause 4.1 of the *Preliminaries*);
  - .4 the Environmental Management Systems Guidelines;
  - .5 the NSW Government Procurement Guideline Skills and Training in the Construction Industry (including any requirements set out in clause 4.3 of the *Preliminaries*); and
  - .6 the NSW Government Policy on Aboriginal Participation in Construction (including any requirements set out in clause 4.2 of the *Preliminaries*).
- .2 The requirements of relevant *NSW Government Policy and Guidelines* are additional to any other requirements of the Contract and *Statutory Requirements*.
- .3 The *Contractor's Project Plans* must comply with all requirements of the relevant *NSW Government Policy and Guidelines* and the Contract, including any requirements set out in clauses 4.1 and 10 of the *Preliminaries*.
- .4 The Contractor must:
- .1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, and procedures required under clause 15.1 and the *Contractor's Project Plans*;
  - .2 review and update its systems, procedures and the *Contractor's Project Plans* 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 *Contractor's Personnel*) and all other things necessary to allow the Principal to carry out reviews and audit of the *Contractor's Project Plans*, systems and procedures and confirm compliance with the Contract.

### **16 Workplace Health and Safety**

#### **Compliance and cooperation**

- .1 The Contractor warrants to the Principal that it is familiar with and has the capability and resources to comply with all applicable *WHS Legislation*.
- .2 The Contractor must:
- .1 comply with, and ensure that any and all of the *Contractor's Personnel* comply with:
    - .1 all applicable *WHS Legislation*;
    - .2 the provisions of this clause 16;

- .3 the workplace health and safety requirements set out in clauses 5.3 and 10.1 of the *Preliminaries*; and
- .4 the *WHS Plan*;
- .2 upon reasonable request by, or on behalf of, the Principal, demonstrate such compliance including by providing written evidence of measures taken to achieve such compliance;
- .3 allow the Principal, the *Principal's Authorised Person* or a person nominated by the Principal to audit the Contractor's compliance with this clause 16;
- .4 if the Principal exercises its right to audit compliance pursuant to clause 16.2.3, promptly provide reasonable assistance and access to information to enable the Principal or a person nominated by the Principal to carry out such audit;
- .5 cooperate with *Separate Contractors* as necessary to ensure (where reasonably practicable) safety practices at the Site are consistent;
- .6 cooperate with the Principal to enable the Principal to comply with its obligations under applicable *WHS Legislation*;
- .7 immediately advise the Principal in writing of any act, fact or circumstances relevant to the ability of the Contractor to carry out its obligations under the Contract without risk to health or safety;
- .8 supply all items necessary to ensure the work in connection with the Contract is being performed without risk to health or safety; and
- .9 ensure that all items supplied by it, including *Materials*, are maintained in a safe condition and without risk to any person including providing written evidence of measures taken to achieve compliance with this clause 16.

#### **WHS Plan**

- .3 The Contractor's high level draft *WHS Plan* at the Date of Contract is included in Schedule 20.
- .4 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 40 *Business Days* before first mobilising to the Site, prepare and submit a *WHS Plan* to the Principal under clause 32A.3.
- .5 The *WHS Plan* must:
  - .1 be consistent with the high level draft *WHS Plan* in Schedule 20;
  - .2 set out in detail how the Contractor proposes to comply with its obligations under the *WHS Legislation* and the Contract;
  - .3 detail the interface arrangements between the Principal, *Separate Contractors* and the Contractor for health and safety, including emergency response, incident reporting and security (including assigned responsibilities in relation to each of those matters);
  - .4 comply with:
    - .1 the Contract, including the *Project Brief* and the workplace health and safety requirements set out in clauses 5.3 and 10.1 of the *Preliminaries*;
    - .2 all applicable *Statutory Requirements*; and
    - .3 all relevant NSW Government Guidelines; and
  - .5 include any other information required by the Contract, any applicable *Statutory Requirements* or the Principal.
- .6 The Contractor acknowledges that:
  - .1 the *WHS Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
  - .2 compliance with the *WHS Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .7 The Contractor must not commence any works on Site unless and until the *WHS Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and



has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *WHS Plan* in accordance with clause 32A.8.1 and either:

- .1 the Contractor has resubmitted the *WHS Plan* in accordance with clause 32A.8.2 and the resubmitted *WHS Plan* has not been commented on; or
- .2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *WHS Plan*.

### **Contractor's responsibilities**

- .8 The Contractor must:
  - .1 before commencement of the work in connection with the Contract, undertake an assessment of the risks associated with the Site and the work in connection with the Contract and identify and implement appropriate measures to control all such risks;
  - .2 provide details of the risk assessment and evidence of implementation of adequate risk control measures to the Principal in accordance with any reasonable request by, or on behalf of, the Principal;
  - .3 immediately notify the Principal and any relevant *Authority* in accordance with applicable *WHS Legislation* and the *WHS Plan* (and, in any case, within 24 hours) of any accident, notifiable incident (being an incident which is notifiable under applicable *WHS Legislation*), injury, property or environmental damage which:
    - .1 occurs during the performance of the Contractor's obligations;
    - .2 is associated with the Site or the work in connection with the Contract; or
    - .3 is otherwise required by *WHS Legislation* to be notified;
  - .4 within 24 hours of any such accident, notifiable incident, injury, property or environmental damage, provide the Principal with a written report giving details of the accident, notifiable incident, injury, property or environmental damage and evidence that the requirements of the *WHS Legislation* have been met;
  - .5 promptly provide investigation reports and details of root causes, action and remedial work to be undertaken in connection with any such accident, notifiable incident, injury, property or environmental damage; and
  - .6 appoint statutory position holders for the purposes of applicable *WHS Legislation* as requested by the Principal or the *Principal's Authorised Person*.
- .9 Without limiting any other provision of this clause 16, the Contractor must ensure, so far as is reasonably practicable:
  - .1 the health and safety of workers carrying out the work in connection with the Contract;
  - .2 that the workers under its control and supervision take reasonable care while carrying out the work in connection with the Contract;
  - .3 the provision and maintenance of safe systems of work;
  - .4 that workers:
    - .1 receive the necessary information, training, instruction and supervision in order to comply with the *WHS Legislation* and any rules, regulations, policies and guidelines issued from time to time by the Contractor; and
    - .2 are aware of, and comply with, all requirements and directives relating to work health and safety which is issued by the Contractor from time to time; and
  - .5 the health and safety of other persons is not put at risk from activities in connection with the Works.
- .10 The Principal may request the Contractor to:
  - .1 immediately cease or modify any activity that does not materially comply with the *WHS Plan* or the *WHS Legislation*; and
  - .2 provide evidence of action taken to meet the Contractor's obligations under this clause 16.10.

- .11 If the Contractor receives a direction or instruction from the Principal or the *Principal's Authorised Person* that it considers will:
  - .1 require it to breach this clause 16 or any applicable *WHS Legislation*; or
  - .2 give rise to circumstances which present actual or potential risk to life or serious injury,
 the Contractor shall, as soon as is reasonably practicable, and in any event prior to complying with such direction or instruction, notify the *Principal's Authorised Person* in writing.
- .12 The Contractor acknowledges and agrees that:
  - .1 the audits referred to in clause 16.2.3 do not relieve, limit or otherwise affect the Contractor's responsibilities under *WHS Legislation* and the Contract; and
  - .2 any corrective work or action which the audit identifies as necessary to rectify any departure from the Contractor's responsibilities under *WHS Legislation* and the Contract must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the departure.
- .13 Where the Contractor or the *Contractor's Personnel* are required to visit or work on any site that is not part of the Site or is not otherwise controlled by the Contractor, the Contractor must, and must ensure that the *Contractor's Personnel*, comply with all directions, procedures and policies of the person that has control or management of that site.
- .14 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 16, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim (including any *Claim*) and/or *Loss* is contributed to or caused by an act or omission by an *Indemnified Party*.

#### **16A Appointment of principal contractor for WHS**

- .1 The Contractor acknowledges and agrees that:
  - .1 the *Early Works Contractor* is engaged as 'principal contractor' for the construction project in accordance with Clause 293 of the *WHS Regulation (2017)* until *Early Works Completion*; and
  - .2 as a precondition of being granted access to the Site before *Early Works Completion*, the Contractor shall:
    - .1 complete the *Early Works Contractor's* Site induction program; and
    - .2 comply with all directions of the *Early Works Contractor* in its capacity as 'principal contractor'.
- .2 The Principal shall give the Contractor written notice:
  - .1 4 *Business Days* prior to the date upon which the Principal anticipates that *Early Works Completion* will occur; and
  - .2 upon the occurrence of *Early Works Completion*.
- .3 Immediately upon issue of the Principal's notice under clause 16A.2.2:
  - .1 the *Early Works Contractor* ceases to be 'principal contractor' for the construction project; and
  - .2 the Contractor (unless otherwise stated in the Contract):
    - .1 is engaged as principal contractor for the construction project in accordance with Clause 293 of the *WHS Regulation (2017)*;
    - .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 (2017)*; and

- .2 a person with management or control of a workplace as specified in the WHS Legislation and the *WHS Regulation (2017)*; and
- .4 must notify the Principal promptly of any matter affecting workplace health and safety where consultation with the Principal is necessary.
- .4 Without limiting clause 16A.3.2, the Contractor shall be responsible for ensuring the competent handover of principal contractor responsibilities from the *Early Works Contractor* to the Contractor to ensure that there is no gap between cessation of principal contractor responsibilities of the *Early Works Contractor* and the assumption of such responsibilities by the Contractor.
- .5 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 16A, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim (including any *Claim*) and/or *Loss* is contributed to or caused by an act or omission by an *Indemnified Party*.

## 17 Commonwealth OHS Accreditation

- .1 If required by Contract Information item 16B, the Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme ("*Scheme*") established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) ("*BCIIP Act*") while building work (as defined in section 5 of the *BCIIP Act*) is carried out. The Contractor must comply with all conditions of *Scheme* accreditation.

## 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 *Indemnified Parties* from and against any claim, action, loss, damage, expense or liability the *Indemnified Parties* may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim, action, loss, damage, expense or liability is contributed to or caused by a breach by the Principal of this clause 19.

## 20 Long service levy

- .1 The Principal shall 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.

**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.

**21A PPSA****PPSA further steps**

- .1 If either party ("Party A") determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, the other party ("Party B") agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Party A asks and considers necessary for the purposes of:
  - .1 ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - .2 enabling Party A to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Party A; or
  - .3 enabling Party A to exercise rights in connection with the security interest.

**Costs of further steps and undertaking**

- .2 The parties will bear their own costs in complying with, and performing, their respective obligations under this clause 21A.

**Negative pledge for the purposes of the PPSA**

- .3 For the purposes of clause 21A.4, "**Personal Property**" means all personal property of the Principal or the Contractor (as applicable) the subject of a security interest granted in favour of the other party under the Contract.
- .4 Each party agrees:
  - .1 not to create any security interest or lien over any of the other party's Personal Property;
  - .2 not to sell, lease or dispose of its interest in the other party's Personal Property;
  - .3 not to give possession of the other party's Personal Property to another person except where the other party expressly authorises it to do so;
  - .4 not to permit any of the other party's Personal Property to become an accession to or commingled with any asset that is not part of the Works;
  - .5 to give the other party details about any "motor vehicle", "watercraft", "aircraft" or "intellectual property" (each as defined in the *PPSA* or the *Personal Property Securities Regulations 2010 (Cth)* (as applicable)) used for the purpose of carrying out the Works comprising part of the other party's Personal Property that has a value of more than [REDACTED] and
  - .6 to notify the other party at least 14 days before:
    - .1 it changes its name, principal place of business or place of registration or incorporation;
    - .2 any ABN, ARBN or ARSN allocated to it changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or one is allocated, or otherwise starts to apply, to it); and
    - .3 it becomes trustee of a trust, or a partner in a partnership.

**Exclusion of PPSA provisions**

- .5 If the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, each party agrees that to the extent the law permits them to be excluded:

- .1 sections 142 and 143 of the *PPSA* are excluded and the relevant secured party need not comply with the following provisions of the *PPSA*: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the *PPSA* notified to the grantor by the relevant secured party after the Date of Contract; and
- .2 the Principal need not give any notice required under any provision of the *PPSA* (except section 135).
- .6 This clause applies despite any other clause in the Contract.

## Management duties

### 22 Time management

#### Contract Program

- .1 The Contractor must submit a *Contract Program* to the Principal within 7 days after the Date of Contract. The program set out in Schedule 16 is the *Contract Program* until the Contractor submits a *Contract Program* under this clause 22.1.
- .2 The *Contract Program* must:
  - .1 in respect of the *Contract Program* submitted under clause 22.1, be consistent with the program set out in Schedule 16;
  - .2 reflect *Scheduled Progress* and show the *Contractual Completion Date* for the whole of the Works;
  - .3 show, and be consistent with, all constraints on access, performance and coordination;
  - .4 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;
  - .5 show the logical relationship between activities and events, the sequence of activities which constitute the critical path or paths, time leads and lags, and resources and other constraints;
  - .6 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;
  - .7 be accurate, comprehensive and complete;
  - .8 comply with any other specific requirements of the Contract, including any specified format or software; and
  - .9 comply with clause 5.8 of the *Preliminaries* and any reasonable requirements of the Principal.
- .3 The Contractor must update the *Contract Program* at the following times:
  - .1 on the first *Business Day* of each month until the *Actual Completion Date*;
  - .2 whenever there is a significant change in scheduling;
  - .3 within 7 days after receiving an instruction from the Principal to do so;
  - .4 when required to comply with clause 50.4; and
  - .5 following the grant 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, the Contractor must revise the *Contract Program* so that it complies with the requirements of the Contract, 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 Not used.

**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****Project IP**

- .1 All *Project IP* vests in the Principal upon its creation.
- .2 To the extent clause 23.1 does not vest ownership of the *Project IP* in the Principal, the Contractor assigns or otherwise transfers the *Project IP*, 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 *Project IP* in the Principal.
- .3 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Project IP* is assigned or otherwise transferred to the Principal upon its creation.
- .4 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Project IP* solely for the purposes of performing the Contractor's obligations under the Contract.

**Contractor Background IP**

- .5 The Contractor grants to the Principal a perpetual, world-wide royalty-free, non-exclusive, transferable, irrevocable licence to use, copy, reproduce, modify and adapt the *Contractor Background IP* for any purpose relating to the work in connection with the Contract, the Works and the *nSFM*, including the design, operation, construction, maintenance and use of the Works.
- .6 The licence granted pursuant to clause 23.5 shall be capable of sub-licence and will be assignable by the Principal.
- .7 Licences referred to in clause 23.5 apply in perpetuity from the Date of Contract or (if the *Contractor Background IP* has not then been created) from the date the *Contractor Background IP* is created.
- .8 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.

**Indemnity for IP infringement**

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

**Moral rights**

- .12 The Contractor must procure and provide to the Principal the agreement of each author that the Principal and any other person authorised by the Principal:

- .1 need not identify the Contractor or any author as the author(s) of any *Project IP* or *Contractor Background IP*; and
- .2 may:
  - .1 materially distort, destroy, mutilate, alter or in any other way change;
  - .2 add to, delete from, retitle; and
  - .3 reproduce, publish, copy and adapt,
 the *Project IP* or *Contractor Background IP* (or a substantial part of or adaptation of it) in any way it sees fit in any medium and in any context and with or without other text, data or images and may in any manner engage in conduct that would, absent the consent, infringe on author's moral rights in the *Project IP* or *Contractor Background IP*.

## 24 Confidentiality and privacy

- .1 The Contractor must maintain all *Confidential Information* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Confidential Information* which is generally available to the public or which is required to be disclosed by law.
- .2 If under the Contract the Contractor is required to disclose *Personal Information*, the Contractor must:
  - .1 if the disclosure is not authorised under the *Privacy Act*, obtain the consent of the natural person to whom that *Personal Information* relates in relation to the Principal's collection and use of that *Personal Information* for the purposes of the Contract or the purposes authorised by the Contract;
  - .2 ensure that the *Personal Information* disclosed is accurate; and
  - .3 inform that natural person:
    - .1 that the *Personal Information* has been collected by or on behalf of Principal; and
    - .2 of any other matters required by the *Privacy Act*.
- .3 The Contractor must:
  - .1 return to the Principal all *Confidential Information* in the possession or control of the Contractor; and
  - .2 provide a Statutory Declaration (Confidential Information) in a form to be agreed by the parties (each acting reasonably),  
within 7 days of the earlier of:
    - .3 the date of termination of the Contract; or
    - .4 *Final Completion* of the Works.

## 25 Media releases and enquiries

- .1 The Contractor must obtain the Principal's prior written consent in respect of:
  - .1 any press release, ceremony, event, promotional advertisement or any other external communication it wishes to make, place or undertake concerning the Contract, the Principal or the Works; and
  - .2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media or other enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media or other enquiry without the Principal's prior written consent.
- .3 The Contractor must ensure that all *Contractor's Personnel* comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- .4 The Principal may give or refuse its consent, in its absolute discretion.

## 25A Stakeholder Management and Community Relations

### Stakeholder Management and Community Engagement

- .1 The Contractor:
  - .1 acknowledges that:
    - .1 the Works and the areas where the work in connection with the Contract are being carried out are of great importance to many people, including local residents, businesses and the travelling public; and
    - .2 there are numerous stakeholders who have an interest in the successful delivery and ongoing operation of the *nSFM*; and
  - .2 must manage and participate in all stakeholder management and community relations meetings, programs and activities as:
    - .1 required by the Contract;
    - .2 contained in the *Stakeholder Management and Community Engagement Plan*; or
    - .3 directed by the Principal from time to time.

### Complaints and notifications

- .2 The Contractor must immediately notify the Principal in writing if any:
  - .1 complaint is made or any proceedings are instituted or threatened;
  - .2 letter of demand is issued; or
  - .3 order or direction is made,

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

  - .4 *Contamination* arising out of, or in any way in connection with, the work in connection with the Contract;
  - .5 the Contractor's non-compliance with any *Approval* (or condition or requirement thereunder) or any *Environmental Statutory Requirements*;
  - .6 the Contractor's use or occupation of the Site or the Works; or
  - .7 loss of or damage to the Site, the Works or any adjacent property or the injury to or death of any person.
- .3 The Contractor must (at its own cost):
  - .1 other than where clause 25A.4 applies, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 25A.2 in accordance with the *Planning Approval*;
  - .2 other than where clause 25A.4 applies, take all reasonable measures to resolve those matters as soon as practicable (including defending any proceedings); and
  - .3 keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 25A.2, which:
    - .1 is in a form or uses a system approved by the Principal; and
    - .2 contains full details of:
      - .1 each complaint, proceedings, letter of demand, order and direction; and
      - .2 the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction; and
      - .3 is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
      - .4 may be inspected by the *Principal's Authorised Person* whenever the *Principal's Authorised Person* reasonably requires.
- .4 The Principal will (at its own cost) be responsible for handling all complaints, proceedings, demands, orders or directions that:



- .1 relate to the Principal's authority to carry out the *nSFM*; or
- .2 provided the Contractor has complied with the Contract, arise under the *EPBC Act*.

The Contractor must provide all reasonable assistance to the Principal in respect of such complaints, proceedings, demands, orders or directions.

- .5 The Contractor must notify anyone who may be adversely affected by the work in connection with the Contract before the relevant work is carried out including notification of:
  - .1 the likely duration of that work; and
  - .2 the name and contact details of the Contractor's community relations manager in case any person wishes to make a complaint.

## **25B GIPA Act**

The parties acknowledge that:

- .1 the Principal may be required to disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
  - .1 the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)*; and
  - .2 to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability;
- .2 within 15 *Business Days* of the date of the Contract the Contractor must notify the Principal in writing identifying any provisions of the Contract it considers to be commercial-in-confidence (as defined in the GIPA Act);
- .3 the Principal will take reasonable steps to consult with the Contractor before disclosing any part of the Contract that the Contractor has notified that it considers to be commercial-in-confidence (as defined in the GIPA Act); and
- .4 nothing in clauses 25B.2 or 25B.3 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

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

### **Obligations of care**

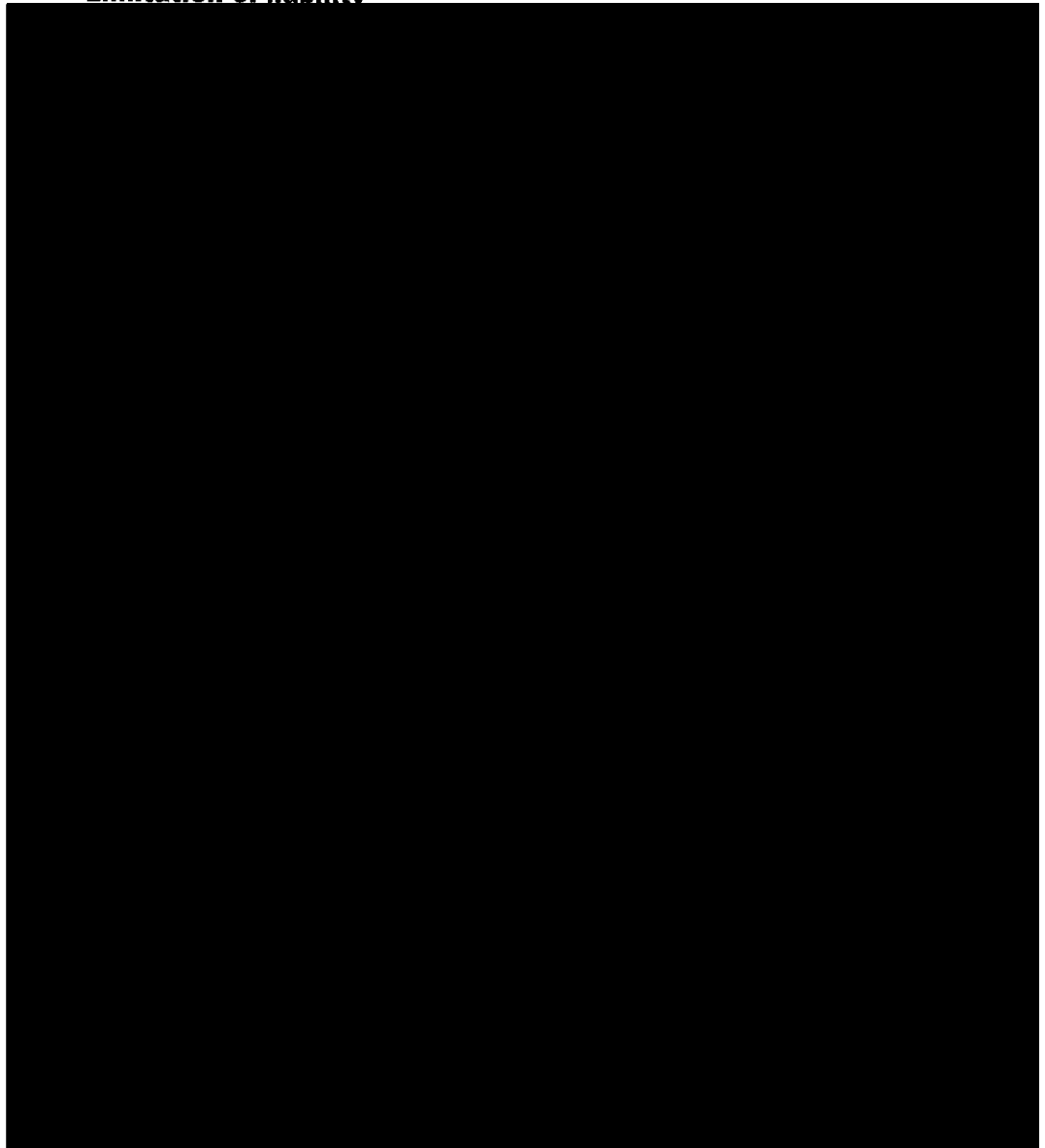
- .1 Until the earlier of *Completion* or the termination of the Contract, and in respect of any part of the Works in respect of which the Contractor is performing work during the *Defects Liability Period*, the Contractor is responsible for all of the following:
  - .1 preventing personal injury or death;
  - .2 preventing loss of or damage to the Site and the Works;
  - .3 preventing loss of or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract;
  - .4 locating and preventing loss of or damage to the existing *Utilities*;
  - .5 repairing or making good loss of or damage to the Works and the Site and the existing *Utilities*; and
  - .6 bearing the cost of repairing, or making good, loss of or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract.
- .2 If, in the opinion of the Principal, urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor

of its obligations), and the Principal's costs of doing so will be recoverable (subject to clause 26.5) as a debt due and payable from the Contractor to the Principal.

