



Formal Instrument of Agreement

Powerhouse Parramatta Project

Dated 16 September 2021

Infrastructure New South Wales ABN 85 031 302 516 ("**Principal**")
Lendlease Building Pty Ltd ACN 000 098 162 ("**Contractor**")

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Formal Instrument of Agreement

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Formal Instrument of Agreement

Details

Parties	Principal and Contractor	
Principal	Name	Infrastructure New South Wales
	ABN	ABN 85 031 302 516
	Address	Level 27, 201 Kent Street, Sydney, NSW 2000
	Attention	[REDACTED]
Contractor	Name	Lendlease Building Pty Ltd
	ACN	000 098 162
	Address	Level 14, Tower Three, International Towers Sydney Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
	Attention	[REDACTED]
Recitals	A	The Principal has committed to building the new Powerhouse Museum in Parramatta (" Project ").
	B	The Project will be operated by the Museum of Applied Arts and Science.
	C	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.
	D	In reliance on the representations in Recital C, the Principal wishes to engage the Contractor to perform the work in connection with the Contract on the terms set out in the Contract.

Formal Instrument of Agreement

The parties agree as follows:

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 of Contract 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.

Corporations Act means the *Corporations Act 2001* (Cth).

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

General Conditions means the document titled "GC21 (Edition 2) General Conditions of Contract" attached 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 meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (p) references to the word “agreed” means agreed in writing;
- (q) references to A\$, \$ and AUD means Australian Dollars, the lawful currency of the Commonwealth of Australia; and
- (r) 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 take 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.

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;
 - (iii) the Contract Information;
 - (iv) the Project Brief;
 - (v) the Preliminary Design;
 - (vi) the remaining Schedules (other than the Project Brief);
 - (vii) the other Contract Documents listed in Contract Information item 25; and
 - (viii) the Details.
- (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).

3 General

3.1 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).

3.2 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.

3.3 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.

3.4 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.

3.5 Non-Waiver

- (a) Subject to clause 3.5(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.

3.6 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).

3.7 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.

3.8 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.

3.9 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.

3.10 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.

3.11 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.

3.12 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.

3.13 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 3.5;
 - (iii) clause 3.8; and
 - (iv) those clauses referred to in clause 105 of the General Conditions of Contract.
- (b) The provisions of the Contract survive expiry or termination of the Contract to the extent necessary to give effect to clause 3.13(a).

3.14 Electronic Execution

- (a) The parties acknowledge and agree that:
 - (i) a party may sign this document electronically and bind itself to this document by executing in that manner; and
 - (ii) a party's signature (whether affixed to this document electronically or in handwriting) may be witnessed remotely in accordance with any applicable laws.
- (b) A person whose signature appears in this document (when affixed electronically) acknowledges that it is their signature and that that relevant signatory affixed (or expressly authorised the affixing of) their signature to this document in order for that relevant party to execute this document.
- (c) This document may be executed in any number of counterparts, each of which:
 - (i) may be executed electronically or in handwriting; and
 - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.
- (d) Without limiting the foregoing, if the signatures of, or on behalf of, one party are on more than one copy of this document, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this document and the parties acknowledge that each such copy executed by a company registered under the Corporations Act 2001 (Cth) will have been executed in a manner consistent with section 127 of the Corporations Act 2001 (Cth).

EXECUTED as an agreement

Signing page

DATED: 16 September 2021

Signed sealed and delivered by)
 [Redacted] as [Redacted])
 [Redacted] of **Infrastructure NSW** pursuant)
 to the Infrastructure NSW Act 2011)
 in the presence of)
 [Redacted])
)
 Sign)
 [Redacted])
)
 Name of witness (block letters))

[Redacted])
)
 Signature)
 [Redacted])

EXECUTED by LENDLEASE)
BUILDING PTY LTD in accordance)
 with section 127(1) of the *Corporations*)
Act 2001 (Cth) by authority of its)
 directors:)
 [Redacted])
)
 Signature of director)
 [Redacted])
)
 Name of director (block letters))

[Redacted])
)
 Signature of director/company)
 secretary*)
 *delete whichever is not applicable)
 [Redacted])
)
 Name of director/company secretary*)
 (block letters))
 *delete whichever is not applicable)



New South Wales Government

GC21 (Edition 2)

General Conditions of Contract

Powerhouse Parramatta Project

Preface

GC21 (Edition 2) General Conditions of Contract (modified)

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

Contract Agreement

Contract Information

Schedules

Attachments

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

Unless noted otherwise, copies of the Codes and Guidelines referred to in the GC21 (Edition 2) General Conditions of Contract may be obtained from Categories/Construction on the buy.nsw.gov.au website with address:

<https://buy.nsw.gov.au/categories/construction>

These are as follows:

- Work Health & Safety management guidelines (for Construction Procurement) (Edition 6)
<https://buy.nsw.gov.au/categories/construction>
- Quality management guidelines (Construction Procurement) (Edition 4)
<https://buy.nsw.gov.au/categories/construction>
- Environmental management guidelines (Construction Procurement) (Edition 4)
<https://buy.nsw.gov.au/categories/construction>
- Skills and training in construction guide
<https://buy.nsw.gov.au/categories/construction>
(For Infrastructure Skills Legacy program refer to:
https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html)
- Aboriginal Procurement Policy
<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>
- NSW Government *Supplier Code of Conduct*
<https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>
- NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013, updated September 2017)
<https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/>

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Preface

The GC21 Edition 2 General Conditions of Contract

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

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

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

Using this document

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

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

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

Contract framework

Roles and relationships

1 General responsibilities

- .1 The Contractor must:
 - .1 remediate the Site as required by the Contract;
 - .2 design and construct the Works in accordance with the Contract; and
 - .3 perform and observe all its other obligations under the Contract.
- .2 The Principal must:
 - .1 pay the Contractor:
 - .1 the Actual Construction Costs;
 - .2 the Preliminaries Fee;
 - .3 the Management Fee;
 - .4 any Share of Savings; and
 as calculated in accordance with the Contract, provided that the aggregate of the above amounts will not exceed the *GMP*; and
 - .2 perform and observe all its other obligations under the Contract.
- .3 The *Preliminaries* and the *Management Fee* may be adjusted as provided for in the Contract.
- .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 with such instructions.

2 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 2.1, 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 under this Contract and will not entitle the Contractor to make any *Claim* against the Principal other than a *Claim* against the Principal for breach of the Contract by the Principal in its capacity as a party to this Contract.
- .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 it bears the full risk of all occurrences of the kind referred to in clause 2.32.3.2 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).

3 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, however the *Principal's Authorised Person* must act reasonably in carrying out the *Principal's Authorised Person's* functions under clauses 71.6, 72.13, 77.1, 83.1, 84.2, 88.6 and 91.3.
- .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.

4 Co-operation and Collaboration

- .1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.
- .2 The parties agree that in undertaking their respective obligations under this Contract, they will have due regard to and seek to achieve the *Objectives* and further will use their best endeavours to comply with the *Collaboration Principles*.
- .3 The Contractor acknowledges and agrees that compliance with the provisions of clause 4.2 does not in any way affect or reduce the other obligations of the Contractor under this Contract.

5 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.

6 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 of 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.
- .2 Compliance with clause 6.1 does not excuse the Contractor from compliance with any other provision of this Contract which requires the Contractor to give notice to the Principal or the *Principal's Authorised Person*.

7 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; and
 - .2 monthly progress reports on the work in connection with the Contract covering such matters as the Principal shall require.
- .2 The Contractor must provide:
 - .1 the weekly progress report under clause 7.17.1.1 at least 2 *Business Days* before each weekly site meeting under clause 7.57.5.2; and
 - .2 the monthly progress report under clause 7.17.1.2 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 section 4.2 of the *Preliminaries*.

Meetings

- .5 The parties must meet:
 - .1 monthly, 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 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.
- .8 Participants in the evaluation and monitoring of meetings must meet their own costs for attendance.

Contractor's records

- .9 During the performance of the works in connection with the Contract, the Contractor must ensure that a complete set of:
 - .1 the Contract;
 - .2 the Contractor's Documents, including the Design Documentation;
 - .3 the IFC Design Documentation;
 - .4 the Contractor's Project Plans;
 - .5 *Approvals* obtained for the work in connection with the Contract; and
 - .6 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.
- .10 During the manufacture or assembly of any Materials off Site, a set of the information and documents referred to in clause 7.9 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.
- .11 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.
- .12 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;
 - .2 the Actual Construction Costs; and
 - .3 the Contractor's compliance with its obligations under the Contract.
- .13 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*.

- .14 The Contractor must preserve the *Records* until 7 years after the expiry of the last *Defects Liability Period*.

8 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 development of the *Preliminary Design* by or on behalf of the Principal;
 - .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 *Contractor's Documents*, 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;
 - .5 the Principal's approval of any Subcontractor under clause 43 or consent to subcontract under clause 44 or to the Contractor performing *Self-Performed Work* under clause 47;
 - .6 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
 - .7 the Contractor's use of the *Preliminary Design* or 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*.

The Contract

9 Separable Portions

- .1 The interpretation and application of:
- .1 Completion;
 - .2 Contractual Completion Date; and
 - .3 Actual Completion Date,
- and clauses 72, 73, 87, 88 and 90 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*.
- .2 *Separable Portions* may be directed by the *Principal's Authorised Person* 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.

10 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 operation of the Works; and

- .3 all work and items necessary for the Works to be fit for the purposes required by the Contract.
- .2 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 expert in work of the type, complexity and scale of the Works;
 - .2 it has made full allowance in the *GMP* for the matters referred to in clauses 10.1 and 10.2; 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 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 The Contractor must:
 - .1 provide all *Temporary Works* required to perform its obligations under the Contract;
 - .2 ensure that all *Temporary Works* are of suitable quality and maintained in excellent condition; and
 - .3 ensure the *Temporary Works* are established at locations and positions on the Site that minimise the impact on the Works, the Site and adjoining properties.

11 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 11.3, the Contractor must ensure that no *Change in Control* occurs in respect of it 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 the Contractor to perform its obligations under the Contract and the Contractor remains a subsidiary of the *Guarantor*.
- .3 The consent referred to in clause 11.2 is not required for a *Change in Control*:
 - .1 where the Contractor or *Guarantor* remains a wholly-owned subsidiary of Lendlease Corporation Limited (ACN 000 226 228); or
 - .2 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.

Transfer by the Principal

- .4 The Contractor acknowledges and agrees that following the *Actual Completion Date*, the Principal may elect to novate this Contract, which novation must include all of its rights, benefits, interests or obligations under or in connection with the Contract to:
 - .1 *MAAS*; or
 - .2 any entity which is owned or controlled by the State of New South Wales or to any agency of the State of New South Wales that will be the owner and operator of the Works.

- .5 If the Principal elects to novate this Contract pursuant to clause 11.4, the Contractor and the Principal agree that such novation may be effected by way of entry by the parties and the relevant novatee into a *Novation Deed*.
- .6 Where the Principal proposes to novate its rights and obligations under this Contract by way of *Novation Deed*, the Contractor must promptly following notice from the Principal, execute a *Novation Deed*.

12 Contractor Warranty Deed

- .1 Within 10 *Business Days* of the Date of Contract, the Contractor must provide the Principal with a *Contractor Warranty Deed* in favour of *MAAS*, duly executed by the Contractor.

13 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.

14 Notices and instructions

- .1 Unless the Contract expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with the Contract must be in writing and signed by the sender (if an individual) or an authorised representative of the sender.
- .2 All communications must be sent to the relevant persons at the addresses in Contract Information items 4 to 11, or at the address for service most recently notified in writing by the addressee.
- .3 Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

Delivery

- .4 Communications must be:
 - .1 sent via *Aconex*;
 - .2 left at the address referred to in the Contract Information;
 - .3 sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Contract Information; or
 - .4 sent by email to the address referred to in the Contract Information.
- .5 If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.
- .6 Subject to clauses 14.8 to 14.13, communications are taken to be received:
 - .1 if sent by post, five days after posting (or 10 days after posting if sent from one country to another); or
 - .2 if sent by email:
 - .1 when the sender receives an automated message confirming delivery; or
 - .2 four 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.
- .7 Despite anything else in this clause 14, if communications are received or taken to be received under clause 14.6 after 5.00pm on a *Business Day* or on a non-*Business Day*, they are taken to be received at 9.00am on the next *Business Day*.

Aconex

- .8 The parties shall register themselves on *Aconex* and comply with any applicable *Aconex* user guide or rules.
- .9 Notwithstanding any other clause of the Contract, the Contractor must give a copy of any notice it is entitled or required to give to the *Principal's Authorised Person* or the Principal by lodging it on *Aconex*.

- .10 A notice lodged upon *Aconex* is deemed to be in writing and delivered to the *Principal's Authorised Person* or the Principal when:
 - .1 the notice has been uploaded on *Aconex* by the Contractor; and
 - .2 the Contractor has sent an email to the *Principal's Authorised Person's* email address specified in the Contract Information (or otherwise notified to the Contractor) notifying it that the notice has been uploaded on *Aconex*.
- .11 The Principal and the *Principal's Authorised Person* may give any direction they are entitled or required to give to the Contractor by lodging it upon *Aconex*.
- .12 A direction lodged by the Principal or the *Principal's Authorised Person* upon *Aconex* is deemed to be in writing and delivered to the Contractor when:
 - .1 the direction has been uploaded on *Aconex* by the Principal or the *Principal's Authorised Person*; and
 - .2 the Principal or the *Principal's Authorised Person* has sent an email to the Contractor's email address specified in the Details (or otherwise notified to the *Principal's Authorised Person*) notifying it that the direction has been uploaded on *Aconex*.
- .13 The Principal and the Contractor shall maintain email addresses throughout the performance of the work under the Contract and notify each other of any change in their email address.

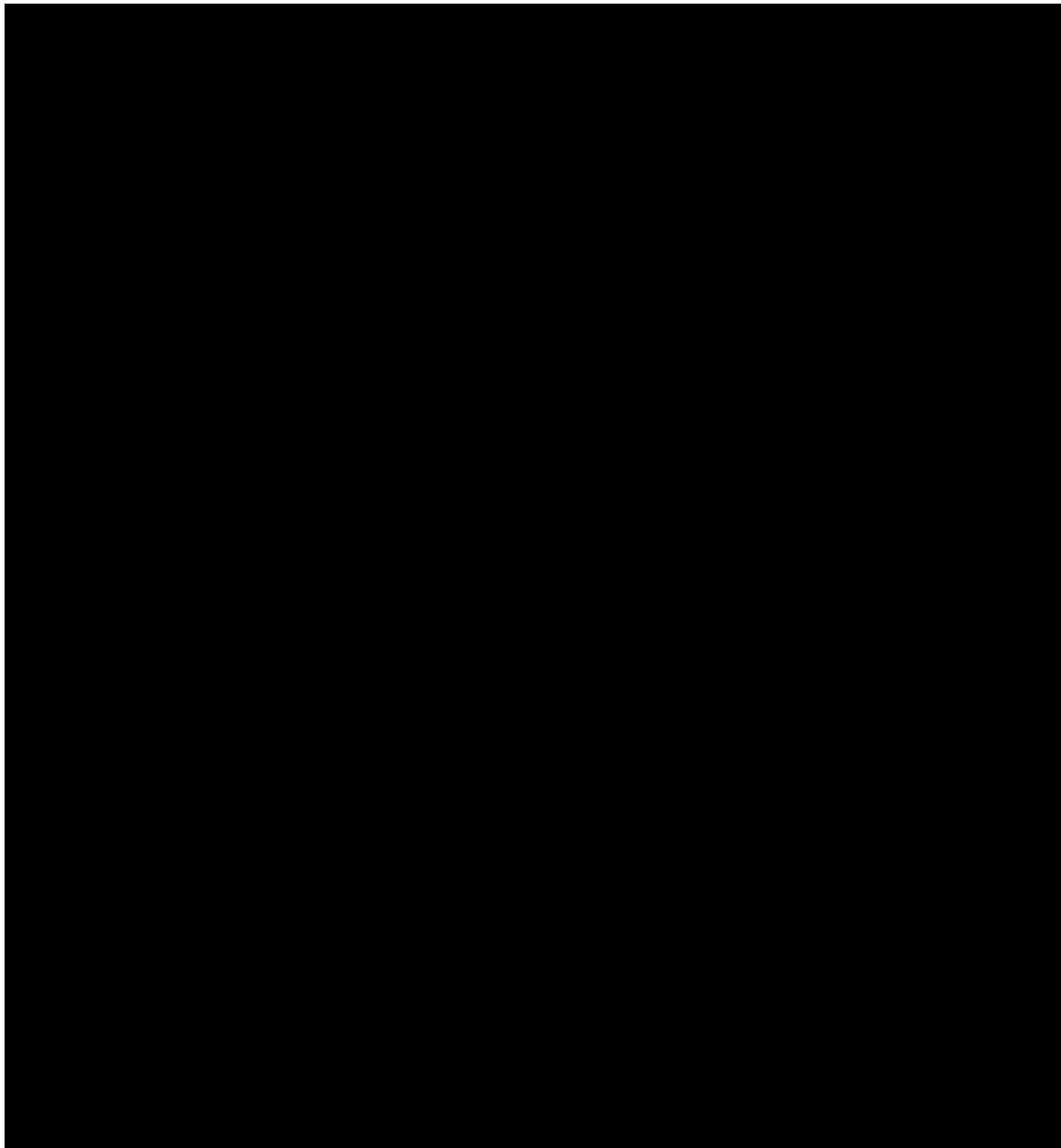
15 Benefit of indemnities

- .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 *Indemnified Party* and is entitled to enforce this Contract in respect of any such indemnities, whether by way of equitable, legal or statutory relief, for itself and on behalf of any *Indemnified Party*.

16 Information Documents and investigations

- .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, the Existing Improvements or the Information Documents; or
 - .2 the adequacy or suitability of the Site, Site Conditions, the Existing Improvements 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, the Existing Improvements and the *Information Documents*;
 - .2 has examined the Site and the Existing Improvements and their 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 *GMP*;
 - .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:
 - .1 the inaccuracy, incompleteness or inadequacy of, or the reliance by the Contractor upon, any *Information Documents*;
 - .2 except as expressly provided in this Contract, the condition of the *Existing Improvements*; or
 - .3 except as expressly provided in this Contract, the Site or any *Site Conditions*.
- .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 16.2.



18 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 calculated in accordance with Contract Information

items 41 and 42 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).

- .2 *Undertakings* must be provided by an insurance company acceptable to the Principal in its absolute discretion.
- .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 18.1 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 18.1 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 18.17, 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 uncalled amount of the original *Undertaking*.
- .6 If the Contractor fails to provide the replacement *Undertaking* in accordance with clause 18.5, 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 18.11.
- .7 Upon receipt of a replacement *Undertaking* which complies with clause 18.5, the Principal must pay the remaining balance from any demand pursuant to clause 18.6 without interest to the Contractor.

Replacement events

- .8 Within 5 *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 18.8, return the original *Undertaking* to the Contractor.

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 101.12; or
 - .5 where the Contractor or the *Guarantor* is insolvent.
- .12 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*.
- .13 Where the Principal has converted an *Undertaking* into money, any interest earned on such monies shall be retained by the Principal.
- .14 The Principal is not obliged to hold amounts realised on the calling of an *Undertaking* in any definable account.
- .15 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.
- .16 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 85.

Return of Undertakings

- .17 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
 - .1 the *Completion Undertaking* within 10 *Business Days* after the *Actual Completion Date* of the whole of the Works; and
 - .2 the *Post-Completion Undertaking* at the time stated in Contract Information item 43 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.
- .18 When any of the circumstances in clause 18.17.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.

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 of a *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, the *Parent Company Guarantee*, and the *Contractor Warranty Deed*.
- .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 18.22 and 18.23, 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 18.22, 18.23 and 18.24 do not apply to security of the type referred to in clause 18.13 and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2020* (NSW) applies instead.

19 Statutory Requirements and Approvals

- .1 The Principal must:
 - .1 ensure that the *Approvals* listed in Contract Information item 16 are obtained and paid for;
 - .2 where any of the *Required Approval Modifications* are required to perform the work in connection with the Contract, then provided that the Contractor complies with its obligations under clause 19.2, ensure that any such *Required Approval Modification* is obtained and paid for; and
 - .3 comply with and discharge the conditions of *Approvals* listed in Contract Information item 17.
- .2 To permit the Principal to comply with its obligations under clause 19.1, the Contractor must:
 - .1 prepare all information, materials and documents required to apply for and obtain any *Required Approval Modifications* by the date set out in the matrix included in Schedule 8; and
 - .2 provide all other reasonable assistance required by the Principal or the relevant government authority in relation to any *Required Approval Modifications*.
- .3 The Principal will submit the application for any *Required Approval Modifications*. Where the Principal does not obtain any *Required Approval Modification* necessary to permit the Contractor to complete the Works in accordance with the Contract, the Principal will direct a *Variation* to the Works to permit the Works to be completed without that *Required Approval Modification*.
- .4 The Contractor is responsible for:
 - .1 compliance with all Statutory Requirements;
 - .2 giving all notices necessary to comply with *Statutory Requirements*;
 - .3 obtaining all *Approvals* necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 16; and
 - .4 the payment of all necessary fees and charges, other than those listed in Contract Information item 16.
- .5 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) which are stated to be the responsibility of the Contractor in Schedule 8.
- .6 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.