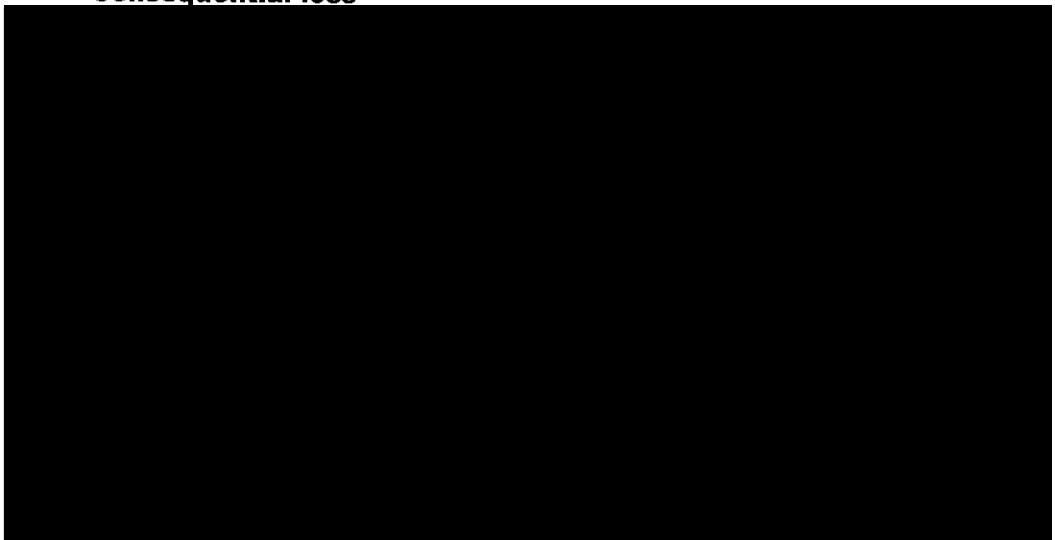
### **Indemnities for property, personal injury or death**

- .3 The Contractor indemnifies the *Indemnified Parties* against all *Loss* arising from or in connection with any loss of or damage to:
  - .1 the Works, from the date the Contractor begins carrying out the work in connection with the Contract; and
  - .2 the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site, until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases to apply to that part when that part is occupied or taken into use, and the indemnity in clause 26.4 then applies to that part of the Works as if the *Actual Completion Date* had been achieved with respect to that part.
- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the *Indemnified Parties* against all *Loss* arising from or in connection with any loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
  - .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
  - .2 which occurred while the Contractor indemnified the *Indemnified Parties* under clause 26.3.
- .5 The Contractor's liability for *Loss* under clauses 26.3 and 26.4, and the Contractor's responsibility under clause 26.1 is reduced to the extent that the loss or damage is contributed to or caused by:
  - .1 any act or omission of, or breach of the Contract by, the Principal or its agents or employees or any use or occupation of the Works prior to *Completion* under clause 64;
  - .2 any act or omission of *TfNSW*, the *Tenant* or (subject to clause 6.23) a *Separate Contractor*;
  - .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*;
  - .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; or
  - .5 an *Uninsurable Force Majeure Event*.
- .6 The Contractor indemnifies the *Indemnified Parties* against all *Loss* arising from or in connection with any the following where they arise in connection with carrying out the Works or the work in connection with the Contract:
  - .1 all damage to property other than property covered under clause 26.3.1;
  - .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3.1; and
  - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury to, disease or death of any person.
- .7 The Contractor's liability to indemnify the *Indemnified Parties* under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by an *Indemnified Party*, the *Tenant* or (subject to clause 6.23) a *Separate Contractor*.

**Limitation of liability**



**Consequential loss**



### **Exclusion of proportionate liability**

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

### **Contractor jointly and severally liable**

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

## **26A Environmental liability**

### **Compliance**

- .1 The Contractor must carry out the work in connection with the Contract:
- .1 in an environmentally responsible manner so as to protect the *Environment*; and
  - .2 in accordance with the *Environmental Management Plan* and all *Environmental Statutory Requirements* (including the *Planning Approval*).
- .2 The Contractor must comply with, and ensure the *Contractor's Personnel* comply with, all *Environmental Statutory Requirements* (including the *Planning Approval*) and the environmental requirements set out in clause 7 of the *Preliminaries*.
- .3 The Contractor must immediately notify the *Principal's Authorised Person* in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any *Approval* or any *Environmental Statutory Requirements* in the carrying out of the work in connection with the Contract.
- .4 If there is a legal challenge in relation to the assessment or determination of the Works under:
- .1 the *Environmental Planning and Assessment Act 1979* (NSW);
  - .2 the *EPBC Act*; or
  - .3 any other *Statutory Requirements*,

the Contractor must continue to perform its obligations under the Contract unless, as a result of that legal challenge, it is otherwise:

- .4 ordered by a court; or
- .5 directed by the Principal.

### **Environmental Management Plan**

- .5 The Contractor's high level draft *Environmental Management Plan* at the Date of Contract is included in Schedule 19.
- .6 The Contractor must, within 15 *Business Days* after the Date of Contract, prepare and submit an *Environmental Management Plan* to the Principal under clause 32A.3.
- .7 The *Environmental Management Plan* must:
  - .1 be consistent with the high level draft *Environmental Management Plan* in Schedule 19;
  - .2 set out in detail how the Contractor proposes to comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract;
  - .3 comply with:
    - .1 the Contract and the environmental requirements set out in clause 7 of the *Preliminaries*; and
    - .2 the *Project Brief*; and
  - .4 include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.
- .8 The Contractor acknowledges that:
  - .1 the *Environmental Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
  - .2 compliance with the *Environmental Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .9 The Contractor must not commence any work on the Site unless and until the *Environmental Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *Environmental Management Plan* in accordance with clause 32A.8.1 and either:
  - .1 the Contractor has resubmitted the *Environmental Management Plan* in accordance with clause 32A.8.2 and the resubmitted *Environmental Management Plan* has not been commented on; or
  - .2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *Environmental Management Plan*.

### **Remediation Action Plan**

- .10 The Contractor must comply with the *Remediation Action Plan*.
- .11 Not used.
- .12 Not used.
- .13 The Contractor acknowledges and agrees that:
  - .1 the *Remediation Action Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
  - .2 compliance with the *Remediation Action Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .14 The Contractor must not amend the *Remediation Action Plan* without the prior written consent of:
  - .1 the Principal and the *Site Auditor*; and

- .2 if required by the *Planning Approval*, the *Consent Authority*.
- .15 Not used.
- Asbestos Management Plan**
- .16 The Contractor must, within 10 *Business Days* after the Date of Contract, prepare and submit an *Asbestos Management Plan* to the Principal under clause 32A.3.
- .17 The *Asbestos Management Plan* must:
  - .1 comply with and include all conditions required by any *Statutory Requirement* and the *Planning Approval*;
  - .2 set out in detail how the Contractor proposes to:
    - .1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to asbestos management and disposal (if applicable); and
    - .2 remediate and dispose (if applicable) of all asbestos as required by the Contract; and
  - .3 comply with and include any other information required by the Contract.
- .18 The Contractor acknowledges and agrees that:
  - .1 the *Asbestos Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
  - .2 compliance with the *Asbestos Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .19 The Contractor must not commence any work on the Site unless and until the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *Asbestos Management Plan* in accordance with clause 32A.8.1 and either:
  - .1 the Contractor has resubmitted the *Asbestos Management Plan* in accordance with clause 32A.8.2 and the resubmitted *Asbestos Management Plan* has not been commented on; or
  - .2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *Asbestos Management Plan*.
- Environment audits**
- .20 The Contractor must, in accordance with the *Environmental Management Plan* and any applicable *Statutory Requirements*:
  - .1 regularly conduct *Environment* audits of its (and the *Contractor's Personnel's*) systems, procedures and work methods;
  - .2 retain copies of such audits; and
  - .3 provide the Principal and its auditors with written copies of all such audits.
- .21 The Principal may:
  - .1 direct the Contractor to carry out *Environment* audits of the Contractor's (or the *Contractor's Personnel's*) systems, procedures and work methods; or
  - .2 on giving notice to the Contractor, itself (or instruct a third party to on its behalf) carry out such audits of the Contractor's (and the *Contractor's Personnel's*) systems, procedures and work methods,

at the Site or any premise (including the Contractor's premises) for the purposes of determining whether the Contractor is complying with its obligations under this clause 26A.
- .22 The Contractor must procure a *Final Environmental Site Assessment* is prepared and provided to, and for the benefit of the Principal not later than one month prior to *Completion* as a condition to *Completion*.

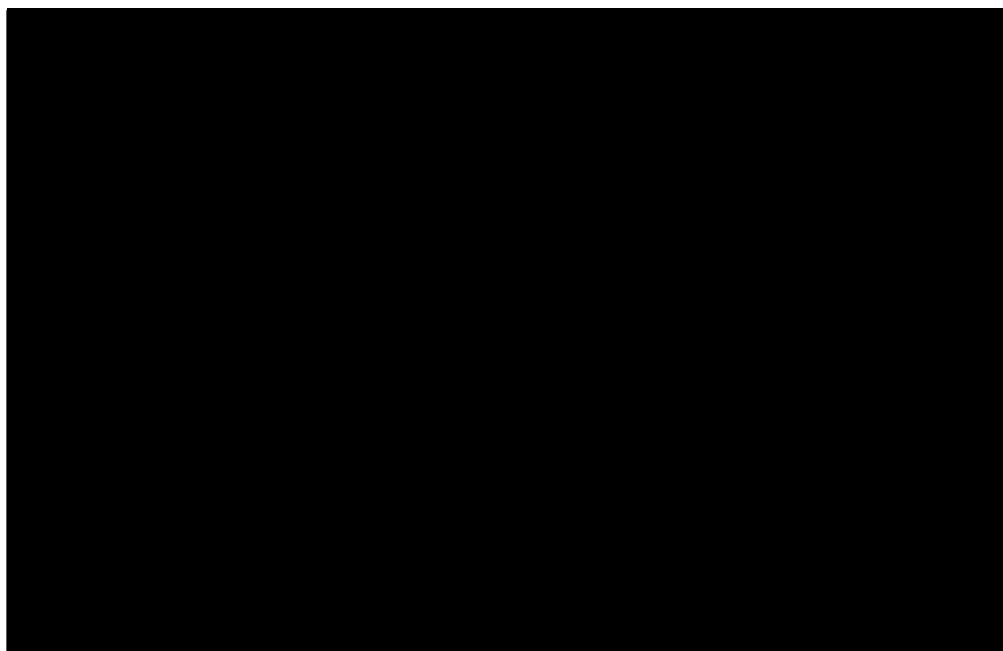
### Contamination

- .23 Without limiting clause 37, the Contractor is responsible for all *Contamination* (including pre-existing *Contamination*, however caused) in, on or under the *Land* (including the soil and groundwater) including *Contamination*:
- .1 which is caused by, disturbed or interfered with in the carrying out of the work in connection with the Contract or the Contractor's or the *Contractor's Personnel's* use of the *Land* and/or the *Licensed Area*;
  - .2 which is *Exacerbated* in the carrying out of the work in connection with the Contract;
  - .3 that migrates from any lands and/or 'Waters' (as that term is defined in the *Construction Licence* and *Ground Lease* (as applicable)) that are occupied by the Contractor and/or the *Contractor's Personnel* and which adjoin, neighbour and/or surround (partially or fully) the *Land* and/or the *Licensed Area*;
  - .4 that migrates from the *Land* and/or the *Licensed Area* as a result of the work in connection with the Contract;
  - .5 that otherwise arises out of or in connection with the Works or the work in connection with the Contract; and/or
  - .6 that is identified in the *Final Environmental Site Assessment*.
- Any *Remediation* of the Site and any *Contamination* by the Contractor must be carried out in accordance with:
- .7 the requirements of the Contract, including the *Project Brief* and the *Preliminaries*;
  - .8 the requirements of the *Construction Licence* and the *Ground Lease* (as applicable);
  - .9 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
  - .10 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).
- .23A Notwithstanding clauses 37 and 26A.23:
- .1 the parties acknowledge and agree that the Site is comprised of both land and seabed; and
  - .2 the elements of the Site which are comprised of seabed are anticipated to be *Contaminated* and such *Contamination* will therefore not constitute *Unidentified Site Conditions*.
- .24 Without limiting the Contractor's obligations under clause 26A.23, if the Contractor is required by:
- .1 *Asbestos Management Plan*, the *Remediation Action Plan* or the *Environmental Management Plan*; or
  - .2 any applicable *Statutory Requirements* or *Approvals* (including the *Planning Approval*),
- to remove from the Site and dispose of any *Contamination* referred to in clause 26A.23, the Contractor must remove from the Site and dispose of such *Contamination* in accordance with:
- .3 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
  - .4 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).
- .25 In performing its obligations in connection with the Contract, the Contractor must:
- .1 prevent any *Contamination* or the release, discharge or escape of any *Contamination* into the *Environment* by the Contractor or the *Contractor's Personnel*; and
  - .2 implement all necessary safety measures to avoid any such *Contamination*.

- .26 Without limiting clauses 26A.23 and 26A.24, the Contractor must only dispose of *Contamination* at sites where such disposal is permitted by *Statutory Requirements*.
- .27 The Contractor must:
- .1 without limiting the requirements of clause 37, immediately give notice to the Principal upon the discovery or release of any *Contamination*; and
  - .2 take any urgent action required to protect people, property and the *Environment*.
- .28 The Contractor must procure that any *Contamination* report provided by a Consultant or Subcontractor in connection with the Works or the Site is provided for the benefit of the Principal.
- .29 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 26A, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim (including any *Claim*) and/or *Loss* is contributed to or caused by an act or omission by an *Indemnified Party*.

**26B**





## 27 Insurance

- .1 The Principal must, not later than the Date of Contract, effect:
  - .1 a Works policy of insurance in accordance with Contract Information item 21, which insures the *Licensor*, the *Landlord*, the Principal, the Contractor and all Subcontractors for their respective interests and covers the Works (including any associated *Temporary Works* and materials on Site to be incorporated into the Works) against insurable risks of loss or damage (whether or not caused by an insured) which includes cover for:
    - .1 the risks of inland transit to the Site of materials to be incorporated into the Works; and
    - .2 the Works on land and over and under water; 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 work in connection with the Contract taken out in the names of the *Licensor*, the *Landlord*, the Principal and the Contractor in accordance with the Contract Information item 22,  
 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 The Contractor must, before starting work in connection with the Contract, effect:
  - .1 workers compensation and related liability insurance in accordance with Contract Information item 23, and where possible, is 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 construction plant and equipment insurance in accordance with Contract Information item 24A, which must cover plant and equipment to be used at the Site for the purpose of the Works, including loading and unloading and storage during transit, against insurable risks of loss or damage (whether or not caused by an insured);

- .4 comprehensive motor vehicle insurance covering compulsory third party bodily injury and third party property damage, as specified in Contract Information item 24B; and
- .5 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 use of such craft, as specified in Contract Information item 24C.
- .3 The Contractor must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
- .4 The Contractor must ensure that every Subcontractor, Supplier, Consultant and all *Contractor's Personnel* are insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) at all times.
- .5 Unless otherwise instructed by the Principal, the Contractor must:
  - .1 make and manage all insurance claims; and
  - .2 notify the Principal:
    - .1 at the same time as the Contractor receives or gives any notice concerning a policy where the notice is relevant to the Contract and the notice means the insurance will no longer comply with the requirements of the Contract; and
    - .2 at least 7 days before any notified cancellation of a policy.
- .6 The Contractor must meet the costs of all excesses or deductibles.
- .7 All policies:
  - .1 except for the policies required by clauses 27.2.1 and 27.2.2, must provide that a notice of claim given to the insurer by the Principal, the *Licensor*, the *Landlord* the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured; and
  - .2 must be placed with an insurer with a *Required Rating* or such other insurer as is approved by the Principal in its absolute discretion.
- .8 Each policy referred to in this clause 27 must:
  - .1 name or otherwise identify the Principal, the *Licensor*, the *Landlord*, the Contractor and its subcontractors as persons covered by the policy or to whom the insurance cover provided by the policy extends; and
  - .2 contains a cross liability provision in which the insurer agrees:
    - .1 to waive all rights of subrogation or action against any of the persons comprising the insured;
    - .2 that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
    - .3 that any non disclosure by one insured does not prejudice the right of the other insured to claim under any insurance;
  - .3 be arranged in such a manner that the insurer shall not subrogate against the Principal, the *Licensor* or the *Landlord*;
  - .4 be on in terms that are satisfactory to the Principal the *Licensor* and the *Landlord*; and
  - .5 contain a provision that the insurance will not be cancelled or amended without at least 10 *Business Days*' prior written notice to the Principal, the *Licensor* and the *Landlord*.
- .9 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 or allow an insurance policy to lapse without the prior written consent of the Principal;
- .5 does not make any material alteration to the policy which would cause the policy to no longer comply with the requirements of the Contract without the prior written consent of the Principal;
- .6 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
- .7 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
- .10 The Contractor must give the Principal a certificate of currency evidencing that that all insurance policies required to be effected by the Contractor under the Contract are current:
  - .1 before starting work in connection with the Contract; and
  - .2 whenever requested in writing by the Principal.
- .11 The Contractor must allow the Principal (or its broker) to review copies of all insurance policies it is required to effect and maintain (but excluding any policy of professional indemnity insurance) whenever requested in writing by the Principal.
- .12 If the Principal has a reasonable objection to any conditions of an insurance policy and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five *Business Days* after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.
- .13 If the Contractor fails to comply with clauses 27.10, 27.11 or 27.12, 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.
- .14 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event related to the Contract that may give rise to a claim under a policy of insurance effected as required by the Contract and in respect of which the Principal is an insured, and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. However, the Contractor shall not be required to comply with this clause 27.14 in respect of any claims which the Principal may have against the Contractor. This clause 27.14 shall not apply to claims under a policy of insurance required by clauses 27.2.1 or 27.2.2.
- .15 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
  - .1 all settlement amounts must be paid by the insurer directly to the Principal;
  - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract;
  - .3 the Contractor must reinstate the Works if instructed to by the Principal and, except as provided in clause 27.15.4.2 may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement;
  - .4 if the Principal elects to have the Works reinstated:
    - .1 to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled to receive from the settlement moneys received, payment in respect of the reinstatement Works carried out by the Contractor; and

- .2 if the cause of the damage to or destruction of the Works was a cause listed in clause 26.5, the Principal shall pay to the Contractor the cost of the reinstatement work.

## Contractor's Personnel

### 28 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, Loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must include in every Subcontract:
  - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
  - .2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
  - .3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.13.3; and
  - .4 when possible, a right of termination for convenience.
- .4 In addition, the Contractor must include:
  - .1 in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 28, 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 28, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 29 after the Subcontractor has claimed payment in accordance with the Subcontract.

### 29 Engaging Subcontractors and Consultants

- .1 The Contractor must not subcontract the whole of the Works but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 Subject to clause 29.3, the Contractor must not engage any Subcontractor in relation to the work in connection with the Contract without the prior written approval of the Principal. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.
- .3 The Contractor is entitled to engage:
  - .1 the *Approved Subcontractors* for their respective scope of work set out in Contract Information item 12A; and
  - .2 Subcontractors whose Subcontract has a value of less than [REDACTED] (provided such Subcontract is not with a design consultant), without requesting the Principal's further consent.
- .4 If Contract Information item 30 includes a list of *Preferred Subcontractors* or *Preferred Consultants* for a particular class of work or services, the Contractor must:
  - .1 only engage a Subcontractor or Consultant from that list for work or services of that class; and
  - .2 engage the relevant *Preferred Subcontractor* or *Preferred Consultant* on terms which are consistent with the term sheet developed by the parties during the *Tender Process*.

- .5 If no *Preferred Subcontractor* or *Preferred Consultant* on the list will subcontract to carry out the work or services, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.
- .6 If agreed between parties, the Contractor must accept novations of the contracts of the Principal's consultants specified in item 30 of the Contract Information, on the terms provided for in Schedule 13.
- .7 The Contractor must ensure that each Subcontractor that will be responsible for handling and disposing of asbestos, holds all necessary qualifications, certificates, tickets and licences required to carry out such work.

### **30 Subcontractor warranties**

- .1 For each trade, item or area of work listed in Contract Information item 31, 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 Part A (Subcontractor's Warranty) for a minimum of the applicable warranty period listed in Schedule 1 Part B (or where no warranty period is listed, for such warranty period as is reasonably obtainable in the subcontracting market).
- .2 If the Contractor, acting reasonably, considers that the form of warranty contained in Schedule 1 Part A is not appropriate in respect of any particular Subcontractor having regard to that Subcontractor's scope of work, the Contractor may propose an alternative form of warranty for the Principal's approval, which approval may be given or withheld in the Principal's absolute discretion.
- .3 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

### **31 Consultant and Supplier relationships**

- .1 Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.
- .3 Where a Consultant is to carry out design work, the Contractor must, within 5 *Business Days* of the engagement of the Consultant provide the Principal with a deed of covenant (duly stamped) executed by the Consultant in the form of Schedule 25.
- .4 The Principal agrees that if the Principal has recovered a loss from the Consultant under or in connection with the deed of covenant, then the Principal is not entitled to recover against the Contractor in respect of that loss that has already been recovered from the Consultant under or in connection with the deed of covenant.

### **31A Key Personnel**

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

### **31B Contractor's Personnel**

#### **Personnel**

- .1 The Contractor must provide and engage the personnel necessary for the proper and timely performance of the work in connection with the Contract.
- .2 The Contractor must ensure that all *Contractor's Personnel* engaged in the performance of the Works:
  - .1 have the competence, skill, qualifications and experience required for the work to be performed by them;

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

#### **Replacement of Personnel**

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

#### **Industrial relations**

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

## Carrying out the Works

### Starting

#### 32 Start-up workshop

- .1 The Principal must convene a start-up workshop within 10 days after the Date of Contract or such other period as the parties agree.
- .2 The parties must attend the start-up workshop and must jointly decide who else will attend. Each party must bear its own costs associated with attending the workshop.
- .3 The objective of the start-up workshop is to promote a culture of cooperation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

#### 32A Contractor's Project Plans

##### Requirements

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

##### Compliance

- .2 The Contractor must perform the work in connection with the Contract in accordance with the latest revisions of the *Contractor's Project Plans* submitted to the *Principal's Authorised Person* under clause 32A.3, 32A.8 or 32A.9, incorporating any changes required by clause 32A.5.

##### Submission

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

##### Comments

- .5 The *Principal's Authorised Person* may, within 10 *Business Days* after an updated *Contractor's Project Plan* is submitted under clause 32A.3, 32A.8 or 32A.9 (or such other period as is expressly permitted by the Contract), give the Contractor written comments on the *Contractor's Project Plan*.
- .6 The Contractor must promptly provide any further information reasonably requested by the *Principal's Authorised Person* for the purposes of reviewing a *Contractor's Project Plans*.
- .7 The *Principal's Authorised Person* is not required to check any document submitted by the Contractor for errors, omission, inconsistencies, ambiguities, discrepancies or compliance with the Contract.

##### Resubmission

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

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

### Revisions

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

## 33 Security

### Provision of Undertakings

- .1 Within 10 *Business Days* after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts required under Contract Information items 32 and 33 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 *Undertakings* must be provided by either:
  - .1 a bank or financial institution acceptable to the Principal in its absolute discretion; or
  - .2 an insurer who is subject to prudential supervision by the Australian Prudential Regulatory Authority (APRA) and who holds a credit rating of at least A by Standard & Poor's (Australia) Pty Limited or A2 from Moody's Investors Services, Inc, or A by Fitch Ratings.
- .3 All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) the *Undertakings* shall be paid by the Contractor.
- .4 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 the *Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Undertakings* to the Principal or the Principal is required to return the *Undertakings*, whichever is earlier.

### Expiry of Undertakings

- .5 If an *Undertaking* contains an expiry date which is earlier than the date it is required to be returned pursuant to clause 33.13, the Contractor must, not less than 20 *Business Days* before the expiry date, provide a replacement *Undertaking*:
  - .1 in the same form as the original *Undertaking*; and
  - .2 for the amount of the original *Undertaking*.
- .6 If the Contractor fails to provide the replacement *Undertaking* in accordance with clause 33.5, then the Principal may make a demand upon the original *Undertaking* and the Principal will hold the proceeds arising from such demand absolutely. The Principal may apply amounts held in accordance with clause 33.11.
- .7 Upon receipt of a replacement *Undertaking* which complies with clause 33.5, the Principal must pay the remaining balance from any demand pursuant to clause 33.6 without interest to the Contractor.

### Replacement events

- .8 Subject to clause 33.9A, within five *Business Days* of an *Undertaking Replacement Event* occurring, the Contractor must replace the *Undertaking* effected by the *Undertaking Replacement Event* with a replacement *Undertaking* which is:
  - .1 in the same form and for the same amount as the *Undertaking* being replaced; and
  - .2 effective from the date of receipt by the Principal.
- .9 The Principal must, as soon as reasonably practicable after receipt of a replacement *Undertaking* provided in accordance with clause 33.8, return the original *Undertaking* to the Contractor.
- .9A If:
  - .1 an *Undertaking Replacement Event* of the kind described in paragraph 3 of that definition occurs; and



.2 the Contractor has replaced the relevant *Undertaking* pursuant to clause 33.8, then if a further *Undertaking Replacement Event* of the kind described in paragraph 3 of that definition occurs ("*Subsequent Undertaking Replacement Event*"), the Contractor shall not be required to replace the *Undertaking* under clause 33.8 in respect of the *Subsequent Undertaking Replacement Event*.

### **Recourse to Undertakings**

- .10 The parties acknowledge and agree that the *Undertakings* are provided by the Contractor both as security for the Contractor's performance of its obligations under the Contract and for the purpose of apportioning the risk of disputes under or in relation to the Contract.
- .11 Regardless of whether a dispute exists regarding the circumstances in which a demand on the *Undertakings* can be made, the Principal may make demand upon any *Undertaking* provided pursuant to the Contract and use the proceeds of such demand:
  - .1 to recover any *Loss* suffered or incurred by the Principal, or which the Principal reasonably considers it will suffer or incur, under or in connection with the Contract for which the Contractor is, or will be, liable under or in connection with the Contract;
  - .2 to recover any moneys or debt due from the Contractor to the Principal;
  - .3 in respect of any bona fide claim made by the Principal against the Contractor under or in connection with the Contract;
  - .4 where the Contract is terminated by the Principal in accordance with clause 73.12; or
  - .5 where the Contractor or the *Guarantor* is insolvent.
- .12 Where the Principal makes a demand upon an *Undertaking* that is not in accordance with the Contract, the Principal's sole liability arising from or in connection with such demand is limited to the repayment of any proceeds received by the Principal in excess of its entitlement and interest on such proceeds calculated in accordance with clause 62.
- .12A Prior to making demand upon any *Undertaking* under clause 33.11;
  - .1 the Principal must have demanded payment of the amount the subject of the demand from the Contractor which demand identifies the basis of the claim and the required time for payment of that amount; and
  - .2 the time for payment of the amount set out in the demand for payment must have expired without receipt by the Principal of the amount from the Contractor.

### **Return of Undertakings**

- .13 Unless the Principal has made or intends to make a demand on an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
  - .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works;
  - .2 the *Post-Completion Undertaking* in exchange for the *Post-Completion Step-down Undertaking* within 14 days after the date which is 15 months after the *Actual Completion Date* of the whole of the Works;
  - .3 the *Post-Completion Step-down Undertaking* in exchange for the *Post DLP Undertaking* within 14 days of the date which is 30 months after the *Actual Completion Date* for the whole of the Works; and
  - .4 the *Post-DLP Undertaking* at the time stated in Contract Information item 34 provided that at that time:
    - .1 there are no outstanding *Defects* or unresolved *Issues*; and
    - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal or claimed by the Principal to be payable; and
    - .3 there are no bona fide claims made by the Principal against the Contractor under or in connection with the Contract.
- .14 When any of the circumstances in clause 33.13.4 apply, the *Post-DLP Undertaking* will be returned when the relevant circumstances no longer apply.

- .15 Regardless of whether a dispute exists regarding the circumstances in which a demand on an *Undertaking* can be made, the Contractor must not take any steps to restrain:
  - .1 the Principal from making any demand on the *Undertakings*;
  - .2 the issuer of an *Undertaking* from making payment under the *Undertaking*; or
  - .3 the Principal using the proceeds of any demand on an *Undertaking*.
- .16 Where the Principal has converted an *Undertaking* into money, any interest earned on such monies shall be retained by the Principal.
- .17 The Principal is not obliged to hold amounts realised on the calling of an *Undertaking* in any definable account.
- .18 The Principal does not hold retention monies or amounts realised on the calling of an *Undertaking* on trust for the Contractor and the Contractor does not have ownership of, or any proprietary interest in, such amounts.

#### **Parent Company Guarantee**

- .19 Within 10 *Business Days* after the Date of Contract (and before starting work on the Site), the Contractor must provide to the Principal an original *Parent Company Guarantee*:
  - .1 in the form set out in Schedule 4; and
  - .2 duly executed by the *Guarantor*.
- .20 If either the Contractor or the *Guarantor* is a foreign entity, the Contractor must, on or prior to the Date of Contract, provide the Principal with a legal opinion from the Contractor's external lawyers, in a form acceptable to the Principal, with respect to the Contractor's and *Guarantor's* entry into, performance of, and the enforceability of, the Contract, and the *Parent Company Guarantee*.
- .21 Within 15 *Business Days* of a *Parent Company Guarantee Replacement Event* occurring, the Contractor must provide a replacement *Parent Company Guarantee* which:
  - .1 is in the form set out in Schedule 4 or in such other form approved by the Principal; and
  - .2 is from an entity approved by the Principal in its absolute discretion.

#### **Cash security - Subcontracts**

- .22 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.
- .23 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.
- .24 The Contractor must deposit all money it receives in trust, as described in clauses 33.22 and 33.23, 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.
- .25 Clauses 33.22, 33.23 and 33.24 do not apply to security of the type referred to in clause 33.16 and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2008* (NSW) applies instead.

#### **34 Site access**

- .1 Subject to clause 34.2, the Principal must give the Contractor access to the Site in accordance with Schedule 18.
- .2 The Principal shall not be obliged to provide the Contractor with access to the Site until all of the following conditions have been satisfied by the Contractor:

- .1 the Contractor's *WHS Plan* and *Environmental Management Plan* have been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.4;
  - .2 the Contractor has provided reasonable evidence to the Principal that it has procured the insurances it is required to take out and maintain pursuant to the Contract;
  - .3 the Contractor has obtained all *Approvals* required to be obtained by the Contractor that required to access the Site and commence Works;
  - .4 all *Contractor's Personnel* that require access to the Site have completed site inductions;
  - .5 the Contractor has provided the *Contract Program* in accordance with clause 22.1 and the *Principal's Authorised Person* has not provided any comments on that *Contract Program* pursuant to clause 32A.5; and
  - .6 the Contractor has provided the *Completion Undertaking* and the *Post-Completion Undertaking* to the Principal in accordance with clause 33.1.
- .3 If there is a delay to *Early Works Completion* which causes the Principal to be unable to give the Contractor access to the Site as required by clause 34.1, the Principal may (to the extent possible and having regard to the Contractor's construction methodology) elect to direct additional separable portions under the *Early Works Contract* to facilitate a staged handover of the *Site* to the Contractor. Where the Principal:
- .1 is able to hand over areas of the Site identified by the Contractor by the dates required by the Contractor's construction methodology, no time or cost relief will be provided to the Contractor and the Contractor must comply with clause 35; or
  - .2 is unable to hand over areas of the Site as described in subclause 34.3.1 then the failure by the Principal to give the Contractor access to the Site shall not constitute a breach of the Contract, and the Contractor has no remedy or entitlement other than:
    - .1 an extension of time in accordance with clause 50;
    - .2 delay costs in accordance with clause 51; and
    - .3 when an entitlement arises under clause 75, to terminate the Contract.
- .4 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.
- .5 The Contractor must, and must ensure that the *Contractor's Personnel*, comply with all *Site Access Conditions* when carrying out any work in connection with the Contract on the Site.
- .6 The Contractor must:
- .1 construct all temporary access required to access the Site;
  - .2 comply with all Site access and security protocols provided by the Principal;
  - .3 control and manage the use of, and access to and through, the Site (but nothing in this clause 34.6.3 affects or limits the Principal's rights under the Contract);
  - .4 only authorise vehicles and persons directly connected with the Works to enter the Site;
  - .5 keep and maintain comprehensive details of all visitors authorised to enter the Site (including full name, employer and purpose of entering the Site) and, upon request by the *Principal's Authorised Person*, provide such details to the *Principal's Authorised Person*; and
  - .6 provide for the continuous safe passage of the public, service providers and road users on existing roads and access ways affected by the work in connection with the Contract in accordance with the Contract, which passage must, unless otherwise consented to in writing by the *Principal's Authorised Person*, be

provided at a standard not less than that provided to the public, service providers and road users prior to the commencement of the work in connection with the Contract.

- .7 The Contractor must access the Site only at the nominated points of entry and exit identified in the Contract or that the *Principal's Authorised Person* approves from time to time.
- .8 The *Principal's Authorised Person* may revoke or amend any approval given in respect of any particular point of entry or exit at any time.
- .9 Despite any other provision of the Contract, the Contractor is not entitled to any *Claim* arising out of or in connection with the revocation of or amendment to any approval pursuant to clause 34.8.
- .10 To the extent that any provision of the Contract obliges the Contractor to give anyone access to the Site, in all cases such access shall be subject to that person complying with the Contractor's reasonable directions regarding site access and safety.

### **35 Access to Site prior to Early Works Completion**

- .1 Without limiting clause 6.17 and clause 16A, if the Contractor is granted access to the Site prior to *Early Works Completion*, the Contractor must:
  - .1 fully cooperate and liaise with the *Early Works Contractor*;
  - .2 carefully plan, coordinate, program and integrate the work in connection with the Contract with the work carried out or to be carried out by the *Early Works Contractor*;
  - .3 not delay the work being performed by the *Early Works Contractor*;
  - .4 attend all coordination meetings with the *Early Works Contractor* as required by the *Principal's Authorised Person*;
  - .5 take all necessary action to avoid loss or damage to the Works by the *Early Works Contractor*;
  - .6 not damage the work being carried out by the *Early Works Contractor*; and
  - .7 advise the *Principal's Authorised Person* if the Contractor becomes aware of any matter arising out of the *Early Works Contractor's* activities that may have an adverse effect on the work in connection with the Contract, the works of a *Separate Contractor* or the safety of any persons.
- .2 The Contractor:
  - .1 is not entitled to make any *Claim* as a result of compliance with this clause 35 or the presence of the *Early Works Contractor*; and
  - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 35, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim (including any *Claim*) and/or *Loss* is contributed to or caused by an act or omission by an *Indemnified Party*.

### **36 Work after Completion**

- .1 The Contractor acknowledges and agrees that on and from the *Actual Completion Date* of *Separable Portion 1*:
  - .1 the Principal and the *Tenants* may conduct their business from the *Building* or may otherwise be in possession of or require use of or access to or from or across the *Land* (for the purpose of this clause, the "*Land Users*");
  - .2 members of the public, clients, employees and agents of the *Land Users* shall have access to the *Land* to conduct business with the *Land Users*;
  - .3 the Contractor must, if performing work in connection with the Contract at the Site:
    - .1 ensure that the work in connection with the Contract is performed strictly in accordance with the *Construction Management Plan*;

- .2 perform the work in connection with the Contract in such a manner as to interfere to the least extent reasonably practicable with the access to, and occupation of, the *Land* by the *Land Users*;
- .3 take all steps necessary to protect the safety of the *Land Users* and their invitees and members of the public from risks to safety caused by the performance of the work in connection with the Contract;
- .4 comply with the procedures, policies and rules required from time to time by the Principal in connection with the *Land* or the Site;
- .5 keep itself informed as to the requirements of, comply with and not do anything which may place the Principal in breach of *Statutory Requirements* applying to the *Land* and the Site and the operation of the *Land Users*' businesses;
- .6 erect appropriate signage for the benefit of employees, agents and invitees of the *Land Users* and members of the public on the *Land* and the Site to enable them to find their way around the *Land* and the Site;
- .7 keep the Site clean and tidy at all times;
- .8 keep the *Principal's Authorised Person* and the Principal informed as frequently as possible and at least on a daily basis of the operations of the Contractor which may affect the conduct of the business of the *Land Users* and any invitees at the *Building* or the Site, or which may affect access to, or any occupation of, the *Building* by the *Land Users*;
- .9 consult and co-operate with the *Land Users* and attend meetings as required by the *Principal's Authorised Person* in relation to the interface between business operations of the *Land Users* and the performance of the work in connection with the Contract; and
- .10 ensure that any utility services at the *Building* are not disrupted without the prior written consent of the Principal, which consent may be:
  - .1 withheld; or
  - .2 conditional upon the *Principal's Authorised Person* approving a written submission by the Contractor detailing any information reasonably required by the Principal concerning the proposed interruption to the utility services,
- .2 The Contractor indemnifies the Principal against any loss, expense or damage of any nature, including legal costs on a full indemnity basis, suffered or incurred by the Principal arising out of or as a consequence of a failure of the Contractor to strictly comply with the *Construction Management Plan*, provided that the Contractor's liability to indemnify the Principal is reduced to the extent that the loss, expense or damage is contributed to or caused by an act or omission by the Principal.

## The Site

### 37 Site Conditions

- .1 Subject to clauses 37.3 - 37.7, the Contractor assumes all risk associated with, and is not entitled to any *Claim* against the Principal arising out of or in connection with *Site Conditions*.
- .2 Subject to clauses 37.3 - 37.7, the Contractor is solely responsible for dealing with any *Site Conditions*:
  - .1 so as to minimise delay;
  - .2 so as to minimise increased costs; and
  - .3 without awaiting any instruction from the Principal, but must comply with any instruction given by the Principal.
- .3 To the extent that the Contractor encounters *Unidentified Site Conditions* while performing the work in connection with the Contract the Contractor must notify the

Principal as soon as practicable (and in any event within 10 days of discovery of the *Unidentified Site Conditions*) ("*Unidentified Site Conditions Notice*").

- .4 An *Unidentified Site Conditions Notice* must be in writing and detail:
  - .1 the *Unidentified Site Conditions* encountered;
  - .2 any *Variation* that the Contractor considers is required to deal with the *Unidentified Site Conditions*;
  - .3 the Contractor's estimate of any increase or decrease to the *Contract Price* as a direct result of dealing with the *Unidentified Site Conditions*;
  - .4 any impact on the *Contract Program* (including any adjustment to the *Contractual Completion Date*) that will result from encountering and dealing with the *Unidentified Site Conditions*; and
  - .5 any other information which the *Principal's Authorised Person* reasonably requires.
- .5 Following receipt of an *Unidentified Site Conditions Notice*, the *Principal's Authorised Person* must, within 10 *Business Days*, notify the Contractor whether or not it agrees that the Contractor has encountered *Unidentified Site Conditions*.
- .6 Subject to clause 37.7, to the extent that the *Unidentified Site Conditions* necessitate the Contractor carrying out additional works, the costs (not including the *Contractor's Percentage Margin* (which may be applied in the Principal's absolute discretion) or delay costs) associated with such additional works must be valued by the *Principal's Authorised Person* under clause 47 and the *Contract Price* will be adjusted accordingly.
- .7 The Contractor is not entitled to any *Claim* in respect of the discovery of *Unidentified Site Conditions* unless:
  - .1 the Contractor has given the Principal an *Unidentified Site Conditions Notice* in accordance with clauses 37.3 and 37.4;
  - .2 either:
    - .1 the Principal has issued a notice under clause 37.5 confirming that the Contractor has encountered *Unidentified Site Conditions*; or
    - .2 it has been determined pursuant to clauses 68-71 that the Contractor has encountered *Unidentified Site Conditions*;
  - .3 in respect of any claim for additional costs, the Contractor has provided a fully substantiated written claim within 21 days of discovery of the *Unidentified Site Conditions*; and
  - .4 in respect of a claim for an extension of the *Contractual Completion Date*, the Contractor has complied with clause 50.

### **37A Interface with Separate Contractors**

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

- .6 attend all coordination meetings with *Separate Contractors* as required by the *Principal's Authorised Person*;
  - .7 take all necessary action to avoid loss or damage to the Works by *Separate Contractors*;
  - .8 not damage the work being carried out by the *Separate Contractors*;
  - .9 advise the *Principal's Authorised Person* if the Contractor becomes aware of any matter arising out of a *Separate Contractor's* activities that may have an adverse effect on the work in connection with the Contract, the works of a *Separate Contractor* or the safety of any persons; and
  - .10 otherwise comply with the requirements of section 4.2 of the *Project Brief*.
- .3 The Contractor:
- .1 is not entitled to make any *Claim* as a result of compliance with this clause 37A or the presence of any *Separate Contractor*; and
  - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 37A, provided that the Contractor's liability to indemnify the *Indemnified Parties* is reduced to the extent that the relevant claim (including any *Claim*) and/or *Loss* is contributed to or caused by an act or omission by an *Indemnified Party*.

### 37C Artefacts

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

### 37D Site security, lighting and fencing

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

### 37E Site clean-up

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

### 37F Extra Land

- .1 The Contractor must:
  - .1 at its own cost:

- .1 identify any land in addition to the Site which is necessary or which it may deem requisite or necessary for the execution of the work in connection with the Contract ("*Extra Land*"); and
- .2 procure for itself the occupation or use of or relevant rights over any *Extra Land*;
- .2 prior to the occupation or use of, or exercise of relevant rights over, any *Extra Land*, give to the *Principal's Authorised Person* a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the *Extra Land*; and
- .3 as a condition precedent to *Completion*, provide the Principal with:
  - .1 a properly executed release on terms satisfactory to the Principal (the form set out in Part D of Schedule 23 is satisfactory) from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the *Extra Land* that includes confirmation that the *Extra Land* has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the *Extra Land*; or
  - .2 if the Contractor demonstrates to the satisfaction of the *Principal's Authorised Person*, acting reasonably, that the Contractor is unable to obtain a release under clause 37F.1.3.1 despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the *Extra Land* has failed or refused to execute such a release within 25 *Business Days* of it being provided by the Contractor to the owner, occupier or other person having an interest in the *Extra Land* following the proper completion of the work on that *Extra Land*.
- .2 The Contractor must ensure that the use and rehabilitation of *Extra Land* is to the satisfaction of the owner, lessee or occupier (as applicable) of the *Extra Land* and all relevant authorities.
- .3 The Contractor acknowledges that the Principal will not be liable for any *Claim* by the Contractor arising out of or in any way in connection with:
  - .1 identifying and obtaining access to *Extra Land*; or
  - .2 any delay, additional costs or other effects on the work in connection with the Contract related to the ability of the Contractor to obtain access to *Extra Land*.

## Design

### 38 Faults in Design Documentation

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

### 38A Design review processes

- .1 The Contractor acknowledges and agrees that there will be two separate design review processes under the Contract:
  - .1 the first, being the submission of all *Design Documentation* for the Principal's review in accordance with clauses 39.8 – 39.19 (inclusive) ("*GC DRP*"); and
  - .2 the second, being the resubmission of the *AFL Design Documentation* to the Principal for issue to the *Tenant* in accordance with clauses 39.20 – 39.23 (inclusive) ("*AFL DRP*").
- .2 Without limiting clause 39.24.3 but subject to clause 39.17, the Contractor may, prior to the commencement of the *AFL DRP*, use for construction purposes, *Approved Design Documentation*, however the Contractor does so at its own risk.



**39 Design by Contractor and Design Documentation****Design responsibilities**

- .1 The Contractor must carry out all design work necessary to complete the *Design Documentation*.
- .2 The Contractor must carry out and complete the design of the Works so that the Works are *Fit for Purpose* and comply with the requirements of the Contract.
- .3 Design or design development will not give rise to a *Variation* or reduce the Contractor's design responsibilities under clause 39.
- .4 The Contractor warrants to the Principal that:
  - .1 the Contractor has checked and carefully considered the *Project Brief*, the *Preliminary Design*, the *Planning Approval* and the other *Contract Documents* and that:
    - .1 the *Project Brief* and the *Preliminary Design* are each accurate, suitable and adequate for the purpose of designing and constructing the Works so as to comply with the requirements of the Contract;
    - .2 it has satisfied itself that, other than as described in clause 39.25, there are no *Faults* in or between any of the *Project Brief*, the *Preliminary Design*, the *Planning Approval* and the other *Contract Documents*; and
    - .3 the design, engineering and construction of the Works in accordance with such documents will enable the Contractor to carry out the work in connection with the Contract and to comply with the requirements of the Contract;
  - .2 the *Design Documentation* will:
    - .1 satisfy the requirements of the *Project Brief* and the other requirements of the Contract including:
      - .1 *Statutory Requirements*;
      - .2 the Principal's instructions;
      - .3 the Building Code of Australia (if stated in Contract Information item 37B) and relevant Australian Standards;
      - .4 if no other standard is specified in the Contract, good industry standards applicable to the Works;
      - .5 the *Agreement for Lease*, including the *Functional Requirements* (as applicable);
    - .2 be in accordance with the *Preliminary Design* subject to such changes as may be necessary to ensure compliance with this Contract or may be necessitated by any of the factors referred to in clause 39.7.2;
    - .3 be *Fit for Purpose* such that the Works will, if constructed in accordance with the *Design Documentation* be *Fit for Purpose* and comply with the Contract;
    - .4 be prepared by appropriately accredited and experienced personnel;
    - .5 be completed in accordance with the requirements of the Contract;
    - .6 be prepared in accordance with, and shall not depart from, the *Key Architectural Details*; and
    - .7 integrate all the design elements;
  - .3 the Works when constructed in accordance with the *Design Documentation* will satisfy the requirements of the *Project Brief* and the other requirements of the Contract;
  - .4 the Works will:
    - .1 be completed in accordance with, and satisfy the requirements of, the Contract; and
    - .2 upon *Completion*, be *Fit for Purpose*;

- .5 at and after the *Actual Completion Date*, the *Design Life* of each part of the Works will meet or exceed and continue to meet or exceed the *Design Life* standards specified in the *Project Brief*.
- .5 If any change in accordance with clause 39.4.2.2 is necessary from the *Preliminary Design*, the Contractor, in preparing the *Design Documentation*, must ensure that the change does not:
  - .1 reduce the:
    - .1 durability;
    - .2 aesthetics and visible features;
    - .3 whole of life performance;
    - .4 *Design Life*;
    - .5 user benefits; or
    - .6 functional performance,
 of any part of the Works or increase the whole of life user or maintenance costs of the Works; or
  - .2 depart from the requirements of the *Key Architectural Details*.
- .6 The Contractor agrees that its obligations under, and the warranties given in, this clause 39 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Works and notwithstanding:
  - .1 any design work, including design work carried out by others (including the Principal and its consultants), prior to the date of the Contract and incorporated in the Contract; or
  - .2 the performance of the *Preliminary Design* by the Principal and its consultants; or
  - .3 any *Variation* the subject of a direction by the Principal.
 and that the development of the *Design Documentation* in accordance with clause 39 does not amount to a *Variation*.
- .7 Subject to clause 37 and unless otherwise expressly stated in the Contract, the Contractor is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor, third parties or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
  - .1 the design of the Works in accordance with the *Project Brief* (including the *Key Architectural Details*) and the *Preliminary Design* and the construction of the Works in accordance with the *Design Documentation*, including costing more or taking longer than anticipated; and
  - .2 any differences between the Works which the Contractor is required to design or construct and the *Preliminary Design* including:
    - .1 differences necessitated by the *Site Conditions* or characteristics of the *Site*, the *Environment* or their surroundings; and
    - .2 differences required to ensure that the Works will be *Fit for Purpose* and satisfy the requirements of this Contract,
 irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 39.4 to 39.6.

### **Functional Requirements**

- .7A The Principal:
  - .1 acknowledges that under clause 11.4(c) of the *Agreement for Lease*, the *Tenant* warrants that the *Functional Requirements* satisfy the *Tenant's* design requirements for the use and occupation of the *Premises* by the *Tenant* for the *Permitted Use*; and
  - .2 must enforce that warranty on behalf of itself and the *Contractor*.

### **Design review – Principal's review**

- .8 The Contractor must develop and complete the design of the Works and prepare and submit:

- .1 the *Design Documentation*; and
  - .2 the documents which the *Document Submission Schedule* requires the Contractor to submit to the *Principal's Authorised Person* for review,
- to the *Principal's Authorised Person* for review:
- .3 as soon as practicable after the document is complete;
  - .4 before the Contractor commences any part of the work in connection with the Contract which is dependent on that document; and
  - .5 where the Contract or the *Document Submission Schedule* sets out a date for submission, on or before that date.
- .9 The Contractor must deliver to the *Principal's Authorised Person*:
- .1 one electronic copy in the form specified in the *Document Submission Schedule*; and
  - .2 one hard copy,
- of each document required to be submitted under clause 39.8.
- .10 Any *Design Documentation* submitted for review must be prepared to a level of detail sufficient to permit the *Principal's Authorised Person* to determine if the *Design Documentation* complies with the Contract.
- .11 Each document submitted by the Contractor pursuant to clause 39.8 must be accompanied by a certificate:
- .1 provided by the Consultant responsible for preparing the relevant document;
  - .2 that certifies that the design and engineering contained in such documents complies with the Contract (including the *Project Brief*, the *Functional Requirements* and the *Key Architectural Details*) and is appropriate for construction; and
  - .3 in the form set out in Part A of Schedule 23.
- .12 The *Principal's Authorised Person* may request additional information to assist it in reviewing any *Design Documentation* or other documents submitted by the Contractor for review. The Contractor must promptly provide such information.
- .13 The *Principal's Authorised Person* may review each document submitted in accordance with clause 39.8 within the later of:
- .1 15 *Business Days* after receipt by the *Principal's Authorised Person* of any such document; or
  - .2 10 *Business Days* after receipt by the *Principal's Authorised Person* of the additional information requested under clause 39.12,
- (the "*Design Review Period*").
- .14 If any such document does not comply with the Contract or is not complete, the *Principal's Authorised Person* may, within the *Design Review Period*, give the Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.
- .15 Within 5 *Business Days* of receipt of the *Principal's Authorised Person's* notice under clause 39.14, the Contractor must modify the document to take the *Principal's Authorised Person's* comments under clause 39.14 into account and re-submit the document to the *Principal's Authorised Person*. Clauses 39.13, 39.14 and 39.15 shall apply to the resubmitted document.
- .16 If, having been provided with *Design Documentation* under clause 39.8, the *Principal's Authorised Person* does not object to the *Design Documentation* within the period stated in clause 39.13, the *Design Documentation* will be the approved *Design Documentation* ("*Approved Design Documentation*").
- .17 The Contractor must not use for construction purposes any *Design Documentation* unless that *Design Documentation* has been approved in accordance with clauses 39.8 to 39.16.
- .18 The Contractor must not depart from any *Approved Design Documentation* unless the Contractor has first submitted to the *Principal's Authorised Person* an amended document, the process in clause 39.13 has been followed and no non-compliance notice has been given under clause 39.14 in respect of that amended document.