- .7 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.
- .8 Where there is a suspension of the work in connection with the Contract due solely to an order of a court arising from a legal challenge in relation to an *Approval* obtained, or to be obtained, by the Principal, the Contractor may make a *Claim* for:
- .1 an extension of time in accordance with clause 72 and delay costs in accordance with clause 73, for any delay incurred by it as a result of the suspension; and
 - .2 an increase to the *GMP* and the *Preliminaries Fee* valued in accordance with clause 71 for unavoidable additional costs incurred by the Contractor as a result of the suspension,
- except where such court order or legal challenge is initiated or upheld due to any act or omission of the Contractor or the *Contractor's Personnel* or the Contractor's non-compliance with its obligations under this Contract or any *Statutory Requirement*.
- .9 In respect of the *Approvals* that the Contractor is required to obtain from Fire & Rescue NSW, to the extent that any such *Approval* imposes conditions or requirements in the areas of :
- .1 fire resistance levels of structure;
 - .2 fire and smoke compartmentation and smoke management;
 - .3 density and type of fire sprinklers, drenchers, hydrants and detections systems;
 - .4 egress strategy; and
 - .5 fire load scenarios,
- which are more onerous than provided for in the *Project Brief* and the *Preliminary Design*, the Contractor must notify the Principal accordingly and the Principal must direct a *Variation* to require the Contractor to comply with those more onerous conditions or requirements.

20 Supplier Code and Industrial Relations Guidelines

- .1 The NSW Government Supplier Code of Conduct (the 'Code') outlines the ethical standards and behaviours expected from the Principal and the Contractor.
- .2 The New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) aims to implement the NSW Government's commitment to greater flexibility and productivity within the State's building and construction industry.
- .3 The Contractor must comply with the Code and the NSW Guidelines and Schedule 41 (Compliance with Supplier Code of Conduct and Building and Construction Guidelines).

National Construction Code (NCC) 2019

- .4 If required by Contract Information item 20A, the Contractor must comply with the requirements of the National Construction Code 2019 (Cth).

Australian Industry Participation Plan

- .5 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.

Commonwealth Building Code 2016

- .6 The Contractor must comply with the requirements of the *Building Code* and Schedule 12 (Compliance with Building Code 2016), provided however, that compliance by the Contractor's Subcontractors with the *Building Code*, only applies on and from the date that the Principal provides written notice to the Contractor confirming that the Works have received Commonwealth funding and the Works are 'Commonwealth funded building works' (as defined in the *Building Code*).

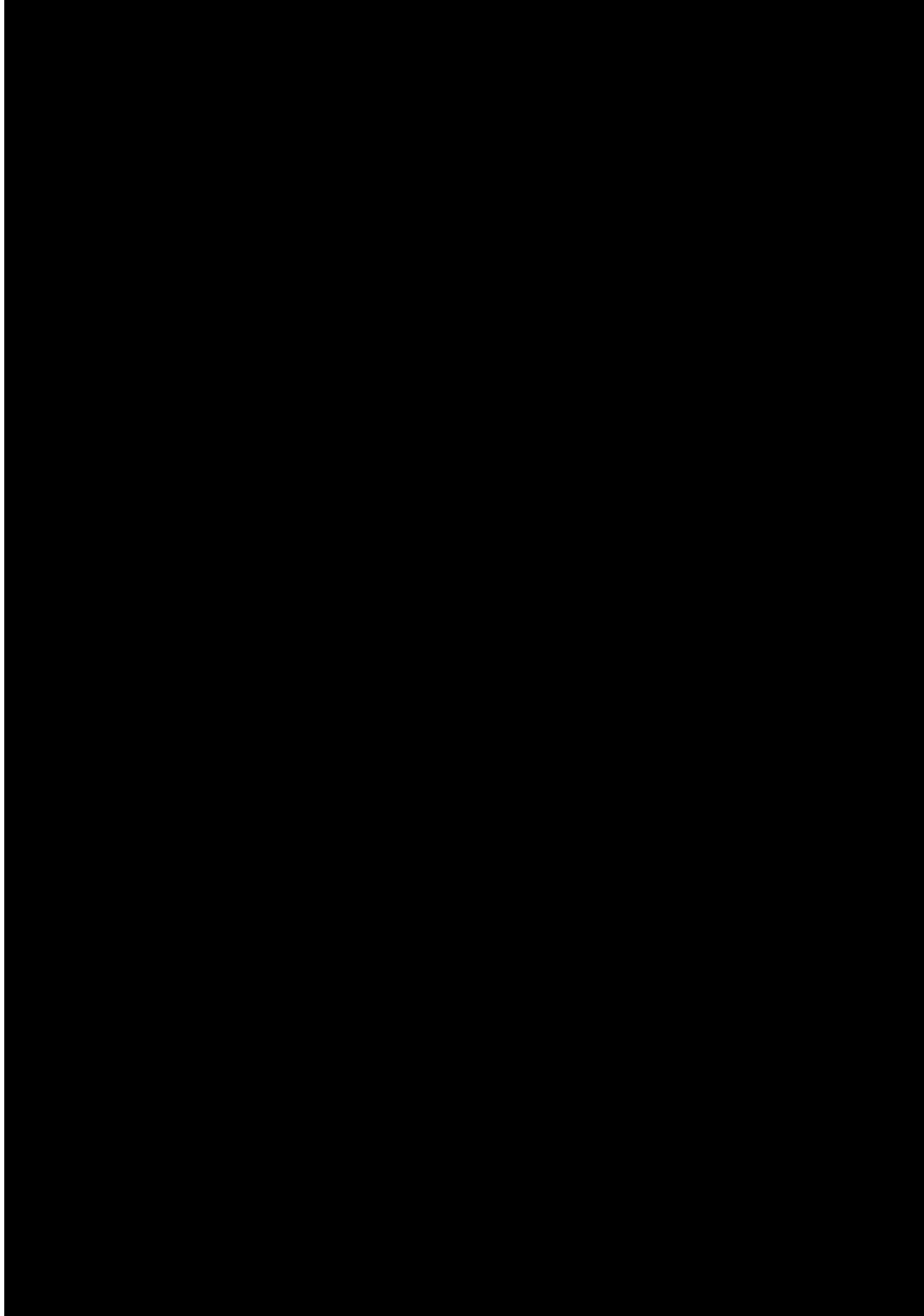
21 Changes to Statutory Requirements

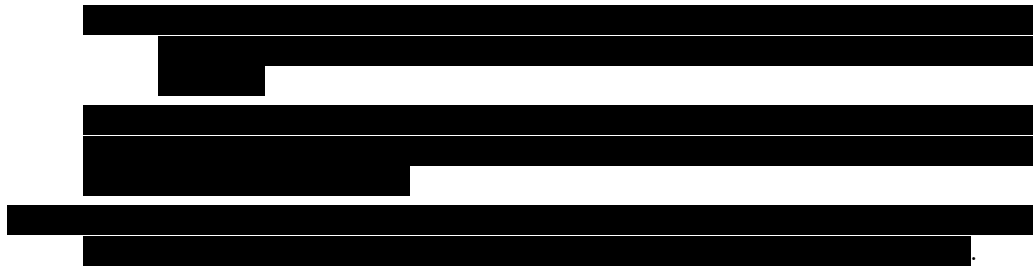
- .1 If the Contractor becomes aware of a *Change in Statutory Requirements* (other than a *COVID-19 Measure*) that affects or may affect the work in connection with the Contract or may require a change to the Works, the Contractor must notify the Principal in writing as soon as possible and in any event within 5 *Business Days* after becoming aware of the *Change in Statutory Requirements*. The notification must include details of:
 - .1 why the *Change in Statutory Requirements* should not reasonably have been expected by the Contractor at the Date of Contract;
 - .2 the changes to the work in connection with the Contract or the Works that the Contractor considers necessary to comply with the *Change in Statutory Requirements*;
 - .3 any estimated delays in achieving *Completion* as a result of the *Change in Statutory Requirements*;
 - .4 any estimated additional work and resources involved and the Contractor's estimate of the *Actual Construction Costs* and the adjustment to the *GMP* and the *Preliminaries Fee* (as applicable) as a result of the *Change in Statutory Requirements*; and
 - .5 any other matters the Contractor considers relevant.
- .2 The Principal may request the Contractor to provide further information about the matters notified under clause 21.1.
- .3 After considering the Contractor's notification under clause 21.1, the Principal must notify the Contractor whether it agrees that there has been a *Change in Statutory Requirements* that requires a change to the work in connection with the Contract or the Works.
- .4 If the Principal agrees that there has been a *Change in Statutory Requirements* that affects or may affect the work in connection with the Contract and if the Contractor has given the notice required by clause 21.1, 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 *GMP*, the *Management Fee* and the *Preliminaries Fee* 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 21.1, then:
 - .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 69, the Contractor may also make a *Claim* for:
 - .1 an extension of time in accordance with clause 72 and delay costs in accordance with clause 73, 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 *GMP* and the *Preliminaries Fee* (as applicable) to be valued in accordance with clause 71 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 72 and delay costs in accordance with clause 73, subject to the requirements of those clauses; and
 - .2 an increase in the *GMP* and the *Preliminaries Fee* (as applicable) to be valued in accordance with clause 71 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 Works, the Contractor may notify an *Issue* under clause 97.
- .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 21.1 must not be counted in any valuation or extension of time.

22 COVID-19 Measures





23 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 23.1.

24 Compliance with NSW Government Requirements

- .1 The Contractor must implement and maintain the systems, strategies and plans required to comply with the following *NSW Government Policy and Guidelines*, and meet other obligations as specified in Contract Information item 19:
 - .1 Industrial Relations Guidelines: Building and Construction Procurement;
 - .2 Work Health and Safety Management Guidelines (for Construction Procurement);
 - .3 Quality Management Guidelines (Construction Procurement);
 - .4 Environmental Management Guidelines (Construction Procurement);
 - .5 Skills and Training in Construction guide, including the Infrastructure Skills Legacy Program; and
 - .6 Aboriginal Procurement Policy.
- .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 sections 1.4, 1.5, 6 and 9 of the *Preliminaries*.
- .4 The Contractor must:
 - .1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, plans and procedures required under clause 24.1 and the *Contractor's Project Plans*;
 - .2 review and update its systems, plans, 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.

25 Third party Agreements

- .1 The Contractor acknowledges and warrants that:
 - .1 it has reviewed the Third Party Agreements;
 - .2 it shall comply with the terms of the *Third Party Agreements* so far as they relate to the work in connection with the Works or the Contract;
 - .3 it shall carry out its obligations under the Contract so as not to place the Principal or *MAAS* in breach of the *Third Party Agreements*; and
 - .4 the Works will comply with the requirements of the *Third Party Agreements* so far as they relate to the Contract; and

- .5 the Contractor will indemnify the Principal in respect of any *Loss* suffered by the Principal as a result of the Contractor's failure to comply with its obligations under this clause 25.

26 Workplace Health and Safety

Compliance and Co-operation

- .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 26;
 - .3 the workplace health and safety requirements set out in sections 5 and 9.1 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 26;
 - .4 if the Principal exercises its right to audit compliance pursuant to clause 26.226.2.3, 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 26.

WHS Plan

- .3 The Contractor's high level draft *WHS Plan* at the Date of Contract is included in Schedule 22.
- .4 The Contractor must, within 30 days after the Date of Contract and at least 30 *Business Days* before first mobilising to the Site, prepare and submit a *WHS Plan* to the Principal under clause 51.3.
- .5 The *WHS Plan* must:
 - .1 be consistent with the high level draft *WHS Plan* in Schedule 22;
 - .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 and assigned responsibilities;
 - .4 comply with:
 - .1 the Contract, including the *Project Brief* and the workplace health and safety requirements set out in sections 5 and 9.1 of the *Preliminaries*;

- .2 all applicable Statutory Requirements; and
- .3 all relevant NSW Government Policy and 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 51.3 and 51.4 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 51.5.

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 26, 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 the action taken to meet the Contractor's obligations under this clause 26.10.
- .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 26 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 26.226.2.3 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 26.

27 Appointment of principal contractor for WHS

- .1 Unless otherwise stated in the Contract, the Contractor:
 - .1 is engaged as principal contractor for the construction project in accordance with Clause 293 of the *WHS Regulation*;
 - .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 (NSW)*; and
 - .2 a person with management or control of a workplace as specified in the *WHS Legislation*; and
 - .4 must notify the Principal promptly of any matter affecting workplace health and safety where consultation with the Principal is necessary.
- .2 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 27.

28 Commonwealth WHS Accreditation

- .1 If required by Contract Information item 20B, the Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (the "**Scheme**") established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) ("**BCIIP Act**") while building work (as defined in section 6

of the BCIP Act) is carried out. The Contractor must comply with all conditions of *Scheme* accreditation.

29 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 22.

30 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 30.1.1.
- .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 30 or anything done by a recipient of the information.

GIPA Act

- .4 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 30.430.4.2 or 30.430.4.3 will limit or otherwise affect the discharge of the Principal's obligations under the *GIPA Act*.

31 Long service levy

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

32 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 32.

33 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; or
 - .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 33

Negative pledge for the purposes of the PPSA

- .3 For the purposes of this clause 33.3, "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 10 *Business 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

34 Time management

Contract Program

- .1 The Contractor must submit a *Contract Program* to the Principal within 10 *Business Days* after the Date of Contract. The program set out in Schedule 15 is the *Contract Program* until the Contractor submits a *Contract Program* under this clause 34.1.
- .2 The *Contract Program* must:
 - .1 in respect of the *Contract Program* submitted under clause 34.1, be consistent with the *Contract Program* set out in Schedule 15;
 - .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 resource 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 any requirements of section 7 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 any delay to the work in connection with the Contract or a significant change in scheduling;
 - .3 within 5 *Business Days* after receiving an instruction from the Principal to do so;
 - .4 when required to comply with clause 69; and
 - .5 following the granting of an extension of time under clause 72.
- .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 5 *Business Days* after receiving the Principal's advice.

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 Notwithstanding clause 34.6, the Principal may direct the Contractor as to the order and sequence in which the work in connection with the Contract is to be performed, and to the extent that compliance with the direction:
 - .1 causes the Contractor to incur more or less cost than would otherwise have been incurred, the Contractor shall be entitled to an adjustment to the *GMP* and the *Preliminaries Fee* (as applicable) for the additional or decreased direct costs incurred by the Contractor valued in accordance with clause 71; or
 - .2 causes a delay to the work in connection with the Contract, the Contractor may claim an extension of time to the Contractual Completion Date in accordance with clause 72.1 and delay costs in accordance with clause 73.

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*.

35 Intellectual property

Project IP

- .1 All *Project IP* vests in the Principal upon its creation.
- .2 To the extent clause 35.1 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 and *MAAS* 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 and the Works, including the operation, maintenance and use of the Works.
- .6 The licence granted pursuant to clause 35.5 shall be capable of sub-licence and will be assignable by the Principal.
- .7 The licences referred to in clause 35.4 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 and the *Indemnified Parties'* use of the *Project IP*, the *Contractor Background IP* and the Works will not infringe any *Intellectual Property Rights*.
- .11 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract.

Moral Rights

- .12 The Contractor will procure and provide to the Principal the agreement of each author that the Principal, *MAAS* 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*.

Novated consultant intellectual property rights

- .13 Notwithstanding any other provision of this clause 35, in respect of any intellectual property created by or on behalf of a *Novated Consultant* (or otherwise licensed to, or vested in, the Contractor pursuant to an agreement with a *Novated Consultant*), the *Intellectual Property Rights* granted by the Contractor to the Principal under this clause 35 are subject to any restrictions on those *Intellectual Property Rights* contained in the *Novated Consultant's* agreement as at the Date of Contract.

36 Confidentiality and Privacy

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

37 Media releases and enquiries

- .1 The Contractor must obtain the Principal's prior written consent to:
 - .1 any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
 - .2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media or other enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media or other enquiry without the Principal's prior written consent.
- .3 The Contractor must ensure that all *Contractor's Personnel* comply with clause 37 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.

38 Stakeholder Management and Community Relations

Contractor's obligations

- .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 *MAAS*, local residents and businesses; and
 - .2 there are numerous stakeholders who have an interest in the successful delivery and ongoing operation of the Works; and
 - .2 must manage and participate in all stakeholder management and community relations meetings, programs and activities as:
 - .1 required by the Contract;
 - .2 contained in the Stakeholder Management and Community Engagement Plan; or
 - .3 directed by the Principal from time to time.

Complaints and notifications

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

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

 - .4 *Contamination* arising out of, or in any way in connection with, the work in connection with the Contract;
 - .5 the Contractor's non-compliance with any *Approval* (or condition or requirement thereunder) or any *Environmental Statutory Requirement*;
 - .6 the Contractor's use or occupation of the Site or the Works; or
 - .7 loss of or damage to the Site, the Works or any adjacent property or the injury to or death of any person.
- .3 The Contractor must (at its own cost):
 - .1 other than where clause 38.4 applies, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 38.2 in accordance with all *Statutory Requirements*;
 - .2 other than where clause 38.4 applies, take all measures to resolve those matters as soon as possible (including defending any proceedings); and
 - .3 keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 38.2, which:
 - .1 is in a form or uses a system approved by the Principal;
 - .2 contains full details of:
 - .1 each complaint, proceedings, letter of demand, order and direction;
 - .2 the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - .3 is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - .4 may be inspected by the *Principal's Authorised Person* whenever the *Principal's Authorised Person* reasonably requires.
- .4 The Principal will (at its own cost) be responsible for handling all complaints, proceedings, demands, orders or directions that:

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

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

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

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

Obligations of care

- .1 Until the earlier of *Completion* or the termination of the Contract, and in respect of any part of the Works in respect of which the Contractor is performing work during the *Defects Liability Period*, the Contractor is responsible for all of the following:
 - .1 preventing personal injury or death;
 - .2 preventing loss or damage to the Site, the *Existing Improvements* and the Works;
 - .3 preventing loss or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract;
 - .4 locating and caring for existing services;
 - .5 repairing or making good loss or damage to the Works, and to the extent such loss or damage arises from the performance of the work in connection with the Contract, loss or damage to the *Existing Improvements* and the Site; and
 - .6 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract.
- .2 If, in the opinion of the Principal, urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Contractor's cost (subject to clause 39.5), and the Principal's costs of doing so will be recoverable from the Contractor (subject to clause 39.5) as a debt due and payable.

Indemnities for property, personal injury or death

- .3 The Contractor indemnifies the *Indemnified Parties* against loss or damage to:
 - .1 the Works, from the date the Contractor begins carrying out the work in connection with the Contract;
 - .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; and
 - .3 to the extent such loss or damage arises from the performance of the work in connection with the Contract, the *Existing Improvements*,

until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works and/or the Site which is occupied or taken into use by the Principal under clause 87 (or otherwise), this indemnity ceases to apply to that part when that part is occupied or taken into use and the indemnity in clause 39.4 then applies to that part of the Works and/or the Site as if the *Actual Completion Date* had been achieved with respect to that part.

- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the *Indemnified Parties* against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
 - .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
 - .2 which occurred while the Contractor indemnified the *Indemnified Parties* under clause 39.3.
- .5 The Contractor's liability for loss or damage under clauses 39.3 and 39.4, and the Contractor's responsibility under clause 39.1 is reduced to the extent that the death, injury, loss or damage is contributed to or caused by:
 - .1 any act or omission of the Principal or any *Separate Contractor* or any of their agents or employees or any use or occupation of the Works and/or the Site prior to *Completion* under clause 87 (or otherwise);
 - .2 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
 - .3 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Subcontractors, Consultants or Suppliers; or
 - .4 an Uninsurable Force Majeure Event.
- .6 The Contractor indemnifies the *Indemnified Parties* against the following where they arise in connection with carrying out the Works or the work in connection with the Contract:
 - .1 all damage to property other than property covered under clause 39.3;
 - .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, arising from damage to property other than property covered under clause 39.3.1.1; and
 - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, or death.
- .7 The Contractor's liability to indemnify the *Indemnified Parties* under clause 39.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by the Principal, any *Separate Contractor* or any of their agents or employees.

40 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.
- .2 The Contractor must comply with, and ensure the *Contractor's Personnel* comply with, all *Environmental Statutory Requirements* and the environmental requirements set out in sections 6 and 9.4 of the *Preliminaries*.
- .3 The Contractor must immediately notify the *Principal's Authorised Person* in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any *Approval* or any *Environmental Statutory Requirement* in the carrying out of the work in connection with the Contract.
- .4 If there is a legal challenge in relation to the assessment or determination of the Works under the:
 - .1 the Environmental Planning and Assessment Act 1979 (NSW);
 - .2 the *EPBC Act*; or
 - .3 any other Statutory Requirement,

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

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

Environmental Management Plan

- .5 The Contractor must, within 30 days after the Date of Contract and at least 30 *Business Days* before first mobilising to the Site, prepare and submit an *Environmental Management Plan* to the Principal under clause 51.3.
- .6 The *Environmental Management Plan* must:
 - .1 set out in detail how the Contractor proposes to comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract;
 - .2 comply with:
 - .1 the Contract and the environmental requirements set out in sections 6 and 9.4 of the *Preliminaries*; and
 - .2 the Project Brief; and
 - .3 include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.
- .7 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.
- .8 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 51.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 51.5.

Remediation Action Plan

- .9 The Contractor acknowledges that the *Remediation Action Plan* has been prepared by the Principal and that the Contractor must comply with the *Remediation Action Plan* in the performance of the work connection with the Contract.
- .10 The Contractor acknowledges that:
 - .1 the *Remediation Action Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Remediation Action Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.

Asbestos Management Plan

- .11 The Contractor must, within 30 days after the Date of Contract and at least 10 *Business Days* before first mobilising to the Site, prepare and submit an *Asbestos Management Plan* to the Principal under clause 51.3.
- .12 The *Asbestos Management Plan* must:
 - .1 comply with and include all conditions required by any *Statutory Requirement*;
 - .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 this Contract; and
 - .3 comply with and include any other information required by the Contract.

- .13 The Contractor acknowledges that:
- .1 the *Asbestos Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and
 - .2 compliance with the *Asbestos Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.
- .14 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 51.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 51.5.

Environment Audits

- .15 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.
- .16 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 as obligations under this clause 40.
- .17 The Contractor must procure a *Site Audit Statement* is prepared and provided to, and for the benefit of, the Principal and *MAAS* as a condition to *Completion*.

41 Contamination

- .1 The Contractor must remediate the Site and all *Contamination*:
- .1 caused, contributed to by, or exacerbated by, the Contractor;
 - .2 disturbed by the performance of the work in connection with the Contract;
 - .3 on, in or under the Site (regardless of whether such *Contamination* is caused or contributed to by the Contractor or the *Contractor's Personnel*);
 - .4 that migrates off the Site as a result of the performance of the work in connection with the Contract; and
 - .5 that migrates on to or under the Site from outside the Site,
- in accordance with:
- .6 the requirements of the Contract, including the *Project Brief* and the *Preliminaries*;
 - .7 the *Asbestos Management Plan*, the *Remediation Action Plan* and the *Environmental Management Plan*; and
 - .8 all applicable *Statutory Requirements* and *Approvals*.
- .2 Without limiting the Contractor's obligations under clause 41.1, if the Contractor is required by:
- .1 the *Asbestos Management Plan*, the *Remediation Action Plan* or the *Environmental Management Plan*; or
 - .2 any applicable *Statutory Requirements* or *Approvals*,
- to remove and dispose of any *Contamination* referred to in clause 41.1, the Contractor must remove 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.
- .3 In performing its obligations in connection with this Contract, the Contractor must:
 - .1 prevent any *Contamination* or the release, discharge or escape of any *Contamination* into the *Environment* by the Contractor or the *Contractor's Personnel*; and
 - .2 implement all necessary safety measures to avoid any such *Contamination*.
- .4 Without limiting clauses 41.1 and 41.2, the Contractor must only dispose of *Contamination* at sites where such disposal is permitted by *Statutory Requirements*.
- .5 The Contractor must:
 - .1 immediately give notice to the Principal upon the discovery or release of any *Contamination*;
 - .2 take any urgent action required to protect people, property and the *Environment*.
- .6 The Contractor must procure that any *Contamination* report provided by a Consultant or Subcontractor in connection with the Works or the Site is provided for the benefit of the Principal and *MAAS*.
- .7 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 41.

42 Insurance

- .1 If Contract Information item 25 or 26 states that the Principal is responsible to effect insurance covering the Works or public liability, the Principal must, not later than the Date of Contract, effect that insurance in accordance with the Contract Information item, on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by the Principal before the Date of Contract. The Principal must provide to the Contractor a final and signed copy of the relevant insurance policy. If the Principal is unable to effect insurance covering the Works for flood damage in accordance with this clause, then to the extent that any loss or damage is caused to the Works by a flood that would have been covered by the Works insurance had it been effected as required, the Principal will bear the cost of any repair of such damage or reinstatement of the Works, but only up to the amount of the insurance proceeds that would have been payable under the Works insurance had the flood event been insurable and less any excess or deductible for which the Contractor would have been liable under this Contract.
- .2 If Contract Information item 25 or 26 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
 - .1 a Works policy of insurance to cover loss or damage to the Works; and
 - .2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.
- .3 Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 27 to 32 as follows:
 - .1 workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;
 - .2 if stated in Contract Information item 28, a professional indemnity policy of insurance to cover liability for breach of professional duty arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor, and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;

- .3 if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 29;
- .4 insurance for loss of or damage to equipment used by the Contractor in the performance of its obligations under the Contract, as specified in Contract Information item 30;
- .5 comprehensive motor vehicle insurance covering compulsory third party bodily injury and third party property damage, as specified in Contract Information item 31; and
- .6 except to the extent covered by the public liability insurance policy referred to in clause 42.1, Asbestos liability insurance to cover the risks associated with Asbestos decontamination work, as specified in Contract Information item 32.
- .4 The Contractor must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information items.
- .5 The Contractor must ensure that every Subcontractor, Supplier, Consultant and all *Contractor's Personnel* are insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) at all times.
- .6 Unless otherwise instructed by the Principal, the Contractor must:
 - .1 make and manage all insurance claims; and
 - .2 notify the Principal at the same time as the Contractor receives or gives any notice concerning a policy, and at least 5 *Business Days* before any notified cancellation of a policy.
- .7 The Contractor must meet the costs of all excesses or deductibles [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- .8 All policies must:
 - .1 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured; and
 - .2 be placed with an insurer with a Required Rating or such other insurer as is approved by the Principal in its absolute discretion.
- .9 Each policy referred to in clauses 42.2, 42.3.3 and 42.3.6 must:
 - .1 name or otherwise identify the Principal, *MAAS* and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends; and
 - .2 include a cross-liability clause under which the insurer agrees that the term "insured" applies to each of the persons covered as if a separate policy of insurance had been issued to each of them, and a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action against any of the persons covered.
- .10 The Contractor must:
 - .1 ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 42 by the Contractor or any Subcontractor, Supplier or Consultant, it:
 - .1 does not do anything which prejudices any insurance;
 - .2 if necessary, rectifies anything which might prejudice any insurance;
 - .3 reinstates an insurance policy if it lapses;
 - .4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;

- .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
- .6 gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- .2 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- .3 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.
- .11 The Contractor must give the Principal a certificate of currency evidencing that that all insurance policies required to be effected by the Contractor under the Contract are current:
 - .1 before starting work in connection with the Contract; and
 - .2 whenever requested in writing by the Principal.
- .12 The Contractor must allow the Principal (or its broker) to review copies of all insurance policies it is required to effect and maintain (but excluding any policy of professional indemnity insurance) whenever requested in writing by the Principal.
- .13 If the Principal has a reasonable objection to any conditions of an insurance policy, and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within 5 *Business Days* after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy (to the extent such insurance or changes are available in the market on commercially reasonable terms), so that the Principal has no objections.
- .14 If the Contractor fails to comply with clauses 42.11, 42.12 or 42.13, the Principal may effect and maintain the relevant insurance policy and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due from the Contractor to the Principal.
- .15 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event related to this Contract that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. However, the Contractor shall not be required to comply with this clause 42.15 in respect of any claims which the Principal may have against the Contractor.
- .16 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
 - .1 all settlement amounts must be paid by the insurer directly to the Principal;
 - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract;
 - .3 the Contractor must reinstate the Works if instructed to by the Principal and, except as provided in clause 42.16.4.2 may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement;
 - .4 if the Principal elects to have the Works reinstated:
 - .1 to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled to receive from the settlement moneys received, payment in respect of the reinstatement Works carried out by the Contractor; and
 - .2 if the cause of the damage to or destruction of the Works was a cause listed in clause 39.5, the Principal shall pay to the Contractor the cost of the reinstatement work.

Contractor's Personnel and Subcontractors

43 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 44.4) 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 claim by Subcontractors against the Principal.
- .3 Unless otherwise agreed with the *Principal's Authorised Person*, all Subcontracts shall:
 - .1 contain provisions that are equivalent to the terms of this Contract;
 - .2 contain a requirement that the Subcontractor comply with all applicable *WHS Legislation* and have in place an acceptable occupational health and safety policy and plan that is consistent with the *WHS Plan*;
 - .3 contain a requirement that all workers who are to be engaged by the Subcontractor be paid in accordance with relevant awards or industrial instruments;
 - .4 contain a provision requiring the Subcontractor to seek the written approval of the Contractor (rejection of such approval being at the Contractor's entire discretion and without having to act reasonably or to provide reasons) prior to the Subcontractor subcontracting or assigning any of the work under the Contract;
 - .5 contain a requirement that the Subcontractor shall ensure that it has at all times appointed to the positions set out in the Subcontractor's tender, individuals who possess the appropriate skill, expertise and qualifications and are the individuals identified in the Subcontractor's tender or alternative individuals acceptable to the Contractor;
 - .6 provide that all of the Contractor's rights, benefits and liabilities shall be capable of assignment to the Principal or a person nominated by the Principal or allow the Contractor to novate the subcontract to the Principal or a nominee of the Principal at no cost to the Principal; and
 - .7 include provisions which require the Subcontractor, through the Contractor, to permit the Principal to audit the books and records of the Subcontractor.
- .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 36, 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 36, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 37 after the Subcontractor has claimed payment in accordance with the Subcontract.

44 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 43 and 44.
- .2 The Contractor must ensure that, unless otherwise agreed by the *Principal's Authorised Person* in writing, the construction of the Works is performed under Subcontracts which shall be made between the Contractor and Subcontractors. All Subcontractors engaged by the Contractor must have the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted and the Contractor shall not engage a Subcontractor if the Contractor knows of any reason why that Subcontractor's tender should not be accepted.
- .3 Subject to clause 44.4, 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.

- .4 The Contractor is entitled to engage:
 - .1 the *Approved Subcontractors* for their respective scope of work set out in Contract Information item 13; 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.
- .5 If Contract Information item 38 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, or will not agree to commercially reasonable terms or pricing for the relevant work, the Contractor must notify the Principal accordingly (including with details of the respects in which the Contractor asserts that a *Preferred Subcontractor* is not acting reasonably) and provide a revised list of alternative Subcontractors and the provisions of clause 44.3 will apply.
- .6 Within 30 days after the Date of Contract, the Principal will effect, and the Contractor must accept, novations of the contracts of the *Novated Consultants* and will enter into a novation deed with each *Novated Consultant* in the form of the *Consultant Novation Deed*.
- .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.

45 Subcontractor warranties

- .1 For each trade, item or area of work listed in Contract Information item 39, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).
- .2 If the Contractor, acting reasonably, considers that the form of warranty contained in Schedule 1 is not appropriate in respect of any particular Subcontractor having regard to that Subcontractor's scope of work, the Contractor may propose an alternative form of warranty for the Principal's approval, which approval may be given or withheld in the Principal's absolute discretion.
- .3 Clause 45.1 does not affect any of the Contractor's other obligations under the Contract.

46 Consultant and Supplier relationships

- .1 Clauses 43, 44 and 45 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 43, 44 and 45 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 (other than in respect of *Novated Consultants*), within 5 *Business Days* of the engagement of the Consultant provide the Principal with a deed of covenant (duly stamped) executed by the Consultant in the form of Schedule 37.

47 Self-Performed Construction Work

- .1 The Contractor may, with the prior written agreement of the *Principal's Authorised Person*, perform construction work itself or by its *Related Bodies Corporate* ("**Self-Performed Work**"). The *Principal's Authorised Person* may impose requirements with which the Contractor must comply as a condition of agreement.
- .2 Where the Contractor wishes to undertake *Self-Performed Work*, the Contractor must submit a proposal to the *Principal's Authorised Person* for such work.
- .3 The Contractor's proposal must include the following particulars and demonstrate value for money to the satisfaction of the Principal:
 - .1 a detailed scope of the *Self-Performed Work* to be undertaken;
 - .2 a detailed methodology addressing the following:

1. a description of the resource methodology that will be used to undertake the *Self-Performed Work*;
 2. details of how the Contractor will ensure that the quality of the *Self-Performed Work* complies with this Contract;
 3. a statement as to how the Contractor will ensure that the *Self-Performed Work* are carried out in an efficient manner; and
 4. a description of the information and particulars that the Contractor will provide to the *Principal's Authorised Person* supporting any *Payment Claim* made by the Contractor for carrying out the proposed works;
- .3 the fixed price or (where rates are agreed to apply to the *Self-Performed Work*) a detailed estimate (including contingency) for carrying out the *Self-Performed Work* broken down into sufficient detail and reconciled against the applicable project cost plan including details of how the proposed rates are built up (on an *Open Book Basis*);
 - .4 the cash flow for the proposed *Self-Performed Work*;
 - .5 the time for commencement and completion of the proposed *Self-Performed Work* and confirmation that these times are in accordance with the then current *Contract Program*;
 - .6 the proposed *Contractor's Personnel* to undertake the proposed *Self-Performed Work* including all construction workers, managerial and technical personnel;
 - .7 the number of resources (man power) and the anticipated total hours to carry out the proposed *Self-Performed Work* onsite and offsite;
 - .8 the cost of any *Materials* and equipment that the Contractor intends to purchase as part of the *Self-Performed Work*; and
 - .9 the type and number of construction plant and the anticipated total hours/days the construction plant will be used to carry out the proposed *Self-Performed Work*.
- .4 The Principal may approve the *Self-Performed Work* in its absolute discretion.
 - .5 Where the Principal approves the performance of *Self-Performed Work* by the Contractor, all such work must be undertaken on an *Open Book Basis* and is subject to audit by the Principal and its auditors.

48 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.

49 Contractor's Personnel

Personnel

- .1 The Contractor must provide and engage the personnel necessary for the proper and timely performance of the work in connection with the Contract.
- .2 The Contractor must ensure that all *Contractor's Personnel* engaged in the performance of the Works:
 - .1 have the competence, skill, qualifications and experience required for the work to be performed by them;
 - .2 hold all necessary qualifications, certificates, tickets and licences required by any applicable *Statutory Requirement* to:
 - .1 undertake the work to be performed by them; and
 - .2 operate any construction equipment they are required to operate; 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 any work in connection with the Contract.

.4 The Contractor is responsible for providing all the recruitment, transportation, accommodation, site amenities, catering and payment of all *Contractor's Personnel* required for the performance of the Contractor's obligations under the Contract.

.5 The *Contractor's Personnel* will not under any circumstance be considered employees or agents of the Principal. The Principal has no responsibility to the Contractor or any *Contractor's Personnel* with respect to remuneration, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any *Statutory Requirement*.

Replacement of Personnel

.6 The *Principal's Authorised Person* may by notice to the Contractor direct the removal of any *Contractor's Personnel* (including *Key Personnel*) who:

.1 is guilty of misconduct or fraud or has engaged in illegal conduct;

.2 breaches the *WHS Plan* or any applicable *Statutory Requirement*;

.3 does not satisfy the standards required by clauses 49.2 and 49.3; or

.4 is incompetent, negligent or a risk to health and safety.

.7 Upon receipt of a notice pursuant to clause 49.6, 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 the work

50 Start-up workshop

.1 The Principal must convene a start-up workshop within 20 *Business Days* after the Date of Contract or such other period as the parties agree.

.2 The parties must attend the start-up workshop and must jointly decide who else will attend. Each party must bear its own costs associated with attending the workshop.

.3 The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

51 Contractor's Project Plans

Requirements

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

Compliance

- .2 The Contractor must perform the work in connection with the Contract in accordance with the latest revisions of the *Contractor's Project Plans* submitted to the *Principal's Authorised Person* under clause 51.3, 51.5 or 51.6, incorporating any changes required by clause 51.5.

Submission

- .3 The Contractor must prepare and submit updated drafts of the *Contractor's Project Plans* to the *Principal's Authorised Person* for comment:
- .1 progressively, at a steady rate and in an appropriate sequence so that the *Principal's Authorised Person* has a reasonable opportunity to complete its review within the time required by clause 51.4; 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 51.5 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 51.3, 51.5 or 51.6 (or such other period as is expressly permitted by the Contract), give the Contractor written comments on the *Contractor's Project Plan*.
- .6 The Contractor must promptly provide any further information reasonably requested by the *Principal's Authorised Person* for the purposes of reviewing a *Contractor's Project Plans*.
- .7 The *Principal's Authorised Person* is not required to check any document submitted by the Contractor for errors, omission, inconsistencies, ambiguities, discrepancies or compliance with the Contract.

Resubmission

- .8 If the *Principal's Authorised Person* comments under clause 51.5 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 51.5 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 51.5 will reapply to that *Contractor Project Plan*.

52 Interface with Separate Contractors

- .1 The Contractor acknowledges that *Separate Contractors* will be performing works on, or in the vicinity of, the Site at the same time as the Contractor is carrying out the work in connection with the Contract.
- .2 The Contractor must:
- .1 permit *Separate Contractors*, and provide *Separate Contractors* with sufficient access to the Site, to execute their works;
 - .2 fully cooperate and liaise with *Separate Contractors*;
 - .3 carefully plan, coordinate, program and integrate the work in connection with the Contract with the work carried out or to be carried out by *Separate Contractors*;
 - .4 not delay the work being performed by *Separate Contractors*;

- .5 monitor the progress of work being performed by *Separate Contractors* and notify the *Principal's Authorised Person* of any interference or sequence activities which may affect the commencement, progress or completion of the work in connection with the Contract;
 - .6 attend all co-ordination meetings with *Separate Contractors* as required by the *Principal's Authorised Person*;
 - .7 take all necessary action to avoid loss or damage to the Works by *Separate Contractors*;
 - .8 not damage the works being carried out by the *Separate Contractors*; and
 - .9 advise the *Principal's Authorised Person* if the Contractor becomes aware of any matter arising out of a *Separate Contractor's* activities that may have an adverse effect on the work in connection with the Contract, the works of a *Separate Contractor* or the safety of any persons.
- .3 The Contractor:
- .1 is not entitled to any *Claim* as a result of compliance with this clause 52; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to comply with this clause 52.

The Site

53 Site access

- .1 Subject to clause 53.2, the Principal must give the Contractor access to the Site in accordance with the Schedule 17. Failure of the Principal to provide access to the Site or the *Existing Improvements* at any time will not constitute a breach of this Contract by the Principal.
- .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 51.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 51.5;
 - .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 to access the Site and commence Works;
 - .4 all *Contractor's Personnel* that require access to the Site have completed site inductions; and
 - .5 the Contractor has provided the *Contract Program* in accordance with clause 34.1 and the *Principal's Authorised Person* has not provided any comments on that *Contract Program* pursuant to clause 51.5.
- .3 If the Principal does not give the Contractor access to the Site as required by clause 53.1, the Contractor has no remedy or entitlement other than:
 - .1 an extension of time in accordance with clause 72 and delay costs in accordance with clause 73;
 - .2 to the extent the failure causes the Contractor to incur more or less cost than would otherwise have been incurred, the Contractor shall be entitled to an adjustment to the *GMP* and the *Preliminaries Fee* (as applicable) for the additional or decreased direct costs incurred by the Contractor valued in accordance with clause 71.6; and
 - .3 when an entitlement arises under clause 103, to terminate the Contract.
- .4 The Contractor must permit the Principal, including its authorised invitees, 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 53.653.6.3 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, 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.

54 Site Conditions

No Claim

- .1 The Contractor assumes all risk associated with, and, except to the extent provided for in clauses 17.4, 54.8, 54.9, 54.13, 56, 72 and 73, is not entitled to any *Claim* against the Principal arising out of or in connection with:
 - .1 the Site or the *Site Conditions*;
 - .2 the Existing Improvements; or
 - .3 the Contractor encountering Site conditions which differ from those conditions:
 - .1 shown or indicated in any information or document relating to the *Site Conditions* that has been provided by or on behalf of the Principal, including the *Information Documents*; or
 - .2 that the Contractor assumed to exist.
- .2 The Contractor is solely responsible for dealing with any *Site Conditions* and the condition of the *Existing Improvements*:
 - .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.