- .19 The Contractor:
- .1 is solely responsible for obtaining approval from all relevant *Authorities* in respect of any *Design Documentation* that relates to *Utilities* or infrastructure that are owned or operated by that *Authority*;
  - .2 must make appropriate allowance in the *Contract Program* for any review of the *Design Documentation* required by an *Authority*; and
  - .3 is not entitled to any *Claim* against the Principal arising out of or in connection with:
    - .1 any review of the *Design Documentation* by a relevant *Authority*; or
    - .2 the time taken by an *Authority* to review the *Design Documentation*, other than where:
      - .1 the relevant *Authority* is TfNSW, Sydney Water or Ausgrid and such time exceeds the appropriate allowance in the *Contract Program*; and
      - .2 the Contractor has not caused or contributed to the reasons for the delay.

#### **Design review – Tenant's review**

- .20 The Contractor must resubmit the *AFL Design Documentation* to the Principal in accordance with the *Design Milestones* and must provide the Principal with such assistance as is required to discharge its obligations under clause 11.1 of the *Agreement for Lease*.
- .21 If the Principal or the *Tenant* require further information in respect of the *AFL Design Documentation* provided in accordance with clause 39.20, the Principal may, within 22 *Business Days* of receipt of the *AFL Design Documentation*, ask the Contractor for further information (on behalf of the *Tenant*) and, to the extent reasonably practicable, the Contractor must provide that further information (either by electronic means or otherwise) to the Principal.
- .22 The Contractor may request information and comments from the Principal (who will make an equivalent request to the *Tenant*) in order to develop and finalise the *AFL Design Documentation* to satisfy the *Functional Requirements*.
- .23 The Contractor acknowledges and agrees that:
  - .1 the *Tenant* shall, within 30 *Business Days* of the *AFL Design Documentation* being provided by the *Principal* in accordance with clause 11.1 of the *Agreement for Lease*, or, if the Principal has requested further information on behalf of the *Tenant* under clause 39.21, within 15 *Business Days* of the *Tenant* being provided with that further information, respond in writing to the *Principal* providing its comments on the *AFL Design Documentation* which must include either:
    - .1 confirmation that the *AFL Design Documentation* complies with the *Functional Requirements*; or
    - .2 the detailed reasons why the *Tenant* believes, acting reasonably, that the *AFL Design Documentation*:
      - .1 does not comply with the *Functional Requirements*; or
      - .2 gives rise to a *Material Adverse Effect*; or
      - .3 would require a *Modification* which would give rise to an *Unacceptable Condition (Tenant)*,
 and the Principal will provide the Contractor with a copy of such comments once received;
  - .2 if the *Tenant* fails to respond to the Principal as described in clause 39.23.1 then the *Tenant* will be deemed to have acknowledged that the *AFL Design Documentation* satisfies the *Functional Requirements*.
- .24 If the *Tenant* provides notice of the kind contemplated by clause 39.23.1.2:
  - .1 the Contractor must take full responsibility for demonstrating satisfaction of the *Functional Requirements*, avoiding the *Material Adverse Effect*, or avoiding the

imposition of an *Unacceptable Condition (Tenant)* as notified by the *Tenant*, including by:

- .1 preparing submissions on the Principal's behalf in response to the *Tenant's* notice;
  - .2 attending any meetings between the *Principal* and the *Tenant* at the *Principal's* request; and
  - .3 otherwise providing all such assistance and taking any steps required by the *Principal* to resolve such matters; and
- .2 the Contractor acknowledges that the *Principal* and the *Tenant* shall meet within 5 *Business Days* of the date such notice is received by the *Principal* to discuss if and how the relevant *AFL Design Documentation* can be amended to satisfy the *Functional Requirements*, avoid the *Material Adverse Effect*, or avoid the imposition of an *Unacceptable Condition (Tenant)*, and the Contractor must attend any such meeting if requested by the *Principal*;
- .3 if:
- .1 the *Principal* and *Tenant* agree; or
  - .2 it is determined under clause 22 of the *Agreement for Lease*, that the *AFL Design Documentation* can be amended to satisfy the *Functional Requirements*, avoid the *Material Adverse Effect*, or avoid the imposition of an *Unacceptable Condition (Tenant)*, the Contractor must amend the *AFL Design Documentation* as directed by the *Principal* at the Contractor's cost; and
- .4 if no agreement is reached between the *Principal* and the *Tenant*:
- .1 the matter will be referred to dispute resolution under clause 22 of the *Agreement for Lease*; and
  - .2 the Contractor shall comply with the requirements of clause 71A.2 in respect of such dispute.

#### **Faults in project documents and resolution**

- .25 The *Principal* and the Contractor acknowledge and agree that:
- .1 the parties have identified the *Faults* in *Contract Documents* as described in Schedule 12;
  - .2 Schedule 12 describes, in respect of each *Fault*, the solution agreed between the parties for the resolution of the *Fault* and the work the Contractor has allowed for in implementing the relevant solution;
  - .3 the Contractor has agreed the *Contract Price* and the *Contractual Completion Date* on the basis that it will implement the solutions and do the work identified in Schedule 12; and
  - .4 if in respect of a *Fault* identified in Schedule 12, the *Principal* directs the Contractor to provide a different solution to that described in Schedule 12, that direction will be a deemed *Variation* under the Contract.

#### **40 Innovation**

- .1 The Contractor may submit in writing to the *Principal*, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the *Principal*. The proposal must include details of:
- .1 the proposed change to the Works and the proposed change in the *Contract Price*;
  - .2 potential risks to the *Principal* and the Contractor if the proposal is accepted;
  - .3 any changes required to *Contractual Completion Dates*;
  - .4 projected changes in operating and maintenance costs;
  - .5 projected changes in whole-of-life costs;
  - .6 any other benefit the *Principal* will receive; and
  - .7 any benefit the Contractor will receive.

- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.
- .3 The Principal must consider the Contractor's proposal but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
- .4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the proposal, subject to any conditions imposed by the Principal, in writing.
- .5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in Contract Information item 38 unless the parties otherwise agree.

#### **41 Principal's Documents**

- .1 The Principal must give the Contractor the number of copies of the *Principal's Documents* stated in Contract Information item 26.

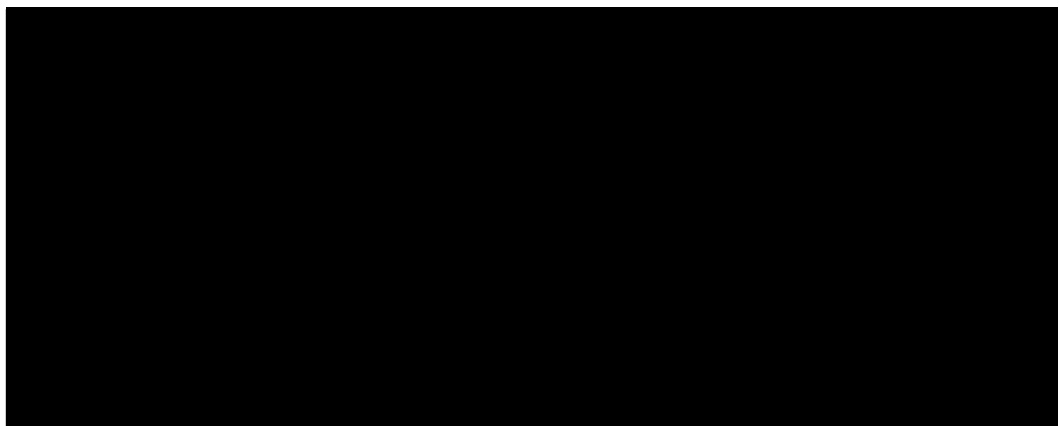
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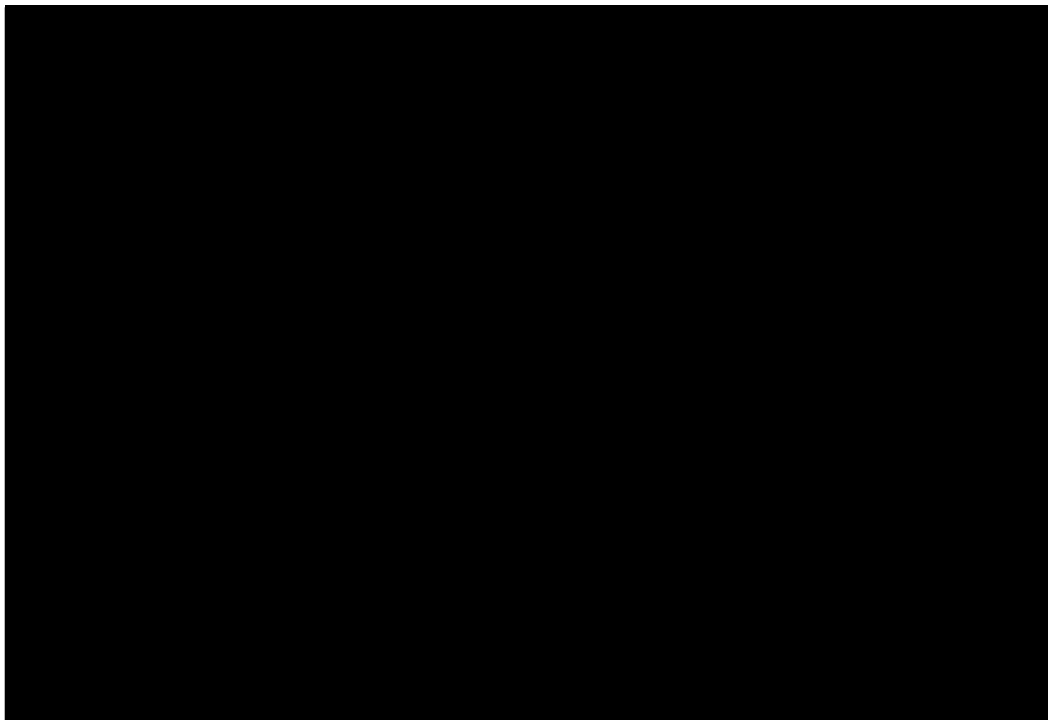
## **Construction**

#### **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, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

#### **42A Minimum Lettable Areas and Minimum Parking Spaces**





#### **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 approved *Design Documentation* and the *Contractor's Project Plans*;
  - .3 *Statutory Requirements*;
  - .4 the Principal's instructions;
  - .5 the Building Code of Australia (if stated in Contract Information item 37B) and relevant Australian Standards; and
  - .6 *Best Industry Practice*.

##### **Utilities and consumables**

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

##### **Commencement of the work in connection with the Contract**

- .3 The Contractor must give the Principal and the *Licensor* at least 20 *Business Days*' written notice of its intention to commence work in connection with the Contract at the Site.

##### **Materials**

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

##### **Construction warranties**

- .8 The Contractor warrants to the Principal that:

- .1 it has the skill, experience, expertise, resources and qualifications to design and construct the Works and carry out the work in connection with the Contract;
- .2 it has all relevant licences and registrations necessary to perform the work in connection with the Contract;
- .3 it will, at all times, employ suitably qualified and experienced *Contractor's Personnel* in the performance of the work in connection with the Contract;
- .4 the work in connection with the Contract will be performed:
  - .1 in accordance with the Contract and all *Statutory Requirements*;
  - .2 diligently, effectively and to a high professional standard; and
  - .3 in a proper and workmanlike manner;
- .5 construction will be carried out in accordance with the approved *Design Documentation*;
- .6 the Works will:
  - .1 be safe and *Fit for Purpose*;
  - .2 comply with the Contract, all *Statutory Requirements*, applicable Australian Standards and *Best Industry Practice*; and
  - .3 at the *Actual Completion Date* and at all times thereafter, meet or exceed the *Design Life* standards specified in the *Project Brief* for each part of the Works; and
- .7 the *Materials* incorporated into the Works will be:
  - .1 new and unused;
  - .2 *Fit for Purpose*; and
  - .3 free from *Defects* and of a merchantable quality.

#### 44 Testing

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

#### 45 Defects

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*, which must be a reasonable time having regard to the nature of the *Defect* and the extent of the work required to make good the relevant *Defect*.
- .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 the cost of doing so will be a debt due from the Contractor to the Principal. The Contractor will not be relieved of any obligation, warranty or liability under the Contract as a result of such *Defect* being made good by others.
- .4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.



- .5 If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:
  - .1 promptly notify the Principal; and
  - .2 carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.

#### **46 Acceptance with Defects not made good**

- .1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
- .2 Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.
- .3 If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.
- .4 If the Contractor agrees with the proposed terms but not with the proposed deductions then the Principal must assess the value of the adjustment in accordance with clause 47.5 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 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 (acting reasonably) 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* until the Contractor provides all the information specified in clause 68.3.
- .3 If the 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 in clauses 47.6 - 47.8 (inclusive) shall apply.
- .6 Subject to clause 47.7, 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 Percentage 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 Percentage Margin*);
  - .3 an additional amount for the *Contractor's Percentage Margin*, calculated as the percentage stated in Contract Information item 42 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.
- .7 A valuation under clause 47.5 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;
  - .3 other than as included in the *Contractor's Percentage Margin* included pursuant to clause 47.6.3, any costs associated with managing and supervising additional works on Site, on and off Site overheads and administration, and valuing or processing the *Claim* and/or *Variation*; or
  - .4 any amount that the Contractor is not entitled to claim under clause 37.7, 49.6 or 68.2.
- .8 A valuation under clause 47 must take into account the specific matters required by that clause.

#### **Application of adjustments**

- .9 The *Contract Price* must be adjusted as agreed, assessed or determined under clause 47.

### **48 Variations**

#### **Instructing and commencing Variations**

- .1 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) by issuing a notice identified as a "Variation Order" ("*Variation Order*"). The Contractor must comply with all *Variation Orders*.
- .2 The Contractor must not carry out a *Variation* unless directed by the Principal by a *Variation Order*.
- .3 Without limiting clause 48.1, the Principal may request the Contractor to provide a proposal with respect to a proposed *Variation* ("*Variation Request*").
- .4 Within 10 *Business Days* after receipt of a *Variation Request*, the Contractor must provide the Principal with a written proposal ("*Variation Proposal*") setting out:
  - .1 the proposed increase or decrease in the *Contract Price* to carry out the proposed *Variation* (including any delay related costs) including details of how such amounts have been calculated;
  - .2 the anticipated effect of the proposed *Variation* on the *Contract Program* and the Contractor achieving *Completion* (including the effect of the *Variation* on the *Target Early Access Date* and the *Target Practical Completion Date*), including any proposed extension of time claim the Contractor would make to carry out the proposed *Variation*; and
  - .3 a statement that the proposed *Variation*:
    - .1 does not conflict with or change the requirements of the *Project Brief* (including the *Key Architectural Details*) or the *Preliminary Design* or involve changes other than those described in the *Variation Request*; or
    - .2 changes the requirements of the *Project Brief* (including the *Key Architectural Details*) or the *Preliminary Design* or involves changes other than those described in the *Variation Request*, in which case the Contractor must explain all the changes and effects, including providing information on the:
      - .1 scope and limits of the work changes;
      - .2 nature of the departure from the *Key Architectural Details*, if applicable;
      - .3 design criteria and how they are to be addressed;
      - .4 effect on relevant reports, drawings and studies;
      - .5 assumptions;
      - .6 any required changes to *Approvals*; and
      - .7 any impact on the *Environment* or the community; and

- .4 the anticipated effect of the proposed *Variation* on the work in connection with the Contract;
- .5 whether the Contractor considers the proposed *Variation* may have an effect described in clause 48.9A; and
- .6 the effect of the proposed *Variation* on any other matter specified by the Principal.
- .5 The Principal is under no obligation to issue a *Variation Order* after receiving a *Variation Proposal* from the Contractor.
- .6 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.
- .7 If the Principal has issued a *Variation Order* and the parties have not agreed in writing on the effects of a proposed *Variation*, the Contractor must carry out the *Variation* in accordance with the *Variation Order* and may make a *Claim* for:
  - .1 an extension of time under clause 50, 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.
- .8 A *Variation* may involve the omission of any part or parts of the Works. The Principal may engage others to perform that or parts of the Works which have been omitted.
- .9 No omission will constitute a basis to allege that the Principal has repudiated the Contract regardless of the subject matter, the extent or timing of the omission.

#### **Notice of impact of Variations on the Works**

- .9A Without limiting clause 48.4, if the Contractor receives:
  - .1 a *Variation Order*; or
  - .2 comments on *Design Documentation* under the process in clause 39, which the Contractor considers (acting reasonably) will, if carried out or implemented, prevent the Contractor from complying with the Contract (including the *Functional Requirements* or the *AFL Matrix*) ("**Liability Direction**"), then the Contractor must notify the Principal in writing within 15 *Business Days* after receiving the relevant *Liability Direction*, giving a detailed explanation as to:
    - .3 the reason for the Contractor holding that view;
    - .4 the specific requirement or requirements of the Contract (including any specific obligation or warranty) that the Contractor will be impeded or prevented from complying with;
    - .5 any options available to mitigate or prevent the Contractor from being impeded or prevented from complying with the relevant requirements of the Contract; and
    - .6 any other matters required by the Principal.
- .9B Within 10 *Business Days* of receipt of a notice under subclause 48.9A, the Principal must notify the Contractor in writing whether the Principal:
  - .1 agrees with the Contractor's notice, in which case the Principal's notice must:
    - .1 withdraw the *Liability Direction*; or
    - .2 direct the Contractor to proceed with the *Liability Direction*, in which case:
      - .1 the Contractor must comply with the *Liability Direction*; and
      - .2 the Contractor shall not be liable to the Principal for a failure by the Contractor to comply with the specific requirement or requirements of the Contract notified and described in the Contractor's notice under subclause 48.9A, to the extent such failure arises as a result of the Contractor proceeding with the *Liability Direction*; or
  - .2 disagrees with the Contractor's notice, in which case:
    - .1 the Contractor must proceed with the *Liability Direction*; and
    - .2 the Contractor shall be entitled to raise an *Issue* in respect of the *Liability Direction* and the Contractor's notice under clause 48.9A.

### Variations proposed by the Contractor

- .10 The Contractor may make a written proposal for a *Variation* for the Contractor's convenience ("*Contractor's Variation Proposal*").
- .11 A *Contractor's Variation Proposal* must set out:
  - .1 a full description of the proposed *Variation*;
  - .2 the matters required by clause 48.4;
  - .3 a full description of the proposed *Variation*;
  - .4 the proposal for sharing any cost savings or increases with the Principal, including the amount;
  - .5 any benefits that would flow to the Principal; and
  - .6 the expected effect upon the future cost of operating and maintaining the Works.
- .12 The Principal may accept or reject the *Contractor's Variation Proposal* in its absolute discretion. 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 Variation Proposal*, the Principal must instruct a *Variation* by way of *Variation Order*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
- .13 If the Contractor considers that the Principal has issued a direction which constitutes a *Variation* but has not been instructed by way of a *Variation Order*, the Contractor must notify the Principal within 2 days after the Contractor receives such direction, and in any event before the Contractor complies with the direction, that the Contractor considers the direction to be a *Variation*.
- .14 Within five *Business Days* after receipt of the Contractor's notice pursuant to clause 48.13, the *Principal's Authorised Person* must advise whether the direction is in its view a *Variation* and:
  - .1 if the *Principal's Authorised Person* agrees with the Contractor, the *Principal's Authorised Person* may:
    - .1 issue a *Variation Order*;
    - .2 issue a *Variation Request*; or
    - .3 withdraw the direction; or
  - .2 if the *Principal's Authorised Person* does not agree with the Contractor, the Principal will notify the Contractor and the Contractor must comply with the direction. The Contractor may dispute the decision of the *Principal's Authorised Person* in accordance with clause 69.
- .15 The Contractor must not carry out any work in relation to the direction notified to the Principal under clause 48.13 until the earlier of:
  - .1 a *Variation Order* is issued by the *Principal's Authorised Person*; or
  - .2 notification under clause 48.14.2.
- .16 The Contractor is not entitled to any *Claim* in respect of such direction unless the Contractor has provided the notice required by clause 48.13 within the required time period and:
  - .1 the *Principal's Authorised Person* has issued a *Variation Order*; or
  - .2 it has been determined pursuant to clause 69 that such direction amounts to a *Variation*.
- .17 The Contractor acknowledges that development of the design by the Contractor does not constitute a *Variation*.

### 48A Pre-Agreed Variations

- .1 The *Principal's Authorised Person* may, in its absolute discretion and without being under any obligation to do so, direct by way of *Variation* any *Pre-Agreed Variation* by giving written notice to the Contractor.
- .2 The Principal and the Contractor agree that if a notice pursuant to clause 48A.1 is given in respect of a *Pre-Agreed Variation* by the relevant date specified in the table in Schedule 10, the Contract, including any relevant components of the *Contract Price*, will

- be deemed to be amended in accordance with the relevant amendments set out in Schedule 10 from the date the Contractor receives such notice.
- .3 Where the *Principal's Authorised Person* directs a *Pre-Agreed Variation* by giving written notice to the Contractor by the relevant date referred to in clause 48A.2, the Contractor, in respect of that *Pre-Agreed Variation*:
- .1 must carry out and complete the preparation of all necessary *Design Documentation* in respect of the *Pre-Agreed Variation* and must submit that *Design Documentation* for review and approval by the *Principal's Authorised Person* in accordance with the process in clauses 39.8 to 39.19;
  - .2 must carry out its obligations under the Contract as amended by clause 48A.2; and
  - .3 acknowledges and agrees that:
    - .1 any adjustment to the *Contract Price* made pursuant to clause 48A.2 will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the *Contract Price* under clause 47 or this clause 48A; and
    - .2 the Contractor is not entitled to make any *Claim* for:
      - .1 any acceleration to the carrying out of the work in connection with the Contract which the Contractor must perform at any time in order to achieve *Completion* by the *Contractual Completion Date*; or
      - .2 any extension of time for any delay to the carrying out of the work in connection with the Contract,
- in connection with the issue of such a notice or the amendment of the Contract pursuant to clause 48A.2.
- .4 Nothing in clauses 48A.1 to 48A.3 prevents the *Principal's Authorised Person* from instructing a *Variation* pursuant to clause 48.1 that involves the same (or similar) changes to the Works as a *Pre-Agreed Variation* after the relevant date for giving notice of the *Pre-Agreed Variation* specified in Schedule 10.
- .5 If the *Principal's Authorised Person* issues a *Variation Order* pursuant to clause 48.1 which involves the same or similar changes to the Works as are required by a *Pre-Agreed Variation* and which is issued or directed after the relevant date in Schedule 10 for that *Pre-Agreed Variation*, the Principal and the Contractor agree that clause 47 and 48 will apply to such *Variation*.