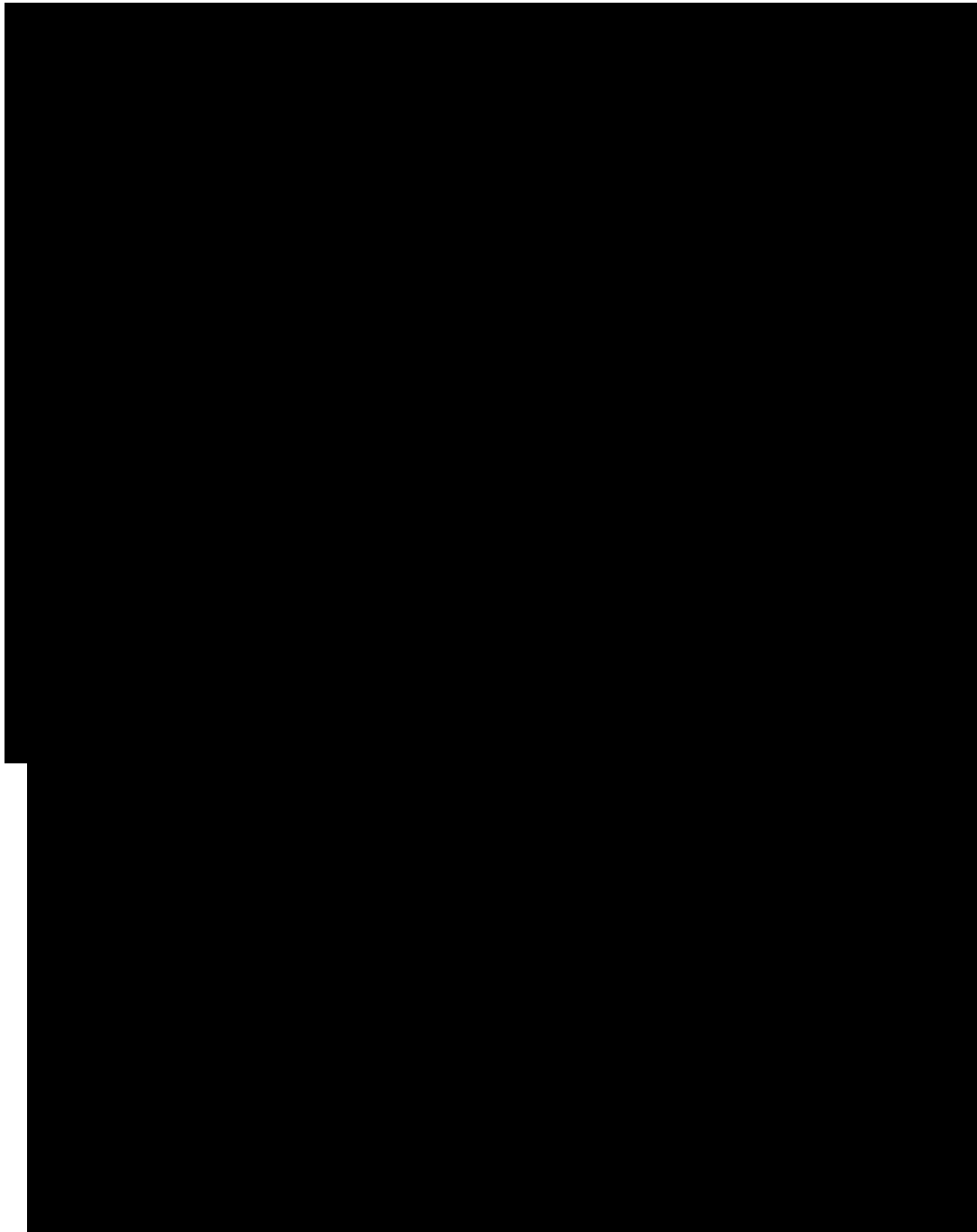
Unanticipated Contamination

- .3 If the Contractor encounters any *Unanticipated Contamination* while performing the work in connection with the Contract, the Contractor must notify the Principal as soon as

practicable (and in any event within 5 *Business Days* after discovery of the *Unanticipated Contamination*) of the *Unanticipated Contamination* encountered.

- .4 As soon as practicable, and within 10 *Business Days* of discovery of the *Unanticipated Contamination*, the Contractor must give a second notice in writing (“**Unanticipated Contamination Notice**”) to the *Principal’s Authorised Person* detailing:
- .1 the *Unanticipated Contamination* encountered;
 - .2 any Variation required to deal with the *Unanticipated Contamination*;
 - .3 the Contractor’s estimate of any additional costs it will incur as a result of dealing with the *Unanticipated Contamination*, calculated in accordance with the rates contained in Schedule 42, and any resulting increase or decrease in the *GMP* and the *Preliminaries Fee* (as applicable);
 - .4 any impact on the *Contract Program* (including any adjustment to the *Contractual Completion Date*) that will be required as a result of the *Unanticipated Contamination*; and
 - .5 any other information which the *Principal’s Authorised Person* reasonably requires.
- .5 The *Principal’s Authorised Person* may request additional information to assist it in determining if the Contractor has encountered any *Unanticipated Contamination*. The Contractor must promptly provide such information.
- .6 The *Principal’s Authorised Person* may conduct any tests it requires to verify the Contractor’s assertion that it has encountered *Unanticipated Contamination*.
- .7 The *Principal’s Authorised Person* must, within the later of:
- .1 10 *Business Days* after receipt of an *Unanticipated Contamination Notice*; or
 - .2 10 *Business Days* after receipt of the additional information requested under clause 54.5; or
 - .3 10 *Business Days* after the conclusion of any tests required by the *Principal’s Authorised Person* under clause 54.6,
- notify the Contractor whether or not it agrees that the Contractor has encountered *Unanticipated Contamination*.
- .8 If the *Principal’s Authorised Person* agrees that the Contractor has encountered *Unanticipated Contamination* which falls within paragraph 1.1 or paragraph 2 of the definition of *Unanticipated Contamination*, then, to the extent that the *Unanticipated Contamination* will:
- .1 directly and necessarily affect any aspect of the work in connection with the Contract or the Works; and
 - .2 require the Contractor to carry out additional work in connection with the Contract or incur additional costs,
- the actual direct costs necessarily and reasonably incurred by the Contractor in dealing with that *Unanticipated Contamination* must be valued in accordance with clause 71 and the *GMP* and the *Preliminaries Fee* (as applicable) will be adjusted accordingly.
- .9 If the *Principal’s Authorised Person* agrees that the Contractor has encountered *Unanticipated Contamination* which falls within paragraph 1.2 of the definition of *Unanticipated Contamination*, then, to the extent that the Contractor is required to remediate or deal with such *Unanticipated Contamination*, the Contractor may claim payment for such work in accordance with Schedule 42 and the *GMP* will be adjusted accordingly.
- .9A If the *Principal’s Authorised Person* agrees that the Contractor has encountered *Unanticipated Contamination* which is *Asbestos*, then the actual direct costs necessarily and reasonably incurred by the Contractor in dealing with that *Asbestos* must be valued in accordance with clause 71 and the *GMP* and the *Preliminaries Fee* (as applicable) will be adjusted accordingly.
- .10 If the *Principal’s Authorised Person* either:
- .1 does not agree that the Contractor has encountered *Unanticipated Contamination* which falls within paragraph 1.1 or paragraph 2 of the definition of *Unanticipated Contamination*; or

- .2 does not agree that the Contractor has encountered *Unanticipated Contamination* which falls within paragraph 1.2 of the definition of *Unanticipated Contamination*, the Contractor may notify an *Issue* under clause 97.
- .11 The Contractor is not entitled to any *Claim* against the Principal arising out of or in connection with *Unanticipated Contamination* unless:
 - .1 the Contractor has given the *Principal's Authorised Person* the written notices required by clauses 54.3 and 54.4, containing the information required by those clauses strictly in accordance with the time periods under those clauses;
 - .2 in respect of any *Claim* for additional costs, the Contractor has provided a fully substantiated written claim within 20 *Business Days* after the discovery of the *Unanticipated Contamination*; and
 - .3 in respect of a claim for an extension of time to the *Contractual Completion Date*, the Contractor has complied with clause 72.



55 Interface with Site Infrastructure

- .1 The Contractor must ensure that the Works integrate with the Site *Infrastructure*.
- .2 The Contractor acknowledges and agrees that:
 - .1 the Contractor will be performing works on, in, or around, Site *Infrastructure*;
 - .2 the Contractor is solely responsible for location, protection and relocation of all Site *Infrastructure*;
 - .3 the Contractor is solely responsible for liaising with the relevant authority, owner or operator of the Site *Infrastructure* and obtaining any access to the Site *Infrastructure* required to perform its obligations under the Contract;
 - .4 the relevant authority may be operating the Site *Infrastructure* at the same time as the Contractor's performance of the work in connection with the Contract on or around the Site *Infrastructure*; and
 - .5 any shutdown of the Site *Infrastructure* outside of the agreed shutdown must only be undertaken with the prior written consent of the relevant authority.
- .3 The Contractor must:
 - .1 coordinate, cooperate and liaise with the relevant authority and the *Principal's Authorised Person* with respect to any potential interface required with the Site *Infrastructure*;
 - .2 not interfere with the relevant authority's operation of the Site *Infrastructure*;
 - .3 only carry out works that interface with the Site *Infrastructure* during the agreed shutdown periods;
 - .4 take all necessary actions to avoid loss or damage to the Site *Infrastructure*;
 - .5 comply at all times with the relevant authority's safety standards and policies; and
 - .6 immediately notify the *Principal's Authorised Person* and the relevant authority if it considers a change is or will be required to the agreed Site *Infrastructure* shutdown schedule.
- .4 The Contractor must not, in performing the work in connection with the Contract, interfere with or damage the Site *Infrastructure*. The Contractor must promptly report to the *Principal's Authorised Person* and the relevant authority any interference with or damage to the Site *Infrastructure* and promptly remedy any damage to the Site *Infrastructure* caused by the Contractor.
- .5 The Contractor:
 - .1 is not entitled to any adjustment of the *GMP*, the *Preliminaries Fee* or any extension of time or any other *Claim* as a result of compliance with this clause 55 or any damage to any Site *Infrastructure*; and
 - .2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the Principal and any *Loss* suffered or incurred by the Principal arising out of or in connection with any interference with, loss of or damage to the Site *Infrastructure* that is caused or contributed to by the Contractor or the *Contractor's Personnel*.

56 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*.
- .3 If compliance with its obligations under clause 56.2 requires the Contractor to carry out additional work in connection with the Contract or incur additional costs, the actual direct costs necessarily and reasonably incurred by the Contractor in complying with those obligations must be valued in accordance with clause 71 and the *GMP* and the *Preliminaries Fee* (as applicable) will be adjusted accordingly.

57 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.

58 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.

59 Extra Land

- .1 The Contractor must:
- .1 at its own cost:
 - .1 identify any land in addition to the Site which is necessary or which it may deem requisite or necessary for the execution of the work in connection with the Contract ("**Extra Land**"); and
 - .2 procure for itself the occupation or use of or relevant rights over any *Extra Land*;
 - .2 prior to the occupation or use of, or exercise of relevant rights over, any *Extra Land*, give to the *Principal's Authorised Person* a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the *Extra Land*; and
 - .3 as a condition precedent to *Completion*, provide the Principal with:
 - .1 a properly executed release on terms satisfactory to the Principal (the form set out in Part D of Schedule 34 is satisfactory) from all *Claims* or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the *Extra Land* that includes confirmation that the *Extra Land* has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the *Extra Land*; or
 - .2 if the Contractor demonstrates to the satisfaction of the *Principal's Authorised Person*, acting reasonably, that the Contractor is unable to obtain a release under clause 59.1.3.1 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 20 *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

60 Faults in Contractor's Documents

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

61 Design by Contractor and Contractor's Documents

Design responsibilities

- .1 The Contractor must carry out all design necessary to complete the Works in accordance with the Contract.
- .2 The Contractor must carry out and complete the design of the Works so that, upon *Completion*, the Works are *Fit for Purpose* and comply with the requirements of the Contract.
- .3 Design or design development does not give rise to a *Variation* or reduce the Contractor's responsibilities under this Contract.
- .4 The Contractor warrants to the Principal that:
 - .1 the Contractor has checked and carefully considered the *Project Brief*, the *Preliminary Design*, the *Approvals* and the other *Contract Documents* and that:
 - .1 the *Preliminary Design* is accurate and fit for the purpose of designing and constructing the Works so as to comply with the Contract;
 - .2 it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the *Project Brief*, the *Preliminary Design*, the *Approvals* 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 IFC Design Documentation will:
 - .1 satisfy the requirements of the *Project Brief* and the other requirements of this Contract including:
 - .1 Statutory Requirements;
 - .2 the Principal's instructions;
 - .3 National Construction Code 2019 (if stated in Contract Information item 20A) and relevant Australian Standards; and
 - .4 if no other standard is specified in the Contract, good industry standards applicable to the Works;
 - .2 be in accordance with the *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 61.7.2;
 - .3 be fit for its intended purpose such that the Works will, if constructed in accordance with the *IFC Design Documentation*, upon *Completion*, be *Fit for Purpose* and comply with this Contract;

- .4 be prepared by appropriately accredited and experienced personnel;
- .5 be completed in accordance with the requirements of this Contract; and
- .6 fully integrate all the design elements;
- .3 the Works when constructed in accordance with the *IFC Design Documentation* will satisfy the requirements of the *Project Brief* and the other requirements of this Contract;
- .4 the Works will:
 - .1 be completed in accordance with, and satisfy the requirements of, this Contract; and
 - .2 upon *Completion*, be *Fit for Purpose* and be capable of remaining *Fit for Purpose*; and
 - .5 upon *Completion*, the design life of each part of the Works will meet or exceed the design life standards specified in the *Project Brief*.
- .5 The Contractor, in preparing the *IFC Design Documentation*, if any change in accordance with clause 61.4.2.2 is necessary from the *Preliminary Design*, must ensure that the change does not reduce the:
 - .1 durability;
 - .2 aesthetics and visible features;
 - .3 whole of life performance;
 - .4 design life;
 - .5 user benefits; or
 - .6 functional performance,
 of any part of the Works or increase the whole of life user or maintenance costs of the Works;
- .6 The Contractor agrees that its obligations under, and the warranties given in, this clause 61 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 the *Preliminary Design*, has been carried out by others, prior to the Date of Contract and incorporated in this Contract;
 - .2 any comment, certification or approval issued by the *Principal's Authorised Person*; or
 - .3 any *Variation* the subject of a direction by the Principal,
 and that the development of the *IFC Design Documentation* in accordance with this clause 61 does not amount to a *Variation*.
- .7 The Contractor is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor, third parties or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
 - .1 the design of the Works in accordance with the *Preliminary Design* and the *Project Brief* and the construction of the Works in accordance with the *IFC 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 physical conditions (including sub-surface conditions) or characteristics of the Site, the *Environment* or their surroundings; and
 - .2 differences required to ensure that the Works will be fit for their intended purposes and satisfy the requirements of this Contract,
 and 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 61.4 to 61.6.

Design review

- .8 The Contractor must develop and complete the *Design Documentation* collaboratively with the Principal and other stakeholders. The Contractor must not commence construction of any part of the Works except in accordance with the *IFC Design Documentation* developed in accordance with clauses 61.9 to 61.19.
- .9 When the Contractor and the *Principal's Authorised Person* agree that any package of *Design Documentation* has reached the stage of 80% completion, the Contractor must submit that *Design Documentation* to the *Principal's Authorised Person* for preliminary review.
- .10 If any of the *Design Documentation* submitted for review does not comply with the Contract, the *Principal's Authorised Person* may give the Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.
- .11 The Contractor must thereafter continue to develop the *Design Documentation* and must prepare and submit:
- .1 the final draft *IFC 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 where the Contract or the *Document Submission Schedule* sets out a date for submission, on or before that date.
- .12 The Contractor must deliver to the *Principal's Authorised Person*:
- .1 one electronic copy in the form specified in the *Preliminaries*; and
 - .2 three hard copies,
- of each document required to be submitted under clause 61.8.
- .13 Any draft *IFC 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 draft *IFC Design Documentation* complies with the Contract.
- .14 Each document submitted by the Contractor pursuant to clause 61.8 must be accompanied by a certificate:
- .1 provided by the Consultant responsible for preparing the relevant document;
 - .2 that certifies that the design and engineering contained in such documents complies with the Contract (including the *Project Brief* and the *Preliminary Design*) and is appropriate for construction; and
 - .3 in the form set out in Part A of Schedule 34.
- .15 The *Principal's Authorised Person* may request additional information to assist it in reviewing any draft *IFC Design Documentation*. The Contractor must promptly provide such information.
- .16 The *Principal's Authorised Person* may review each document submitted in accordance with clause 61.8 within the later of:
- .1 15 *Business Days* after receipt by the *Principal's Authorised Person* of any such document; or
 - .2 15 *Business Days* after receipt by the *Principal's Authorised Person* of the additional information requested under clause 61.15,
- (the “**Design Review Period**”).
- .17 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.
- .18 Within 5 *Business Days* of receipt of the *Principal's Authorised Person's* notice under clause 61.17, the Contractor must modify the document to take the *Principal's Authorised Person's* comments under clause 61.17 into account and re-submit the document to the

Principal's Authorised Person. Clauses 61.16, 61.17 and 61.18 shall apply to the re-submitted document.

- .19 If, having been provided with draft *IFC Design Documentation* under clause 61.8, the *Principal's Authorised Person* does not object to the draft *IFC Design Documentation* within the *Design Review Period*, the draft *IFC Design Documentation* will become part of the *IFC Design Documentation*.
- .20 The Contractor must not use for construction purposes any *Design Documentation* unless that *Design Documentation* has become part of the *IFC Design Documentation* in accordance with clauses 61.8 to 61.19.
- .21 The Contractor must not depart from any *IFC Design Documentation* unless the Contractor has first submitted to the *Principal's Authorised Person* an amended document, the process in clause 61.16 has been followed and no non-compliance notice has been given under clause 61.17 in respect of that amended document.
- .22 The Contractor:
 - .1 is solely responsible for obtaining approval from all relevant authorities in respect of any *Design Documentation* that relates to *Utilities* or infrastructure that are owned or operated by that authority;
 - .2 must make appropriate allowance in the *Contract Program* for any review of the *Design Documentation* required by an authority; and
 - .3 is not entitled to any *Claim* against the Principal arising out of or in connection with any review of the *Design Documentation* by a relevant authority, including in respect of the time taken by an authority to review the *Design Documentation*.

62 Not used

63 Principal's Documents

- .1 The Principal must give the Contractor the number of copies of the *Principal's Documents* stated in Contract Information item 34.

Construction

64 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 10 *Business 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 64.3.1 is due to a *Fault* in the *Contract Documents*, clause 60 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.

65 Construction

- .1 The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
 - .1 the Contract;
 - .2 the Contractor's Documents (including the IFC Design Documentation and the Contractor's Project Plans);
 - .3 Statutory Requirements;
 - .4 the Principal's instructions;
 - .5 National Construction Code 2019 (if stated in Contract Information item 20A) and relevant Australian Standards; and
 - .6 best industry practice.

Utilities and consumables

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

Materials

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

Construction warranties

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

66 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 66.2 show compliance with the Contract, the Contractor may only make a *Claim* for an increase in the *GMP* or the *Preliminaries Fee* (as applicable) to be valued in accordance with clause 71 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.

67 Defects

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract. The Contractor will not be entitled to payment of any *Actual Construction Costs* or have any other *Claim* in respect of rectification of any *Defects*.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
 - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
 - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .4 Nothing in clause 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.
- .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.

68 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 *GMP* and any terms it requires.
- .3 If the Contractor agrees with the proposed deductions and terms, the *GMP* must be adjusted as agreed.
- .4 If the Contractor agrees with the proposed terms but not with the proposed deductions then the Principal is to assess the value of the adjustment in accordance with clause 71 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 97.
- .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 68 as not to be made good.

Changes to work and time

69 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 90.1.3) by issuing a notice identified as a “Variation Order” (“**Variation Order**”). The Contractor must comply with all *Variation Orders*.
- .2 A *Variation* may involve the omission of any part or parts of the Works. The Principal may engage others to perform that part or parts of the Works which have been omitted.
- .3 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.
- .4 The Contractor must not carry out a *Variation* unless directed by the Principal by a *Variation Order*, and the Contractor is not entitled to payment of any *Actual Construction Costs* or any adjustment to the *GMP*, the *Preliminaries Fee* or the *Management Fee* for carrying out any *Variation* that has not been directed by a *Variation Order*.
- .5 Without limiting clause 69.1, the Principal may request the Contractor to provide a proposal with respect to a proposed *Variation* (“**Variation Request**”).
- .6 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 *GMP*, the *Preliminaries Fee* and the *Management Fee* (as applicable) to carry out the proposed *Variation* (on an *Open Book Basis*), 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 any proposed extension of time claim the Contractor would make to carry out the proposed *Variation*;
 - .3 a statement that the proposed *Variation*:
 - .1 does not conflict with or change the requirements of the *Project Brief* or the *Preliminary Design* or involve changes other than those described in the *Variation Request*; or
 - .2 changes the requirements of the *Project Brief* 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 design criteria and how they are to be addressed;
 - .3 effect on relevant reports, drawings and studies;
 - .4 assumptions;
 - .5 any required changes to *Approvals* and any *Third Party Agreements* affected; and
 - .6 any impact on the *Environment* or the community; and
 - .4 the effect of the proposed *Variation* on any other matter specified by the Principal.
- .7 The Principal is under no obligation to issue a *Variation Order* after receiving a *Variation Proposal* from the Contractor.
- .8 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 *GMP*, the *Preliminaries Fee* and *Management Fee* (as applicable) must be adjusted as agreed.
- .9 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 72, or the Principal may assess a reduction in time in accordance with clause 72; and

- .2 an adjustment to the *GMP*, the *Preliminaries Fee* and *Management Fee* (as applicable) to be valued in accordance with clause 71,
or the Principal may assess a deduction from the *GMP*, the *Preliminaries Fee* and the *Management Fee* (as applicable) to be valued in accordance with clause 71.

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 69.6;
 - .3 the proposal for sharing any cost savings or increases with the Principal, including the amount;
 - .4 any benefits that would flow to the Principal; and
 - .5 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 *GMP*, the *Preliminaries Fee* or the *Management Fee*.
- .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 5 *Business 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*.