#### 49 Changes to Statutory Requirements

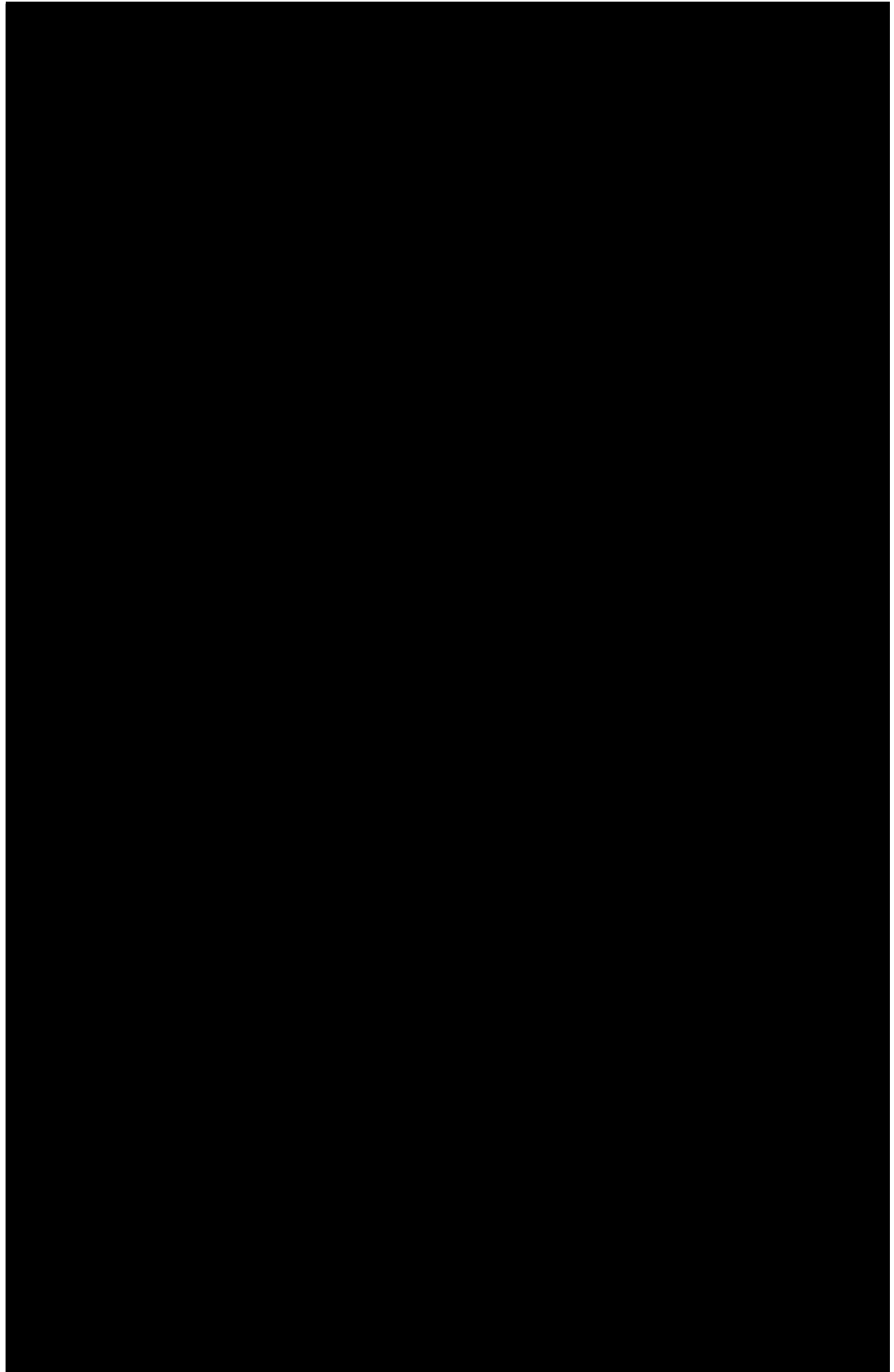
- .1 If the Contractor becomes aware of a *Change in Statutory Requirements* (other than a *COVID-19 Measure*) that requires a change to the work in connection with the Contract, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the *Change in Statutory Requirements*. The notification must include details of:
  - .1 the *Change in Statutory Requirements*;
  - .2 why the *Change in Statutory Requirements* should not reasonably have been expected by the Contractor at the Date of Contract;
  - .3 the changes to the work in connection with the Contract that the Contractor considers necessary to comply with the *Change in Statutory Requirements*;
  - .4 any delays in achieving *Completion* as a result of the change to the work in connection with the Contract;
  - .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price* as a result of the change to the work in connection with the Contract; 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 or not it agrees (acting reasonably) that there has been a

*Change in Statutory Requirements* that requires a change to the work in connection with the Contract.

- .4 If the Principal agrees that there has been a *Change in Statutory Requirements* that requires a change to the work in connection with the Contract 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 *Change in Statutory Requirements* within 10 *Business Days* after receipt of the Contractor's notice under clause 49.1:
    - .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 *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 *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
      - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the *Change in Statutory Requirements*.
- .5 If the Principal does not agree that there has been a *Change in Statutory Requirements* that requires a change to the work in connection with the Contract, the Contractor may notify an *Issue* under clause 69.
- .6 Costs and delay incurred by the Contractor as a result of a *Change in Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.
- .7 The parties acknowledge and agree that if:
  - .1 there is a change in *Statutory Requirements* in a *Key Plant and Equipment Manufacturing Country* which would be a *Change in Statutory Requirements* but for paragraph .3 of the definition of *Change in Statutory Requirements*;
  - .2 the change will or is reasonably expected to prevent or disrupt the transport of the relevant *Key Plant and Equipment* from the *Key Plant and Equipment Manufacturing Country* to Australia; and
  - .3 the Contractor reasonably believes that the change will therefore delay the Contractor in achieving *Completion*,
 the parties shall meet to discuss in good faith:
  - .4 the potential impacts of the change on the work in connection with the Contract;
  - .5 whether the Contractor has taken reasonable steps to mitigate the effects of the potential delay on the work in connection with the Contract; and
  - .6 what further steps are available to the parties to mitigate or avoid the potential impacts,

and the Principal may, in its absolute discretion, consider whether to exercise its rights under clause 50.8 in respect of the delay.

#### **49A COVID-19 Measures**





## **50 Changes to Contractual Completion Dates**

### **Extensions of time**

- .1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Date* if:
  - .1 the Contractor is or will be delayed in achieving *Completion* by an *Excusable Delay Event*;
  - .2 the delay is to an activity or activities on the critical path of the then current *Contract Program*;
  - .3 the Contractor has given the Principal an initial notice in writing within 7 days after the Contractor became aware or ought reasonably to have become aware of the first occurrence of the *Excusable Delay Event*, setting out the *Excusable Delay Event*, 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 a *Claim* for an extension of time which includes the other information required by clauses 50.3 and 50.4.
- .2 The Contractor must take all reasonable steps to avoid delay and its effects.
- .3 If the Contractor is delayed in achieving *Completion*, 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*;



- .2 be submitted within 14 days after the Contractor became aware or ought reasonably to have become aware of the first occurrence of the *Excusable Delay Event*; and
- .3 be updated every subsequent 14 days while the delay continues.
- .4 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*.
- .5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work in connection with the Contract.
- .6 Where there is any overlap between a delay to *Completion* caused by an *Excusable Delay Event*, and a delay to *Completion* caused by any other event then, in making a determination under clause 50.14, the *Principal's Authorised Person* may reduce the period by which the *Contractual Completion Date* is to be extended to the extent that the delay to *Completion* is caused by the event that is not an *Excusable Delay Event*.
- .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 49.6.
- .8 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. The Principal is not obliged to exercise this discretion for the benefit of the Contractor.
- .9 It is a condition precedent to the Contractor's entitlement to an extension of time to the *Contractual Completion Date* that:
  - .1 the Contractor has been, or will be, delayed by an *Excusable Delay Event*;
  - .2 the delay is demonstrable on the critical path for the work in connection with the Contract of the current *Contract Program*;
  - .3 the *Excusable Delay Event* was not directly or indirectly caused by an act or omission of, or a breach of the Contract by; the Contractor or the *Contractor's Personnel*;
  - .4 not used;
  - .5 the Contractor has submitted the notices strictly as required under this clause 50; and
  - .6 the *Excusable Delay Event* has delayed or will delay the Contractor in achieving *Completion*.
- .10 If any of the conditions precedent set out in clause 50.9 are not met, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant *Excusable Delay Event* or period of delay.
- .11 A delay by the *Principal's Authorised Person* or a failure by the *Principal's Authorised Person* to grant a reasonable extension of time in accordance with this clause 50 shall not cause the *Contractual Completion Date* to be set at large.

#### **Reductions in time**

- .12 If a *Variation* leads to less time being required for *Completion*, the Principal may assess a reasonable adjustment to the affected *Contractual Completion Date*.
- .13 In assessing the Contractor's entitlement to an extension of time, the Principal may take into account whether the Contractor has taken all reasonable steps to mitigate the effects of the delay on the progress of the work in connection with the Contract, and the Principal may reduce any extension of time to the extent the Contractor has failed to take such steps.

#### **Adjustment to Contractual Completion Dates**

- .14 If the conditions precedent in clause 50.9 have been satisfied, the *Principal's Authorised Person* must (acting reasonably), within a reasonable time and in any event not later than 20 *Business Days* of the receipt of the Contractor's claim under clause 50.3 issue a written notice advising the Contractor of its determination as to the period, if any, by which the *Contractual Completion Dates* are to be extended.

## 51 Delay costs and liquidated damages

### Delay costs

- .1 The Contractor is entitled to delay costs only for delay or disruption caused by any of the following events, but only where the Contractor has been granted an extension to the *Contractual Completion Date* as a result of such events:

- .2 Any *Claim* for delay costs must be submitted to the Principal at the same time as the Contractor's *Claim* for an extension of time under clause 50. The Principal will provide its determination of the delay costs payable to the Contractor at the same time as it provides its notice under clause 50.14.
- .3 Delay costs are calculated 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 49.6.
- .4 Delay costs shall:
- .1 be limited to the Contractor's reasonably and necessarily incurred additional direct costs incurred by the Contractor because of the delay (and exclude any off-site overheads or profit);
  - .2 be based on any prior agreement or any applicable rates and prices in the Contract (as applicable); and
  - .3 not exceed the daily delay damages cap stated in Contract Information item 47.
- .5 Notwithstanding clause 51.2, the Contractor:
- .1 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; and
  - .2 shall only claim delay costs in respect of days which are 'working days' for the purposes of clause 18.
- .6 The Contractor has no remedy or entitlement connected with delay or disruption to the work in connection with the Contract (including any delay or disruption caused by a breach of Contract by the Principal) other than:
- .1 the amounts to be paid in accordance with clause 51; or

- .2 an extension of time to the *Contractual Completion Date* to which it is entitled under clause 50.

### **Liquidated damages**

- .7 Not used
- .8 If the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date*, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 48, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*. Liquidated damages payable under this clause 51.8 for one or more *Separable Portions* shall not, in respect of any one day exceed in aggregate the amount stated in item 48.
- .9 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.
- .10 Liquidated damages for which the Contractor is liable are a debt due and immediately payable from the Contractor to the Principal. The Principal may, at any time, give the Contractor a written demand for any liquidated damages payable by the Contractor, whether or not *Completion* has been achieved. 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.
- .11 The Contractor's liability for liquidated damages shall not exceed the amount set out in Contract Information item 20. Prior to the Contractor's liability under clause 51.8 reaching the limitation stated in Contract Information item 20, the Contractor may, on one occasion only, elect to increase the amount stated in item 20 by an additional amount equal to the amount stated in item 20.
- .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 Contractor and the Principal acknowledge that the rates for liquidated damages in Contract Information item 48 are a genuine pre-estimate of the Principal's loss (including in respect of liability to tenants and other users of the Works in connection with any failure by the Contractor to achieve *Completion* of the Works by the *Contractual Completion Date*) and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.

- .14 If it is determined that the Contractor's liability to pay the liquidated damages is deemed to be or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), the Principal may claim general damages for the Contractor's failure to achieve *Completion* by the *Contractual Completion Date*, subject to the same limits on liability as are applicable to liquidated damages under the Contract.
- .15 The payment by the Contractor of liquidated damages does not in any way relieve the Contractor from any of its obligations to achieve *Completion* or from any other obligations and liabilities under the Contract including by way of general damages.

## **52 Acceleration**

- .1 The Principal may issue an *Acceleration Notice* requesting the Contractor to accelerate progress of the Works. Subject to clauses 52.2.1 and 52.3, the Contractor must comply with the *Acceleration Notice*.

- .2 On receipt of the *Acceleration Notice*, the Contractor must, within the time specified in the request:
  - .1 demonstrate to the satisfaction of the Principal (acting reasonably) that the acceleration request in the *Acceleration Notice* cannot reasonably be achieved; or
  - .2 advise the Principal of:
    - .1 its 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 If possible, the parties must agree on the steps to be taken, the amount or method of calculating the Contractor's costs for acceleration, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor complies with the *Acceleration Notice*.
- .4 To the extent that the Contractor takes the steps agreed in accordance with clause 52.3, the *Contract Price* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47.

### 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 Subject to clause 53.4, the Contractor has no other remedy or entitlement in connection with a suspension by the Principal other than a *Claim* for:
  - .1 an extension of time in accordance with clause 50; and
  - .2 delay costs in accordance with clause 51.
- .4 If the period of suspension instructed the Principal pursuant to clause 53.1 exceeds a period of more than 60 consecutive days (a "*Prolonged Suspension*"), then:
  - .1 in addition to the Contractor's entitlements under clause 53.3, the Contractor may submit a *Claim* in respect of any of the following additional costs which are reasonably and necessarily incurred as a direct result of the *Prolonged Suspension*:
    - .1 demobilisation costs;
    - .2 remobilisation costs;
    - .3 storage costs; and
    - .4 subcontractor costs,
 together, the "*Prolonged Suspension Costs*", provided that the *Prolonged Suspension Costs* must not include any additional costs:
    - .5 in respect of delay or disruption as a result of the *Prolonged Suspension*, which are included in the value of any delay costs payable to the Contractor; or
    - .6 which are included in any other payment made by the Principal under the Contract;
  - .2 any *Claims* for *Prolonged Suspension Costs* must be submitted to the Principal at the same time as each of the Contractor's updated *Claims* for an extension of time under clause 50.3.3 as a result of the *Prolonged Suspension*; and
  - .3 the Principal will provide its determination as to the amount of *Prolonged Suspension Costs* payable to the Contractor at the same time as it provides its notice under clause 50.14 in respect of the extension of time as a result of any *Prolonged Suspension*.

### 54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the Building Payment Act, 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 Payment Act.

## Payment

### 55 The Contract Price

- .1 The *Contract Price* includes all labour, *Materials*, construction equipment, *Temporary Work*, consumables, fees, *Taxes* (other than GST) and anything else necessary to carry out and complete the Works and the performance of the Contractor's obligations under the Contract
- .2 The *Contract Price* is payable in Australian Dollars. The Contractor is not entitled to:
- .1 receive payment in a currency other than Australian Dollars; or
  - .2 any adjustment to the *Contract Price* for any foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

#### Provisional Sums

- .3 If Contract Information item 40 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;
    - .2 the *Contract Price* (as applicable) 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 41 as included in the *Provisional Sum* margin; and
      - .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 41 to the cost specified in clause 55.3.3.2.1.

### 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 Not used****58 Payment Claims**

- .1 Subject to clause 58.2, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 44, for work carried out up to that date.
- .2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .3 *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.
- .4 *Payment Claims* may only include a claim for payment for the *Value Completed* and any other amounts then due to the Contractor pursuant to the provisions of the Contract.
- .5 The supply (whether work is done or otherwise) for which the *Payment Claim* is made must be treated as a separate taxable supply for the purposes of calculation of the GST.
- .6 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 payments already made.
- .7 Every *Payment Claim* must be accompanied by:
  - .1 a completed and true *Subcontractor’s Statement* and *Supporting Statement*, executed on the date of the *Payment Claim*;
  - .2 all relevant calculations of the amounts claimed;
  - .3 sufficient evidence to enable the *Principal’s Authorised Person* to value any work and *Materials* for which payment has been claimed in the relevant *Payment Claim*;
  - .4 all relevant *Conformance Records*; and
  - .5 any other information specified in the Contract.

**Unfixed Materials**

- .8 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated, or payments to subcontractors in respect of such *Materials*, unless all of the following conditions are satisfied:
  - .1 the *Materials* for which the Contractor wishes to claim are *Claimable Unfixed Materials* and, in respect of payments to be made to subcontractors for unfixed *Materials*, the subcontracts relate to steel tubes and steel sheets, structural steel or timber (glulam);
  - .2 the Principal has agreed in writing to pay the Contractor for the unincorporated *Claimable Unfixed Materials* and/or the payments to the relevant subcontractors;
  - .3 the Contractor has provided before or with the *Payment Claim*:
    - .1 the *Floating Undertaking* for the amount specified in Contract Information item 33C, in the form specified in Schedule 2 (Undertaking);

- .2 a statement in the terms in Schedule 11 (Statement regarding Materials); and
- .3 a detailed status report in respect of the period to which the *Payment Claim* relates, setting out:
  - .1 the details of the unincorporated *Materials* which are covered by the *Floating Undertaking* as at the date of the *Payment Claim*, including (but not limited to) tax invoices evidencing the value of, and any advance payment made by the Contractor (or its subcontractors) in respect of, the relevant unincorporated *Materials*; and
  - .2 if applicable, the details of any previously unincorporated *Materials* which have been incorporated into the Works;
- .4 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
- .5 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.
- .9 The Principal and the Contractor acknowledge and agree that the Contractor may amend or replace the *Floating Undertaking* provided that:
  - .1 at any given time, the amount of the *Floating Undertaking* reflects not less than 100% of the full reinstatement value of all relevant unincorporated *Materials*; and
  - .2 the amended or replacement *Floating Undertaking* complies with clause 33.2.
- .10 The Principal may have recourse to and use the proceeds of the *Floating Undertaking* provided under clause 58.8.3 in respect of any bona fide *Claim* that the Principal has in connection with the relevant *Materials*.
- .11 Subject to clause 58.10, the Principal must release the *Floating Undertaking* provided by the Contractor under clause 58.8.3 when all relevant unincorporated *Materials* have been incorporated into the Works.
- .12 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
- .13 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.
- .14 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 (acting reasonably) 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));
- .4 clause 58.6.2 to 58.6.4 (other items to accompany a Payment Claim); and
- .5 clause 58.7 (Unfixed Materials).
- .2 In calculating the *Scheduled Amount*:
  - .1 the following amounts must not be included:
    - .1 any amount which the Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied; or
    - .2 any amount in respect of which the obligation of the Principal to make payment has been suspended under the Contract; and
  - .2 any amounts which:
    - .1 have become due from the Contractor to the Principal under the Contract;
    - .2 the Principal is entitled under the Contract to set-off against the progress payment; or
    - .3 the Principal is entitled under the Contract to withhold, deduct or retain from the progress payment,
 are to be deducted.
- .3 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
- .4 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.
- .5 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 Not used

## 61 Final payment

- .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, however this clause does not prevent the Contractor from:
  - .1 raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by the Principal; or
  - .2 making any claim against the Principal arising solely from a third party claim first brought against or communicated to the Contractor after the date by which a *Final Payment Claim* is due under this clause.
- .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. The Principal must act reasonably in preparing the *Final Payment Schedule*.
- .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 46, 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 Subject to 64.1A, before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may (subject to the relevant person complying with the Contractor's reasonable work, health and safety and site security requirements and protocols) use or occupy all or any part of the Works that are 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
  - .2 the Principal becomes responsible for any additional insurance required.
- .1A If the Principal intends for members of the public to use or occupy any part of the Works that are sufficiently complete, the Principal must direct a *Separable Portion* in respect of the completed Works prior to granting such access.
- .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.

### 64A Early Access Stage (AFL)

#### Target Early Access Date

- .1 The Contractor must:
  - .1 ensure that the *Early Access Stage* is achieved by the *Target Early Access Date* as notified by the Principal to the Tenant from time to time; and

- .2 without limiting clauses 64A.2-64A.9, comply with the requirements of clause 14 of the *AFL Matrix*.
- .2 The Contractor acknowledges and agrees that:
  - .1 the Principal and the *Tenant* have jointly appointed the *Independent Certifier* to amongst other things, certify that the 'Early Access Stage' has been achieved under the *Agreement for Lease*; and
  - .2 the Contractor and the Principal shall jointly appoint the *Independent Certifier* to, amongst other things, certify that the *Early Access Stage* has been achieved. The *Independent Certifier* shall be required to act consistently in its determinations in respect of the *Agreement for Lease* and the Contract.

#### **Certification of Early Access Stage**

- .3 The Contractor must give the Principal and the Independent Certifier a written notice specifying the date on which the Contractor estimates the *Early Access Stage* will occur:
  - .1 eight months and two days before that date;
  - .2 four months and two days before that date;
  - .3 8 weeks and two days before that date;
  - .4 four weeks and two days before that date; and
  - .5 7 *Business Days* before that date.
- .4 After the Contractor gives a notice under clause 64A.3.5 or clause 64A.8.1, the *Independent Certifier* will inspect the Works in respect of the *Early Access Stage* with the objective of identifying and advising the Contractor, the *Tenant* and the Principal of any matters which would prevent the *Early Access Stage* being achieved.
- .5 Within 7 *Business Days* after the Contractor gives notice under clause 64A.3.5 or 64A.8, the *Independent Certifier*, the Contractor and the Principal must jointly inspect the Works with the *Tenant* for the purposes of determining whether the *Early Access Stage* has been reached.
- .6 Within 1 Business Day after the inspection referred to in clause 64A.5, the *Independent Certifier* will issue to the Principal, the Contractor and the *Tenant*:
  - .1 the *Early Access Stage Certificate* certifying that the *Early Access Stage* has been achieved; or
  - .2 an outstanding work list specifying the works which the *Independent Certifier* considers must be carried out before the *Early Access Stage* is achieved or a notice stating that there are additional works required before the *Early Access Stage* can be achieved and, in which case, the *Independent Certifier* must provide the outstanding works list within 3 *Business Days* from the date of the inspection referred to in clause 64A.5; or
  - .3 a written notice stating that the *Early Access Stage* is so far from being achieved that it is not practicable to issue a notice under clause 64A.6.2.
- .7 If the *Independent Certifier* issues an outstanding work list under clause 64A.6.2:
  - .1 the Contractor must notify the Independent Certifier and the Principal in writing when the Contractor believes it has completed the work specified in the list;
  - .2 within 3 *Business Days* after the Contractor gives notice under clause 64A.7.1 the *Independent Certifier*, the Principal and the Contractor must jointly reinspect the Works with the *Tenant* in respect of the relevant *Early Access Stage*; and
  - .3 the *Independent Certifier* will issue the *Early Access Stage Certificate* immediately after the *Independent Certifier* is satisfied that the work specified in the list is complete.
- .8 If the Independent Certifier issues a notice under clause 64A.6.3:
  - .1 the Contractor must give the *Independent Certifier* and the Principal a written notice specifying the date the Contractor estimates the *Early Access Stage* will occur 3 *Business Days* before that date; and
  - .2 clause 64A.4 and clauses 64A.5 to 64A.7 will apply.

- .9 The *Early Access Stage Certificate* must include a list of any outstanding Works and Defects (as that term is defined in the *Agreement for Lease*) in Works at the *Date of Early Access*.

#### **64B Completion under AFL and Contract**

- .1 The Contractor acknowledges and agrees that:
- .1 the Works (other than the elements of the Works comprising *Separable Portion 2*) will be subject to two separate completion regimes:
    - .1 the first, being the certification of 'Practical Completion' (as that term is defined in the *Agreement for Lease*) under clause 16 of the *Agreement for Lease*; and
    - .2 the second, being the certification of *Completion* under clause 65;
  - .2 the Principal and the *Tenant* have jointly appointed the *Independent Certifier* to amongst other things, certify 'Practical Completion' under the *Agreement for Lease*; and
  - .3 the Contractor and the Principal shall jointly appoint the *Independent Certifier* to, amongst other things, certify *Completion* of the Works. The *Independent Certifier* shall be required to act consistently in its determinations in respect of the *Agreement for Lease* and the Contract.
- .2 It is a condition precedent to *Completion* that the Works have achieved 'Practical Completion' under the *Agreement for Lease*.
- .3 To the extent that the Contractor is prevented from achieving 'Practical Completion' (as that term is defined in the *Agreement for Lease*) in accordance with clause 16 of the *AFL Matrix* as a result of the Principal failing to discharge an obligation of the Principal which has been allocated to the Principal in accordance with the *AFL Matrix*, such act or omission of the Principal shall amount to an *Excusable Delay Event*.
- .4 The requirements of clause 65 are in addition to the Contractor's obligations under clause 16 of the *AFL Matrix*

#### **65 Completion**

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 Without limiting clause 16.2 of the *AFL Matrix*, the Contractor must give the *Principal's Authorised Person* and the *Independent Certifier*:
- .1 20 *Business Days*;
  - .2 10 *Business Days*; and
  - .3 5 *Business Days*,
- written notice of the date upon which the Contractor anticipates that the Works will achieve *Completion*.
- .3 When the Contractor is of the opinion that the Works have achieved *Completion*, the Contractor must give a written notice to the *Principal's Authorised Person* and the *Independent Certifier* stating that the Works have, in the Contractor's opinion, reached *Completion*.
- .4 The parties must, within a reasonable time, and in any event within 10 *Business Days*, after receipt of the Contractor's notice under clause 65.3, carry out a joint inspection of the Works together with the *Independent Certifier*. Such inspection shall be in addition to:
- .1 any final inspection of the Works carried out by the *Licensor* pursuant to clause 4.13 of the *Construction Licence*;
  - .2 any final inspection of the Works carried out by the *Landlord* pursuant to clause 2.9 of Schedule 2 to the *Ground Lease*; and
  - .3 any inspection carried out by the Principal, the *Tenant* and the *Independent Certifier* pursuant to clause 16.3 and clause 17.3 of the *Agreement for Lease*.
- .5 Within 14 *Business Days* after the joint inspection, the *Independent Certifier* must either:
- .1 if *Completion* has been achieved, issue a *Certificate of Completion* in the form set out in Part B of Schedule 23:

- .1 stating that the Works have achieved *Completion*; and
- .2 subject to clause 65A, stating the *Actual Completion Date*; or
- .2 if *Completion* has not been achieved, notify the Contractor in writing that it considers that the Works has not achieved *Completion* and identifying any *Defects* or outstanding works that prevent the Works from achieving *Completion*.
- .6 If the *Independent Certifier* provides a notice to the Contractor pursuant to clause 65.5.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 65.3, 65.4 and 65.5 must be repeated until the *Independent Certifier* issues a *Certificate of Completion*.
- .7 Notwithstanding that all the requirements of *Completion* have not been met, the *Principal's Authorised Person* may at any time, in its sole and absolute discretion, issue a *Certificate of Completion*.
- .8 The issue of a *Certificate of Completion* will not:
  - .1 operate as approval by the Principal of the Contractor's performance of its obligations in connection with the Contract;
  - .2 be taken as an admission that the Works comply with the Contract; or
  - .3 prejudice any of the Principal's rights against the Contractor.