Notice of Variations

- .14 Within 5 *Business Days* after receipt of the Contractor's notice pursuant to clause 69.13, 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 97.
- .15 The Contractor must not carry out any work in relation to the direction notified to the Principal under clause 69.13 until the earlier of:
- .1 a *Variation Order* is issued by the *Principal's Authorised Person* under clause 069.14.1.1;
 - .2 or notification under clause 069.14.2.
- .16 The Contractor is not entitled to any *Claim* in respect of such direction unless the Contractor has provided the notice required by clause 69.13 within the required time period and:
- .1 the *Principal's Authorised Person* has issued a *Variation Order* under clause 069.14.1.1; or
 - .2 it has been determined pursuant to clause 97 that such direction amounts to a *Variation*.
- .17 The Contractor acknowledges that development of the *Preliminary Design* by the Contractor does not constitute a *Variation*.

70 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 70.1 is given in respect of a *Pre-Agreed Variation* by the relevant date specified in the table in Schedule 10, this Contract, including any relevant components of the *GMP*, the *Preliminaries Fee* and the *Management Fee* 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 performance of a *Pre-Agreed Variation* necessarily requires the Contractor to procure additional design work from a *Novated Consultant*, and as a result, the Contractor is obliged to make an additional payment to that *Novated Consultant*, the Contractor will be entitled to recover such payment as part of the *Actual Construction Costs* and the *GMP* will be further adjusted to account for such additional payment.
- .4 Where *Principal's Authorised Person* directs a *Pre-Agreed Variation* by giving written notice to the Contractor by the relevant date referred to in clause 70.2:
 - .1 the Contractor must carry out its obligations under this Contract as amended by the *Pre-Agreed Variation*;
 - .2 the Contractor will be entitled to be paid the *Actual Construction Costs* in respect of carrying out the *Pre-Agreed Variation*; and
 - .3 any adjustment of the components of the *GMP*, the *Preliminaries Fee* and the *Management Fee* made pursuant to clause 70.2 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 performance of the *Pre-Agreed Variation*; and
 - .4 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 or any delay costs for any delay to the carrying out of the work in connection with the Contract,
in connection with the *Pre-Agreed Variation*.
- .5 Nothing in this clause 70 prevents the *Principal's Authorised Person* from instructing a *Variation* pursuant to clause 69.1 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.
- .6 If the *Principal's Authorised Person* issues a *Variation Order* pursuant to clause 69.1 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 clauses 71.5 and 69 will apply to such *Variation*.

71 Valuation of changes

- .1 If the Contractor submits a *Claim* complying with clause 96.1 and the Principal agrees that the Contractor is entitled to an adjustment to the *GMP*, the *Preliminaries Fee* or *Management Fee* (as applicable), then the parties must endeavour to reach agreement on the adjustment. If agreement cannot be reached then within 20 *Business Days* after the Contractor has provided the information specified in clause 96.3, the Principal is to assess the value of the adjustments in accordance with clause 71 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 97.
- .2 The Principal is not required to assess a *Claim* until the Contractor provides all the information specified in clause 96.3.
- .3 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing.

Valuation principles

- .4 When the Contract requires an adjustment to the *GMP*, the *Management Fee* or the *Preliminaries Fee* (as applicable) to be valued in accordance with clause 71, the valuation of any such adjustment will be agreed between the parties or, failing agreement within 10 *Business Days*, be determined by the *Principal's Authorised Person* in accordance with clause 71.6.
- .5 Where the valuation or adjustment is in respect of a *Variation* that is the same or similar to a *Pre-Agreed Variation*, the valuation or adjustment shall be determined by adjusting the price for the applicable *Pre-Agreed Variation* by any additional costs that the Contractor can demonstrate that it will reasonably and necessarily incur solely as a result of the *Variation* not being directed within the time required by Schedule 10 for the applicable *Pre-Agreed Variation*.
- .6 Otherwise, where the Contract provides that a valuation is to be made under clause 71, the valuation or adjustment will be determined by the *Principal's Authorised Person* as follows:
 - .1 the *GMP* must be adjusted by:
 - .1 the additional *Actual Construction Costs* reasonably and necessarily incurred or saved by the Contractor as a result of the event in respect of which the valuation or adjustment is required; and
 - .2 the same amount as any adjustment to the *Management Fee* or the *Preliminaries Fee*;
 - .2 where there is to be an adjustment to the *Management Fee*, the *Principal's Authorised Person* must determine the adjustment by multiplying the *Management Fee Percentage* by the sum of:
 - .1 the additional *Actual Construction Costs* reasonably and necessarily incurred or saved by the Contractor as a result of the event in respect of which the valuation or adjustment is required; and
 - .2 the corresponding adjustment to the *Preliminaries Fee*;
 - .3 where there is to be an adjustment to the *Preliminaries Fee*, the *Principal's Authorised Person* must determine the adjustment by adding or deducting the increased or decreased actual cost of any items or services the subject of the *Preliminaries Fee* caused by the event in respect of which the valuation or adjustment is required; and
 - .4 where the Contractor is given the right to claim extra costs for delay and disruption by clause 73.1, the valuation of such costs shall include a reasonable amount for on-Site overheads but shall not include off-Site overheads or margin.
- .7 A valuation or adjustment under clause 71.6 must not include:
 - .1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
 - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
 - .3 any amount that the Contractor is not entitled to claim under any provision of this Contract.

Application of adjustments

- .8 The *GMP*, *Management Fee* and *Preliminaries Fee* must be adjusted as agreed, assessed or determined under clause 71.

72 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 *Excusable Delay Event* causes a delay to an activity or activities on the critical path of the then current *Contract Program* as last submitted to the Principal (and not rejected by the Principal under clause 34.5) before the occurrence of the *Excusable Delay Event*;
 - .3 the Contractor has given the Principal an initial notice in writing within 5 *Business 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 in accordance with, and which includes the other information required by, clauses 72.3 and 72.4.
- .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 72. 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 10 *Business 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 10 *Business Days* while the delay continues, with the final *Claim* being submitted within 10 *Business Days* after the cessation of the delay caused by the *Excusable Delay Event*.
 - .4 With every *Claim* made under clause 72.3 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 for 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, to the extent of such overlap, the Contractor is not entitled to an extension of time regardless of the order in which those events or delays occurred.
 - .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 21.6. Further, if the *Principal's Authorised Person* considers that the Contractor has failed to comply with its obligations under clause 72.2, then in making a determination under clause 72.13, the *Principal's Authorised Person* may reduce the period by which the *Contractual Completion Date* is to be extended to the extent that such failure has contributed to the delay.
 - .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 in achieving *Completion* by an *Excusable Delay Event*;
 - .2 the delay is demonstrable on the critical path for the work in connection with the Contract of the *Contract Program* that was current when the *Excusable Delay Event* occurred;
 - .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 the Contractor has submitted the notices strictly as required under this clause 72; and

- .5 the *Excusable Delay Event* has delayed the Contractor in achieving *Completion*.
- .10 If any of the conditions precedent set out in clause 72.9 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 72 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*.

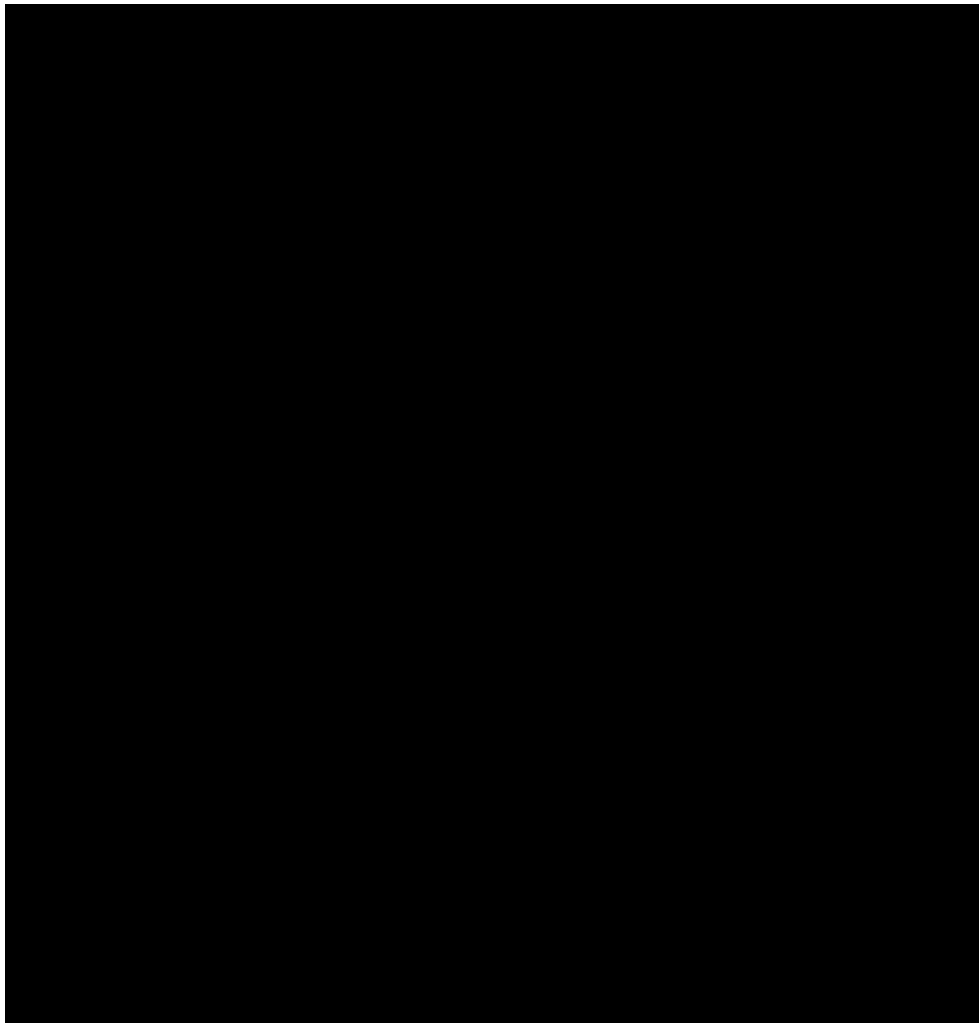
Adjustment to Contractual Completion Dates

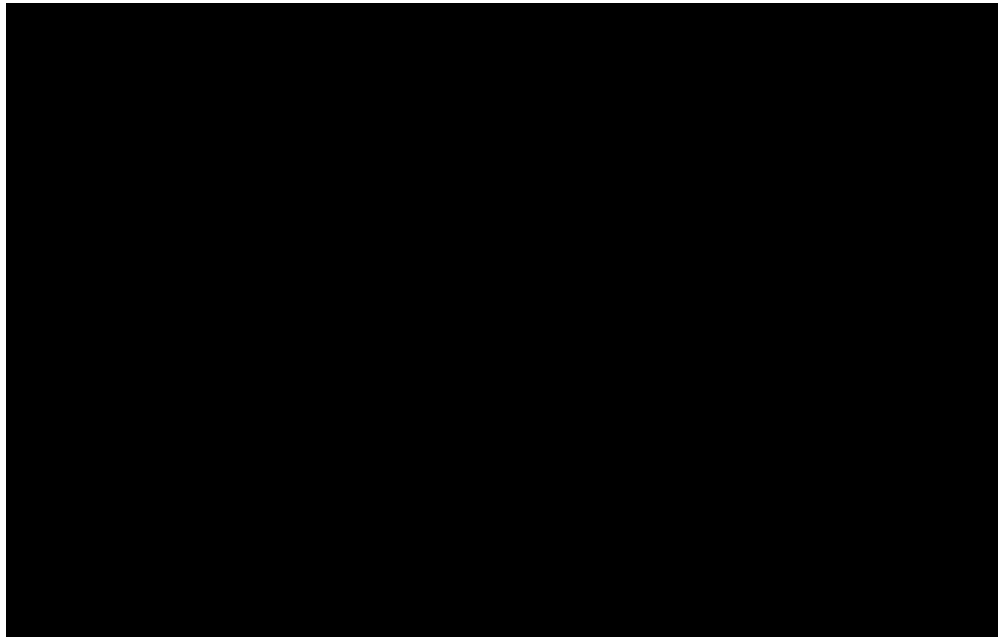
- .13 If the conditions precedent in clause 72.9 have been satisfied, the *Principal's Authorised Person* must, within a reasonable time and in any event not later than 20 *Business Days* of the receipt of the Contractor's claim under clause 72.3 issue a written notice advising the Contractor of its determination as to the period, if any, by which the *Contractual Completion Dates* are to be extended.

73 Delay costs and liquidated damages

Delay costs

- .1 The Contractor is entitled to delay costs (and an adjustment to the *GMP* for the same amount as those delay costs) if and only if the Contractor is granted, or is entitled to be granted, an extension of time under clause 72 in respect of a delay to *Completion* caused by:





- .2 Any *Claim* for delay costs (and the associated adjustment to the *GMP* for the same amount as those delay costs) must be submitted to the Principal at the same time as the Contractor's *Claim* for an extension of time under clause 72. The *Principal's Authorised Person* will provide its determination of the delay costs payable to the Contractor and the adjustment to the *GMP* at the same time as it provides its notice under clause 72.13.
- .3 Delay costs are calculated at the applicable rate in Contract Information item 54 according to the cause of the delay for the number of days by which the time for achieving *Completion* is extended because of a cause listed in clause 73.1, subject to the limitations in clause 21.6.
- .4 The rate or rates stated in Contract Information item 54A1 apply where the delay is caused by the Principal's failure to give the Contractor sufficient access to the Site to allow the Contractor to start work, in accordance with clause 53.1. The rate or rates stated in Contract Information item 54A2 apply in respect of other delays for which the Contractor is entitled to delay costs, save for delays caused by a *COVID Shutdown* or a *Major Flood*. The rate or rates stated in Contract Information item 54A3 apply in respect a delay caused by a *COVID Shutdown* or a *Major Flood* for which the Contractor is entitled to delay costs, provided however that the Contractor's entitlement to delay costs for all *COVID Shutdowns* and *Major Floods* in the aggregate shall not exceed 20 days.
- .5 Notwithstanding clause 73.2, the Contractor is not entitled to delay costs or any adjustment to the *GMP* under this clause 73 for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs.
- .6 The Contractor is not entitled to any *Claim* for delay costs if such costs have already been included in the value of a *Variation* or any other payment under the Contract.
- .7 Notwithstanding any other provision of this Contract, 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 73; or
 - .2 an extension of time to the *Contractual Completion Date* to which it is entitled under clause 72.

Liquidated damages

- .8 If Contract Information item 55 states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date*.
- .9 If Contract Information item 55 states that liquidated damages apply and the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date* to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated

damages at the rate stated in Contract Information item 55, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*.

- .10 If, however, the Contract is terminated before the Contractor achieves *Completion*, any liquidated damages will apply only up to the date of termination of the Contract.
- .11 The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied prior to *Completion* under clause 87. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the *GMP* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the *Principal's Authorised Person*, acting reasonably.
- .12 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.
- .13 The Contractor's liability for liquidated damages shall not exceed the amount set out in Contract Information item 24.
- .14 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.
- .15 The Contractor and the Principal acknowledge that the rates for liquidated damages in Contract Information item 55 are a genuine pre-estimate of the Principal's loss (including in respect of liability to *MAAS* 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.
- .16 If it is determined that the Contractor's liability to pay liquidated damages is 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* provided that the Contractor's aggregate liability for such damages will not exceed the amount set out in Contract Information item 24.
- .17 Liquidated damages payable under clause 73.9 or alternatively general damages payable under either clause 73.8 or 73.16 are the Principal's sole and exclusive remedy in respect of the Contractor's failure to achieve *Completion* of the Works by the *Contractual Completion Date*.
- .18 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.

74 Acceleration

- .1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
- .2 If requested in writing by the Principal whether before or after the issue of an *Acceleration Notice*, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 the likely increase in the *Actual Construction Costs* to achieve the proposed acceleration;
 - .2 the adjustment to the *GMP*, the *Management Fee* and the *Preliminaries Fee* that the Contractor requires as a result of the proposed acceleration; and
 - .3 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 adjustment to the *GMP*, the

Management Fee and the *Preliminaries Fee* before the Contractor complies with the *Acceleration Notice*.

- .4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *GMP*, the *Management Fee* and the *Preliminaries Fee* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 71 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

75 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 Other than a *Claim* for:
- .1 an extension of time in accordance with clause 72; and
 - .2 delay costs in accordance with clause 73,
- the Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

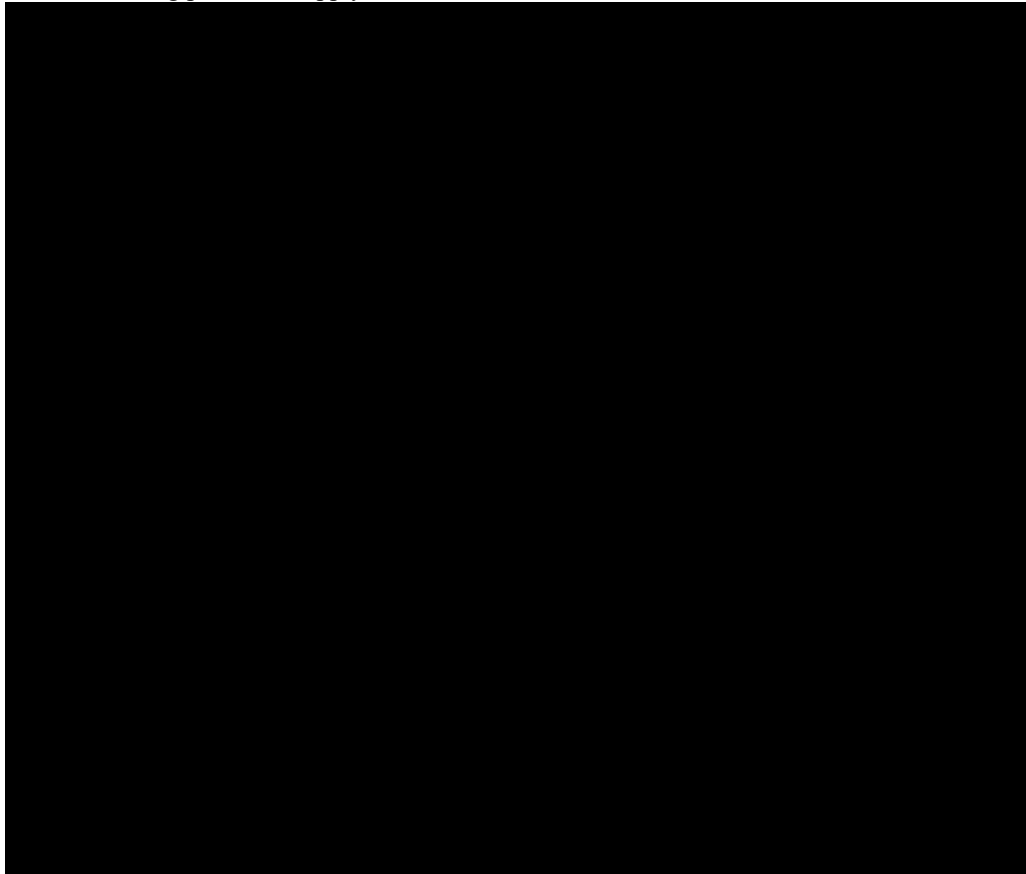
76 Contractor's suspension

- .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 72, but despite clause 73, it will not be entitled to any payment for delay or disruption.
- .2 Clause 76 is not intended to limit any rights of the Contractor under the *Building Payment Act*.