#### **65A Completion during Blackout Period**

- .1 If *Completion* of *Separable Portion 1* occurs on a 'Black Out Date' or during the 'Christmas Blackout Period' (as those terms are defined in the *Agreement for Lease*) ("*Blackout Period*") the *Actual Completion Date* will be deemed to be the next *Business Day* following the cessation of the *Blackout Period* and:
  - .1 the Contractor is not liable to pay liquidated damages in respect of *Separable Portion 1* once *Completion* occurs (notwithstanding that the *Actual Completion Date* is not deemed to occur until the end of the *Blackout Period* which falls after *Completion* of *Separable Portion 1*);
  - .2 the Contractor remains responsible for the care and security of the completed Works and must maintain its insurances until the deemed *Actual Completion Date*. The Contractor is not entitled to make any Claim for costs as a result of this prolonged responsibility; and
  - .3 the *Defects Liability Period* in respect of *Separable Portion 1* commences on the deemed *Actual Completion Date*.

#### **66 Close-out workshop**

- .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. Each party must bear its own costs associated with attending the workshop.

#### **67 Rectification of Defects**

- .1 In addition to the requirements of clause 19 of the *AFL Matrix*, at any time prior to the expiry of the *Defects Liability Period*:
  - .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice* which must be a reasonable time having regard to the nature of the *Defect* and the extent of the work required to make good the relevant *Defect*;
  - .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 In respect of any *Defect* rectified during a *Defect Liability Period*, a new *Defect Liability Period* for the rectified works will commence from the date of completion of the rectification of the *Defect* and continue for the longer of:
  - .1 the remainder of the original *Defects Liability Period*; or

- .2 a period of [REDACTED] provided that the maximum duration of the *Defects Liability Period* as extended under this clause shall be [REDACTED] from the *Actual Completion Date*.
- .3 The Principal must give the Contractor reasonable access (having regard to the operation of the Works) to the Works and the Site to enable the Contractor to perform its obligations under this clause 67.
- .4 In carrying out any rectification work pursuant to this clause 67, the Contractor must:
  - .1 do so diligently and promptly;
  - .2 do so in accordance with any directions given by the *Principal's Authorised Person*; and
  - .3 do so at the times directed by the Principal and in the manner, which causes minimum interruption to the Principal or the operation of the Works.
- .5 If:
  - .1 the Principal or the operator of the Works considers that a *Defect* requires urgent rectification to avoid risk of personal injury or harm to the *Environment* or the Works; and
  - .2 it is not practical or possible to provide the Contractor with an opportunity to rectify the *Defect*,
 then:
  - .3 the Principal or the operator of the Works may have the *Defects* made good by others and:
    - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
    - .2 not used.
- .6 Nothing in clause 67 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.
- .7 Clause 67 does not affect the Principal's rights under clause 46.

#### **67A Certificate of Final Completion**

- .1 As soon as the Works, in the opinion of the Contractor, reach the stage of *Final Completion*, the Contractor must give a written notice to the *Principal's Authorised Person*.
- .2 The Contractor must provide a *Deed of Release* with its notice under clause 67A.1.
- .3 The *Principal's Authorised Person* must, within a reasonable time after the later of:
  - .1 receipt of the Contractor's notice under clause 67A.1; or
  - .2 receipt of the *Deed of Release*, duly executed by the Contractor,
 either:
  - .3 issue a *Certificate of Final Completion* in the form set out in Part C of Schedule 23 stating that *Final Completion* has been achieved; or
  - .4 notify the Contractor in writing that the Works have not achieved *Final Completion* and of any *Defects* that must be remedied before *Final Completion* can be achieved.
- .4 If the *Principal's Authorised Person* notifies the Contractor of any outstanding *Defects*, the Contractor must then remedy those *Defects* and the procedures described in clauses 67A.1 and 67A.2 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Final Completion*.

## Claim and Issue resolution

### 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 time specified in clause 68.1, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant event giving rise to the *Claim*.
- .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 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 it must be valued in accordance with clause 47.
- .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 or not agreed 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

#### 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*.
- .2 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*.
- .3 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.
- .4 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.

- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.
- .6 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 49.
- .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 50. 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 51. 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:
    - .1 in excess of the amount stated in Contract Information item 52(a); or
    - .2 which is equal to or less than the amount stated in Contract Information item 52(a) but which, when taken in aggregate with all other amounts

previously determined by the *Expert* where such determinations are individually for amounts equal to or less than the amount stated in Contract Information item 52(a), exceeds the amount stated in Contract Information item 52(b),

calculated without having regard to:

- .3 any interest that may be payable; and
  - .4 any amount that has been paid pursuant to the *Building Payment Act*; or
  - .3 contains a manifest error of fact or law.
- .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.

## **71A Disputes under the Agreement for Lease**

### **Disputes generally**

- .1 The Contractor:
    - .1 acknowledges and agrees that any dispute, difference, controversy or claim directly or indirectly based upon, arising out of, relating to or in connection with the *Agreement for Lease* (including any questions relating to the existence, validity or termination of the *Agreement for Lease*), must be resolved in accordance with clause 22 of the *Agreement for Lease* ("*AFL Dispute*");
    - .2 shall provide the Principal with such assistance as is required pursuant to clause 22 of the *AFL Matrix* in respect of the *AFL Dispute*;
    - .3 shall comply with clause 71A.2 to the extent that an *AFL Dispute* relates to the *Design Documentation* ("*AFL Design Dispute*"); and
    - .4 further acknowledges and agrees that:
      - .1 if an *AFL Dispute* or *AFL Design Dispute* arises out of or in connection with a breach or alleged breach of the Contract (including a breach of the *AFL Matrix*) by the Contractor, the Contractor shall not be entitled to any increase to the *Contract Price*, extension of time or delay costs; and
      - .2 otherwise, the Contractor shall be entitled to claim:
        - .1 an extension of time under clause 50; and/or
        - .2 an adjustment to the *Contract Price* to be valued in accordance with clause 47,
- in respect of any delay and/or cost (as applicable) incurred as a result of the Contractor's compliance with this clause 71A.

### **Disputes – AFL Design Documentation**

- .2 The Contractor acknowledges and agrees that:
  - .1 the Contractor is responsible for ensuring that the *Design Documentation* meets the *Functional Requirements*, avoids a *Material Adverse Effect* and avoids the imposition of an *Unacceptable Condition (Tenant)*; and
  - .2 to the extent that an *AFL Design Dispute* arises, the Contractor shall:
    - .1 be responsible for preparing all notices, submissions and particulars in respect of the *AFL Design Dispute* on the Principal's behalf;
    - .2 if directed by the Principal, attend meetings and/or dispute resolution proceedings between the Principal and the *Tenant*; and
    - .3 otherwise comply with the requirements of clauses 71A.3 – 71A.9.

### **Notice of AFL Design Dispute**

- .3 If:
  - .1 the Principal and the *Tenant* cannot reach an agreement under clause 11.3(d) of the *Agreement for Lease*; or
  - .2 the Principal otherwise notifies the Contractor of the existence an *AFL Design Dispute*,



then, at the direction of the Principal, the Contractor must give the Principal a written notice in respect of the *AFL Design Dispute* within the time required by clause 71A.4 specifying:

- .3 the *AFL Design Dispute*;
  - .4 particulars of reasons why the Contractor considers the Principal should be dissatisfied with the *Tenant's* position in respect of the *AFL Design Dispute*; and
  - .5 the position which the Contractor believes is correct.
- .4 The written notice under clause 71A.3 must be given to the Principal within 10 *Business Days* after the *AFL Design Dispute* is notified to the Contractor and must be in a form which complies with clause 24.1 of the *Agreement for Lease* ("*Notice of AFL Design Dispute*").
- .5 Without limiting the Contractor's responsibilities under clause 71A.2, the Principal must:
- .1 upon receipt of a *Notice of AFL Design Dispute*, provide a corresponding notice to the *Tenant* (which does not materially depart from the *Notice of AFL Design Dispute*) in accordance with the requirements of clause 22.1 of the *Agreement for Lease*;
  - .2 diligently and expeditiously pursue any *AFL Design Dispute* (including by using reasonable endeavours to pass to the *Tenant* or incorporate, the submissions of the Contractor in relation to the *AFL Design Dispute* to the extent required by the Contractor (provided those submissions meet the requirements of the *Agreement for Lease*);
  - .3 keep the Contractor informed (including, subject to its obligations under the *Agreement for Lease*, by promptly providing documents and information reasonably requested by the Contractor received by, or otherwise available to, the Principal in relation to the *AFL Design Dispute*) of the progress of the *AFL Design Dispute* under the *Agreement for Lease*, except to the extent such documents or information may be subject to legal privilege;
  - .4 regularly consult with the Contractor including on request by the Contractor in relation to the manner in which the Principal pursues the related *AFL Design Dispute* under the *Agreement for Lease* and implement reasonable steps suggested by the Contractor as to the manner in which the related dispute under the *Agreement for Lease* should be pursued and costs minimised;
  - .5 where permitted by the *Tenant* (the Principal having used reasonable endeavours to obtain such permission), allow the Contractor to participate in meetings, discussions, negotiations or dispute resolution procedures between the Principal and the *Tenant* in relation to the *AFL Design Dispute*;
  - .6 not settle, waive or compromise or make any admission in relation to the *AFL Design Dispute* under the *Agreement for Lease* (to the extent it is for the benefit of the Contractor) without the prior written consent of the Contractor, which consent must not be unreasonably withheld or delayed; and
  - .7 promptly notify the Contractor upon, and (subject to legal privilege) provide details in relation to, the resolution of the *AFL Design Dispute* under the *Agreement for Lease*.

### **Executive Negotiation**

- .6 The Contractor:
- .1 acknowledges that where a notice relating to an *AFL Design Dispute* is given under clause 22.2 of the *Agreement for Lease*, the *AFL Design Dispute* will be referred to the relevant "*Executive Negotiators*" under the *Agreement for Lease* and the *Executive Negotiators* will, within 5 *Business Days* after the date on which the notice of the *AFL Design Dispute* was given under clause 22.2 of the *Agreement for Lease*, commence meetings and negotiations with a view to resolving the *AFL Design Dispute*;
  - .2 must prepare all submissions and particulars in respect of the *AFL Design Dispute* on behalf of the Principal's *Executive Negotiator*; and

- .3 must provide such assistance as is required by the Principal and the *Executive Negotiator* in relation to such negotiation.
- .7 The Contractor further acknowledges that if the *Executive Negotiators* have not:
  - .1 resolved the *AFL Design Dispute*;
  - .2 reached agreement upon a procedure to resolve the *AFL Design Dispute*; or
  - .3 met or undertaken negotiations with a view to resolving the *AFL Design Dispute*, within 15 Business Days after the date on which the notice of *AFL Design Dispute* was given under clause 22.2 of the *Agreement for Lease* (or such longer period of time as the *Executive Negotiators* or the Principal and the *Tenant* may have agreed in writing), then, whether or not the *Executive Negotiators* have met and undertaken negotiations with a view to resolving the *AFL Design Dispute*, the *AFL Design Dispute* will be referred to expert determination in accordance with clause 22.4 of the *Agreement for Lease*.

### **Expert Determination**

- .8 If an *AFL Design Dispute* is referred to expert determination under clause 22.4 of the *Agreement for Lease* the Contractor must continue to provide the Principal with assistance in respect of the *AFL Design Dispute*, including by:
  - .1 preparing submissions and particulars in respect of the *AFL Design Dispute*; and
  - .2 if directed by the Principal, attending meetings and/or dispute resolution proceedings between the Principal and the *Tenant*.
- .9 The Contractor acknowledges and agrees that:
  - .1 a determination by the expert in relation to the *AFL Design Dispute* will be binding on the Principal, the Contractor and the *Tenant*; and
  - .2 if, as a result of an expert's determination, the Principal is required to amend the *AFL Design Documentation* the Contractor must do so on behalf of the Principal, and:
    - .1 to the extent that the need for such amendment has arisen out of or in connection with the Contractor's failure to comply with the Contract (including the *AFL Matrix*), the Contractor shall not be entitled to any increase to the *Contract Price*, extension of time or delay costs ; or
    - .2 otherwise, the Contractor shall be entitled to claim:
      - .1 an extension of time under clause 50; and
      - .2 an adjustment to the *Contract Price* to be valued in accordance with clause 47,

in respect of any delay and/or cost (as applicable) incurred as a result of the Contractor's compliance with this clause 71A.

## **72 Parties to perform the Contract**

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

## Termination

### 72A Step-in

#### Right of step-in

- .1 If:
  - .1 a *Contractor Default Event* (other than an event of the kind described in paragraphs 1.4 or 1.5 of the definition of '*Contractor Default Event*') occurs;
  - .2 a *Contractor Termination Event* occurs; or
  - .3 an incident occurs which poses a serious risk to the health and safety of any person or damage to any property of the *Environment*, and such incident arises in connection with an act or omission of the Contractor or the *Contractor's Personnel*,
 ("Step-In Event"), the Principal may elect to do any or all of the following:
  - .4 assume total or partial management and control of the whole or any part of the Works or the work in connection with the Contract;
  - .5 access those parts of the Site or any premises the Contractor has access or is entitled to occupy; and
  - .6 take such other steps as are necessary in the reasonable opinion of the Principal for it to carry out the work in connection with the Contract and minimise the effect of the relevant *Step-In Event*.
- .2 The Principal must not exercise its rights under clause 72A.1 on the occurrence of a *Contractor Default Event* for so long as the Contractor is complying with its obligations under clauses 73.2 to 73.5 in respect of that *Contractor Default Event*.

#### Notice

- .3 The Principal may exercise its rights under clause 72A.1 without prior notice to the Contractor but the Principal must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to the Contractor that it is exercising those rights.

#### Consequences of the Principal exercising its rights

- .4 During the exercise of the Principal's rights under clause 72A.1, the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise those rights.
- .5 Except to the extent that the Contractor's obligations are suspended under clause 72A.4, the exercise by the Principal of its rights under clause 72A.1 will not affect any other obligation of the Contractor under the Contract.
- .6 The exercise by the Principal of its rights under clause 72A.1 (or the cessation of such exercise) will not affect any other right of the Principal under the Contract.

#### Contractor to assist Principal

- .7 The Contractor must:
  - .1 grant such access rights as are necessary and take all action that is necessarily required by the Principal to assist the Principal in exercising its rights under clause 72A.1;
  - .2 provide sufficient resources, including *Contractor's Personnel*, to assist the Principal in exercising its rights under clause 72A.1; and
  - .3 not do anything to hinder, disrupt or prevent the Principal in exercising its rights under clause 72A.1.

#### Limits on liability during step-in

- .8 When exercising its rights under clause 72A.1, the Principal must use its reasonable endeavours to carry out the work in connection with the Contract in a manner which is consistent with the Contract, but taking into account the circumstances that prompted the Principal to exercise those rights.

- .9 Where the Principal has exercised its rights under clause 72A.1 then any *Loss* suffered or incurred by the Principal in connection with the exercise by the Principal of its step-in rights will be a debt due and payable by the Contractor to the Principal.
- .10 Subject to the express terms of the Contract, the Contractor acknowledges and agrees that:
  - .1 the Principal, when exercising its rights under clause 72A.1, is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the Principal exercises its rights under clause 72A.1; and
  - .2 the Contractor will not be entitled to make any *Claim* against the Principal, arising in connection with the exercise by the Principal of its rights under clause 72A.1 except to the extent caused by:
    - .1 a breach by the Principal of the Contract;
    - .2 a negligent act of the Principal in the course of it exercising its rights under clause 72A.1; and
    - .3 a fraudulent or reckless act or omission of the Principal in the course of it exercising its rights under clause 72A.1.

#### **Cessation of step-in rights**

- .11 The Principal may, at any time, cease to exercise its rights in accordance with this clause 72A upon giving 5 *Business Days*' notice to the Contractor.
- .12 The Principal must cease to exercise its rights in accordance with this clause 72A where:
  - .1 the *Contractor Default Event* or *Contractor Termination Event* (as the case may be) has been cured; and
  - .2 where the step-in rights are exercised in respect of the event set out in clause 72A.1.3, the relevant event ceases and its consequences have been remedied.
- .13 If the Principal ceases to exercise its rights under clause 72A.1, the Contractor must immediately recommence carrying out any obligations suspended due to the exercise by the Principal of those rights and the Principal must, give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible. The assistance given by the Principal in respect of the process of transition will be at the Contractor's expense, which amount shall be a debt due and payable by the Contractor to the Principal on demand.

### **73 Contractor Default and Termination**

#### **Principal may issue Default Notice**

- .1 If the *Contractor Default Event* occurs, the Principal may give a written notice to the Contractor ("**Default Notice**"):
  - .1 stating that it is a notice under this clause 73.1;
  - .2 specifying the nature of the *Contractor Default Event*; and
  - .3 specifying a reasonable time period within which the Principal requires the Contractor to remedy the *Contractor Default Event* ("**Cure Period**").

#### **Cure Plan**

- .2 If:
  - .1 a *Default Notice* has been given; and
  - .2 the *Contractor Default Event* is capable of being remedied,
 the Contractor must:
  - .3 remedy the *Contractor Default Event* within the *Cure Period*; or
  - .4 if the *Cure Period* is more than 15 *Business Days*, within five *Business Days* after receipt of the *Default Notice*, prepare and submit a draft cure plan to the Principal describing the actions and measures which the Contractor will diligently pursue to remedy the *Contractor Default Event* and its impacts within the *Cure Period* ("**Draft Cure Plan**"). The *Cure Period* for breaches referred to in paragraphs 1.4 and 2 of the definition of *Contractor Default Event* must be more than 15 *Business Days*.

- .3 Within 10 *Business Days* after receipt of the *Draft Cure Plan*, the Principal shall either:
  - .1 approve the *Draft Cure Plan* by notifying the Contractor; or
  - .2 reject the *Draft Cure Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .3A The Contractor acknowledges that where the relevant *Contractor Default Event* has caused an "Event of Default" under the *Agreement for Lease*, the Principal shall be entitled to reject a *Draft Cure Plan* where the Principal's equivalent "draft Cure Plan" under the *Agreement for Lease* is not approved by the *Tenant*.
- .4 If the Principal approves a *Draft Cure Plan* pursuant to clause 73.3.1 ("*Approved Cure Plan*") the Contractor shall comply with and implement the *Approved Cure Plan* and remedy the *Contractor Default Event* within the *Cure Period*.
- .5 If the Principal rejects a *Draft Cure Plan* pursuant to clause 73.3.2, the Contractor, in consultation with the Principal, shall amend the *Draft Cure Plan* to meet the Principal's requirements and submit the amended *Draft Cure Plan* to the Principal for approval within five *Business Days* after receipt of the Principal's notice issued under clause 73.3.2. Clauses 73.3, 73.3A, 73.4 and 73.5 will apply to the amended *Draft Cure Plan*. This clause 73.5 does not extend the *Cure Period*.
- .6 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Cure Plan*.

#### **Mitigation Plan**

- .7 If:
  - .1 a *Default Notice* has been given; and
  - .2 the *Contractor Default Event* is not capable of being remedied,
 the Contractor shall, within five *Business Days* after receipt of the *Default Notice*, prepare and submit to the Principal a draft plan describing the actions and measures which the Contractor will diligently pursue to mitigate or overcome the effects of the *Contractor Default Event* and prevent the *Contractor Default Event* from re-occurring ("*Draft Mitigation Plan*").
- .8 Within 10 *Business Days* after receipt of the *Draft Mitigation Plan*, the Principal shall either:
  - .1 approve the *Draft Mitigation Plan* by notifying the Contractor; or
  - .2 reject the *Draft Mitigation Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .9 If the Principal approves a *Draft Mitigation Plan* pursuant to clause 73.8.1 ("*Approved Mitigation Plan*"), the Contractor shall comply with and implement the *Approved Mitigation Plan*.
- .10 If the Principal rejects a *Draft Mitigation Plan* pursuant to clause 73.8.2, the Contractor, in consultation with the Principal, shall amend the *Draft Mitigation Plan* to meet the Principal's requirements and submit the amended *Draft Mitigation Plan* to the Principal for approval within five *Business Days* after receipt of the Principal's notice issued under clause 73.8.2. Clauses 73.8, 73.9 and 73.10 will apply to the amended *Draft Mitigation Plan*.
- .11 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Mitigation Plan*.

#### **Termination for Contractor Termination Event**

- .12 If a *Contractor Termination Event* occurs, the Principal may, by written notice to the Contractor, immediately terminate the Contractor's employment under the Contract.
- .13 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 as soon as reasonably practicable and remove all *Temporary Work* and *Materials* it has brought onto the 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; and
  - .6 the Principal may make provisional assessments of the amounts payable to the Principal under clause 73.13.5 and may, without limiting any other right of recourse, demand them against the *Undertakings*.
- .14 If the Principal terminates the Contractor's employment under clause 73, the rights of the Principal will be the same as they would have been at law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.
  - .15 Termination of the Contract does not affect the rights and obligations of the parties under the Contract which accrued prior to the date of termination.

#### **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.
- .3 The Contractor must leave the 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 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.
- .4 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 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 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 ■■■ 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.

- .5 Within 10 *Business Days* after the date of termination under this clause 74, the Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 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 fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, 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 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

## 76 Termination notices

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

## 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 Not used

## 79 Definitions

- .1 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	• Site
• Contract Information	• Subcontract
• Contractor	• Subcontractor
• Consultant	• Supplier
• Date of Contract	• work in connection with the Contract
• Principal	• Works
- .2 Wherever the following words and phrases are used in the Contract with initial capitals, they have the special meanings set out in clause 79.

### **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 stated in the *Certificate of Completion* as the date on which *Completion* of the Works was achieved.

### **AFL Design Documentation**

Means the "Design Documents" as defined in the *Agreement for Lease* which are to be submitted at the *Design Milestones*.

### **AFL Matrix**

Means the *Third Party Agreement Matrix* of that name included at Schedule 7 Part A.

**Agreement for Lease**

Means the document titled 'Agreement for Lease – Sydney Fish Market' between the Principal and Sydney Fish Market Pty Ltd ACN 064 254 371 dated 19 February 2019.

**Approvals**

Any authorisation, approval, authority, permit, licence, certificate, consent, direction, notice, permission, privilege or exemption, granted by the State, the Commonwealth or any other *Authority* relating to the Works, the Site, the *Environment*, the Contract or the performance of the Contractor's obligations under the Contract, including the *Planning Approval* and *Harbour Master Approval*.

**Approved Cure Plan**

The cure plan approved by the Principal pursuant to clause 73.3.1.

**Approved Design Documentation**

Has the meaning given in clause 39.16.

**Approved Mitigation Plan**

The mitigation plan approved by the Principal pursuant to clause 73.8.1.

**Approved Subcontractors**

Those Subcontractors, Suppliers and Consultants set out in Contract Information item 12A.

**Artefacts**

Any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or value (including valuable minerals).

**Asbestos Management Plan**

The asbestos management plan submitted by the Contractor pursuant to clause 26A.

**Authority**

Means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority (including a *Consent Authority* or the *Ports Authority*), agency, Minister, statutory corporation or instrumentality, and any electricity, telecommunications, gas or other utility company having statutory rights in relation to the carrying out of the Works.

**BCIIP Act**

Has the meaning given in clause 17.

**Best Industry Practice**

Means (subject to any express provisions of the Contract which impose higher standards) the practices which are adopted by experienced and competent contractors with respect to works similar to the Works and activities similar to the work in connection with the Contract which, with respect to any objective, may be expected, in the exercise of that expertise, to accomplish that objective in a manner consistent with the Contract regarding quality, safety and environmental protection, including:

- .1 using effective procurement methods;
- .2 using good quality, new, or where appropriate suitable recycled materials, undamaged equipment and materials for the Works, which are suitable for the purpose for which they are required;
- .3 ensuring that all workmanship and construction techniques are of the quality and standards as required by the Contract; and
- .4 complying with all relevant *Statutory Requirements*.

**Building**

Has the meaning given in the *Agreement for Lease*.



**Building Code 2016**

Has the meaning given in clause 13.15

**Building Payment Act**

The *Building and Construction Industry Security of Payment Act 1999* (NSW).

**Business Day**

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

**Certificate of Completion**

A certificate issued by the *Independent Certifier* under clause 65.5.

**Certificate of Final Completion**

A certificate issued by the *Principal's Authorised Person* under clause 67A.3

**Change in Control**

A change in control occurs in respect of a party if, at any time, any person or party alone or together with any Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)), ceases to or commences to, directly or indirectly have *Control* of that party.

**Change in Statutory Requirements**

Means:

- .1 the enactment of any new *Statutory Requirement*; or
- .2 the repeal, modification or re-enactment of any existing *Statutory Requirement*, that:
  - .3 is applicable in Australia;
  - .4 comes into effect after the Date of Contract;
  - .5 in respect of any new or changed *Statutory Requirement* that does not relate solely to dealing with the COVID-19 emergency, could not reasonably have been anticipated at the Date of Contract by a competent and experienced contractor in the position of the Contractor; and
  - .6 in respect of any new or changed *Statutory Requirement* that relates to planning or the *Environment*, is directly related to the Site,

but excludes:

- .7 a change in *Taxes* or any *Statutory Requirement* that relates to *Taxes*;
- .8 the conditions or requirements contained in, or associated with, any *Approval* that is issued or comes into effect after the Date of Contract; or
- .9 a change in any *Approval* that the Contractor is required to obtain and maintain in accordance with the Contract.