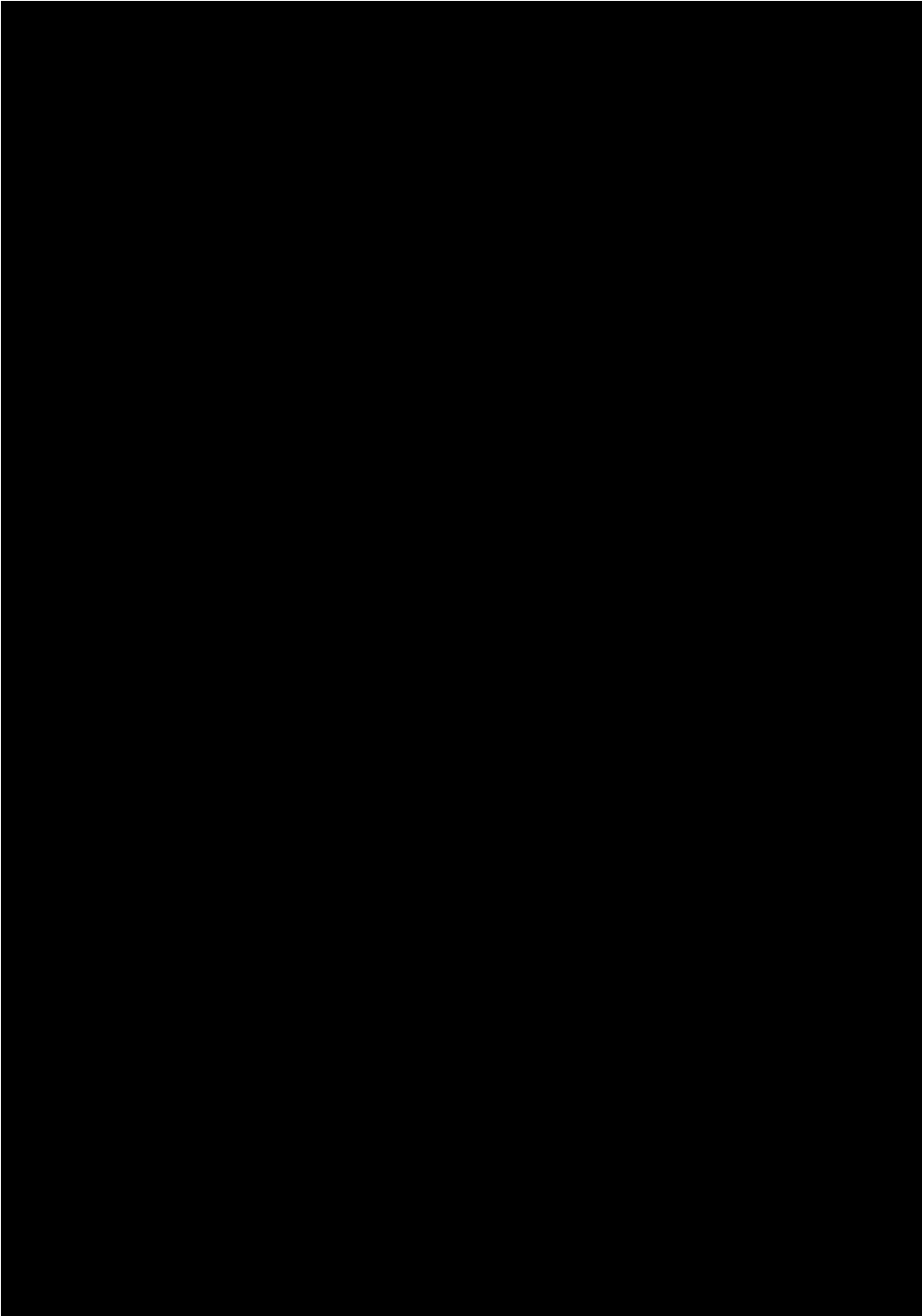
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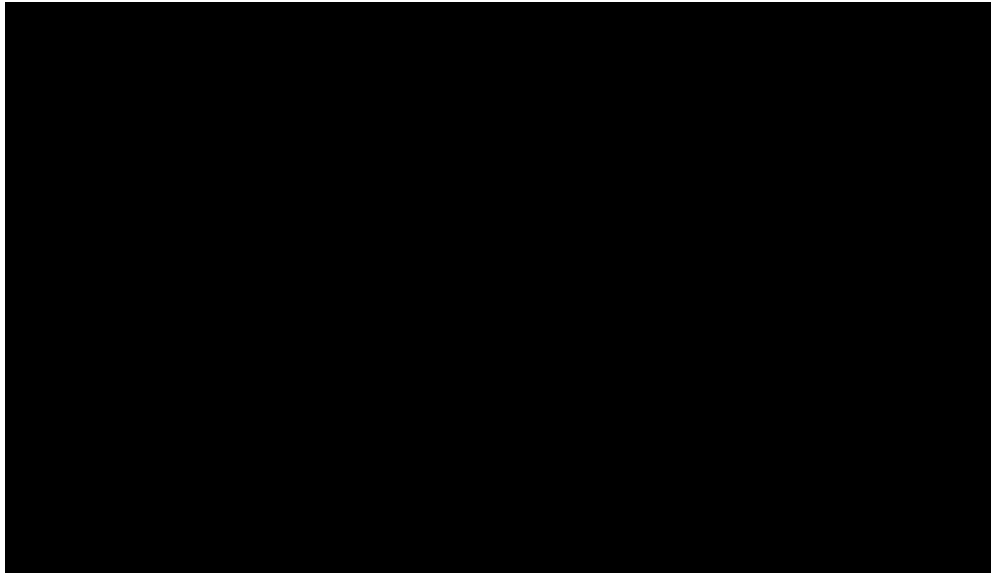
77 Actual Construction Costs and GMP

- .1 The following provisions apply to all *Actual Construction Costs*:




Excluded Costs

- .2 In no circumstances is the Contractor entitled to claim any *Excluded Costs* from the Principal, regardless of whether such costs are actually incurred by the Contractor in connection with performing the work in connection with the Contract.
 - .3 If the Contractor is paid any costs that are *Excluded Costs*, such overpayment shall constitute a debt due and payable by the Contractor to the Principal under the Contract and the Principal may, on identifying any such overpayment, certify the overpayment as a debt due and payable under the Contract, at any time.
- 



Inclusions and adjustments


- .5 Except where expressly provided in the Contract, the Contractor acknowledges that it shall not be entitled to any adjustment to the *GMP*, the *Management Fee* or the *Preliminaries Fee* or the payment of any other compensation whatsoever.
- .6 The *GMP* includes all labour, *Materials*, construction equipment, *Temporary Work*, consumables, fees, *Taxes* (other than GST) and anything else necessary to carry out and complete the work in connection with the Contract and the Works and the performance of the Contractor's obligations under the Contract.
- .7 All amounts under this Contract are expressed 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 *GMP*, the *Management Fee* or the *Preliminaries Fee* for any foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

78 Provisional Sums

- .1 If Contract Information item 50 states that the Contract 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, then:
 - .1 the *GMP* must be adjusted by deducting:
 - .1 the *Provisional Sum* for that work; and
 - .2 the decrease to the *Management Fee* determined in accordance with clause 78.178.1.2.2; and
 - .2 the *Management Fee* will be decreased by an amount determined by applying the percentage stated in Contract Information item 51 to the *Provisional Sum* for that work; and
 - .3 if the Principal instructs the Contractor to carry out the work:
 - .1 the Contractor must comply with the instruction;
 - .2 the *GMP* must be adjusted by:
 - .1 the difference between the *Provisional Sum* and the *Actual Construction Costs* incurred by the Contractor in performing the work the subject of the *Provisional Sum*; and
 - .2 adding or deducting the adjustment to the *Management Fee* determined in accordance with clause 78.178.1.3.3; and
 - .3 the *Management Fee* will be adjusted as follows:

- .1 if the *Actual Construction Costs* referred to in clause 78.178.1.3.2 are greater than the relevant *Provisional Sum*, the *Management Fee* will be increased by an amount determined by applying the percentage stated in Contract Information item 51 to the difference between the *Actual Construction Costs* referred to in clause 78.178.1.3.2 and the relevant *Provisional Sum*; or
- .2 if the *Actual Construction Costs* referred to in clause 78.178.1.3.2 are less than the relevant *Provisional Sum*, the *Management Fee* will be decreased by an amount determined by applying the percentage stated in Contract Information item 51 to the difference between the *Actual Construction Costs* referred to in clause 78.178.1.3.2 and the relevant *Provisional Sum*.

79 Share of Savings

- .1 It is the objective of the parties that the total of all *Actual Construction Costs* shall not exceed the *GMP*, and the parties must work collaboratively to achieve that objective.
- .2 The Contractor must keep the Principal fully informed as to the *Actual Construction Costs* being incurred by the Contractor, and the Principal may give any directions if considers appropriate to the Contractor in order to reduce the *Actual Construction Costs*.
- .3 The parties have agreed that they will share the benefit of cost underruns as provided for by this clause 79.
- .4 
- .5 The Principal's liability to pay the *Share of Savings* shall each not exceed the value of the *Management Fee*.
- .6 The Contractor may claim any *Share of Savings* in the *Final Payment Claim*.

80 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.

81 Payment Claims

- .1 Subject to clause 81.2, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 52, for work carried out up to that date.
- .2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 84.
- .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 of:
 - .1 the *Preliminaries Fee* and the *Management Fee*, in accordance with the proportion of the *Works* completed; and
 - .2 the *Actual Construction Costs* incurred by the Contractor since the last *Payment Claim* (or in the case of the first *Payment Claim*, since the Date of Contract),

in accordance with the Contract. 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.

- .5 The Contractor is only entitled to payment for:
 - .1 to the extent that the *Payment Claim* is for the *Actual Construction Costs*, the value of work for which the Contractor has provided evidence, on an *Open Book Basis*, of the cost incurred; and
 - .2 to the extent that the *Payment Claim* is based on a rate or price included in the Contract, the value of work for which the Contractor has provided evidence of the quantities to which the rates or prices must be applied.
- .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 to or is required to pay under clause 96 or any other provision of the Contract;
 - .4 state the amount of interest, if any, that the Contractor claims under clause 85; 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;
 - .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.

82 Unfixed Materials

- .1 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
 - .1 the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
 - .2 where the value of the unincorporated *Materials* is greater than [REDACTED] the Contractor provides before or with the *Payment Claim*:
 - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
 - .2 a statement in the terms in Schedule 11 (Statement regarding *Materials*);
 - .3 the Contractor provides evidence before or with the *Payment Claim* that:
 - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
 - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
 - .4 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
- .2 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
- .3 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.
- .4 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*.

83 Payments

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the *Principal's Authorised Person* must provide a *Payment Schedule* to the Contractor that:
 - .1 identifies the *Payment Claim* to which it relates;
 - .2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and
 - .3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld.
- .2 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
- .3 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
- .4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement.

84 Final payment

- .1 The Contractor must submit a *Final Payment Claim* for all amounts that the Contractor asserts remain owing to the Contractor (whether under the Contract or otherwise) 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 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's Authorised Person* must provide a *Final Payment Schedule* to the Contractor.
- .3 If the *Principal's Authorised Person* considers that no payment is due to the Contractor and that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the *Principal's Authorised Person* certifies that the Contractor must pay, and include reasons and particulars supporting that certification.
- .4 Payments certified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 10 *Business Days* after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 83.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *GMP*, the *Management Fee* and the *Preliminaries Fee* 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 84.1;
 - .2 any *Issue* properly notified under clause 97 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 20 *Business 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.

85 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 53, for the period the payment is late.

86 Set-off

- .1 If the Principal claims a sum, including a debt due, in connection with the Contract, 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

87 Early use

- .1 Before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete by directing a *Separable Portion* in respect of the completed Works and then:
- .1 the Contractor's responsibilities are not affected, except if they are reduced under clauses 39.3 or 39.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
 - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves *Completion*, the Principal must give not less than 15 *Business 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 15 *Business Days* after receipt of a notice under clause 87.2, 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.

88 Completion

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 On the date which is 6 months prior to the then current Contractual Completion Date, the Contractor must provide written notice to the Principal as to whether the Contractor expects to achieve *Completion* of the Works by the Contractual Completion Date; and if not, the date on which the Contractor then anticipates achieving *Completion*.
- .3 The Contractor must give the *Principal's Authorised Person* not less than 20 *Business Days*' written notice of the date upon which the Contractor anticipates that the Works will achieve *Completion*.
- .4 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* stating that, in the Contractor's opinion, the Works have reached *Completion*.
- .5 The parties must, within a reasonable time, and in any event within 10 *Business Days*, after receipt of a Contractor's notice under clause 88.4, carry out a joint inspection of the Works.
- .6 Within 10 *Business Days* after the joint inspection referred to in clause 88.5, the *Principal's Authorised Person* must either:

- .1 if *Completion* has been achieved, issue a *Certificate of Completion* in the form set out in Part B of Schedule 34:
 - .1 stating that the Works have achieved *Completion*; and
 - .2 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*.
- .7 If the *Principal's Authorised Person* provides a notice to the Contractor pursuant to clause 88.688.6.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 88.4, 88.5 and 88.6 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Completion*.
- .8 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*.
- .9 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.

89 Close-out workshop

- .1 The Principal must convene a close-out workshop within 15 *Business 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.

90 Defects after Completion

- .1 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 *Defect*;
 - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 67.3 and 67.4 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 90.1.1.
- .2 In respect of any *Defect* rectified during a *Defects Liability Period*, a new *Defects 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 90.
- .4 In carrying out any rectification work pursuant to this clause 90, the Contractor must do so:
 - .1 diligently and promptly;
 - .2 in accordance with any directions given by the *Principal's Authorised Person*; and
 - .3 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; and
- .2 it is not practical - or - possible to provide the Contractor with an opportunity to rectify the *Defect*,

then the Principal or the operator of the Works may have the *Defect* made good by others and the cost of doing so will be a debt due from the Contractor to the Principal.

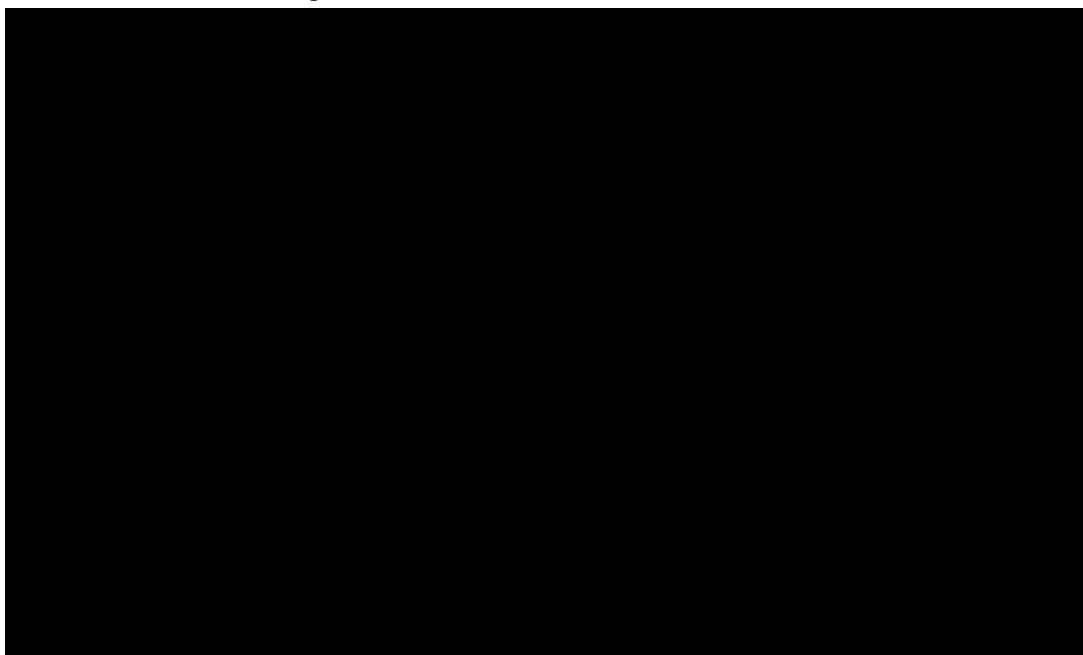
- .6 Nothing in clause 90 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
- .7 Clause 90 does not affect the Principal's rights under clause 68.

91 Certificate of Final Completion

- .1 As soon as the Works, in the opinion of the Contractor, reaches 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 91.1.
- .3 The *Principal's Authorised Person* must, within a reasonable time after the later of:
 - .1 receipt of the Contractor's notice under clause 91.1; 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 34 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 91.1 and 91.2 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Final Completion*.

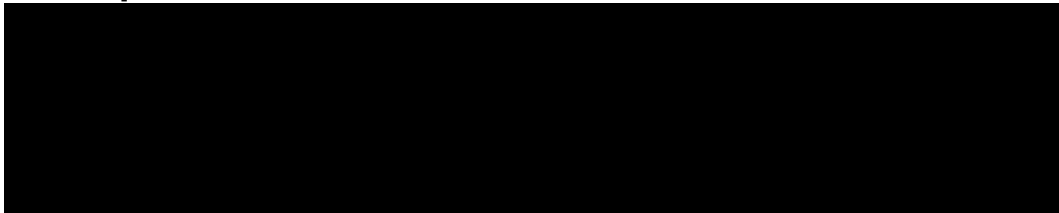
Liability

92 Limitation of liability





93 Consequential loss



94 Exclusion of proportionate liability

- .1 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.

95 Contractor jointly and severally liable

- .1 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.

Claim and Issue resolution

Claim resolution

96 Contractor's Claims

- .1 If the Contractor wishes to make:
- .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 Contractor must submit full details of that *Claim* in writing ("**Prescribed Notice**") within 20 *Business 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 submit a *Prescribed Notice* in respect of a *Claim* within the time specified in clause 96.1, 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 *Prescribed Notice* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, and a detailed quantification of the *Claim*. The *Prescribed Notice* must also include details of the effect of the event giving rise to

the *Claim* on the *GMP*, the *Management Fee*, the *Preliminaries Fee* and the *Contractual Completion Date(s)*.

- .4 If a *Claim* complies with clause 96.3 and the Principal agrees that the Contractor is entitled to a money adjustment, it must be valued in accordance with clause 71.
- .5 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .6 If a *Claim* is rejected or not agreed within 20 *Business Days* after the Contractor has provided a valid *Prescribed Notice*, it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 97.1.
- .7 The provisions of clauses 96.2 to 96.6 apply generally to all *Claims*, whether made under clause 96 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

Issue resolution

97 Notification of Issue

- .1 The Contractor may dispute an assessment or instruction of the Principal or the *Principal's Authorised Person*, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal of an *Issue* within 20 *Business Days* after notification of the assessment or instruction, or within 20 *Business Days* after it becomes an *Unresolved Claim*.
- .2 Either party may give notice to the other of an *Issue* (excluding an *Issue* arising from an *Unresolved Claim*, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 20 *Business Days* after becoming aware of the *Issue*.
- .3 Subject to clause 97.6, the parties must follow the *Issue* resolution procedures in clauses 97 and 98 before either commences litigation or takes similar action.
- .4 If notice of an *Issue* under clause 97.1 or 97.2 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 84 or clause 96.2.
- .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 97 and 98 does not prevent a party from seeking an urgent declaration or injunction from a court.

98 Resolution by senior executives

- .1 If a party gives notice of an *Issue* under clause 97, 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 commence litigation or take similar action until 20 *Business Days* after giving notice of an *Issue*.

99 Parties to perform the Contract

- .1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 97 to 98.

Termination

100 Step-in

Right of step-in

- .1 If:
 - .1 a 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 100.1 on the occurrence of a *Contractor Default Event* for so long as the Contractor is complying with its obligations under clauses 101.2 to 101.5 in respect of that *Contractor Default Event*.

Notice

- .3 The Principal may exercise its rights under clause 100.1 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 100.1, the Contractor's rights and obligations under this 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 100.4, the exercise by the Principal of its rights under clause 100.1 will not affect any other obligation of the Contractor under this Contract.
- .6 The exercise by the Principal of its rights under clause 100.1 (or the cessation of such exercise) will not affect any other right of the Principal under this 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 100.1;
 - .2 provide sufficient resources, including *Contractor's Personnel*, to assist the Principal in exercising its rights under clause 100.1; and
 - .3 not do anything to hinder, disrupt or prevent the Principal in exercising its rights under clause 100.1.

Limits on liability during step-in

- .8 When exercising its rights under clause 100.1, 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 100.1 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 this Contract, the Contractor acknowledges and agrees that:
 - .1 the Principal, when exercising its rights under clause 100.1, 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 100.1; 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 100.1 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 100.1; or
 - .3 a fraudulent or reckless act or omission of the Principal in the course of it exercising its rights under clause 100.1.

Cessation of step-in rights

- .11 The Principal may, at any time, cease to exercise its rights in accordance with this clause 100 upon giving 5 *Business Days'* notice to the Contractor.
- .12 The Principal must cease to exercise its rights in accordance with this clause 100 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 100.1100.1.3, the relevant event ceases and its consequences have been remedied.
- .13 If the Principal ceases to exercise its rights under clause 100.1, 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.

101 Contractor Default and Termination

Principal may issue Default Notice

- .1 If a *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 101.1;
 - .2 specifying the nature of the *Contractor Default Event*; and
 - .3 specifying the time period by 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 5 *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.
- .4 If the Principal approves a *Draft Cure Plan* pursuant to clause 101.3.1 ("**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 101.3.2, 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 5 *Business Days* after receipt of the Principal's notice issued under clause 101.3.2. Clauses 101.3, 101.4 and 101.5 will apply to the amended *Draft Cure Plan*. This clause 101.5 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 5 *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 101.8.1 ("**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 101.8.2, 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 5 *Business Days* after receipt of the Principal's notice issued under clause 101.8.2. Clauses 101.8, 101.9 and 101.10 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 101 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 101, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
- .5 If, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete the Works, then the difference will be a debt due from the Contractor to the Principal.
- .6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 101.13.5 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 101, 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 this Contract does not affect the rights and obligations of the parties under the Contract which accrued prior to the date of termination.

102 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 83 and any other items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 102.1, subject to its rights under the Contract (including clause 86), the Principal must pay the Contractor:
 - .1 the amount due to the Contractor for all work carried out (as determined under clauses 81 and 83) to the date the termination notice takes effect, after taking into account previous payments and any deductions, retentions or set-offs under clauses 83 and 86;
 - .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 102.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs; and
 - .4 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 102, the Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 The payments referred to in clause 102.4 are full compensation for termination under clause 102 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

103 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 20 *Business 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 102.3 to 102.6 will then apply. The Contractor's sole remedy for the Principal's

breach will be the applicable amounts referred to in clause 102.4 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

104 Termination notices

- .1 Notices under clauses 101, 102 and 103 must be in writing and be delivered by hand, registered post or equivalent.