**Change in WAD Condition**

Has the meaning given to that term in clause 6C.5.

**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 the payment of additional monies, or for breach of contract by the Principal.

**Claimable Unfixed Materials**

Means *Materials* comprising the following:

- .1 Main switchboards;
- .2 Lifts and escalators;
- .3 Steel tubes and steel sheets;
- .4 Precast concrete;
- .5 Structural steel;
- .6 Timber (glulam);

- .7 Façade; and
- .8 Generators, specialist refrigeration equipment and greywater treatment plant.

### **Claimed Amount**

The amount claimed by the Contractor in a *Payment Claim*.

### **Completion**

The stage in the execution of the work in connection with the Contract, when:

- .1 in relation to all *Separable Portions*:
  - .1 the Works are complete except for minor *Defects* or omissions:
    - .1 which do not prevent the Works from being *Fit for Purpose* or being reasonable capable of being used for their intended purpose;
    - .2 the existence and rectification of which will not prejudice the convenient use of the Works by the Principal or the *Tenant*;
    - .3 which the *Principal's Authorised Representative* determines do not require immediate rectification and which the Contractor has reasonable grounds for not promptly rectifying; and
    - .4 which do not cause any legal restrictions on the use or occupation of the Works;
  - .2 the Contractor has provided to the Principal:
    - .1 all *Subcontractor's* warranties and any Consultant's deeds of covenant required by clause 31.3;
    - .2 all 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;
    - .3 all certificates, authorisations, approvals and consents (including *Approvals*) from statutory authorities and service providers for which the Contractor is responsible under the Contract;
    - .4 those certificates required for the occupation of the Works for which the Contractor is responsible under the Contract;
    - .5 each Consultant certificate required under clause 26A.22 and clause 39.11;
    - .6 where clause 37F.3 applies, a properly executed release which complies with clause 37F.3.1 or a statement signed by the Contractor which complies with clause 37F.3.2 (as applicable);
    - .7 a full electronic version of the electronic records sent via Aconex on a separate Solid State Hard-Disk Drive (SSD); and
    - .8 all other documents required by the Contract to be provided as a condition to *Completion*;
  - .3 the Contractor has carried out and successfully completed all *Testing* required by the Contract;
  - .4 the Contractor has provided all of the "work as executed" drawings as required by the clause 2.3 of the *Preliminaries*;
  - .5 the Contractor has provided all training required by the Contract;
  - .6 all debris, rubbish, building materials, temporary works and construction equipment has been removed from the Site and the Site has been cleaned;

and in addition, in respect of

- .2 *Separable Portion 1*:
  - .1 'the Early Access Period' (as that term is defined in the *Agreement for Lease*) has expired;
  - .2 the requirements of clause 16.1 of the *Agreement for Lease* have been satisfied and the *Independent Certifier* has issued a 'Certificate of Practical Completion' (as that term is defined in the *Agreement for Lease*) under clause 16.3 of the *Agreement for Lease*;

- .3 the requirements of clause 17.1 of the *Agreement for Lease* have been satisfied and the *Independent Certifier* has issued a 'Third Wharf Practical Completion Certificate' (as that term is defined in the *Agreement for Lease*) under clause 17.3 of the *Agreement for Lease*;
  - .4 the requirements of clause 4.13 of the *Construction Licence* and clause 2.9 of the *Ground Lease* (as applicable) have been satisfied;
  - .5 the requirements of clause 42A have been satisfied; and
  - .6 all other pre-conditions to achieving *Completion* set out in the Contract have been satisfied; and
- .3 *Separable Portion 2*, the Contractor has achieved 'practical completion' under the *Works Authorisation Deed*.

### **Completion Undertaking**

The *Undertaking* required under clause 33.1, for the amount stated in Contract Information item 32.

### **Confidential Information**

Any of the following:

- .1 the terms of the Contract;
- .2 all *Data*; and
- .3 all other documents and information in any form whatsoever in the possession or knowledge of a party which:
  - .1 is disclosed to the other party; and
  - .2 is identified at the time of such disclosure as being confidential or proprietary (or which the other party should reasonably have considered as being confidential or proprietary),

whether such disclosure is made on, prior to or after the Date of Contract.

### **Conformance Records**

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

### **Consent Authority**

Has the meaning given in the *Environment Planning and Assessment Act 1979* (NSW).

### **Construction Licence**

Means the document titled 'Construction Licence - the Bays Market District, Blackwattle Bay' between the Roads and Maritime Services ABN 76 236 371 088 and UrbanGrowth NSW Development Corporation ABN 41 163 782 371 dated 1 April 2019, as varied by the letter titled 'Construction Licence - Construction Licence — The Bays Market District, Blackwattle Bay, Sydney NSW between Roads and Maritime Services ABN 76 236 371 088 (as Transport for New South Wales's [ABN 18 804 239 602] statutory predecessor) (Licensor) and UrbanGrowth NSW Development Corporation ABN 41 163 782 371 (now Infrastructure NSW) (Licensee) dated 01 April 2019' dated 30 January 2020.

### **Construction Licence Matrix**

Means the *Third Party Agreement Matrix* of that name contained at Schedule 7 Part B.

### **Construction Management Plan**

Means the plan attached at Schedule 36.

### **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.

**Contamination**

- .1 Any waste, asbestos, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils.
- .2 Without limiting paragraph .1, has the meaning given to 'Contamination' in the *Contaminated Land Management Act 1997* (NSW).

**Contract**

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

**Contract Documents**

The Contract Documents as defined in the *Formal Instrument of Agreement* or specified in item 25.

**Contract Information**

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

**Contract Price**

The fixed, lump sum amount stated as such in Contract Information item 39, subject to adjustment in accordance with the Contract.

**Contract Program**

The program described in clause 22.

**Contractor**

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

**Contractor Background IP**

All *Intellectual Property Rights* owned by or licensed to the Contractor or any *Contractor's Personnel* (including know-how and technical information) which:

- .1 exists prior to the Date of Contract or is developed or acquired by the Contractor or the *Contractor's Personnel* independently of the Contract; and
- .2 is used by the Contractor or the *Contractor's Personnel* in the performance of the work in connection with the Contract or otherwise made available to the Principal under or in connection with the Contract but does not include the *Project IP*.

**Contractor Default Event**

Any of the following events or circumstances:

- .1 a substantial breach of the Contract by the Contractor. A substantial breach includes, but is not limited to, any of the following:
  - .1 suspending progress of the carrying out of the work in connection with the Contract in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
  - .2 the Contractor engaging in fraud, collusion or dishonest conduct in the performance of the work in connection with the Contract;
  - .3 failing to make payment to the Principal when such amount is due and payable under the Contract;
  - .4 significantly failing to achieve *Scheduled Progress*;
  - .5 failing to comply with an instruction in writing or confirmed in writing by the Principal;
  - .6 failing to carry out the Works with professional skill, care and competence;
  - .7 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
  - .8 failing to provide *Undertakings* or a *Parent Company Guarantee* as required under clause 33;

- .9 failing to comply with any provision of the Contract or any *Statutory Requirement* relating to the *Environment* or workplace health and safety;
  - .10 the Contractor assigning a right or benefit under the Contract without first obtaining the Principal's written consent;
  - .11 failing to effect and maintain insurance policies as required under the Contract;
  - .12 failing to rectify a *Defect* in accordance with a *Defect Notice*;
  - .13 failing to comply with clauses 39.24.1 or 71A;
  - .14 a breach by the Contractor of the Contract, including a *Third Party Agreement Matrix* applicable in respect of the *Agreement for Lease*, *Construction Licence* or *Ground Lease*, or the *WAD Matrix*, where such breach gives rise to an "Event of Default" or equivalent under a *Third Party Agreement* or the *WAD*; or
- .2 no earlier than [REDACTED] after the Date of Contract, (and not more than once every three months after that date), the *Principal's Authorised Person* determines on reasonable grounds that there is no reasonable prospect that the Contractor will achieve *Completion* by the date that is [REDACTED] after the *Contractual Completion Date*.

### **Contractor Insolvency**

Any of the following applying to the Contractor:

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

### **Contractor Termination Event**

Any of the following events or circumstances:

- .1 a *Default Notice* has been given under clause 73.1 and the Contractor fails to:
  - .1 if the *Contractor Default Event* is capable of being remedied:
    - .1 remedy the *Contractor Default Event* within the Cure Period;
    - .2 where clause 73.2.4 applies, submit a *Draft Cure Plan* in accordance with clause 73.2.4 or a revised *Draft Cure Plan* in accordance with clause 73.5; or
    - .3 comply with and implement the *Approved Cure Plan*, and otherwise diligently pursue the remediation of the *Contractor Default Event*; or
  - .2 if the *Contractor Default Event* is not capable of being remedied:
    - .1 submit a *Draft Mitigation Plan* in accordance with clause 73.7 or a revised *Draft Mitigation Plan* in accordance with clause 73.10; or
    - .2 comply with and implement the *Approved Mitigation Plan*;
- .2 the Contractor abandoning the whole or a substantial part of the work in connection with the Contract;
- .3 a *Change in Control* of the Contractor;
- .4 *Contractor Insolvency* or *Guarantor Insolvency*;
- .5 the Contractor's aggregate liability to the Principal exceeds the amount set out in Contract Information item 19;

- .6 the Contractor's liability to the Principal for liquidated damages equals or exceeds the liquidated damages liability cap set out in Contract Information item 20 and the Contractor has not, prior to such cap being reached, notified the Principal that it agrees to refresh such cap and continue to pay liquidated damages up to such refreshed cap pursuant to clause 51.11; or
- .7 the Contractor has notified the Principal that it agrees to refresh the liquidated damages liability cap set out in Contract Information item 20 prior to the liquidated damages liability cap being reached, and the Contractor's liability to the Principal for liquidated damages equals or exceeds the refreshed cap,

### **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 Documents**

The *Design Documentation*, the *Contractor's Plans*, and all other drawings, specifications, calculations and other documents and information which the Contractor must produce to design and construct the Works and to comply with its obligations under the Contract.

### **Contractor's Percentage 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.

### **Contractor's Personnel**

- .1 the *Contractor's Authorised Person*;
- .2 any Subcontractor, Supplier or Consultant;
- .3 any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of the Contractor, the *Contractor's Authorised Person* or a Subcontractor, Supplier or Consultant, including the *Key Personnel*; and
- .4 any other person engaged or employed by or on behalf of the Contractor in the performance of the work in connection with the Contract.

### **Contractor's Project Plans**

The plans, systems, manuals and documents (excluding *Design Documentation*) set out in Schedule 17 and Schedule 27 which are required to be submitted by the Contractor to the Principal pursuant to clause 32A.

### **Contractual Completion Date**

The day stated in Contract Information item 13, by which the Contractor must achieve *Completion* of the Works, as adjusted under the Contract.

### **Control**

Means:

- .1 control as defined in section 50AA of the Corporations Act; or
- .2 the power (whether legally enforceable or not) to, whether directly or indirectly:
  - .1 determine the management or policies of the entity;
  - .2 control the membership of the board or other governing body of the entity; or
  - .3 control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity,
 regardless of whether the power is in writing or not, enforceable or unenforceable, expressed or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise.

### **Core WAD Assumption**

Means those *WAD Assumptions* marked "\*\*\*" in section 8.11 of the Project Brief.

**Cost**

Includes any costs, charges and expenses (including financing costs, those incurred in connection with advisers and any legal costs and expenses on a full indemnity basis).

**COVID-19**

The COVID-19 virus that was the subject of the pandemic declared by the World Health Organisation on 11 March 2020.

**COVID-19 Management Plan**

The plan contained in Schedule 34.

**COVID-19 Management Plan Costs**

The nominal costs to the Contractor of implementing the COVID-19 Management Plan as set out in Schedule 34.

**COVID-19 Measures**

Any *Change in Statutory Requirements* that relates solely to the COVID-19 emergency or any measures, restrictions or regulations imposed to deal with the COVID-19 emergency.

**Cultural Heritage Artefacts**

The *Artefacts* set out in Contract Information item 36.

**Cure Period**

The cure period referred to in clause 73.1.3.

**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**

The date stated in the *Formal Instrument of Agreement*.

**Day 1 COVID Restrictions**

Has the meaning given to that term in clause 49A.1.

**Deed of Release**

The deed of release in the form set out in Schedule 24.

**Default Notice**

A notice issued by the Principal pursuant to clause 73.1.

**Defect**

An error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works or any other failure of the Works to comply with the Contract.

**Defects Liability Period**

The period stated in Contract Information item 53, as may be extended in accordance with clause 67.

**Defect Notice**

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

**Design Documentation**

All documents containing any engineering or designs created, or required by the Contract to be created, by or on behalf of the Contractor for the purposes of, or in connection with, the Works.

**Design Life**

Means the periods specified for the Works (or parts of the Works) in the *Project Brief*, commencing on *Completion* of the Works and ending on the day after expiry of the period specified in the *Project Brief*.

**Design Milestones**

Means the 'Design Milestones' contained in the *Document Submission Schedule*.

**Design Review Period**

The design review period stated in clause 39.13.

**Document Submission Schedule**

The document set out in Schedule 17.

**Draft Cure Plan**

The draft cure plan prepared by the Contractor pursuant to clause 73.2.4.

**Draft Mitigation Plan**

The draft mitigation plan prepared by the Contractor pursuant to clause 73.7.

**Early Access Condition**

Has the meaning given to that term in the *Agreement for Lease*.

**Early Access Stage**

Means the stage in the performance of the Works with respect to the Grandfathered Retail Area (as that term is defined in the *Agreement for Lease*) when the *Early Access Stage Condition* is satisfied.

**Early Access Stage Certificate**

Means the certificate issued by the Independent Certifier pursuant to clause 64A.6.1 or 64A.7.3.

**Early Works**

Has the meaning given to that term in the *Project Brief*.

**Early Works Completion**

Means the date on which the *Early Works Contractor* achieves completion of the *Early Works* as notified by the Principal to the Contractor.

**Early Works Contract**

Means the document which appoints the *Early Works Contractor* to carry out the *Early Works*.

**Early Works Contractor**

Means the contractor appointed by the Principal to carry out the *Early Works* pursuant to the *Early Works Contract*.

**Encumbrance**

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

**Environment**

Means components of the earth, including:

- .1 land, air and water, and
- .2 any layer of the atmosphere, and
- .3 any organic or inorganic matter and any living organism, and
- .4 human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs 1-3 (above).

**Environmental Management Plan**

The environmental management plan submitted by the Contractor pursuant to clause 26A.

**Environmental Statutory Requirements**

Any *Statutory Requirement* relating to any aspect of the *Environment* or health or having as its objective the protection or enhancement of the *Environment*, including the *Planning Approval*.



**EPBC Act**

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Exacerbate**

Has the meaning given in the *Construction Licence* and the *Ground Lease*.

**Excusable Delay Event**

The following events or circumstances are *Excusable Delay Events*:



**Expert**

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

**Expert Determination**

The process of determination of an *Issue* by an *Expert*, under clause 71 and the procedure in Schedule 5 (Expert Determination Procedure).

**Extra Land**

Has the meaning given in clause 37F.

**Fault**

Ambiguity, error, omission, inconsistency or discrepancy, including any inconsistency between the *Design Documentation* and the *Functional Requirements*.

**Final Completion**

That stage in the execution of the work in connection with the Contract when the *Defect Liability Period* has expired and the Contractor has rectified all *Defects* that arose during the *Defect Liability Period*.

**Final Environmental Site Assessment**

Has the meaning given in the *Construction Licence* and the *Ground Lease*.

**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.

**Fit for Purpose**

Means:

- .1 when used in the context of the Works that they:
  - .1 are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the *Project Brief*;
  - .2 are capable of remaining fit for their intended purposes, functions and uses applicable at the *Actual Completion Date* for the *Design Life* (as specified or reasonably inferred from the *Project Brief*). For the avoidance of doubt, the Contractor's compliance with this requirement will not be measured against future (i.e. post-*Completion*) advancements in technology or use; and
  - .3 otherwise meet the requirements set out in or which can be reasonably inferred from the Contract; and
- .2 when used in any other context, that the products, materials or other things:
  - .1 are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the *Project Brief*; and
  - .2 otherwise meet the requirements set out in or which can be reasonably inferred from the Contract.

**Floating Undertaking**

The *Undertaking* required under clause 58.8, for the amount stated in Contract Information item 33C.

**Force Majeure Event**

The following events or circumstances:

- .1 earthquake, fire, flood, lightning or landslide;
- .2 a cyclone (provided it has been named by the Bureau of Meteorology);
- .3 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, act of public enemies, sabotage, malicious damage, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- .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; or
- .5 strikes, industrial disputes or industrial action on a national or state-wide basis, provided such event or circumstance:
  - .6 is beyond the reasonable control of the affected party;
  - .7 is not caused or contributed to by a breach of the Contract, or a negligent or unlawful act or omission of, the affected party or its respective contractors, consultants, employees, directors or agents;
  - .8 causes or results in default, or delay in the performance, by the affected party of any of its obligations under the Contract; and
  - .9 could not reasonably have been expected to have been prevented, avoided or overcome by the affected party exercising a standard of care and diligence consistent with that of a prudent and competent person in the circumstances.

### **Formal Instrument of Agreement**

The document entitled "Formal Instrument of Agreement" between the parties to which these GC21 General Conditions of Contract are attached.

### **Functional Requirements**

Has the meaning given in the *Agreement for Lease*.

### **Ground Construction Slab**

Has the meaning given in the *Construction Licence* and as further detailed in the *Project Brief*.

### **Ground Lease**

Means the 99 year lease of the *Land* from the *Licensor* to the Principal which is substantially in the same form as the document provided to the Contractor at the Date of Contract.

### **Ground Lease Matrix**

Means the *Third Party Agreement Matrix* of that name contained in Schedule 7 Part C.

### **Guarantor**

The entity identified at Contract Information item 12B.

### **Guarantor Insolvency**

Any of the following applying to the *Guarantor*:

- .1 the *Guarantor* is insolvent;
- .2 an application for winding up is made which is not stayed within 14 days;
- .3 a winding-up order is made;
- .4 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- .5 a mortgagee enters into possession of any property of the *Guarantor*;
- .6 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- .7 any actions having a similar effect are taken

### **Harbour Master Approval**

Means any required approvals from the *Ports Authority*.

**Indemnified Parties**

Means:

- .1 Infrastructure NSW;
- .2 the *Licensor*, the Minister for Roads, Maritime and Freight and the State of NSW (as those parties are described in the *Construction Licence*); and
- .3 the *Landlord*, the Minister for Roads, Maritime and Freight and the State of NSW (as those parties are described in the *Ground Lease*).

**Independent Certifier**

Means the independent certifier appointed under the *Agreement for Lease* and the *Independent Certifier Deed* (as applicable).

**Independent Certifier Deed**

Means a deed substantially in the form contained in Schedule 32, to be entered into between the Principal, the Contractor and the *Independent Certifier*.

**Information Documents**

Any information, data or document which is:

- .1 listed or referred to in Schedule 26;
- .2 issued or made available by, or on behalf of, the Principal or the New South Wales Government to the Contractor in connection with the Call for Expressions of Interest for the Project (Call for EOI), the Request for Tender for the Project (RFT), or the Project (including, without limitation, anything issued or made available through the Principal's website or a data room) and which at the time of issue (or being made available) is expressly classified or stated to be an 'Information Document';
- .3 issued or made available by, or on behalf of, the Principal or the New South Wales Government to the Contractor in connection with the Call for EOI, the RFT or the Project (including, without limitation, anything issued or made available through the Principal's website or a data room), but which is not intended to form part of the Call for EOI or the RFT (as applicable), regardless of whether or not it is expressly classified or stated to be an 'Information Document'; or
- .3 referred to or incorporated by reference in an Information Document, whether issued or made available on, before or after the Date of Contract, other than any document which the Principal is obliged by the terms of the Contract to provide to the Contractor and the Contractor is expressly obliged by the terms of the Contract to rely on.

**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.

**Key Architectural Details**

Has the meaning given in section 7 of the *Project Brief*.

**Key Personnel**

The key personnel named in Contract Information item 12 and any replacement person appointed by the Contractor pursuant to clause 31A.

**Key Plant and Equipment**

Means the following:

Key Plant and Equipment	Key Plant and Equipment Manufacturing Country
steel piles and sheet piles	Japan, Korea, China
structural steel	China, Vietnam
glazed facade panel	China, Vietnam
timber beams	Italy/Austria (via Netherlands)

lifts and escalators	Thailand Indonesia China Switzerland (via Netherlands) Germany
generators	China, United States of America
chillers	China
crate washers	Netherlands

**Key Plant and Equipment Manufacturing Country**

Means in respect of each item of Key Plant and Equipment, the country of its manufacture as set out in the table in the definition of Key Plant and Equipment.

**Land**

Has the meaning given in the *Construction Licence* and the *Ground Lease* (as applicable).

**Land Users**

Has the meaning given in clause 36.

**Landlord**

Has the meaning given in the *Ground Lease*.

**Licensed Area**

Has the meaning given in the *Construction Licence*.

**Licensor**

Has the meaning given in the *Construction Licence*.

**Loss**

Loss means all damage, loss, liability and *Cost* of whatever nature or description.

**Material Adverse Effect**

Has the meaning given in the *Agreement for Lease*.

**Materials**

Includes materials, plant, equipment and other goods.

**Minimum Area**

Has the meaning given in the *Agreement for Lease*.

**Minimum Additional Retail Area**

Means at least 5,819m<sup>2</sup> of 'Additional Retail Area' as that term is defined in the *Agreement for Lease*.

**Minimum Parking Spaces**

Has the meaning given to that term in clause 42A.3.2.

**Modification**

Has the meaning given in the *Agreement for Lease*.

**nSFM**

Means the design, construction and commissioning of the New Sydney Fish Market development.

**NSW Code**

Means the NSW Government Code of Practice for Procurement.

**NSW Guidelines**

Means the NSW Industrial Relations Guidelines for Building and Construction Procurement described in clause 13.1.

**NSW Government Policy and Guidelines**

Means the policies and guidelines specified in clause 15.

**Parent Company Guarantee**

The guarantee provided on behalf of the Contractor pursuant to clause 33.19.

**Parent Company Guarantee Replacement Event**

Any of the following:

- .1 *Guarantor Insolvency*;
- .2 the *Guarantor* suffers a drop in its long term credit rating; or
- .3 the *Parent Company Guarantee* becomes invalid or unenforceable.

**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.

**Permitted Use**

Has the meaning given in the *Agreement for Lease*.

**Personal Information**

Personal Information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

**Planning Approval**

The *Planning Approval (Stage 1)* and the *Planning Approval (Stage 2)*.

**Planning Approval (Stage 1)**

Means the approval of a development application or applications which approves the concept of the New Sydney Fish Market and grants consent for demolition and enabling works which form part of the *Early Works*.

**Planning Approval (Stage 2)**

Means the approval of a development application or applications which grants consent for the construction and operation of a new fish market including land and water based structures for the use of the Site for the fish market including waterfront commercial and tourist facilities and ancillary uses which forms part of the Works.

**Post-Completion Step-down Undertaking**

The *Undertaking* required under clause 33.13.2, for the amount stated in Contract Information item 33A.

**Post-Completion Undertaking**

The *Undertaking* required under clause 33.1, for the amount stated in Contract Information item 33.

**Post DLP Undertaking**

The *Undertaking* required under clause 33.13.3, for the amount stated in Contract Information item 33B.

**PPSA**

The *Personal Property Securities Act 2011* (Cth).

**Pre-Agreed Variations**

Any of the *Variations* set out in Schedule 10.

**Preferred Consultant**

A Consultant listed in Contract Information item 30 for a specified service or area of specialism.

**Preferred Subcontractor**

A Subcontractor or Supplier listed in Contract Information item 30 for a specified trade or area of work.

**Preliminaries**

The document contained in Schedule 27.

**Preliminary Design**

The preliminary design included in Schedule 30.

**Premises**

Has the meaning given in the *Agreement for Lease*.

**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.

**Privacy Act**

The *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

**Project Brief**

The Principal's project requirements for the Works set out in Schedule 14.

**Project IP**

All *Intellectual Property Rights* created or coming into existence as a result of, for the purpose of or in connection with the performance of the work in connection with the Contract by the Contractor or the *Contractor's Personnel* and its other obligations under the Contract.

**Project Objectives**

means the Principal's objectives for the *nSFM*, as set out at section 2.2 of the 'Request for Tender' issued to the Contractor on 22 May 2020.

**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.

**RCTI**

Means the tax invoice referred to in clause 56.3.

**Remediation**

Has the meaning given to it in the *Contaminated Land Management Act 1997* (NSW).

**Remediation Action Plan**

The remediation action plan contained in Schedule 22.

**Records**

Means the records referred to in clause 6.12.

**Reimbursable Expense**

Means the type of expense defined in clause 56.6.

**Required Rating**

A credit rating of at least A- by Standard & Poor's (Australia) Pty Limited or A3 from Moody's Investors Services, Inc, or, if no rating is provided by Standard & Poor's

(Australia) Pty Limited or Moody's Investors Services, Inc, an equivalent credit rating issued by another generally recognised international credit rating agency.

**Seawall**

Means the existing retaining structure that supports the land side of the Site referred to in section 8.13 of the *Project Brief*.

**Schedule of Rates**

Means the schedule of rates contained in Schedule 15.

**Scheduled Amount**

The amount of payment (if any) stated in a *Payment Schedule* or *Final Payment Schedule* (as applicable), that the Principal proposes to make in relation to a *Payment Claim* or *Final Payment Claim* (as applicable), as referred to in clause 59.1.2 and clause 61.

**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 will be completed by the *Contractual Completion Date*.

**Scheme**

The *Australian Government Building and Construction OHS Accreditation Scheme*.

**Separable Portion**

Means the separate portions of the work in connection with the Contract which are identified in clause 7 and such other portion of the work in connection with the Contract directed by the *Principal's Authorised Person* pursuant to clause 7.

**Separate Contractor**

- .1 A contractor engaged by the Principal (other than the Contractor or the *Contractor's Personnel*) to carry out work on the Site. It includes a contractor that is engaged at the Date of Contract and any contractor engaged after the Date of Contract.
- .2 A contractor (other than the Contractor or the *Contractor's Personnel*) that is engaged by the *Tenant*, the State, the Commonwealth, a utility or any other *Authority* is performing work on the Site, including any 'Third Party Works' (as that term is defined in the *Project Brief*).

**Separate Contractor Deed**

A deed substantially in the form attached at Schedule 29.

**Site**

The land to be made available by the Principal to the Contractor for the purpose of executing the work in connection with the Contract, as described in Contract Information item 2.

**Site Access Conditions**

The Site access conditions set out in Part C of Schedule 18.

**Site Access Date**

The dates for access to the Site set out in Part B of Schedule 18.

**Site Auditor**

Means a person accredited as a site auditor under Part 4 of the *Contaminated Land Management Act 1997* (NSW).

**Site Conditions**

Any physical conditions of the 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.

**Stakeholder Management and Community Engagement Plan**

The stakeholder management and community engagement plan set out in Schedule 21.



**Statutory Requirements**

The laws relating to the Works or the Site, or the lawful requirements of any *Authority* or provider of services having jurisdiction over the Works, the Site, the environment or the Contract, or anyone or anything connected with the Works or the Site or the Contract, including any *Approvals*.

**Step-In Event**

A Step-In Event as defined in clause 72A.1.

**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.

**Subcontractor Statement**

The form prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relation Act 1996* (NSW) as set out in Part 2 of Schedule 6.

**Supplier**

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

**Supporting Statement**

The form prepared for the purpose of section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) as set out in Part 1 of Schedule 6.

**Target Early Access Date**

Means the date that is 16 weeks prior to the *Contractual Completion Date* of *Separable Portion 1*.

**Target Practical Completion Date**

Has the meaning given in the *Agreement for Lease*.

**Taxes**

Taxes means taxes, levies, imposts, charges and duties (including customs duties and stamp and transaction duties) paid, payable or assessed as being payable by any *Authority* together with any fines, penalties and interest in connection with them.

**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.

**Tenant**

Has the meaning given in the *Agreement for Lease*.

**Tender Process**

Means the interactive tender process conducted in the course of the procurement of the Contract during which the Contractor reviewed the *Project Brief*.

**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.

**TfNSW**

Means Transport for New South Wales.

**Third Parties**

Means a party to a *Third Party Agreement* other than the Principal.

**Third Party Agreements**

Means each of:

- .1 the *Construction Licence*;
- .2 the *Agreement for Lease*; and
- .3 the *Ground Lease*.

**Third Party Agreement Matrix**

Means each of the matrices contained in Schedule 7.

**Unacceptable Condition (Tenant)**

Has the meaning given in the *Agreement for Lease*.

**Undertaking**

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

**Undertaking Replacement Event**

In respect of any *Undertaking* issued under the Contract:

- .1 the providing financial institution becomes insolvent;
- .2 the providing bank or financial institution suffers a drop in its long term credit rate to less than the *Required Rating*;
- .3 the Principal having recourse to all or part of the *Undertaking*; or
- .4 the *Undertaking* becomes invalid or unenforceable.

**Unidentified Site Conditions**

### **Uninsurable Force Majeure Event**

A *Force Majeure Event* in respect of which insurance is not available in the recognised international insurance market in respect of that risk generally at the time that such insurance ought to be obtained by a reasonable and prudent contractor provided that the uninsurability is not caused or contributed to (directly or indirectly) by any act, default or omission of the Contractor or the *Contractor's Personnel* (whether negligent or otherwise) or the breach of any *Statutory Requirement* by the Contractor or the *Contractor's Personnel* or as a result of the claims history of the Contractor under any policy of insurance.

### **Unresolved Claim**

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

### **Utilities**

Includes any service, utility, facility or item of infrastructure for the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including pipe, open or subsoil drains), sewerage, industrial waste disposal, lighting, CCTV and electronic communications service.

### **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).

### **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 *Design Documentation*) in accordance with the requirements of the Contract.

### **Variation Order**

A Variation Order as described in clause 48.1.

### **Variation Proposal**

A Variation Proposal as described in clause 48.4.

### **Variation Request**

A Variation Request as described in clause 48.3.

### **WAD Assumptions**

The assumptions contained at section 8.11 of the Project Brief.

### **WAD Baseline Conditions**

The template conditions contained at Part A of Schedule 31 which represent TfNSW's standard form works authorisation deed and which have not been tailored to the New Sydney Fish Market project.

### **WAD Baseline Matrix**

The draft WAD matrix contained at Part B of Schedule 31.

### **WAD Matrix**

The matrix to be developed in accordance with clause 6C.

**WAD Works**

Means the Bridge Road amendments and the Bridge Road shared path contemplated by the draft *Planning Approval* as further particularised in the *Project Brief*.

**WHS Legislation**

The *Work Health and Safety Act 2011* (NSW) and the *WHS Regulation (2017)*.

**WHS Plan**

The workplace health and safety plan submitted by the Contractor pursuant to clause 16.

**WHS Regulation (2017)**

The *Work Health and Safety Regulation 2017* (NSW).

**work in connection with the Contract**

All the *Materials* to be supplied and the whole of the work and services to be performed by the Contractor pursuant to the Contract to design, engineer, procure, supply, construct, install, test, commission and hand over the Works in accordance with the Contract and includes:

- .1 all work stated in the *Project Brief* and the *Preliminaries*;
- .2 all work that is not specifically mentioned in the Contract but can be reasonably inferred by an experienced and competent contractor as being required for the proper performance of the Works as if such works were expressly stipulated in the Contract; and
- .3 the work associated with any *Variation*.

**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.

**Works Authorisation Deed or WAD**

Means the works authorisation deed authorising the *WAD Works* to be entered into by the Principal and *TfNSW*.

# Contract Information

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

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## Contract

Item

### 1 Contract name

The Contract name is: New Sydney Fish Market Main Works Project

The Contract number is: RFT-10031871

### 2 Site

*Defined in clause 79*

The Site is: The licensed area as set out in Part A of Schedule 18

### 3 Description of the Works

The Works are: *Mentioned in clause 8.1 and clause 79*  
The design and construction of the nSFM building, operational and public wharves, public realm and the Bridge Road works.

---

## Principal's details

### 4 Principal

*Defined in clause 79*

The Principal is: Infrastructure NSW

### 5 Principal's Authorised Person

*Mentioned in clause 2 and defined in clause 79*

The Principal's Authorised Person is:



### 6 Notices to the Principal

*Mentioned in clause 11*

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

Office address: Level 27, 201 Kent St, Sydney NSW 2000  
(for delivery by hand)

Postal address: Level 27, 201 Kent St, Sydney NSW 2000  
(for delivery by post)

e-mail address:



**7 Principal's senior executive***Mentioned in clauses 69 & 70*

The Principal's senior executive is:

Office address:  
(for delivery by hand)

Level 27, 201 Kent St, Sydney NSW 2000

Postal address:  
(for delivery by post)

Level 27, 201 Kent St, Sydney NSW 2000

e-mail address:

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**Contractor's details****8 Contractor**

The Contractor is:

Multiplex Constructions Pty Limited  
ABN 70 107 007 527**9 Contractor's Authorised Person**The Contractor's Authorised  
Person is:*Mentioned in clause 2***10 Notices to the Contractor***Mentioned in clause 11**Notices must go to the Contractor's Authorised Person named above, at the address or number shown here.*Office address:  
(for delivery by hand)Level 22, 135 King Street, Sydney  
NSW 2000Postal address:  
(for delivery by post)Level 22, 135 King Street, Sydney  
NSW 2000

e-mail address:

**11 Contractor's senior executive***Mentioned in clause 70*The Contractor's senior executive  
is:Office address:  
(for delivery by hand)Level 22, 135 King Street, Sydney  
NSW 2000

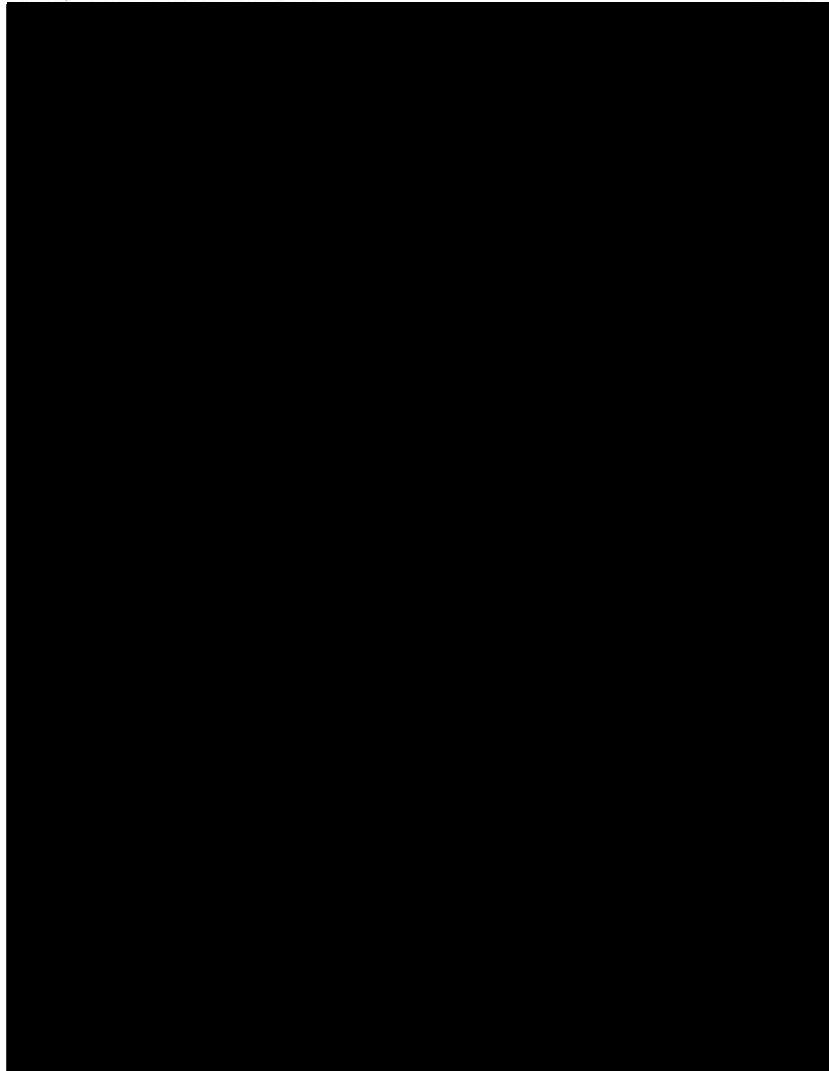
e-mail address:

**12 Key Personnel***Mentioned in clause 31A.1**The Contractor's Key Personnel are:*

Name	Position

**12A Approved Subcontractors***Mentioned in clause 29.3..1**The Approved Subcontractors are:*

--



**12B Guarantor**

The *Guarantor* is:

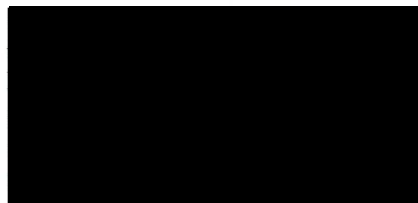
Multiplex Pty Limited

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**Dates and times**

**13 Time for Completion**

The *Contractual Completion Date*  
is:





## Statutory and Government requirements

### 14 Fees, charges and approvals

Approvals that have been obtained or will be obtained, and fees and charges that have been paid or will be paid, by the Principal are:

*Mentioned in clause 12*  
*Planning Approval (Stage 1)*  
*Planning Approval (Stage 2)*  
*EPBC Act Approval (if required)*

### 14A Conditions of Approvals

Conditions of the *Planning Approval* that will be discharged by the Principal are:

*Mentioned in clause 12*  
 Those items attributed to the Principal in the matrix included in Schedule 8

### 15 Compliance with NSW Government guidelines

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

Is the Contractor required to implement a Corporate WHS Management System acceptable to the Principal? (Yes/No)

Yes

*Mentioned in clause 15*

Is the Contractor required to submit a WHS Plan in accordance with the WHS Regulation (2017)? (Yes/No)

Yes

If required, the WHS Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

#### B - Workplace Relations

Is the Contractor required to submit a Workplace Relations Management Plan? (Yes/No)

Yes

*Mentioned in clause 15*

If required, the Workplace Relations Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

#### C - Quality Management

Is the Contractor required to implement a certified Quality Management System? (Yes/No)

Yes

*Mentioned in clause 15*

Is the Contractor required to submit a Quality Management Plan? (Yes/No)

Yes

If required, the Quality Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

#### **D - Environmental Management**

Is the Contractor required to implement an accredited Environmental Management System? (Yes/No)

Yes

*Mentioned in clause 15*

Is the Contractor required to submit an Environmental Management Plan? (Yes/No)

Yes

If required, the Environmental Management Plan must be provided:

By the date for submission set out in the Document Submission Schedule.

#### **E - Training Management**

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

Yes

*Mentioned in clause 15*

#### **F - Aboriginal Participation**

The Aboriginal Participation Project Category is:

Category 2

*Mentioned in clause 15*

An Aboriginal Participation Plan must be provided:

An Aboriginal Participation Report must be provided:

Is the Contractor required to submit copies of the Aboriginal Participation Plan and Participation Report to the NSW Procurement Board? (Yes/No)

### **16 Requirements for Commonwealth Funded projects**

#### **16A - Building Code 2016**

*Mentioned in clause 13.15*

Is the Contractor required to comply with the Building Code 2016? No

### 16B - Australian Government Building and Construction OHS Accreditation Scheme

*Mentioned in clause 17*

Is the Contractor required to maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme? No

### 17 Principal contractor

*Mentioned in clause 16A*

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

### 18 Working hours and working days

*Mentioned in clause 18*

Working hours and working days are: As per *Planning Approval (Stage 2)* Conditions C2 to C7 inclusive

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## Liability

### 19 Limitation of liability

*Mentioned in 26.8 and 26.9*

Subject to clause 26.9, the limit of the Contractor's liability to the Principal and *TfNSW* in the aggregate:

### 20 Cap on liquidated damages

*Mentioned in clause 51.11*

The Contractor's liability for liquidated damages is limited to:

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## Insurance

### 21 Works insurance

*Mentioned in clause 27.1.1*

The party responsible for effecting Works insurance is: The Principal

Minimum cover is:

Additional cover required:

Named Insureds:

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible is

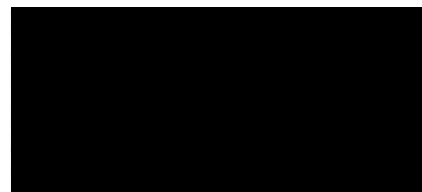
Not applicable

**22 Public liability insurance***Mentioned in clause 27.1.2*

The party responsible for effecting public liability insurance is:

The Principal

Minimum cover is:



Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible is:

Not applicable

**23 Workers compensation insurance***Mentioned in clause 27.2.1*

Minimum cover is:

as required by law.

Period of cover is:

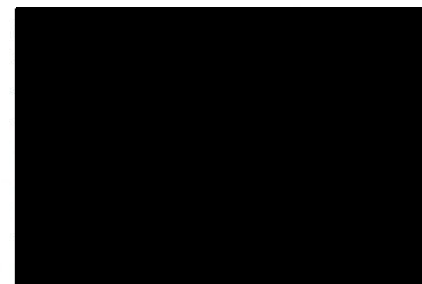
From the Date of Contract until the expiry of the *Defects Liability Period*.**24 Professional indemnity insurance***Mentioned in clause 27.2.2*

Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No)

Yes

Minimum cover is:

Indemnity to Principal



Period of cover is:

until the date that is 7 years after the Actual Completion Date.

Maximum deductible

Not applicable

**24A Construction Equipment insurance***Mentioned in clause 27.2.3*

Insured Property

All construction equipment

Minimum cover is:



Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible

Not applicable

#### **24B Motor Vehicle insurance**

*Mentioned in clause 27.2.4*

Minimum cover for third party  
bodily injury or damage to property  
is:

Minimum cover for compulsory  
third party:

As required by law

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible

Not applicable

#### **24C Marine insurance**

*Mentioned in clause 27.2.5*

Minimum cover is:

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible

Not applicable

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## **Contract Documents**

### **25 Other Contract Documents**

*Mentioned in definition of Contract Documents*

Other *Contract Documents* (not  
listed in the Formal Instrument of  
Agreement) are:

Base Building Brief Rev 11, dated 21  
April 2020  
1.

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## **Principal's Documents**

### **26 Copies of Principal's Documents**

*Mentioned in clause 41*

The number of copies of the  
*Principal's Documents* to be  
provided to the Contractor is:

1 electronic copy.



## Contractor's Documents

### 27 Copies of Contractor's Documents

*Mentioned in the definition of Contractor's Document*

The number of copies of the *Contractor's Documents* to be provided to the Principal is:

1 Hard Copy, 1 soft copy (PDF or native format as otherwise required by contract)

## Subcontract work

### 28 Inclusion of consistent requirements in Subcontracts

*Mentioned in clause 28.4*

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

[REDACTED]

### 29 Payment period for Subcontracts

*Mentioned in clause 28.4.2*

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 28, is:

20 Business Days.

### 30 Subcontractors and Consultants

*Mentioned in clause 29.4, 29.6 and 29.6*

The *Preferred Subcontractors* referred to in clause 29 are:

The *Preferred Consultants* referred to in clause 29 are:

BVN (Documenting Architect)  
Aspect Studio (Landscape Architect)

The Consultants to be novated to the Contractor referred to in clause 29 are:

N/A

### 31 Subcontractor's warranty

*Mentioned in clause 30.1*

Trades or areas of work requiring a Subcontractor's warranty are:

All of the Approved Subcontractors listed in Item 12A and any other Subcontractor whose scope of work exceeds [REDACTED] in value

## Undertakings

### 32 Completion Undertaking

*Mentioned in clause 33.1*

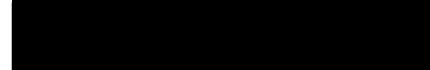
The amount of the *Completion Undertaking* is:



### 33 Post-Completion Undertaking

The Amount of *Post-Completion Undertaking* is:

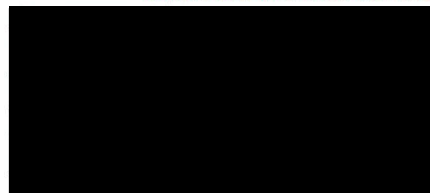
*Mentioned in clause 33.1*



#### 33A Post-Completion Step-down Undertaking

The Amount of *Post-Completion Step-down Undertaking* is:

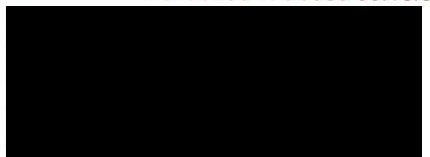
*Mentioned in clause 33.13.2*



#### 33B Post DLP Undertaking

The Amount of *Post DLP Undertaking* is:

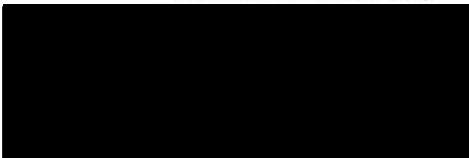
*Mentioned in clause 33.13.3*



#### 33C Floating Undertaking

The amount of *Floating Undertaking* is:

*Mentioned in clause 58.8*



### 34 Return of Post-DLP Undertaking

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

*Mentioned in clause 33.13.2*

Within 10 *Business Days* after the issue of a *Final Completion Certificate*

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## Cultural Heritage Artefacts

### 35 Not Used

### 36 Cultural Heritage Artefacts

*Mentioned in the definition of Cultural Heritage Artefacts*

The *Cultural Heritage Artefacts* are:

The discovery of the following Artefacts on or under the Site:

- European cultural heritage
- Indigenous cultural heritage,

except where the Contractor was made aware of the existence and location of such Site Conditions prior to the Date of Contract.

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## Design and documentation

### 37 Scope of design activities

#### 37A - Not Used

#### 37B - Building Code of Australia

*Mentioned in clauses 39 & 43*

Does the Building Code of  
Australia apply? (Yes/No) Yes

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## Innovation

### 38 Innovation

*Mentioned in clause 40.5*

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



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## Payments

### 39 Contract Price

*Mentioned in the definition of Contract Price*


The Contract Price is:



### 40 Provisional Sums

*Mentioned in clause 55.3*

*Provisional Sum* items referred to  
in clause 55.3 are:

 excluding GST for Active  
Equipment including for the design,  
procurement, installation, builders  
works and commissioning noted in  
Project Brief Appendix 14

### 41 Provisional Sum margin

*Mentioned in clause 55.3*

The *Provisional Sum* margin  
includes profit and off Site  
overheads:

»  
("and on Site overheads including  
attendance and administration" applies  
if not filled in).

The *Provisional Sum* margin is:

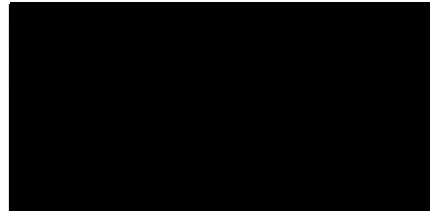
»  
("10%" applies if not filled in).



**42 Contractor's Percentage Margin***Mentioned in clauses 47 and 79*

The *Contractor's Percentage Margin* includes profit and off-Site overheads:

The percentage for *Contractor's Percentage Margin* is:

**43 Not used****44 Date for Payment Claims***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.

**45 Not Used****46 Interest on late payments***Mentioned in clause 62*

The rate of interest per annum is:



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**Delay costs and Liquidated damages****47 Delay costs cap***Mentioned in clause 51*

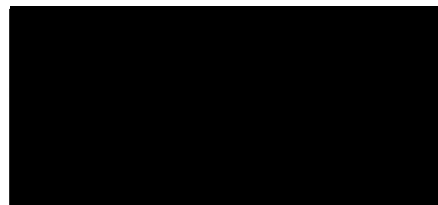
Upper limit per day for which delay costs payable:

**48 Liquidated damages***Mentioned in clause 51.8 and 51.14*

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

Yes

The rate per day for liquidated damages is:



## Expert Determination

### 49 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.

### 50 Expert Determination representative

*Mentioned in clause 11 and 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.

Office address:  
(for delivery by hand)

As shown in Contract Information item 7.

e-mail address:

As shown in Contract Information item 7.

### 51 Person to nominate an Expert

*Mentioned in clause 71*

The person is:

Chief Executive Officer  
Australian Commercial Disputes  
Centre  
Level 16  
1 Castlereagh Street  
Sydney NSW 2000

Telephone number:

(02) 9239 0700

Facsimile number:

(02) 9223 7053

### 52 Threshold amount for litigation

*Mentioned in clause 71*

The threshold amount for litigation following an *Expert's* determination is:

- (a) for any individual determination by the *Expert*: [REDACTED]
- (b) for multiple determinations by the *Expert* which are individually below the threshold in (a) above, the aggregate limitation is: [REDACTED]

## Defects Liability

### 53 Defects Liability Period

The *Defects Liability Period* is:

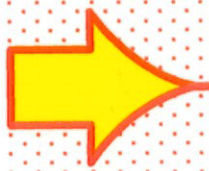
The period commencing on the *Actual Completion Date* and, subject to any extension in accordance with clause 67, expiring on the date that is [REDACTED] after the *Actual Completion Date* for the whole of the Works.

## Signing page

DATED: 22 October 2020.

Signed sealed and delivered by  
**Simon Draper** as Chief Executive  
Officer of **Infrastructure NSW** pursuant  
to the Infrastructure NSW Act 2011  
in the presence of

**SIGN  
HERE**



[Redacted signature of witness]

Signature of witness

[Redacted name of witness]

Name of witness (block letters)

[Redacted signature]

Signature



**EXECUTED** by **Multiplex  
Constructions Pty Ltd** ABN 70 107  
007 527 in accordance with section  
127(1) of the *Corporations Act 2001*  
(Cth) by authority of its directors:

**SIGN  
HERE**



[Redacted signature of director]

Signature of director

[Redacted name of director]

Name of director (block letters)

[Redacted signature of director/company secretary]

Signature of director/company  
secretary\*

\*delete whichever is not applicable

[Redacted name of director/company secretary]

Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