105 Survival

- .1 Without limiting the survival of any clause by operation of law, clauses 35, 36 and 37 and all indemnities in the Contract survive termination.

Meanings

106 Interpretation

- .1 Words in the singular include the plural, and vice versa, and words denoting any gender include all genders.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.
- .3 “Including” and similar words are not words of limitation.
- .4 The meaning of ‘or’ is that of the inclusive ‘or’, that is meaning one, some or all of a number of possibilities.
- .5 The term ‘may’, when used in the context of a power, right or action exercisable by the Principal or the *Principal’s Authorised Person*, means that the Principal or the *Principal’s Authorised Person* (as the case may be) can exercise that power, right or action in its absolute and unfettered discretion and the Principal or the *Principal’s Authorised Person* (as applicable) has no obligation to the Contractor to do so.
- .6 References to an approval, record or report means that the approval, record or report must be in writing unless otherwise agreed by the Principal.
- .7 The word “day”, unless qualified, for example as “Working Day” or “Business Day”, has its common English meaning according to context, namely a period of 24 hours or a calendar day.
- .8 Headings and notes are provided to guide the parties and form part of the Contract.
- .9 A reference to the Contract is a reference to the entire Contract (including all Schedules and Attachments), and includes a reference to the Contract as amended, supplemented, varied or replaced from time to time.
- .10 A reference to any of the *Contractor’s Project Plans* is a reference to that *Contractor’s Project Plan* as amended or updated from time to time in accordance with the Contract.
- .11 A reference to any authority, utility company or other body is:
 - .1 if that authority, utility company or other body is reconstituted, renamed or replaced or if the powers or functions are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - .2 if that authority, utility company or other body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that authority, utility company or other body.
- .12 A reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for that legislation, section or provision.
- .13 A reference to any quality standards or to any section or requirement of it includes any amendment to or of, that quality standard, section or requirement.
- .14 Where any word or phrase is defined in the Meanings, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

107 Definitions

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

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

Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 107.

Aboriginal Participation Plan

The Aboriginal participation plan required pursuant to section 1.4 of the *Preliminaries*.

Acceleration Notice

A written instruction under clause 74.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an “*Acceleration Notice*”.

Aconex

Means the website www.aconex.com.au.

Actual Completion Date

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

Actual Construction Costs

All of the costs and expenses of the Contractor properly and actually paid in respect of the work in connection with the Contract comprising:

- .1 the cost of materials, goods, equipment, tradework and other services paid to *Subcontractors* or suppliers, but excluding any *Excluded Costs*;
- .2 amounts paid to the Consultants in accordance with their consultancy agreements, but does not include amounts paid by the Principal to any *Novated Consultants* before novation;
- .3 amounts payable to the Contractor in respect of *Self-Performed Work* under clause 47;
- .4 any excesses or deductibles paid in respect of any claims under any policies of insurance required to be maintained under this Contract; and
- .5 valid *Claims* by the Contractor for the payment of additional costs in respect of the work in connection with the Contract which are payable to the Contractor under the terms of the Contract,

but which do not include costs and expenses which are included or deemed to be included in:

- .6 the Preliminaries Fee;
- .7 the Management Fee.

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.

Approved Cure Plan

The cure plan approved by the Principal pursuant to clause 101.3101.3.1.

Approved Mitigation Plan

The mitigation plan approved by the Principal pursuant to clause 101.8.1.

Approved Subcontractors

Those Subcontractors, Suppliers and Consultants set out in Contract Information item 13.

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).

Arup Report

Arup Saint Georges Terrace – Building Stability Risk Assessment 22 December 2020 Issue.

Asbestos

Has the meaning given to “Asbestos Waste” in the *Protection of the Environment Operations Act 1997* (NSW).

Asbestos Management Plan

The asbestos management plan submitted by the Contactor pursuant to clause 40.11.

Building Code

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

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

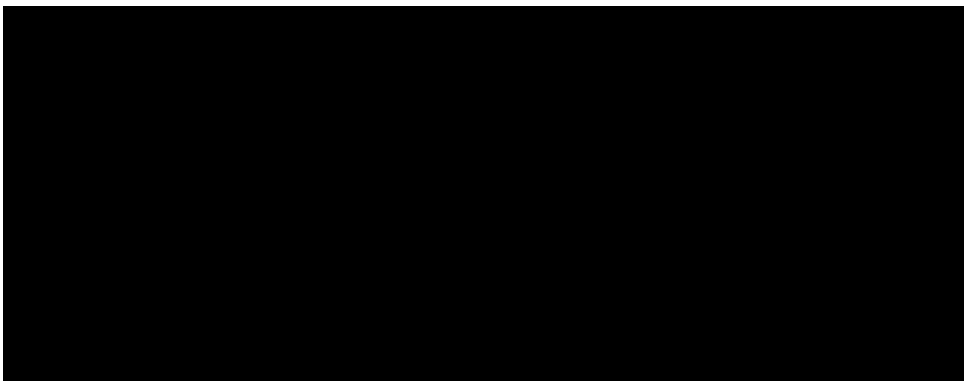
A certificate issued by the *Principal's Authorised Person* under clause 88.6.

Certificate of Final Completion

A certificate issued by the *Principal's Authorised Person* under clause 91.3.

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 International COVID Requirements**Change in Statutory Requirements**

Means:

- .1 the enactment of any new Statutory Requirement;
- .2 the repeal, modification or re-enactment of any existing Statutory Requirement; or
- .3 a change to any of the items specified in Contract Information item 16 arising from the requirements of any relevant authority,

that:

- .4 is applicable in Australia;

- .5 comes into effect after the Date of Contract; and
 - .6 in respect of any new or changed *Statutory Requirement* that does not relate solely to dealing with the COVID-19 emergency:
 - .1 could not reasonably have been anticipated at the Date of Contract by a competent and experienced contractor in the position of the Contractor; and
 - .2 requires a change to the Works; and
 - .7 in respect of any new or changed *Statutory Requirement* that relates to planning or the *Environment*, is directly related to the Site,
- but excludes:
- .8 a change in Taxes or any *Statutory Requirement* that relates to Taxes;
 - .9 except as provided for in paragraph .3 of this definition, the conditions or requirements contained in, or associated with, any Approval that is issued or comes into effect after the Date of Contract; or
 - .10 except as provided for in paragraph .3 of this definition, a change in any Approval that the Contractor is required to obtain and maintain in accordance with this Contract.

Claim

A claimed entitlement of the Contractor under or in connection with the Contract, whether in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to *Actual Construction Costs*, an extension of time, the payment of additional monies, or for breach of contract by the Principal.

Claimed Amount

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

Collaboration Principles

The principles contained in Schedule 32.

Completion

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

- .1 the Works are fully complete with no *Defects* or omissions, except for minor *Defects* or omissions which:
 - .1 do not prevent the *Works* from being used for their intended purpose;
 - .2 the *Principal's Authorised Person* has determined that the Contractor has reasonable grounds for not rectifying; and
 - .3 do not cause any impediment to the safe and efficient use or occupation of the *Works*;
- .2 the Contractor has provided to the Principal:
 - .1 a full and detailed statement setting out, on an *Open Book Basis*, all of the *Actual Construction Costs* incurred by the Contractor in carrying out the work in connection with the Contract;
 - .2 all *Subcontractor's* warranties and any Consultant's deeds of covenant required by clause 46.3;
 - .3 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;
 - .4 all certificates, authorisations, approvals and consents (including *Approvals*) from statutory authorities and service providers for which the Contractor is responsible under the Contract;
 - .5 those certificates required for the occupation, use and maintenance of the Works for which the Contractor is responsible under the Contract;
 - .6 a *Site Audit Statement* that has been prepared and certified in accordance with all applicable *Statutory Requirements*;
 - .7 each Consultant certificate required under clause 61.14 and a certificate from each Consultant responsible for producing any *IFC Design*

- Documentation* that the finally as-constructed Works comply with the *IFC Design Documentation* prepared by that Consultant;
- .8 where the Contractor has procured any *Extra Land* under clause 59.1, a properly executed release which complies with clause 59.159.1.3.1 or a statement signed by the Contractor which complies with clause 59.159.1.3.2 (as applicable);
 - .9 a full electronic version of the electronic records sent via Aconex on a separate Solid State Hard-Disk Drive (SSD); and
 - .10 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 section 2.2 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 and all *Existing Improvements* impacted by the work in connection with the Contract have been cleaned; and
 - .7 all other pre-conditions to achieving *Completion* set out in the Contract have been satisfied.

Completion Undertaking

The *Undertaking* required under clause 18.1, for the amount stated in Contract Information item 41.

Confidential Information

Any of the following:

- .1 the terms of this 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.

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.

Consultant Novation Deed

Means the deed in the form of Schedule 33.

Contamination

- .1 Any *Asbestos*, pollution (other than air pollution), hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or hazardous or special 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 Contract Information item 33.

Contract Information

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

Contract Program

The program described in clause 34.

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 76;
 - .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 a significant failure 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 18 or the *Contractor Warranty Deed* as required under clause 12;
 - .9 submitting a *Subcontractor's Statement* or *Supporting Statement* that is incomplete or untrue in any respect;
 - .10 failing to comply with any provision of this Contract or any *Statutory Requirement* relating to the *Environment* or workplace health and safety;
 - .11 the Contractor assigning a right or benefit under the Contract without first obtaining the Principal's written consent;
 - .12 failing to effect and maintain insurance policies as required under the Contract; or
 - .13 the Contractor taking steps to materially reduce its resources on Site.

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 101.1 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 101.2101.2.4 applies, submit a *Draft Cure Plan* in accordance with clause 101.2101.2.4 or a revised *Draft Cure Plan* in accordance with clause 101.5; 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 101.7 or a revised *Draft Mitigation Plan* in accordance with clause 101.10;
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 in breach of clause 11.2;
- .4 Contractor Insolvency;
- .5 the Contractor's aggregate liability to the Principal equals the amount set out in Contract Information item 23;
- .6 the Contractor's liability to the Principal for liquidated damages equals the liquidated damages liability cap set out in Contract Information item 24 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; or
- .7 the Contractor has notified the Principal that it agrees to refresh the liquidated damages liability cap set out in Contract Information item 24, and the Contractor's liability to the Principal for liquidated damages equals or exceeds the refreshed cap.

Contractor Warranty Deed

The Contractor warranty deed in the form set out in Schedule 35.

Contractor's Authorised Person

The person appointed to act on behalf of the Contractor under clause 3, named in Contract Information item 9 or as subsequently notified to the Principal.

Contractor's Documents

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 61, which the Contractor must produce to design and construct the Works in accordance with the Contract.

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 the *Preliminaries* which are required to be submitted by the Contractor to the Principal pursuant to clause 51.

Contractual Completion Date

The day stated in Contract Information item 15, 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 2001 (Cth)*; 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.

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 Management Plan

The plan contained in Schedule 28.

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.

COVID Shutdown

Means a shutdown of the whole of the Site for at least one full working day and which applies only to the Site and which is either

- .1 directed by a public health authority; or
- .2 initiated by the Contractor with the prior approval of the Principal,

and is solely due to any of the Contractor's Personnel recording a positive test for the COVID-19 virus, except where the Contractor has failed to comply with the *COVID -19 Management Plan* or take any other steps that a reasonable and prudent contractor would take to prevent the closure or expedite the re-opening of the Site.

Cultural Heritage Artefacts

The *Artefacts* set out in Contract Information item 44.

Cure Period

The cure period referred to in clause 101.1101.1.3.

Data

The *Contractor's Documents* and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Contract, including the *Design Documentation*.

Date of Contract

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

Deed of Release

The deed of release in the form set out in Schedule 36.

Default Notice

A notice issued by the Principal pursuant to clause 101.1.

Defect

Any defect error, omission, non-compliance, failure, 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 56, as may be extended in accordance with clause 90.

Defect Notice

A notice issued by the Principal under clause 67.2 or 90.1.

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 Review Period

The design review period stated in clause 61.16.

Document Submission Schedule

The document set out in Schedule 16.

Draft Cure Plan

The draft cure plan prepared by the Contractor pursuant to clause 101.2101.2.4.

Draft Mitigation Plan

The draft mitigation plan prepared by the Contractor pursuant to clause 101.7.

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 40.5.

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*.

EPBC Act

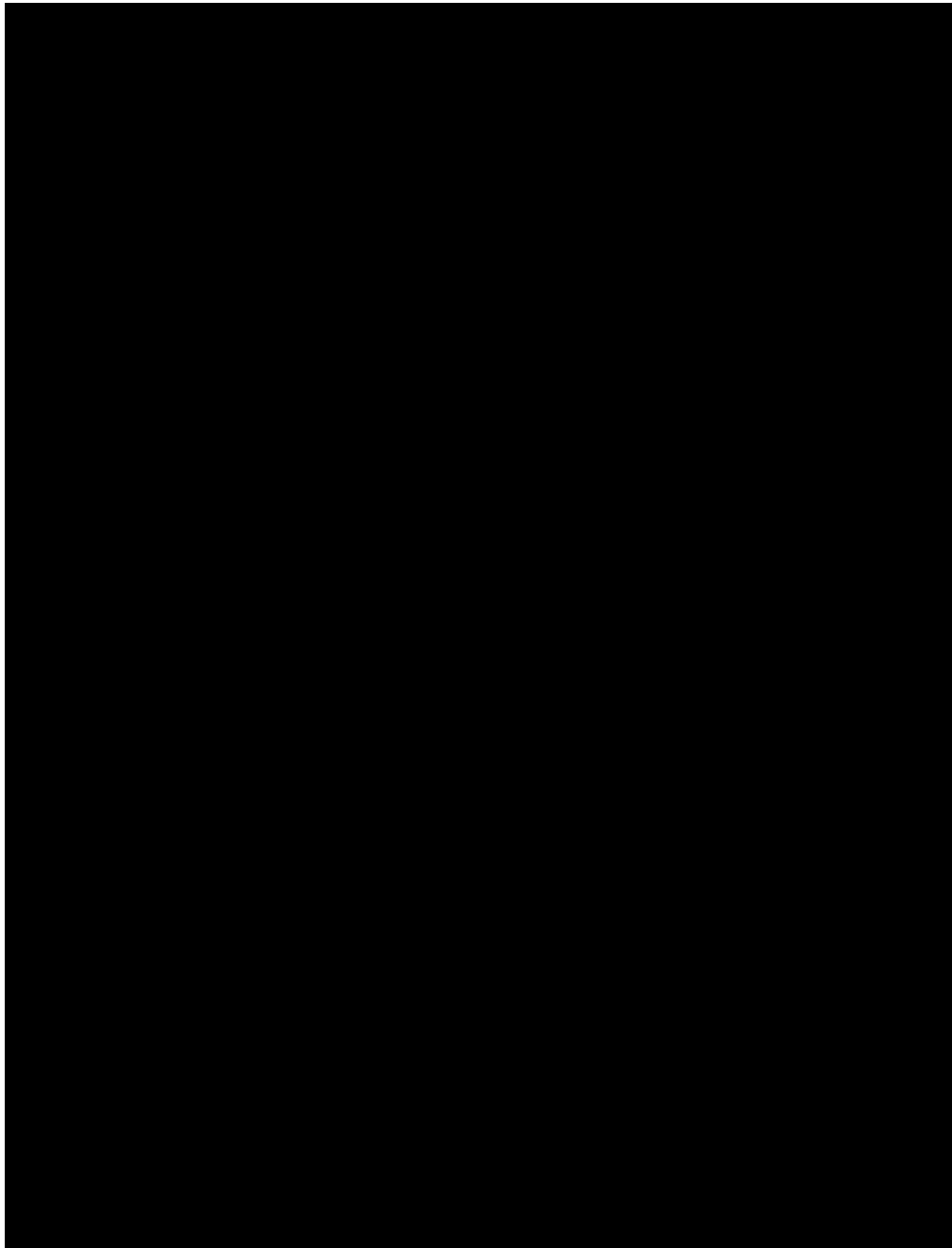
The *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

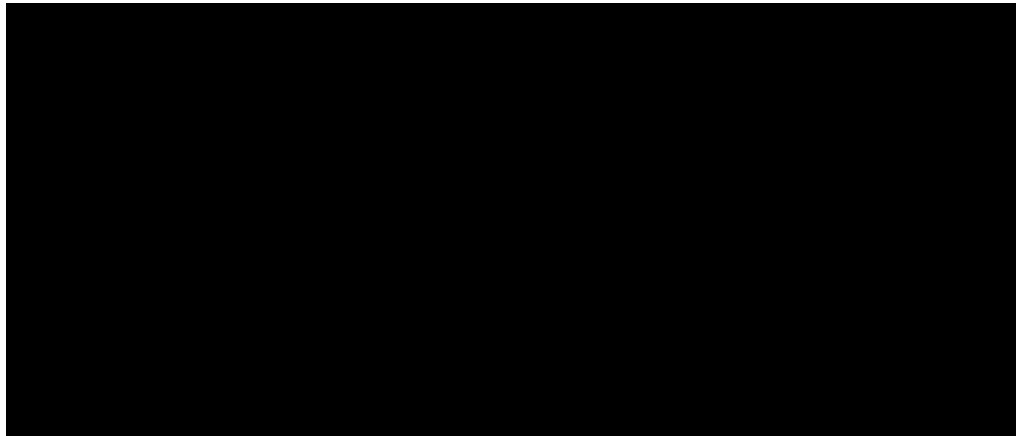
Excluded Costs

Costs which are not to be claimed by or paid to the Contractor, and for which the Contractor is solely liable, as described in clause 77.4.

Excusable Delay Event

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





Existing Improvements

All existing improvements, buildings, structures, services; *Utilities*, carpark, loading bays, roadways, pedestrian ways or other facilities associated with the above situated within, about, under or in the vicinity of the Site or its surrounds and includes any part of the Works comprising a *Separable Portion* from the time it reaches *Completion* and is handed over to the Principal under the Contract.

Extra Land

Has the meaning given in clause 59.

Fault

Any error, ambiguity, inconsistency or discrepancy.

Final Actual Cost (FAC)

The total of the *Actual Construction Costs* and the *Preliminaries Fee* and the *Management Fee* payable to the Contractor under this Contract.

Final Completion

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

Final Payment Claim

A *Payment Claim* given by the Contractor to the Principal under clause 84.1.

Final Payment Schedule

A *Payment Schedule* given by the Principal to the Contractor under clause 84.2.

Fit for Purpose

Means fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from, the GC 21 General Conditions of Contract, the *Project Brief* and the *Preliminary Design* and otherwise meets the requirements set out in or which can be reasonably inferred from the Contract.

Force Majeure Event

Only the following events or circumstances:

- .1 earthquake, fire, natural disaster (excluding flood), lightning, landslide, explosion or sudden and accidental chemical or biological pollution;
- .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 be 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.

Guaranteed Maximum Price (GMP)

The amount stated in Contract Information item 47, being the maximum amount to be paid by the Principal for the performance of all work in connection with the Contract, as adjusted in accordance with the Contract.

Guarantor

The entity identified at Contract Information item 14.

IFC Design Documentation

The *Design Documentation* to be completed by the Contractor and used for the construction of the Works to be produced through the process more particularly described in clause 61 and the *Document Submission Schedule*.

Indemnified Parties

Infrastructure New South Wales and *MAAS*.

Industrial Action

Industrial action of any description including but not limited to:

- .1 a ban, limitation or restriction on the performance of work, the acceptance or offering for work or attendance at work; or
- .2 any interference with contractual relations, picketing, secondary boycott, blockade, embargo or intimidation relating to the Works,

but only to the extent that it is not caused or contributed to by the conduct of the Contractor or the *Contractor's Personnel* or of any person employed or engaged by the Contractor or the *Contractor's Personnel*.

Information Documents

Any information, data or document which is:

- .1 listed or referred to in Schedule 38;
- .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 Works (“**Call for EOI**”), the Request for Tender for the Works (“**RFT**”), or the Works (including, without limitation, anything issued or made available through INSW'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 Works (including, without limitation, anything issued or made available through INSW'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
- .4 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 arising out of or in any way connected with the Contract, the work in connection with the Contract or the Works and includes an *Unresolved Claim*.

Key Equipment

The equipment identified as such in Item 57 of the Contract Information.

Key Off-Site Area

The areas where *Key Equipment* is being manufactured, each as identified in Item 58 of the Contract Information.

Key Personnel

The key personnel named in Contract Information item 12 and any replacement person appointed by the Contractor pursuant to clause 48.

Loss

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

MAAS

The Museum of Applied Arts and Science.

Major Flood

A flood that affects the Site at a level at or above RL4.1.

Management Fee

Means the lump sum amount specified in Contract Information item 48, as adjusted in accordance with the Contract, which represents the Contractor's margin for performing the work in connection with the Contract.

Management Fee Percentage



Materials

Includes materials, plant, equipment and other goods.

Migrating Contamination

Means *Contamination* which migrates into, onto or under the Site from outside the Site after the Date of Contract but excluding *Contamination*:

- .1 the migration of which was caused by the Contractor or the *Contractor's Personnel* (including as a result of the Contractor's failure to comply with its obligations under the Contract);
- .2 the migration of which could have been prevented or minimised by the Contractor by the implementation of measures that would have been taken by a competent and experienced contractor in the position of the Contractor to prevent or minimise such migration; or
- .3 that existed in, on or under the Site at the Date of Contract, whether or not that *Contamination* originally migrated from outside the Site.

NSW Government Policy and Guidelines

Means the policies and guidelines specified in clause 24.1.

Novated Consultants

Means the Principal's consultants identified as novated consultants in Contract Information item 40.

Novation Deed

A novation deed in the form set out in Schedule 5.

Objectives

The objectives contained in Schedule 31.

Open Book Basis

Means pricing, costing and all other relevant information to enable an assessment of actual costs and profit margins in a clear, transparent and fully auditable manner.

Parent Company Guarantee

The guarantee provided on behalf of the Contractor pursuant to clause 18.19.

Parent Company Guarantee Replacement Event

Any of the following:

- .1 the *Guarantor* is insolvent;
- .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 81 or 84.

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 83 and 84.

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).

Post-Completion Undertaking

The *Undertaking* required under clause 18.1, for the percentage of the *GMP* (at the Date of Contract) stated in Contract Information item 42.

PPSA

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

Pre-Agreed Variations

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

Preferred Subcontractor

A Subcontractor, Supplier or Consultant listed in Contract Information item 38 for a specified trade or area of work.

Preliminaries

The document contained in Schedule 39.

Preliminaries Fee

Means the lump sum amount specified in Contract Information item 49, as adjusted in accordance with the Contract, which represents the Contractor's sole compensation for the items and services set out in section 10 of the *Preliminaries*.

Preliminary Design

The Preliminary Design provided set out in Schedule 14.

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 3, 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 *Project Brief* for the Works set out in Schedule 13.

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.

Provisional Sum

A sum included in the *GMP* 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.

Quality Management Plan

The plan set out in Schedule 20.

RCTI

Means the tax invoice referred to in clause 80.

Records

Means the records referred to in clause 7.11.

Related Body Corporate

Has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

Remediation Action Plan

The remediation action plan set out in Schedule 30.

Required Approval Modification

The modifications described as such in Schedule 8.

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.

Scheduled Amount

The amount of payment (if any) stated in a *Payment Schedule*, that the Principal proposes to make in relation to a *Payment Claim*, as referred to in clause 83.183.1.2.

Scheduled Progress

The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works will be completed by the *Contractual Completion Date*.

Scheme

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

Self-Performed Work

The work described in clause 47.

Separable Portion

Each of the portions of the Works set out in Schedule 7 and any other portion of the Works directed by the *Principal's Authorised Person* to be a separable portion pursuant to clause 9.2.

Separate Contractor

- .1 A contractor engaged by the Principal or MAAS (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 a third party is performing work in the vicinity of, but not on, the Site.

Share of Savings

The amount calculated in accordance with clause 79.4.

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 17.

Site Access Date

The dates for access to the Site set out in Part B of Schedule 17.

Site Audit Statement

A site audit statement as defined in the *Contaminated Land Management Act 1997* (NSW), which certifies that the Site is suitable for use as a museum.

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.

Site Infrastructure

Any infrastructure or services existing on the Site.

Stakeholder Management and Community Engagement Plan

The stakeholder management and community engagement plan set out in Schedule 23.

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 100.1.

Subcontract

An agreement between the Contractor and a Subcontractor or a Supplier.

Subcontractor

An entity (including one engaged in accordance with clause 44.4) 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's 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 1 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 2 of Schedule 6.

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

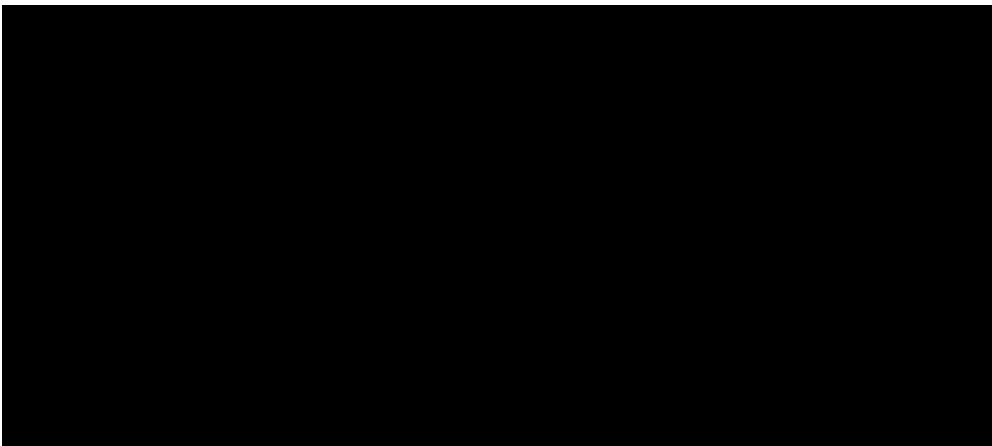
Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used to carry out the Works but not forming part of the Works.

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.

Third Party Agreements

Each of the agreements included in Schedule 40.

Unanticipated Contamination**Undercroft Slab**

Means the Undercroft (Terrace – Lower Ground level) slab on grade depicted in Section F.2.1 “Undercroft” in the *Project Brief* and ARUP Drawing: PP-ARP-DRG-S-300002 “Terrace – LG Level General Arrangement” forming part of the *Preliminary Design*.

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 insurance company suffers a drop in its long term credit rate to less than the *Required Rating*; or
- .3 the *Undertaking* becomes invalid or unenforceable.

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 its Personnel (whether negligent or otherwise) or the breach

of any *Statutory Requirement* by the Contractor or its 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 96.6.

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:

- .1 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 the *IFC Design Documentation*, shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract;
- .2 upgrade to or replacement of any *Utilities* which the Contractor is directed to perform by Endeavour Energy and Sydney Water in relation to *Utilities* owned by them consequent upon the performance by the Contractor of the works described in Part D of Appendix F.7 of the *Project Brief*; or
- .3 changes to the stormwater design as described in Part D of Appendix F.7 of the Project Brief provided such change is limited to:
 - .1 a change in pipe, pit or inlet sizing to that set out in the *Preliminary Design* to meet the requirements of a relevant authority;
 - .2 the introduction of detention or water quality devices to those set out in the *Preliminary Design* to meet the requirements of a relevant authority; or
 - .3 the relocation of a connection point between the Works and an existing *Utility* as a result of a direction or requirement of a relevant authority; or
- .4 augmentation or relocation of existing *Utilities* necessary for the performance of the Works but only to the extent such augmentation or relocation is required by a relevant authority and is not set out in the Project Brief or Preliminary Design.

Variation Order

A Variation Order as described in clause 69.1.

Variation Proposal

A Variation Proposal as described in clause 69.6.

Variation Request

A Variation Request as described in clause 69.5.

WHS Legislation

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

WHS Plan

The workplace health and safety plan submitted by the Contractor pursuant to clause 26.4 and set out in Schedule 22.

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*.

Workplace Relations Management Plan

The plan set out in Schedule 19.

Works

The physical 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 10.1 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

The Contract Information is part of the Contract. Words and phrases are defined in clause 107.

Contract

Item

1 Contract name

The Contract name is: Powerhouse Parramatta Project

The Contract number is: INSW2259

2 Site

Defined in clause 107

The Site is: The land shown in the plan set out in Part A of Schedule 17.

3 Description of the Works

Mentioned in clause 10

The Works are: As described in the *Project Brief* and the *Preliminary Design*

Principal's details

4 Principal

Defined in clause 107

The Principal is: Infrastructure NSW

5 Principal's Authorised Person

Mentioned in clause 3

The *Principal's Authorised Person* is:

6 Notices to the Principal

Mentioned in clause 14

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

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

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

e-mail address:

7 Principal's Senior executive*Mentioned in clauses 97 & 98*

The Principal's senior executive is: [REDACTED]

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

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

e-mail address: [REDACTED]

Contractor's details**8 Contractor**

The Contractor is: Lendlease Building Pty Limited

9 Contractor's Authorised Person

The *Contractor's Authorised Person* is: [REDACTED] *Mentioned in clause 3*

10 Notices to the Contractor*Mentioned in clause 14*

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 14, Tower Three, International
Towers Sydney, Exchange Place, 300
Barangaroo Avenue, Barangaroo NSW
2000

Postal address:
(for delivery by post) Level 14, Tower Three, International
Towers Sydney, Exchange Place, 300
Barangaroo Avenue, Barangaroo NSW
2000

e-mail address: [REDACTED]

11 Contractor's senior executive*Mentioned in clause 98*

The Contractor's senior executive is: [REDACTED]

Office address:
(for delivery by hand) Level 14, Tower Three, International
Towers Sydney, Exchange Place, 300
Barangaroo Avenue, Barangaroo NSW
2000

Postal address:
(for delivery by post) Level 14, Tower Three, International
Towers Sydney, Exchange Place, 300

Barangaroo Avenue, Barangaroo NSW
2000

e-mail address:



12 Key Personnel

The *Contractor's Key Personnel* are:

Name	Position
[Redacted]	

13 Approved Subcontractors

The *Approved Subcontractors* are:

Name	Scope of Works
[Redacted]	

14 Guarantor

The *Guarantor* is:Lendlease Building Australia Holdings Pty
Ltd (ABN: 50 007 520 381)

Dates and times

15 Time for Completion

The *Contractual Completion Date*
is:

Statutory and Government requirements

16 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 19

Those items attributed to the Principal in the matrix included in Schedule 8

17 Conditions of Approvals

Conditions of *Approvals* that will be discharged by the Principal are:*Mentioned in clause 19*

Those items attributed to the Principal in the matrix included in Schedule 8

18 Not used

19 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)

Mentioned in clauses 24 & 26

Yes

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*Mentioned in clause 24*

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

Yes

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*Mentioned in clause 24*

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

Yes

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*Mentioned in clause 24*

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

Yes

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*Mentioned in clause 24*

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

Yes

F - Aboriginal Participation*Mentioned in clause 24*

The Aboriginal Participation Project Category is:

Category 3

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

20 Code Requirements

A – National Construction Code 2019

Mentioned in clause 20.4

Is the Contractor required to comply with National Construction Code 2019?	Yes
--	-----

B - Australian Government Building and Construction WHS Accreditation Scheme

Mentioned in clause 28

Is the Contractor required to maintain accreditation under the <i>Scheme</i> ?	Yes
--	-----

21 Principal contractor

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

Mentioned in clause 27

22 Working hours and working days

Working hours and working days are:

Mentioned in clause 29

Liability

23 Limitation of liability

Subject to clause 92.2, the limit of the Contractor's liability to the Principal in respect of any one occurrence in connection with loss or liability other than personal injury or death is:

Mentioned in 92.1

24 Cap on liquidated damages

Mentioned in clause 73.13

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



Insurance

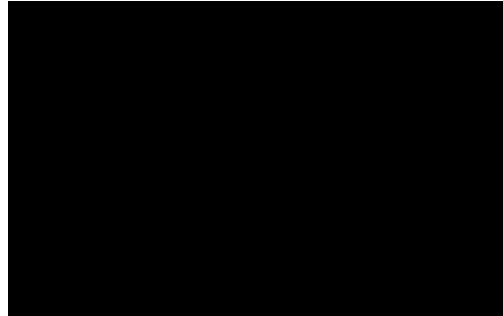
25 Works insurance

Mentioned in clause 42.2

The party responsible for effecting Works insurance is:

Principal

Minimum cover is:



Additional cover required:

Named Insureds:

Principal and the Contractor

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible is

Not applicable

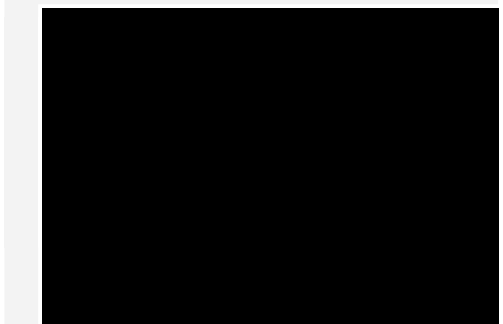
26 Public liability insurance

Mentioned in clause 42.2

The party responsible for effecting public liability insurance is:

Principal

Minimum cover is:



Named Insureds

Period of cover is:

Maximum deductible is:

Not applicable

27 Workers compensation insurance

Mentioned in clause 42.3

Minimum cover is:

As required by law.

Extension

To be extended to cover the Principal's statutory liability to such workers, where permitted by law.

Period of cover is:

until the expiry of the *Defects Liability Period*.

28 Professional indemnity insurance

Mentioned in clause 42.342.3.2

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

Yes

Required amount of 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

29 Marine liability insurance

Mentioned in clause 42.342.3.3

Minimum cover is:

Period of cover is:

Maximum deductible

Not applicable

30 Construction Equipment insurance

Mentioned in clause 42.342.3.4

Insured Property

Minimum cover is:

All construction equipment

Period of cover is:

until the expiry of the *Defects Liability Period*.

Maximum deductible

Not applicable

31 Motor Vehicle insurance

Mentioned in clause 42.342.3.5

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

Minimum cover for compulsory third party:

Period of cover is:

Maximum deductible

As required by law

until the expiry of the *Defects Liability Period*.

Not applicable

32 Asbestos liability insurance*Mentioned in clause 42.342.3.6*

Minimum cover is:

Period of cover is:

Maximum deductible

[REDACTED]
until the expiry of the *Defects Liability Period*.

Not applicable

Contract Documents**33 Other Contract Documents***Mentioned in definition of Contract Documents*Other *Contract Documents* (not listed in the Formal Instrument of Agreement) are:

NIL

Principal's Documents**34 Copies of Principal's Documents***Mentioned in clause 63*The number of copies of the *Principal's Documents* to be provided to the Contractor is:

1 electronic copy.

Contractor's Documents**35 Copies of Contractor's Documents***Mentioned in definition of Contractor's Documents*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**36 Inclusion of consistent requirements in Subcontracts***Mentioned in clause 43.4*

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

[REDACTED]

37 Payment period for Subcontracts*Mentioned in clause 43.443.4.2*

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 36, is:

30 Business Days.

38 Preferred Subcontractors*Mentioned in clause 44.5*

The *Preferred Subcontractors* referred to in clause 44 are:

Concrete – Waterglass Finish
Applicator: Waterstone

39 Subcontractor's warranty*Mentioned in clause 45.1*

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

All of the Preferred Subcontractors listed in item 38 and any other Subcontractor whose scope of work exceeds [REDACTED]

40 Novated Consultants

Consultants of the Principal or MAAS who will be novated to the Contractor

Moreau Kusunoki Genton
McGregor Coxall
DEP Engineering
L'Observatoire International
ARUP (Structures, Civil (including Flooding), Façade and Fire Safety)

Undertakings

41 Completion Undertaking*Mentioned in clause 18.1*

The amount of the *Completion Undertaking* is:

[REDACTED]

42 Post-Completion Undertaking*Mentioned in clause 18.1*

The Amount of *Post-Completion Undertaking* is:

[REDACTED]

43 Return of Post-Completion Undertaking*Mentioned in clause 18.17*

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

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

Cultural Heritage Artefacts

44 Cultural Heritage Artefacts

Mentioned in clause 73.1.3

The *Cultural Heritage Artefacts* are:

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

- European cultural heritage
- Indigenous cultural heritage.

Design and documentation

45 Not used

Not used

46 Not used

Payments

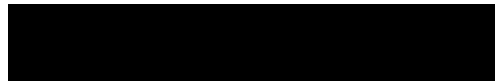
47 GMP

The *GMP* at the Date of Contract is:



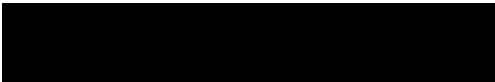
48 Management Fee

Management Fee is:



49 Preliminaries Fee

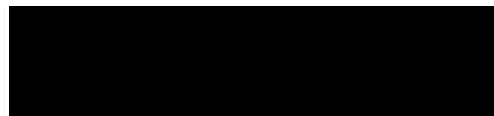
Preliminaries Fee is:

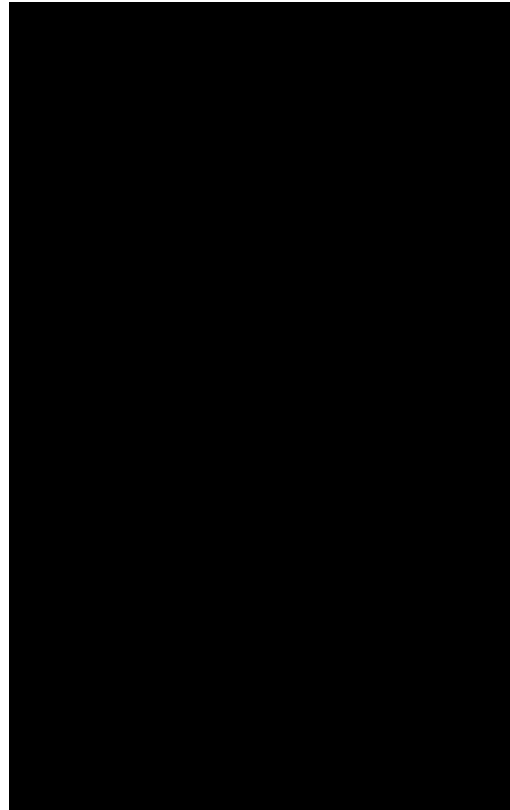


50 Provisional Sums

Mentioned in clause 78

Provisional Sum items referred to in clause 78 and the time by which they must be instructed are:





51 Provisional Sum margin

Mentioned in clause 78

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

The *Provisional Sum* margin is:

Yes

The *Management Fee Percentage*

52 Date for Payment claims

Mentioned in clause 81.1

The date in the month for making *Payment Claims* is:

The last *Business Day* prior to the end of each calendar month.

53 Interest on late payments

Mentioned in clause 85

The rate of interest per annum is:



Delay costs and liquidated damages

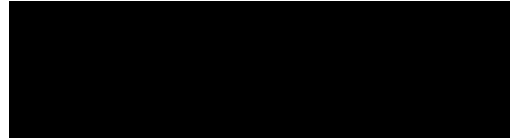
54 Delay costs

Mentioned in clauses 53 and 73

A1 - Delay costs for delay in access to the Site

The rate in item 54A1 applies only if the Principal fails to give initial access to the Site as required by clause 53.1.

The rate per day for delay costs due to the Principal's failure to give the Contractor initial access to the Site in accordance with clause 53.1 is:

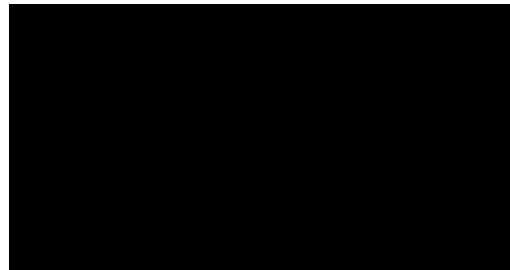


A2 - Delay costs for delay other than in access to the Site

The rate or rates in item 54A2 apply when the rate in item 54A1 is not applicable, in accordance with clause 73.

The rate per day for delay costs payable when *Completion* of the whole of the Works is delayed is:

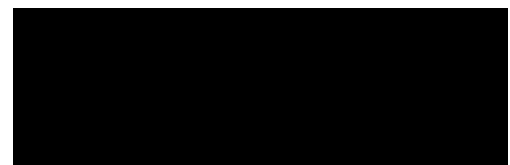
The rate per day for delay costs payable when *Completion* of the whole of the Works is delayed due to a *Major Flood* or a *COVID Shutdown* is



A3 - Delay costs for delays due to COVID Shutdowns and Major Floods

The rate or rates in item 54A3 apply when the *Contractual Completion Date* is extended due to a delay caused by a *COVID Shutdown* or a *Major Flood*, in accordance with clause 73 and are capped at a maximum of 20 days delay.

The rate per day for delay costs payable when *Completion* of the whole of the Works is delayed due to a *Major Flood* or a *COVID Shutdown* is



55 Liquidated damages

Mentioned in clauses 73.8 and 73.9

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

Yes

The rate per day for liquidated damages for the whole of the Works is:



Defects Liability

56 Defects Liability Period

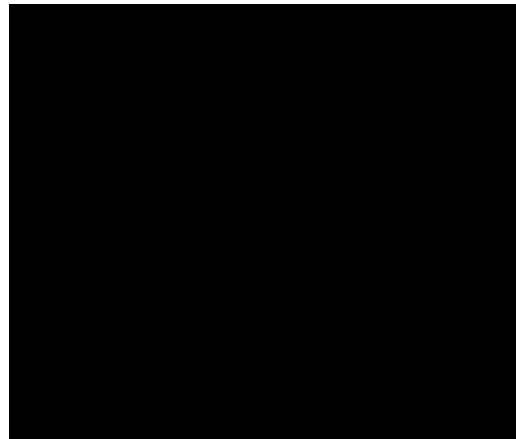
The *Defects Liability Period* is:

The period commencing on the *Actual Completion Date* and, subject to any extension in accordance with clause 90, expiring on the date that is [REDACTED] after the *Actual Completion Date* for the whole of the Works.

COVID-19 Measures

57 Key Equipment

The *Key Equipment* is:



58 Key Off-Site Areas

The *Key Off-Site Areas* are:

