

Schedule 1 - Subcontractor's Warranty

Subcontractor's Warranty

Powerhouse Parramatta Project

Dated

[insert] (“**Guarantor**”)

Infrastructure New South Wales ABN [insert] (“**Beneficiary**”)

Details

Deed

between

Subcontractor:

Name
ABN/ACN/ARBN
Address
Email
Attention

AND

Contractor:

Name
ABN/ACN/ARBN
Address
Email
Attention

And

Each of the Beneficiaries as follows:

The Principal:

Name
ABN/ACN/ARBN
Address
Email
Attention

The Museum of Arts and Applied Science:

MAAS
ABN/ACN/ARBN 59 354 516 818
Address 500 Harris Street, Ultimo, NSW, 2007
[Redacted]
[Redacted]
[Redacted]

Subcontract Work:

.....

Recitals

- A. The Contractor has entered into the Contract with the Principal for the carrying out of the Works.
 - B. The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work, which are to be used by the Contractor in performing the Contract.
 - C. The Beneficiaries, the Contractor and the Subcontractor wish to set out the obligations that the Subcontractor will owe each of the Beneficiaries directly, and make certain arrangements relating to the Contract and Subcontract.
 - D. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Beneficiaries (or any one of them) against the Contractor or the Subcontractor.
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Terms of Deed

1 Definitions

In this Deed the following words and expressions have the meanings set out below:

- .1 **Beneficiaries** means the Principal and MAAS and each of their successors and permitted assignees.
- .2 **Contract** means the contract between the Principal and the Contractor dated [insert] for the Works.
- .3 **Default Event** means any failure by the Contractor to comply with an obligation imposed upon the Contractor under the Subcontract if such failure:
 - .1 would entitle the Subcontractor to give the Contractor a notice under the Subcontract requiring the Contractor to remedy such failure; or
 - .2 whether immediately or following the delivery of a notice or effluxion of time, would entitle the Subcontractor to exercise any Right.
- .4 **Details** means the section of this Deed headed Details.
- .5 **Insolvency Event** means any of the following applying to the Subcontractor or Contractor:
 - .1 the Subcontractor or Contractor is insolvent;
 - .2 the Subcontractor or 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 Subcontractor or 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.
- .6 **Material Notice** means a notice issued under the Subcontract by:
 - .1 either the Subcontractor or the Contractor following an Insolvency Event;
 - .2 by the Subcontractor or the Contractor relating to events and circumstances entitling either party to terminate, rescind, accept a repudiation or suspend performance of any obligations under the Subcontract; or
 - .3 by the Subcontractor purporting to exercise its Rights.
- .7 **party** means the Subcontractor or the Beneficiaries (or any one of them).

- .8 **Related Body Corporate** has the meaning it has in the *Corporations Act 2001* (Cth).
- .9 **Right** means the Subcontractor's right under the Subcontract to terminate, rescind, accept a repudiation by the Contractor of, or suspend performance of any obligations under, the Subcontract.
- .10 **Subcontract** means the contract between the Contractor and the Subcontractor dated *[insert]* for the Subcontract Work.
- .11 **Subcontract Work** means all of the works and services to be performed by the Subcontractor to comply with its obligations under the Subcontract, including the subcontract work and products identified in the Details and work carried out pursuant to the Subcontract prior to the date of this Deed.
- .12 **Warranty Period** means one year from the *Actual Completion Date* of the whole of the Works.

2 Interpretation

- .1 Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Deed:
 - .1 the singular includes the plural and vice versa;
 - .2 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);
 - .3 a reference to a document also includes any variation, replacement or novation of it;
 - .4 the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
 - .5 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;
 - .6 a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - .7 a reference to a time of day is a reference to Sydney time;
 - .8 a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
 - .9 a reference to "law" includes common law, principles of equity and legislation (including regulations);
 - .10 a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
 - .11 a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
 - .12 a reference to any thing (including an amount) is a reference to the whole and each part of it;
 - .13 a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
 - .14 if a day on which a party must do something under this Deed is not a Business Day, the party must do it on the next Business Day.
- .2 Unless the contrary intention appears, a term which has a defined meaning in the Contract has the same meaning when used in this Deed.
- .3 If a provision of this Deed is inconsistent with a provision of the Subcontract, the provisions of this Deed prevail to the extent of the inconsistency.

3 Warranty

- .1 The Subcontractor warrants to the Beneficiaries that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work will:
 - .1 comply in all respects with the requirements of the Contract;

- .2 to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract, then the *Materials* or standard of workmanship must:
 - .1 comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any relevant Australian Standards or international standard; and
 - .2 be new and of good and merchantable quality;
 - .3 be free of all liens, charges and encumbrances of any kind;
 - .3 be fit for the purposes for which they are required;
 - .4 capable of safe and reliable operation; and
 - .5 be free from defects and deficiencies.
- .2 The Subcontractor represents, warrants and undertakes to the Beneficiaries that:
 - .1 the Subcontractor will:
 - .1 perform its obligations under the Subcontract in a proper and workmanlike manner and to a standard of care, skill, judgment and diligence; and
 - .2 provide suitably qualified staff to a standard, commensurate with a competent professional experienced in work of a similar nature to the Subcontract Work;
 - .2 the Subcontractor will perform its obligations under the Subcontract in accordance with the Subcontract and all applicable legislative requirements;
 - .3 the Subcontract Works will be fit for their intended purpose and meet any design life specified in the Contract in respect of those Subcontract Works; and
 - .4 to the extent that it is obliged to assign or license *Intellectual Property Rights* to the Contractor or the Beneficiaries (or any one of them):
 - .1 it is the legal and beneficial owner of such rights; and
 - .2 it has not previously assigned, transferred nor exclusively licensed such rights.
- .3 The Subcontractor gives to the Beneficiaries the same warranties, guarantees and indemnities that it has given the Contractor under the Subcontract and agrees that the Beneficiaries may assign these warranties and guarantees without the consent of the Subcontractor.

4 Replacement or making good

- .1 Until the expiry of the Warranty Period, the Subcontractor must replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work which does not comply with the requirements of this Deed.

5 Notice of Defects

- .1 The Beneficiaries (or any one of them) may notify the Subcontractor in writing if it considers there has been any breach of this Deed or if the Beneficiaries (or any one of them) requires the Subcontractor to replace or make good any of the Subcontract Work in accordance with clause 4 of this Deed (“**Remedy Notice**”).

6 Time to remedy

- .1 The Subcontractor must do everything to remedy any breach or to carry out any replacement or making good notified to it in the Remedy Notice within a reasonable time after receiving the Remedy Notice.

7 Failure to remedy

- .1 If the Subcontractor fails to remedy the breach or complete the work specified in the Remedy Notice within a period determined by the Beneficiaries (or any one of them) to

be reasonable in the circumstances, the Beneficiaries (or any one of them) may give written notice to the Subcontractor that the Beneficiaries (or any one of them) intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.

- .2 If the Subcontractor fails to complete the work by the date specified in clause 1.1 of this Deed, or another date agreed by the parties, the Beneficiaries (or any one of them) may have the work carried out by others, and any Loss suffered or incurred by the Beneficiaries (or any of them) will be a debt due from the Subcontractor to the Beneficiaries (as applicable).

8 Indemnity

- .1 The Subcontractor indemnifies the Beneficiaries against claims (including *Claims*, actions and Losses) brought against, suffered or incurred by the Beneficiaries (or any one of them) arising out of a breach of this Deed by the Subcontractor.

9 Liability

- .1 The liability of the Subcontractor under this Deed is not affected by:
 - .1 the Principal exercising or refraining from exercising any or all of their rights against the Contractor, at law or in equity;
 - .2 MAAS exercising or refraining from exercising any or all of their rights against the Contractor at law or in equity; or
 - .3 the Contractor exercising or refraining from exercising any or all of their rights against the Subcontractor, at law or in equity.
- .2 Any information provided to, and any inspection undertaken by, the Beneficiaries (or any one of them) or any person authorised by the Beneficiaries (or any one of them) will not:
 - .1 limit or discharge the obligations of the Subcontractor under the Subcontract; or
 - .2 relieve the Subcontractor from any liability which it may have in respect of any defect or default in or relating to the Subcontract Work.

10 Urgent action by Principal

- .1 The Beneficiaries (or any one of them) may take any urgent action necessary to protect the Works, other property or people as a result of a breach of this Deed.
- .2 The Subcontractor agrees that the Beneficiaries (or any one of them) taking action under clause 1.1 does not affect the warranty or any other obligation of the Subcontractor under this Deed.
- .3 Any Loss suffered or incurred by the Beneficiaries (or any of them) as a consequence of the Beneficiaries (or any one of them) taking action under clause 1.1 will be a debt due from the Subcontractor to the Beneficiaries (as applicable).

11 Assignment

- .1 The Subcontractor may not assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or to be varied without the prior written consent of the Beneficiaries (which may be given or withheld in the Beneficiaries' absolute discretion).
- .2 Each of the Beneficiaries may assign or otherwise deal with its rights under this Deed in any way it considers appropriate. If a Beneficiary does this, neither the Contractor nor the Subcontractor may claim against any assignee (or any other person who has an interest in this Deed) any right of set-off or other rights the Contractor or the Subcontractor has against the relevant Beneficiary.

12 Material Notices

- .1 The Subcontractor must give the Beneficiaries:
 - .1 copies of any Material Notice;
 - .2 copies of all documents issued by the Subcontractor to the Contractor relating to the event or circumstance to which the Material Notice relates;at the same time as it gives the Material Notice to the Contractor, or as soon as is reasonably possible following receipt of a Material Notice from the Contractor.

13 Novation

- .1 The Subcontractor acknowledges that under the Contract that, in the event of a Contractor Termination Event, the Contractor must:
 - .1 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; and
 - .2 consent to the novation to the Principal or its nominee of the Subcontract, if required by the Principal.
- .2 If required by the Beneficiaries (or any one of them), the Subcontractor agrees to do all things reasonably necessary (including to execute a deed of novation or provide such information as reasonably required by the Beneficiaries) to give effect to:
 - .1 the novation of the Subcontract; and
 - .2 assignment of any rights or benefits in connection with the Subcontract Work, including any warranties, unconditional undertakings, bank guarantees, insurance bonds or other security,to the Beneficiaries (or any one of them).
- .3 The Subcontractor acknowledges and agrees that the Beneficiaries (or any one of them) may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the Subcontract, if novated, from amounts otherwise payable to the Contractor or from any Undertakings given on the Contractor's behalf.

14 Acknowledgements

- .1 The Contractor acknowledges that:
 - .1 neither the existence of the Contract nor the fact that the Beneficiaries (or any one of them) exercises a power under the Contract or this Deed will of itself contravene, or constitute a Default Event under the Subcontract or entitle the Contractor to exercise any Right or power under the Subcontract; and
 - .2 the Beneficiaries will not be liable, or taken to have assumed liability, for any liability or obligation under or in respect of the Subcontract as a result of the entry into, or exercise of any rights or powers under, the Contract or this Deed.

15 Representations and warranties

- .1 Each of the Subcontractor and the Contractor represents and warrants to the Beneficiaries that:
 - .1 **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
 - .2 **(power)** it has the power to enter into and perform its obligations under this Deed;
 - .3 **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this Deed and; and

- .4 **(binding obligations)** this Deed contains legal, valid and binding obligations, enforceable in accordance with its terms.

16 Confidentiality

- .1 Each party agrees not to disclose information provided by another party that is not publicly available except:
- .1 to any person in connection with an exercise of rights or a dealing with rights or obligations under this Deed; or
 - .2 to officers, employees, legal and other advisers and auditors of any party; or
 - .3 to any party to this Deed or any Related Body Corporate of any party to this Deed, provided the recipient agrees to act consistently with this clause; or
 - .4 with the consent of the party who provided the information; or
 - .5 as allowed by any law or stock exchange.

17 Notices

- .1 Notices must be sent to the relevant persons at the addresses in the Details, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing.
- .3 Notices are taken to be received:
- .1 if sent by post, 3 days after posting;
 - .2 if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
 - .3 if sent by email:
 - .1 when the sender receives an automated message confirming delivery; or
 - .2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,
- whichever happens first.

18 Governing Law

- .1 This Deed is governed by the law in force in the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

19 General

- .1 The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this Deed and of other related documentation, except stamp duty.
- .2 This Deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the Deed.
- .3 Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this Deed and the transactions contemplated by it.
- .4 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this Deed or any part of it.
- .5 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.
- .6 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed 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 this Deed or is contrary to public policy.

- .7 A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

20 Operation of Deed

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

Executed as a deed

Signing page

DATED: _____

Signed sealed and delivered by)

)
as Chief Executive Officer of Infrastructure)
NSW pursuant to the *Infrastructure NSW*)
Act 2011 (NSW))
in the presence of)

)
.....)
Signature of witness)

)
.....)
Name of witness (block letters))

.....
Signature

EXECUTED by [SUBCONTRACTOR])
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by authority of)
its directors:)

)
.....)
Signature of director)

)
.....)
Name of director (block letters))

.....
Signature of director/company secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

SIGNED by [MAAS REP] as authorised)
representative for MAAS in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of MAAS

EXECUTED by [CONTRACTOR] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by authority of)
its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....
Signature of director/company secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

Schedule 2 – Undertaking

Refer to clauses 18 and 82 of the General Conditions of Contract.

Schedule 3 – Payment Claim Worksheet

Refer to clause 81.3 of the General Conditions of Contract.

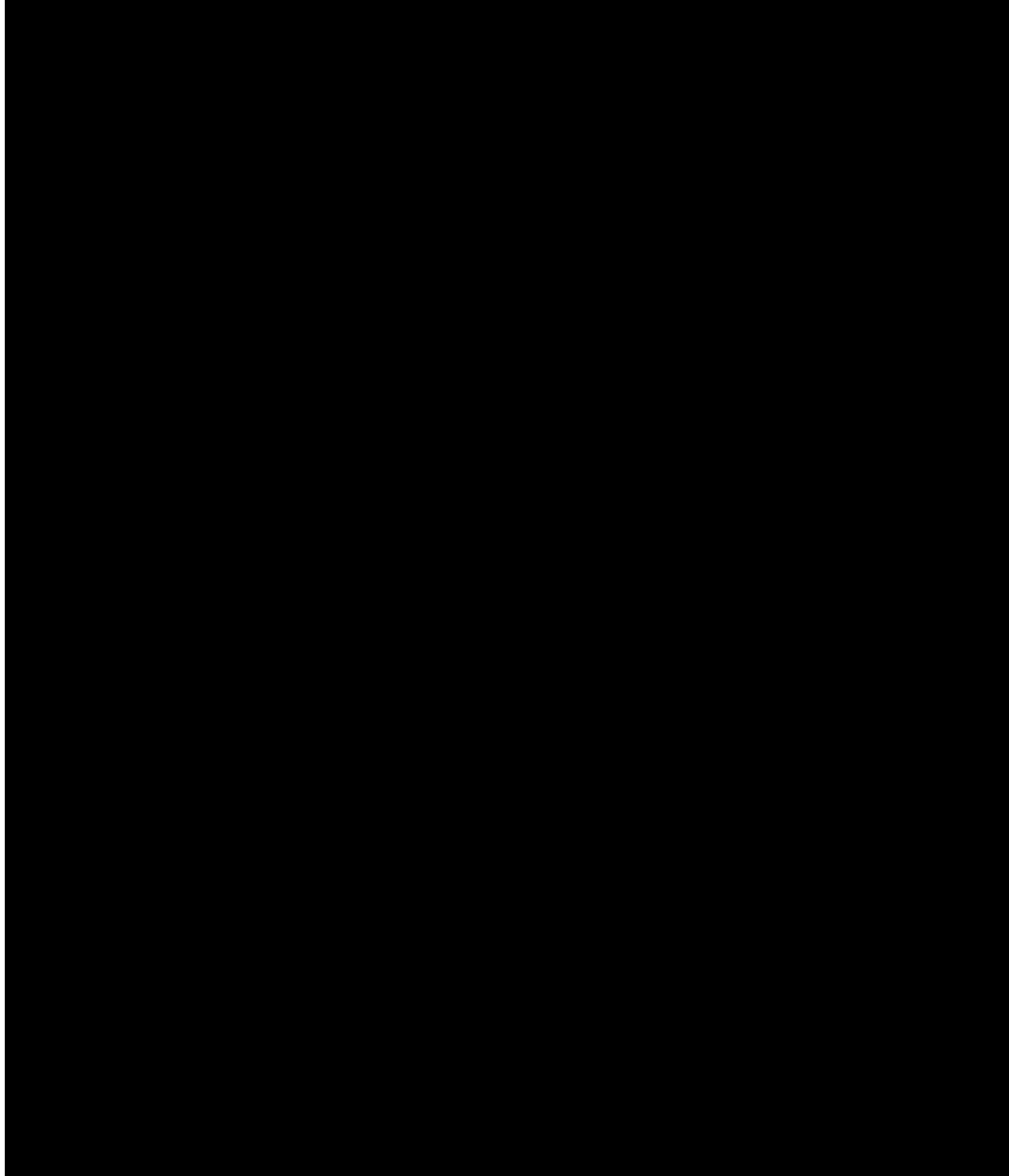
The Contractor:
 ABN
 The Contract: The contract between the Principal and the Contractor
 Contract Name: »
 Contract Number: »

1	2	3	4	5
Activity to suit schedule of prices and/or activities	Activity number	Value of activity \$	Activity completed %	Activity completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet				\$
Amount carried forward to next sheet				\$

Value Completed	\$
Less payments already made	\$
Claimed Amount	\$

Schedule 4 – Parent Company Guarantee

Refer to clause 18.19 of the General Conditions of Contract.



Schedule 5 – Novation Deed

Refer to clause 11.4 of the General Conditions of Contract.

Novation Deed

Powerhouse Parramatta Project

Dated

[insert] [insert ABN/ACN] (“**Incoming Party**”)

Infrastructure New South Wales [insert ABN/ACN] (“**Outgoing Party**”)

[insert] (“**Consenting Party**”)

Details

Parties	Incoming Party, Outgoing Party and Consenting Party	
Incoming Party	Name	[Insert]
	ABN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Outgoing Party	Name	Infrastructure NSW
	ABN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Consenting Party	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Attention	[insert]
Recitals	A	Outgoing Party and Consenting Party are parties to the Contract.
	B	The parties to this deed have agreed to the novation of the Contract on the terms of this deed.
Contract	[insert]	
Novation Date	[insert date novation to be effective from]	
Governing law	New South Wales	
Date of deed	See Signing page	

General terms

1 Definitions and Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means, in respect of a party, a director or secretary of the party or another person appointed by the party to act as an Authorised Officer under this deed.

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; and
- (b) 27, 28, 29, 30 and 31 December.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Contract means the contract referred to in the Details.

Details means the section of this deed headed Details.

New Contract means the new contract formed under clause 3.1.

Novation Date means the date set out in the Details.

Related Body Corporate has the meaning it has in the *Corporations Act 2001* (Cth).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this deed:

- (a) the singular includes the plural and vice versa;
- (b) 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);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) 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;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to New South Wales time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;

- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (p) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day.

2 Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and the New Contract and for other valuable consideration.

3 Novation

3.1 Novation

With effect on and from the Novation Date, the parties agree that the Contract is discharged and the New Contract is created on the same terms and conditions as the Contract except that:

- (a) Incoming Party is substituted for Outgoing Party; and
- (b) each reference to Outgoing Party will be read as a reference to Incoming Party in the New Contract; and
- (c) notices to Incoming Party must be provided using its details specified in the Details; and

3.2 Rights and benefits

With effect on and from the Novation Date, Incoming Party:

- (a) is bound by the New Contract as the Contract relates to Outgoing Party; and
- (b) enjoys under the New Contract all the rights and benefits conferred on Outgoing Party under the Contract.

3.3 Release from future performance

On and from the Novation Date, Consenting Party releases Outgoing Party from any obligation under the Contract to be performed on or after the Novation Date.

3.4 Consenting Party acknowledgement

The Consenting Party acknowledges that nothing in this deed or any of the transactions contemplated by this deed constitutes:

- (a) a breach of any term of the Contract;
- (b) an event of default under the Contract; or
- (c) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the Contract.

3.5 Contract security

- (a) Within 10 Business Days of the Novation Date, Consenting Party shall procure the issue of new security in favour of Incoming Party ("**New Security**").
- (b) The New Security must be on the same terms and for the same amount as the Existing Security and must otherwise comply with the Contract.
- (c) Outgoing Party must return any security still held under the Contract ("**Existing Security**") to Consenting Party within five days after the Consenting Party has provided the New Security to the Incoming Party pursuant to clause 3.5(a).
- (d) Nothing in this clause 3.5 limits or affects Outgoing Party's right to have recourse to the Existing Security in accordance with the Contract prior to the Novation Date.

4 Accrued Rights

4.1 Mutual release

- (a) Subject to clause 4.1(b), on and from the Novation Date, each of Consenting Party and Outgoing Party releases the other from:
 - (i) any obligation or liability under or in respect of the Contract; and
 - (ii) any Claim which it, but for this release, had or may in the future have had against the other under or in respect of the Contract,arising in connection with the performance of the Contract before the Novation Date.
- (b) Clause 4.1(a) does not apply to:
 - (i) any Claim Outgoing Party had, or may in the future have had, against Consenting Party under or in respect of the Contract; and
 - (ii) any liability Consenting Party had, or may in the future have had, to Outgoing Party under or in respect of the Contract,in respect of any event or circumstance for which Consenting Party indemnifies Outgoing Party pursuant to the Contract.

4.2 Assumption by Incoming Party

On and from the Novation Date Incoming Party assumes responsibility for any obligation or liability of the Outgoing Party owed to the Consenting Party under or in respect of the Contract arising in connection with the performance of the Contract before the Novation Date.

5 Representations and warranties

5.1 General representations and warranties

Each party represents and warrants to each other party that:

- (a) **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed and, for Incoming Party and Outgoing Party, the New Contract;
- (c) **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed and, for Incoming Party and Outgoing Party, the New Contract; and
- (d) **(binding obligations)** this deed and, for Incoming Party and Outgoing Party, the New Contract, constitute legal, valid and binding obligations, enforceable in accordance with their terms.

6 GST

6.1 Consideration GST exclusive

Unless expressly stated otherwise in this deed, all amounts payable or consideration to be provided under this deed are exclusive of GST.

6.2 Payment of GST

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 6.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

6.3 Reimbursements

If a party is required under this deed to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

6.4 Calculation of payments

If an amount payable under this deed is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and

- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

6.5 Interpretation

For the purposes of this clause 6:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 6;
- (b) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

7 Notices and other communications

7.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

7.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 7.1. However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

7.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

7.4 When effective

Communications take effect from the time they are received or taken to be received under clause 7.5 (whichever happens first) unless a later time is specified.

7.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or

- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
 - (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 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 the email has not been delivered,
- whichever happens first.

7.6 Receipt outside business hours

Despite anything else in this clause 7, if communications are received or taken to be received under clause 7.5 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.

8 General

8.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

8.2 Stamp duty

Consenting Party agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

8.3 Governing law

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

8.4 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

8.5 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

8.6 No merger

The representations, warranties and indemnities in this deed do not merge on the Novation Date.

8.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this deed or any part of it.

8.8 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous deeds, understandings and negotiations on that subject.

8.9 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed 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 this deed or is contrary to public policy.

8.10 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

8.11 Confidentiality

Each party agrees not to disclose information provided by another party that is not publicly available except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed; or
- (b) to officers, employees, legal and other advisers and auditors of any party; or
- (c) to any party to this deed or any Related Body Corporate of any party to this deed, provided the recipient agrees to act consistently with this clause; or
- (d) with the consent of the party who provided the information; or
- (e) as allowed by any law or stock exchange.

EXECUTED as a deed

Signing page

DATED: _____

Signed sealed and delivered by)
)
 as Chief Executive Officer of Infrastructure)
 NSW pursuant to the *Infrastructure NSW*)
Act 2011 (NSW))
 in the presence of)
)
)
)
)
 Signature of witness)
)
)
)
)
 Name of witness (block letters)

.....
Signature

SIGNED by [**MAAS REP**] as authorised)
 representative for **MAAS** in the presence of:)
)
)
)
 Signature of witness)
)
)
)
)
 Name of witness (block letters)

.....
 By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of MAAS

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

.....
Signature of director/company secretary*
 *delete whichever is not applicable
)
)

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

Schedule 6 – Combined Subcontractor’s Statement and Supporting Statement

Refer to clause 81.7 of the General Conditions of Contract.

Part 1



Subcontractor’s Statement Regarding Worker’s Compensation, Payroll Tax and Remuneration

(Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

Subcontractor’s Statement

Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: _____ ABN: _____
(Business name)

of _____
(Address of subcontractor)

has entered into a contract with _____ ABN: _____
(Business name of principal contractor) (Note 2)

Contract number/identifier _____

This Statement applies for work between: DD/MM/YYYY and DD/MM/YYYY inclusive, (Note 4)

subject of the payment claim dated: DD/MM/YYYY (Note 5)

I, _____ a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated DD/MM/YYYY (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature* _____ Full name _____

*Once the form is complete please print and sign.

(g) Position/Title _____ Date DD/MM/YYYY

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Part 2



SUPPORTING STATEMENT BY HEAD CONTRACTOR

REGARDING PAYMENT TO SUBCONTRACTORS

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head Contractor: [business name of head contractor] ABN:

1. Has entered into a contract with [business name of subcontractor] ABN:
Contract number/identifier:

OR

2. Has entered into a contract with the subcontractors listed in the attachment to this statement.

[Delete whichever of the above does not apply]

This statement applies for work between: [start date] and [end date] Inclusive (the construction work concerned), subject of the payment claim dated: [date]

I, [full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors, have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: Date:

Full name: Position/Title:

Penalties

The *Building and Construction Security of Payment Act 1999* provides that:

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.

Maximum penalty: \$22,000 (200 penalty units).

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.

Maximum penalty: \$22,000 (200 penalty units) or 3 months imprisonment, or both.

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule 7 – Separable Portions

Refer to clause 9.2 of the General Conditions of Contract.

Separable Portions

Separable Portion	Scope of Works	Contractual Completion Date	Rate of liquidated Damages
[insert]	[insert]	[insert]	[\$insert]
[insert]	[insert]	[insert]	[\$insert]
[insert]	[insert]	[insert]	[\$insert]
[insert]	[insert]	[insert]	[\$insert]

Schedule 8 – Approvals Matrix

Refer to clause 19 of the General Conditions of Contract.

PART A

Approvals the responsibility of the Principal

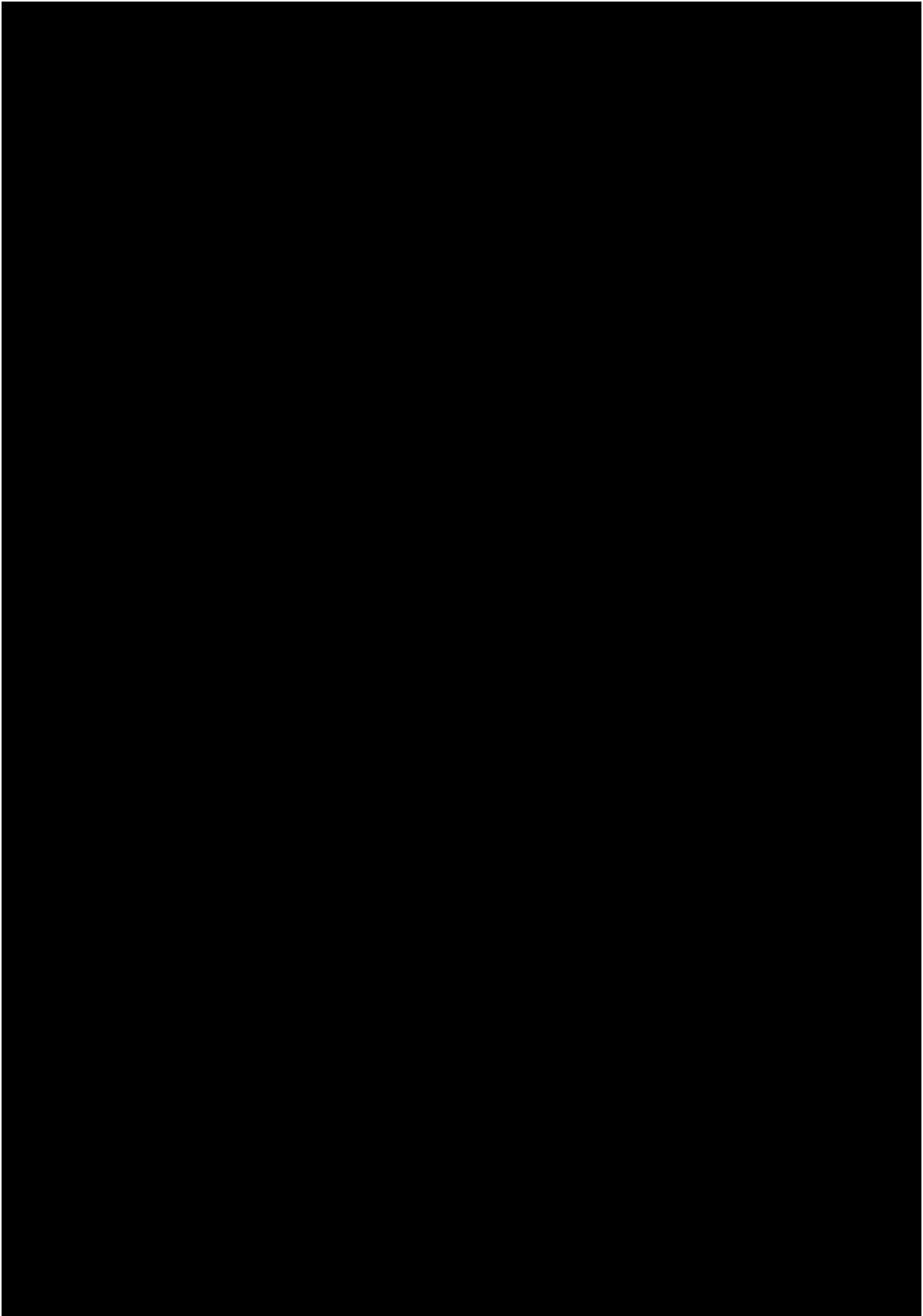
- State Significant Development Application - construction and operation of the Powerhouse Parramatta
- Electricity connection
- Water connection

Approvals the responsibility of the Contractor

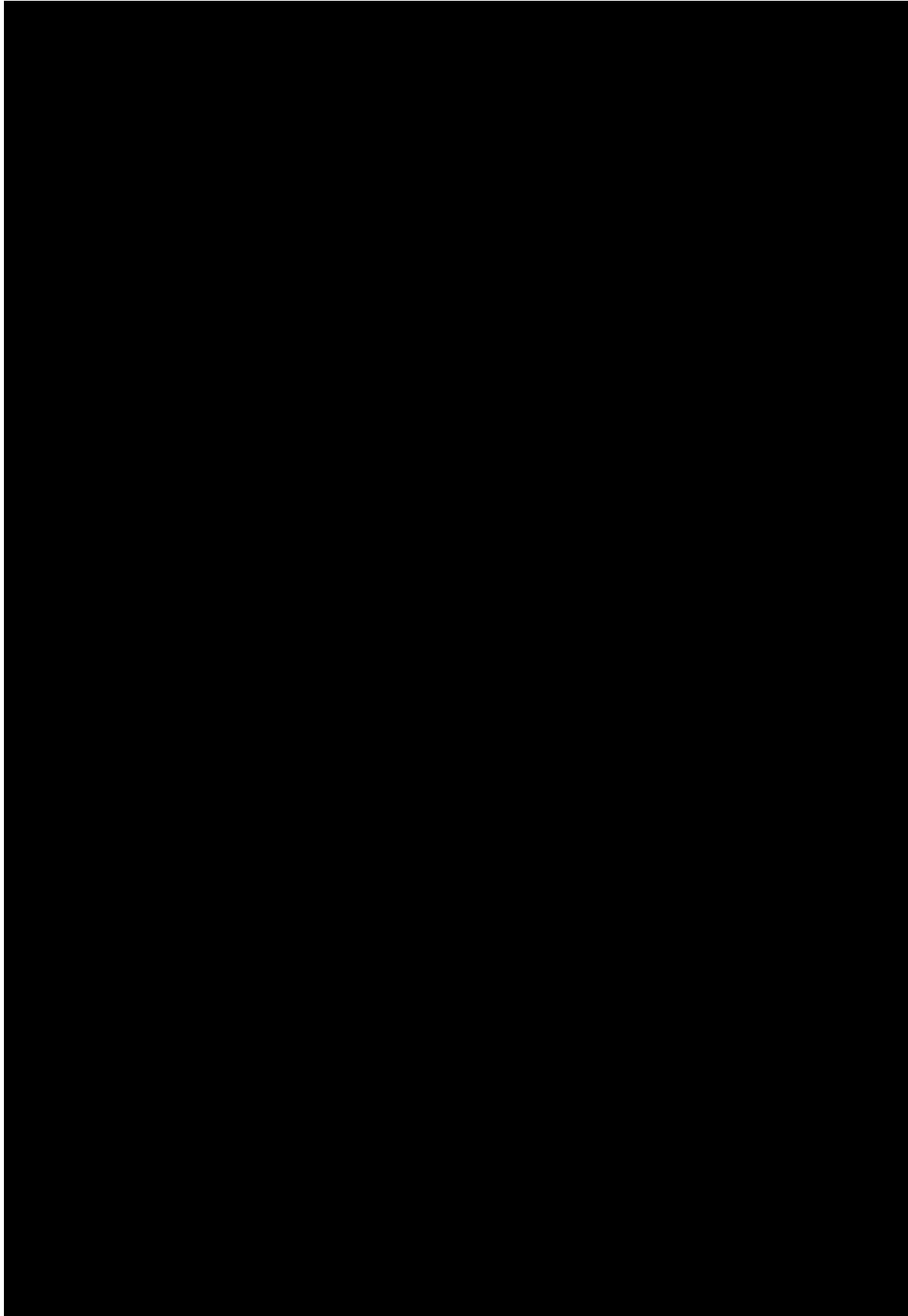
All Approvals other than:

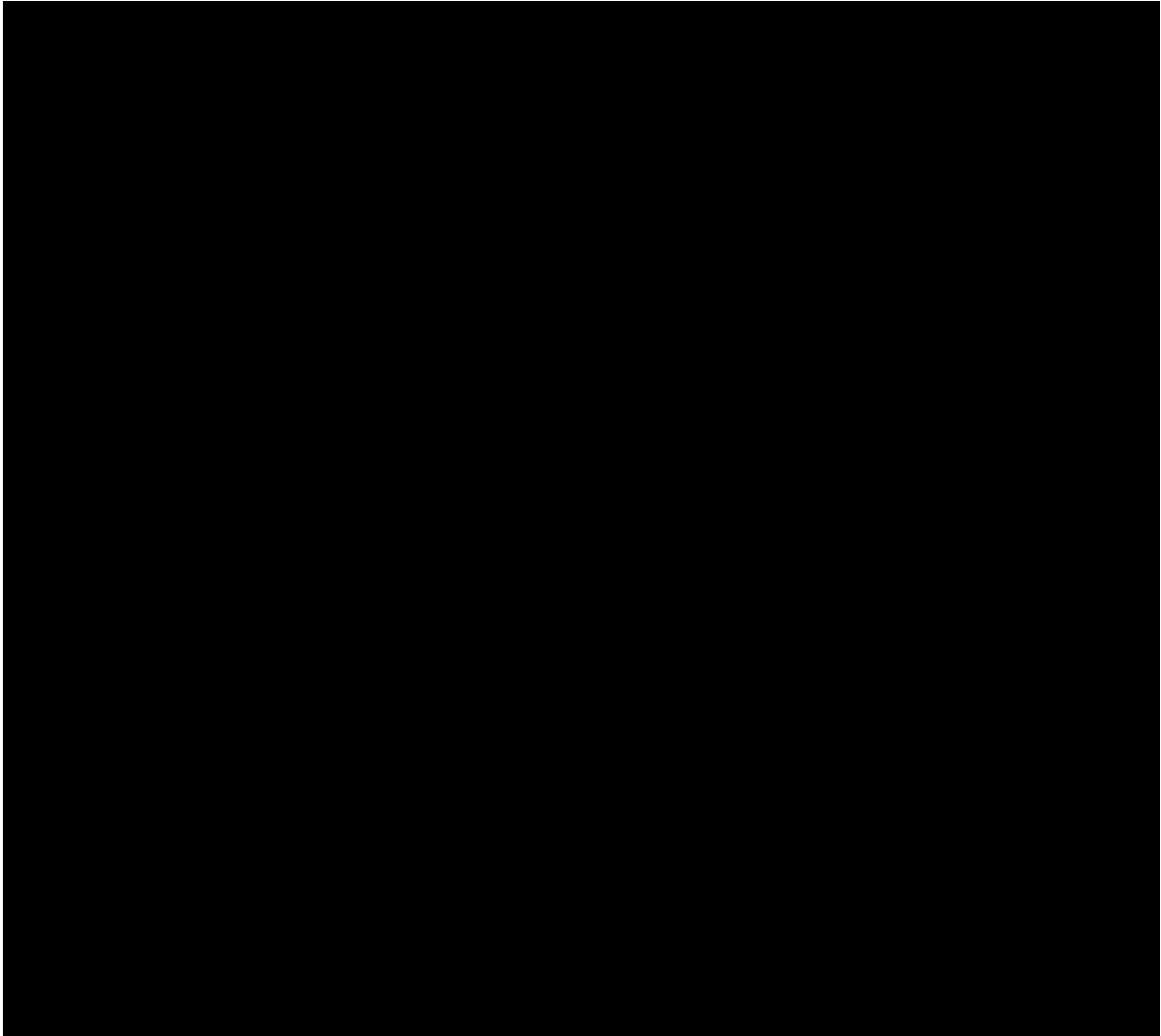
- the Approvals the responsibility of the Principal; and,
- those items attributed to the Principal in the Conditions of Approval Matrix (Part B of this Schedule 8)

PART B



PART C





Schedule 9 – Subcontract requirements

Refer to clause 43.4.1 of the General Conditions of Contract.

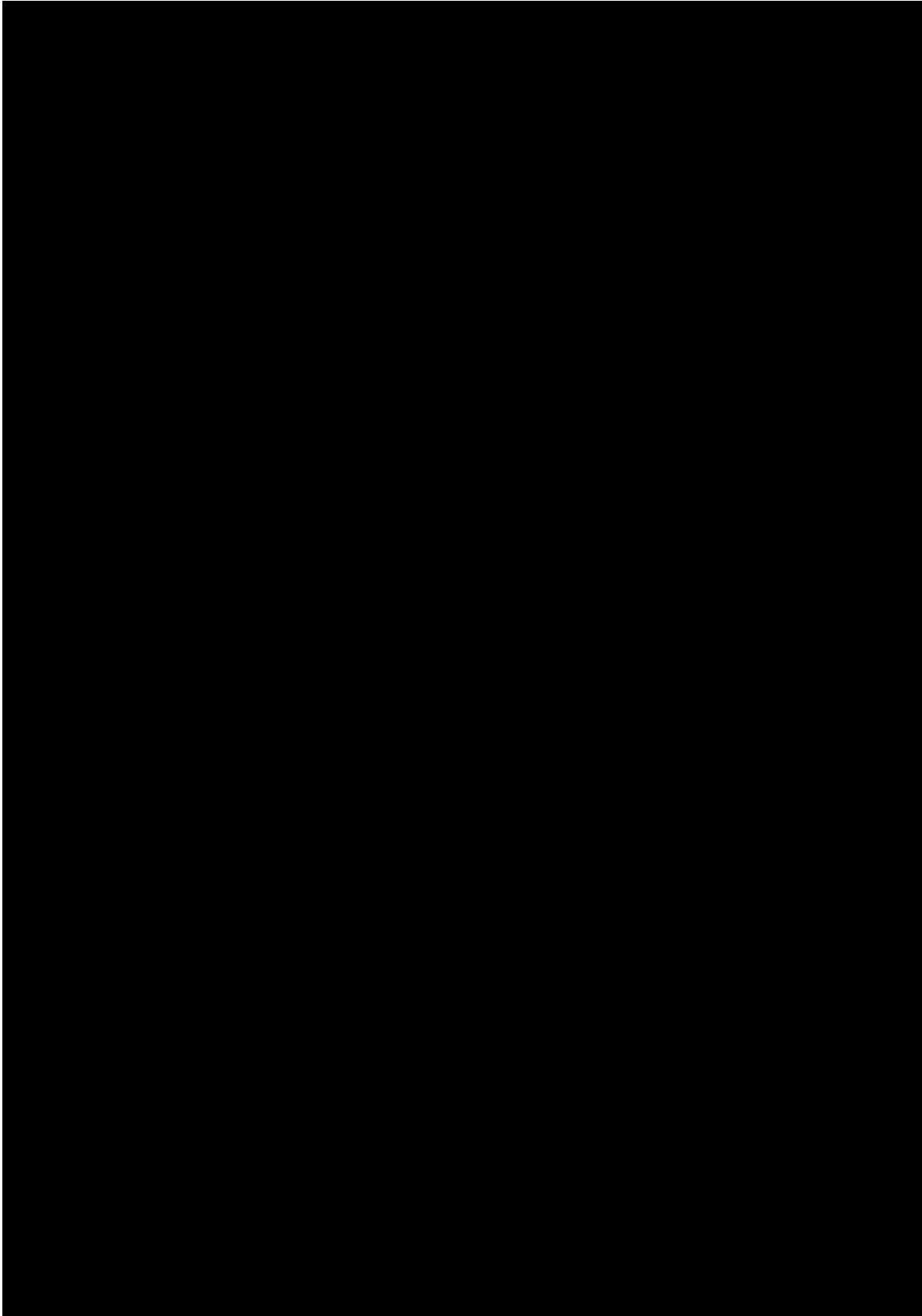
General requirements for specified subcontracts

In addition to its obligations under clause 43.3, for all Subcontracts valued at or over the amount stated in Contract Information item 36, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 4 – Co-operation and Collaboration
2. clause 5 – Duty not to hinder performance
3. clause 6 – Early warning
4. clause 7 – Evaluation and monitoring
5. clause 13 – Governing law of the Contract
6. clause 20 – Supplier Code and Industrial Relations Guidelines
7. clause 22 – COVID-19 Measures
8. clause 23 – No collusive arrangements
9. clause 24.1.2 – Work health and Safety management, except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the Contractor as principal contractor for work health and safety matters
10. clause 24.1.6 – Aboriginal Participation in Construction
11. clause 35 – Intellectual property
12. clause 36 – Confidentiality and Privacy
13. clause 37 – Media releases and enquiries
14. clause 39 – Care of people, property and the environment, indemnities and limitations
15. clauses 42.5, 42.10.1, 42.10.2, 42.10.5 and 42.10.6 – Insurances
16. clause 43 – Subcontractor relationships
17. clause 44.7 – Subcontractor responsibilities
18. clause 45 – Subcontractor warranties
19. clause 81 – Payment Claims
20. clause 82 – Unfixed Materials
21. clause 83 – Payments
22. Schedule 1 (Subcontractor’s Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 45 to provide the warranty)
23. Schedule 9 (Subcontract requirements)
24. Schedule 41 (Compliance with NSW Supplier Code of Conduct and Building and Construction Guidelines)

Schedule 10 – Pre-Agreed Variations

Refer to clause 70.2 of the General Conditions of Contract.



Schedule 11 – Statement regarding Materials

Refer to clause 82.1.4 of the General Conditions of Contract.

I am a representative of *[name of company/entity with custody of the Materials or on whose land the Materials are stored]* in the capacity of *[insert position]* and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other encumbrance over the *Materials* listed in the schedule to this statement (“Materials”). I acknowledge that the *Materials* are the property of the Principal named in the schedule to this statement (“Principal”) and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the *Materials* are stored at any reasonable hour to inspect or remove the *Materials*. I undertake to make no claim or charge against the Principal in respect of the storage of the *Materials*.

SCHEDULE

Materials

[list the Materials]

Principal

[insert name of the Principal]

SIGNED.....

DATE:.....

Schedule 12 – Compliance with Building Code 2016

Refer to clause 20.17 of the General Conditions of Contract.

1. In this Schedule 12:

ABCC	means the body referred to in subsection 29(2) of the Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
Act	means the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Building Code	means the <i>Code for the Tendering and Performance of Building Work 2016</i> , which is available at https://www.legislation.gov.au/Details/F2016L01859 .
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Enterprise Agreement	has the same meaning as in the <i>Fair Work Act 2009</i> (Cth).
Exclusion Sanction	has the same meaning as in subsection 3(1) of the Building Code.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Subcontractor	means a Building Contractor or Building Industry Participant who the Subcontractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.
Works	means Commonwealth Funded Building Work that is the subject of this Contract.

2. The Contractor:

.1 declares as at the date of commencement of this Contract in relation to the Works;
and

.2 must ensure that during the term of this Contract in relation to the Works,

that it and its Subcontractors:

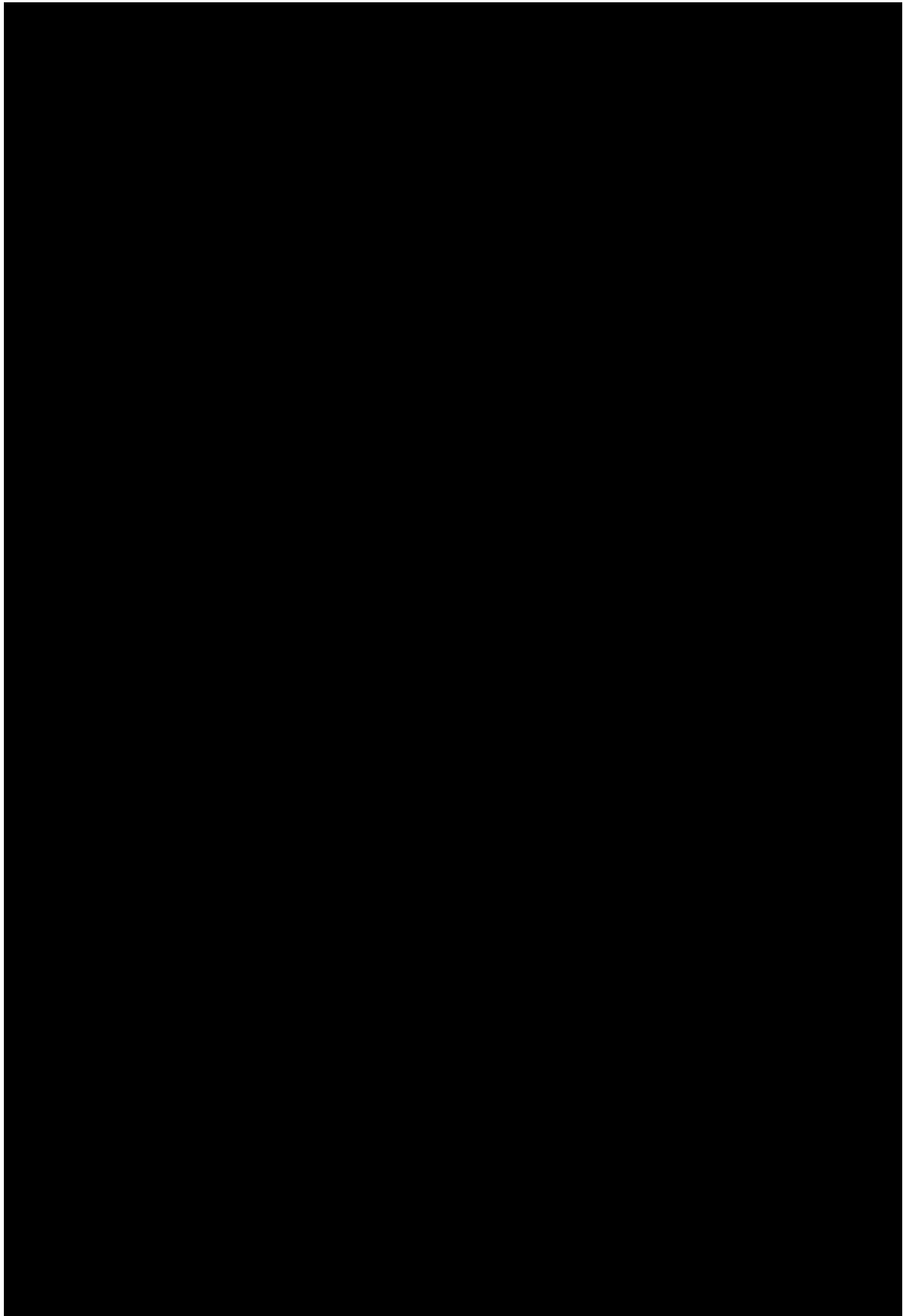
- .3 comply with the Building Code;
 - .4 are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - .5 are not subject to an Exclusion Sanction;
 - .6 have not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
 - .7 will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - .8 unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a state or territory government; and
 - .9 comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works.
3. Without limiting and notwithstanding clause 2.3, the Contractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Subcontractors that is non-compliant with the Building Code.
4. The Contractor must every six months during the term of this Contract advise the Principal whether:
 - .1 it has in the preceding 6 months or since it last advised the Principal, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or
 - .2 it or its Related Entities have in the preceding 6 months or since it last advised the Contractor, whichever is the earliest:
 - .1 been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - .2 owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
5. Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
6. The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working day after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
7. The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
8. The Contractor must only enter into a subcontract for any of the Works where:
 - .1 the Subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and

- .2 the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
9. The Contractor must ensure that it and its Subcontractor comply with clauses contained in the subcontract referred to in clause 8.2.

Schedule 13 – Project Brief

Powerhouse Parramatta Project Brief – rp20101409 – Rev F – A (13.09.21)

Schedule 14 – Preliminary Design



Schedule 15 – Contract Program

Refer to clause 34.1 of the General Conditions of Contract.

Schedule 16 – Document Submission Schedule

Refer to clause 61.8 of the General Conditions of Contract.

The Contractor is required to submit to the Principal's Authorised Person for review the documents set out in Table 1. The documents are to be submitted on or before the date for submission.

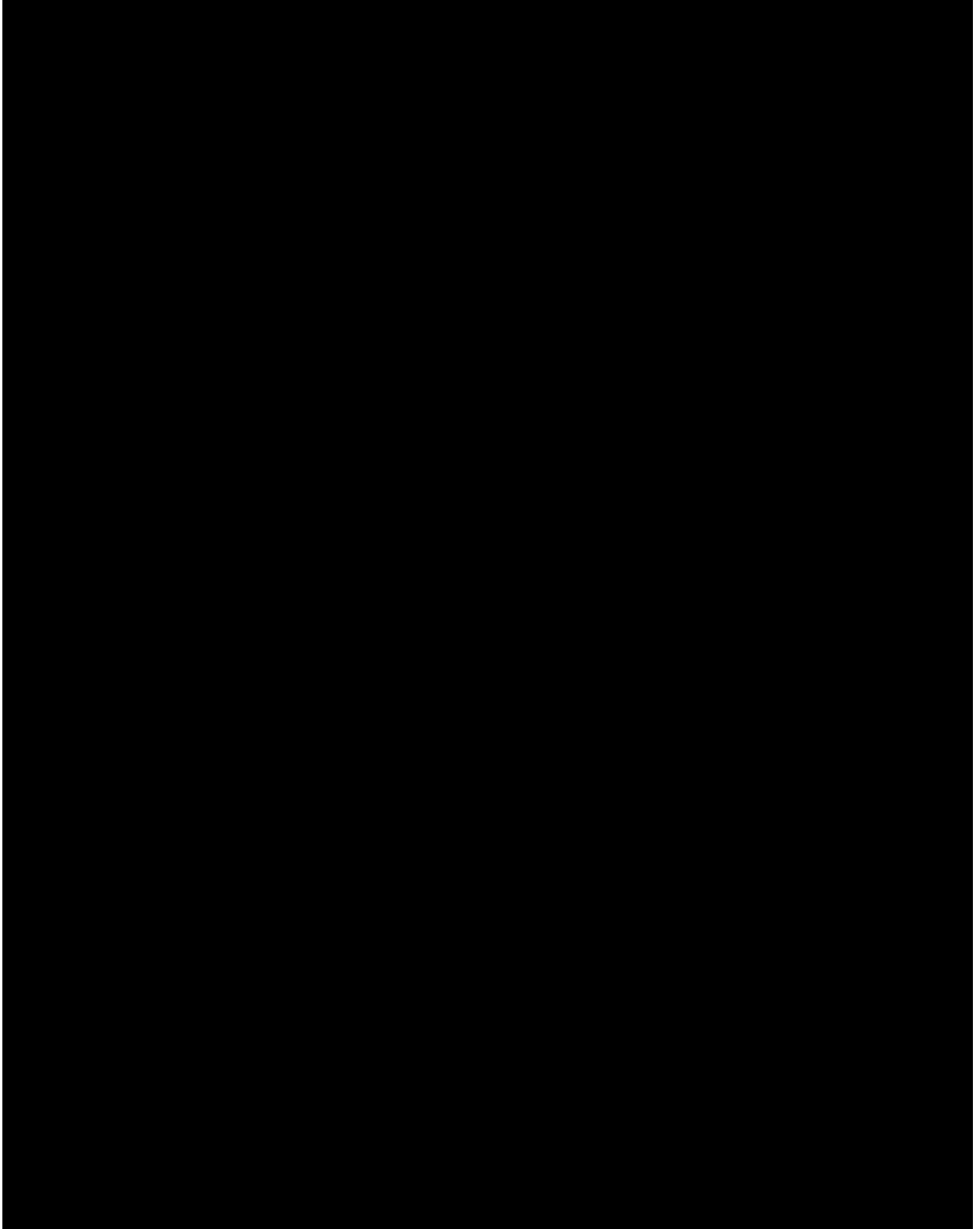
Table 1 – Document submission schedule

Document	Date for submission:
<i>WHS Plan</i>	30 Days after the Date of Contract
<i>Stakeholder Management and Community Engagement Plan</i>	30 Days after the Date of Contract
<i>Environmental Management Plan</i>	30 Days after the Date of Contract
Construction Management Plan	30 Days after the Date of Contract
Design Management Plan	30 Days after the Date of Contract
Construction Traffic Management Plan	30 Days after the Date of Contract
Risk Management Plan	30 Days after the Date of Contract
<i>Quality Management Plan</i>	30 Days after the Date of Contract
<i>Workplace Relations Management Plan</i>	30 Days after the Date of Contract
Works as executed drawings	Complete draft set 28 days before completion of the works and final drawings within 28 days of completion of that work
Asbestos Management plan	30 Days after the Date of Contract
Completion Plan	9 months prior to the <i>Contractual Completion Date</i>
<i>Aboriginal Participation Plan</i>	Within 60 days after the Date of Contract and a Participation Report must be prepared when 90% of the Contract is complete
Dilapidation Reports	Before works commence in an area adjacent to property or assets

Document	Date for submission:
ESD Management Plan	30 Days after the Date of Contract
Emergency Management Strategy	6 months prior to Contract Completion Date

Schedule 17 – Site Access Schedule

Refer to clause 53.1 of the General Conditions of Contract.



Schedule 19 – Workplace Relations Management Plan

Schedule 20 – Not Used

Schedule 21 – Not Used

Schedule 22 – Work Health and Safety (WHS) Plan

Refer to clause 26.4 of the General Conditions of Contract.

Schedule 23 – Stakeholder Management and Community Engagement Plan

Schedule 24 – Construction Management Plan

Schedule 25 – Design Management Plan

Schedule 26 – Risk Management Plan

Schedule 27 – Not Used

Schedule 28 – COVID-19 Management Plan

Schedule 29 – Completion Plan

Schedule 30 – Remediation Action Plan

Refer to clause 40.10 of the General Conditions of Contract.

Schedule 31 – Objectives

DESIGN

- An outstanding piece of architecture
- Flexible spaces that deliver a dynamic changing program.
- A 24-hour working precinct that actively contributes to the city.
- Public domain that supports inclusion and diversity.
- A building that meets International Museum Standards
- A demonstration of adaptable technology

SUSTAINABLE

- A museum and precinct that delivers significant cultural programming for Sydney that is affordable and accessible.
- A changing program that drives repeat visitation and attracts new audiences
- Minimum 6 star Green Star rating
- An entrepreneurial approach to leveraging partnerships and investment.
- Project delivery within approved Capital and Operational budgets

COLLABORATIVE

- A place that acknowledges Country and embeds First Nations culture.
- World class facilities that connect community with industry.
- Exhibitions that provide increased access to Powerhouse collections.
- An interdisciplinary facility that brings together researchers, scientists, and artists.
- Programs that connect local and remote communities with experiential, lifelong learning opportunities.

Schedule 32 – Collaboration Principles

Commitments

In delivering the Works, including exercising their rights and performing their obligations under this Contract, the Parties agree at all times to act in good faith.

The Parties commit to working together collaboratively, in performing the Works and carrying out the work in connection with the Contract, in order to achieve the Objectives.

In carrying out the work in connection with the Contract and performing the Works, the Parties agree at all times to act (to the maximum extent possible and subject to the terms of this Contract), in accordance with the Key Collaborative Contracting Principles set out in this Schedule.

Key Collaborative Contracting Principles

Collaborative behaviours

Acting collaboratively and in good faith, encompasses the Parties acting fairly and reasonably, openly and honestly with integrity, with and toward each other in everything they do under the contract and doing all things necessary to give effect to the intent of these Key Collaborative Contracting Principles.

The Parties must adopt a “proactive communication culture”, be transparent in all of their dealings with each other as to their respective expectations and drivers in respect of the project, be respectful of each other’s position, share information willingly and not hold back ideas.

Commitment to a “solutions focus”

The Parties acknowledge and agree that they will commit themselves to:

- the promotion and maintenance of a "solutions focussed" culture between the Parties in relation to disputes, errors, mistakes, Defects, poor performance and other issues which may arise; and
- the prompt and mutual resolution of all disputes, differences and other issues by all Parties within the framework created by this Contract and the Key Collaborative Contracting Principles.

The Parties agree they will not act in a unilateral and “best for self” manner.

Design review

The Parties acknowledge and agree that there are several stakeholders other than the Parties that have a vested interest in the design of the project. The Parties agree to act collaboratively to accommodate, within the framework of the Contract, stakeholder participation in any design review processes.

Schedule 33 – Consultant Novation Deed

Schedule 34 – Certificates

Part A – Consultant’s Design Certificate

To: [TBC] of [address]; and
[TBC] of [address]

From: [Consultant] of [address]

Date: [TBC]

RE: Contract dated [insert] between [TBC] and the Consultant (**Contract**) for professional services in respect of [TBC] (**Project**).

I [TBC] am a [TBC] at [TBC] (**Consultant**) and am duly authorised to provide this certification on the Consultant’s behalf.

This is a certificate given in respect of:

- (a) professional services provided under the Contract; and
- (b) works undertaken under a contract between [TBC] and [TBC] relating to the works to which those professional services relate dated [TBC] (**Construction Contract**).

This certificate is subject to, and must be read in accordance with, the terms of the Contract.

The Consultant has prepared the following design documents for the Project between [date of last certificate or commencement of services] and [date of this certificate] (**Relevant Design Documents**):

Design Document description	Date
[list]	[list]
[list]	[list]

I certify that:

- (a) all work in connection with the Contract and all Design Documentation (including Relevant Design Documents) created in connection with the work in connection with the Contract carried out by the Consultant (or any subconsultant) comply with all Statutory Requirements and the requirements of the Contract, including the following documents:
 - (i) [TBC]; and
 - (ii) [TBC]

(Contract Requirements);

- (b) all work in connection with the Contract carried out by the Consultant (or any subconsultant) and all Design Documentation (including Relevant Design Documents) created by the Consultant (or any subcontractor) in connection with the work in connection with the Contract are, to the extent the Design Documentation is to be relied upon for the purposes of construction, to a standard and level of detail appropriate for construction purposes;
- (c) the Relevant Design Documents do not deviate from the Design Documentation previously prepared or certified by the Consultant (except to the extent consented to by the Principal);
- (d) as at the date of this certificate the Consultant has undertaken such reviews and inspections of the Works and the work in connection with the Contract as are required by the Contract or reasonably necessary to confirm (having regard to accepted Good Industry Practice, and assumptions the Consultant can make in accordance with Good Industry Practice), and (based on those reviews and inspections) confirms, that the Work and the work in connection with the Contract to which the Design Documentation created by the Consultant (or any subcontractor) relates (**Relevant Construction Work**):
 - (i) comply with the Contract Requirements; and
 - (ii) conform to the Design Documentation created by the Consultant (or any subcontractor),

except to the extent of minor defects or omissions listed below; and

Minor Defects or Omissions
[list]
[list]

- (e) where this certificate is provided after the expiry of the Defects Liability Period relating to any part of the Relevant Construction Work, all defects identified and notified to the Consultant before the expiry of the Defects Liability Period have been rectified in conformity with the Design Documentation and in accordance with the Construction Contract.

Terms used in this certificate have the meaning given to them in the Construction Contract, unless otherwise stated.

Signed for and on behalf of the Consultant by:

[print name]

Part B – Certificate of Completion

[ON PRINCIPAL’S LETTERHEAD]

[Insert date]

[Contractor]

[Address]

CERTIFICATE OF COMPLETION

Dear *[insert Contractor’s Authorised Person]*

Contract for between *[insert]* and *[insert]* dated *[insert]* (reference *[insert]*) (the “Contract”)

Unless otherwise defined in this notice, capitalised terms have the meaning given to them in the Contract.

We refer to clause 88.5.1 of the Contract. We advise you that on *[insert date]* Completion was achieved. The *Actual Completion* is *[insert date]*.

Yours sincerely

.....

[]

[Principal’s Authorised Person]

Part D – Property Owner’s Certificate

(clause 59)

This Deed Poll is in favour of:

Infrastructure New South Wales of [insert address] (ABN [insert]) (“**Principal**”)

and

The Museum of Applied Arts and Science of [insert address] (ABN [insert]) (“**MAAS**”),

and their successors and permitted assigns (together, the **Beneficiaries**).

PROPERTY ADDRESS: (“**Property**”)

- 1 I/We confirm that we are the registered owner/occupier/lessee of the Property.
- 2 I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:
 - (a) [Insert description of works] (“**Works**”)
- 3 I/We confirm that:
 - (a) the Works have been carried out to my/our satisfaction;
 - (b) the Property has been rehabilitated and all damage and degradation on it repaired to my/our satisfaction.
- 4 I/We release the Beneficiaries from all claims and actions (whether for damages or otherwise and howsoever arising) which I/we may have arising out of or in connection with the works referred to in section 1 above.

SIGNED as a Deed Poll

SIGNED, SEALED and DELIVERED

by

[insert name] in the presence of:

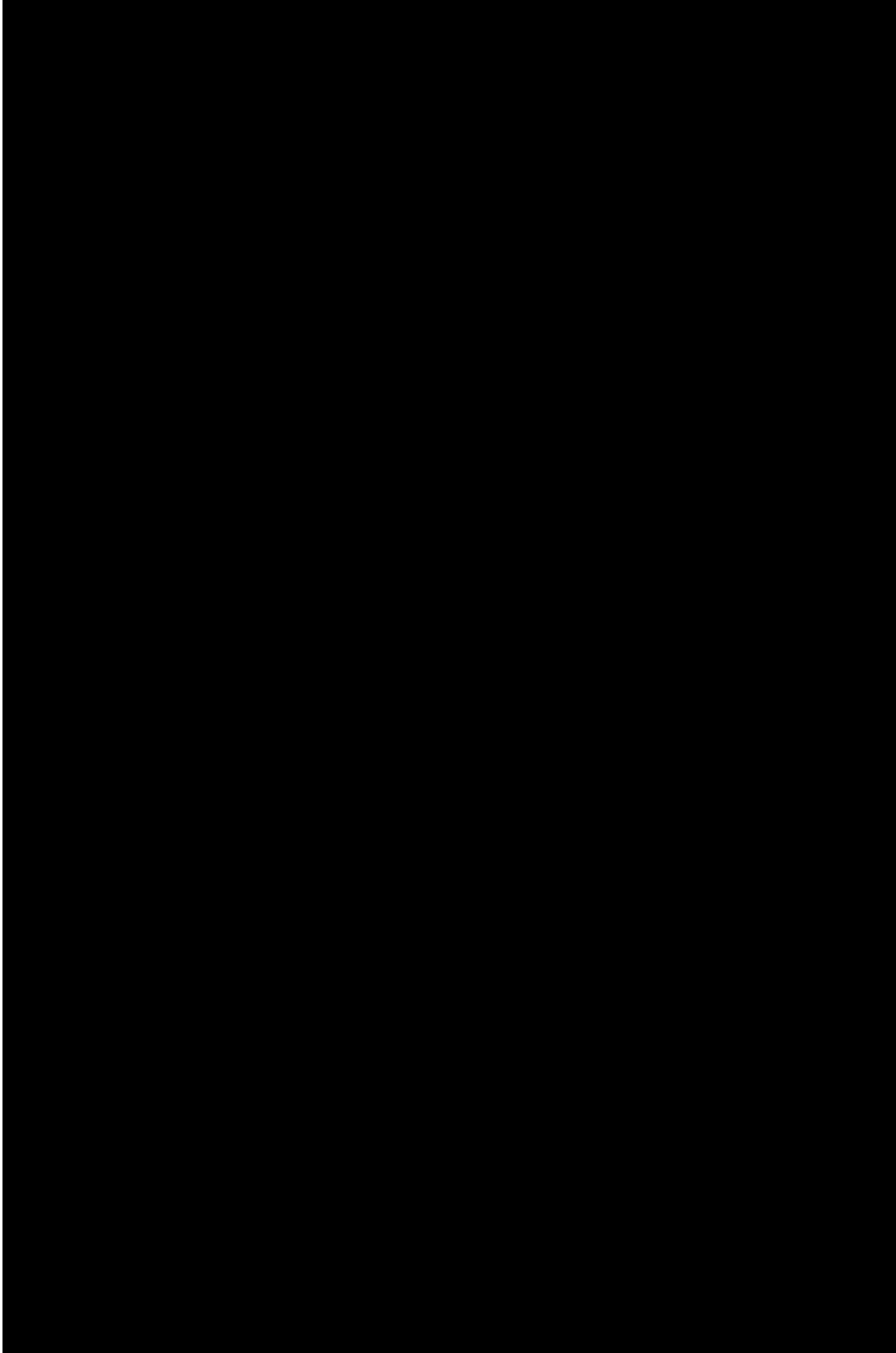
Signature of witness

Signature

Name of witness in full

Schedule 35 – Contractor Warranty Deed

Refer to clause 12 of the General Conditions of Contract.



Schedule 36 – Deed of Release

Refer to clause 91.2 of the General Conditions of Contract.

This Deed Poll is in favour of:

Infrastructure NSW of [insert address] (ABN [insert]) (“Principal”)

and

The Museum of Applied Arts and Science of [insert address] (ABN [insert]) (“MAAS”),

and their successors and permitted assigns (together, the **Beneficiaries**).

THIS DEED OF RELEASE IS EXECUTED on [Insert date]

BY: [Insert Contractor's Name] of [Insert Contractor's address].

RECITALS

- A. By contract dated [insert date] between the Contractor and the Principal, (“Contract”), the Contractor agreed to perform the Works.
- B. Pursuant to clause 91.2 of the Contract, the Contractor must execute and deliver to the Principal a deed of release once it considers the Works have achieved *Final Completion*.

THE CONTRACTOR AGREES

- 1 The Contractor warrants to the Beneficiaries that it has lodged with the Principal all *Claims* that it has which arise out of or in connection with the Contract, the execution of the work in connection with the Contract or associated with the Works and those *Claims* have been satisfied in full by the Principal.
- 2 The Contractor releases and forever discharges the Beneficiaries from all causes of action, proceedings, claims or demands which it has or may in the future have against the Beneficiaries arising out of or in connection with the Contract, the execution of the work in connection with the Contract or associated with the Works (**Claims**).
- 3 The Contractor acknowledges that the Principal will issue a *Certificate of Final Completion* pursuant to clause 91.3 in reliance on the warranties and releases contained in this deed.
- 4 This deed may be pleaded by the Beneficiaries as a bar to any *Claims*.
- 5 The release under this deed does not apply to:
 - (a) claims the Contractor has already made in writing against the Principal as at the date of this deed;
 - (b) claims in relation to the Contractor's entitlement to the return of the *Undertakings* pursuant to the Contract;
 - (c) the extent that the grant of the release would prevent the Contractor from enforcing its rights under any policy of insurance required to be effected under the Contract; or
 - (d) prevent the Contractor from:
 - (i) raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by a Beneficiary; or
 - (ii) making any claim against a Beneficiary arising solely from a third party claim first brought against or communicated to the Contractor after the date of this deed.

6 Unless the context otherwise requires, defined terms used but not defined in this deed have the same meaning as defined in the Contract.

EXECUTED as a deed.

EXECUTED by [CONTRACTOR] in)	
accordance with section 127(1) of the)	
<i>Corporations Act 2001</i> (Cth) by authority of)	
its directors:)	
)	
.....)	
Signature of director)
)	Signature of director/company secretary*
)	*delete whichever is not applicable
)	
.....)
Name of director (block letters))	Name of director/company secretary*
)	(block letters)
)	*delete whichever is not applicable

Schedule 37 – Consultant’s Deed of Covenant

This Deed Poll is in favour of:

Infrastructure NSW of [insert address] (ABN [insert ABN]) (“Principal”)

and

The Museum of Applied Arts and Science of [insert address] (ABN [insert ABN]) (“MAAS”),

and their successors and permitted assigns (together, the **Beneficiaries**).

Recitals

- A The Principal has engaged [*Insert Contractor’s name*] (ABN [*Insert Contractor’s ABN*]) of [*Insert Contractor’s address*] (“Contractor”) to carry out certain works for the Principal by contract dated [*insert date*] (“Contract”).
- B The Contractor has engaged [*Insert Consultant’s name*] (“Consultant”) under a contract (“Professional Services Agreement”) to carry out the design work specified in the Schedule for the purposes of its obligations under the Contract (“Design Work”).
- C Under the Contract the Contractor is required to procure the Consultant to execute this deed poll in favour of the Beneficiaries.

Operative

1 Duty of care

The Designer warrants to the Beneficiaries that in performing the Design Work and in providing any certificate under clause 61.14 of the Contract:

- (a) it will owe a duty of care to the Beneficiaries;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Beneficiaries will be relying upon the skill and judgement of the Consultant in performing the Design Work.

2 Governing law and jurisdiction

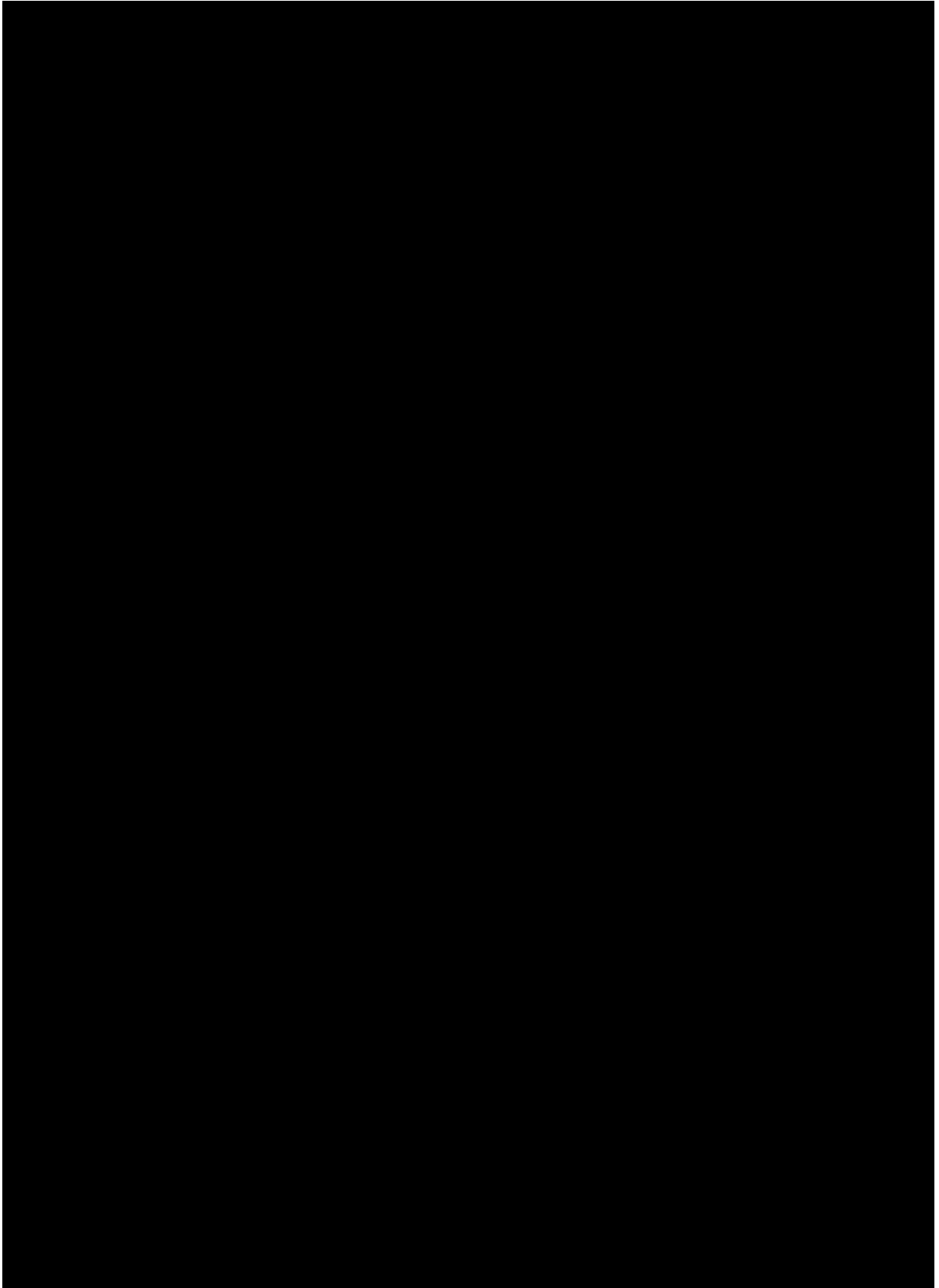
This deed poll will be construed in accordance with the law of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of New South Wales.

3 Consultant’s limited liability

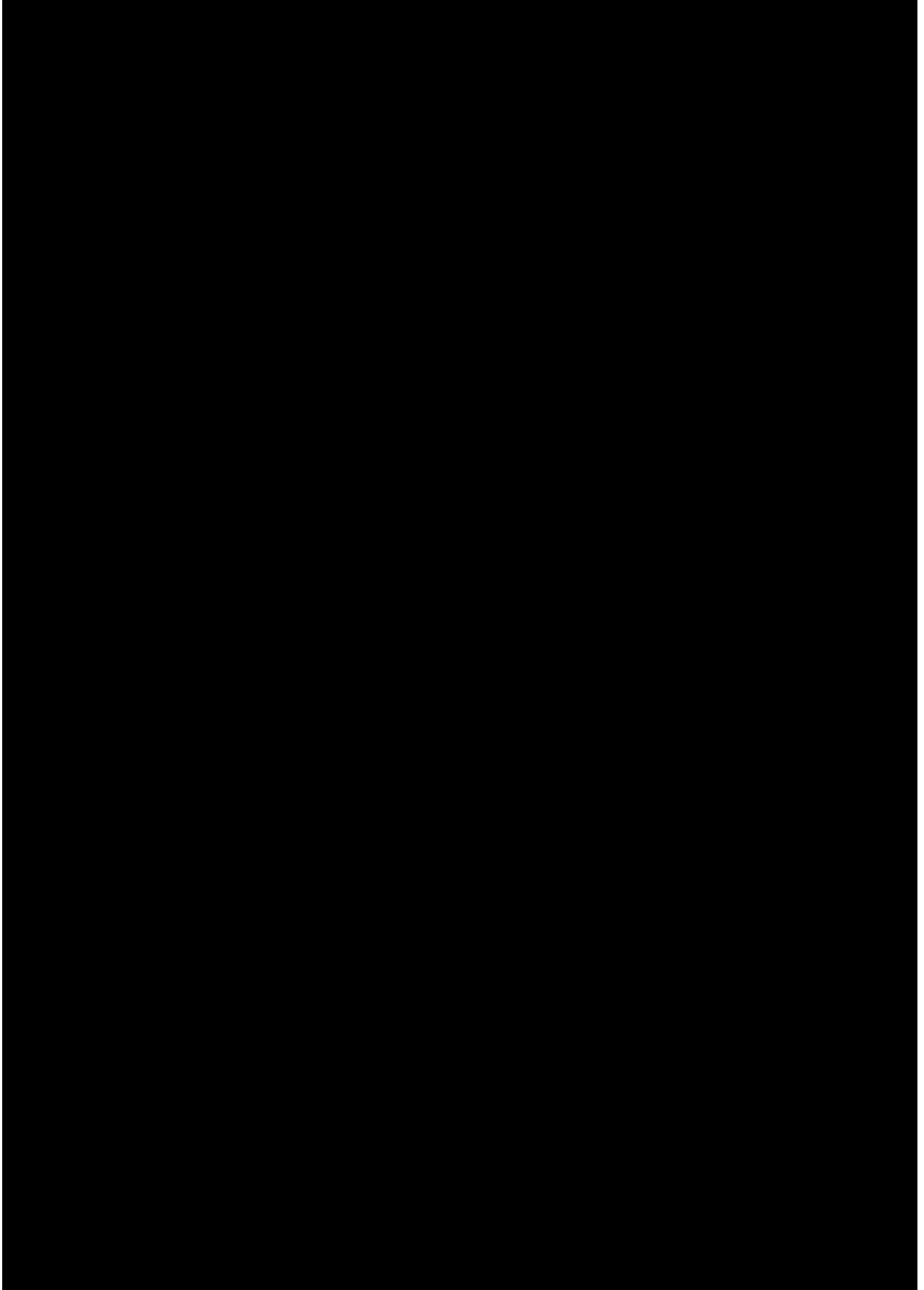
The aggregate of the Consultant’s liability to each of the beneficiaries under this Deed Poll and the Consultant’s liability to the Contractor under the Professional Services Agreement:

- (a) will not exceed the liability which the Consultant would have had under the Professional Services Agreement if the Professional Services Agreement had

Schedule 38 – Information Documents

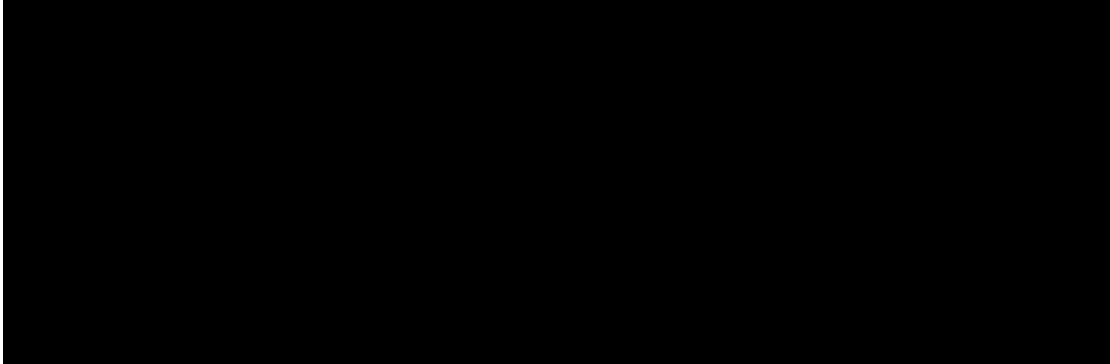


Schedule 39 – Preliminaries



Schedule 40 – Third Party Agreements

Refer to clause 25 of the General Conditions of Contract.



Schedule 41 - Compliance with NSW Supplier Code of Conduct and Building and Construction Guidelines

Refer to clause 20 of the General Conditions of Contract.

Terminology

- .1 In addition to terms defined in this document, terms used in this Schedule 41 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated September, 2017). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

In particular, as stated in clause 3.1 of the NSW Guidelines; any relevant document or procedure referencing the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction - means a reference to these reissued Guidelines. Relevant documents may include but not are limited to: a Practice Direction, a workplace relations management plan or a model contract clause.

- .2 Note the NSW Government Supplier Code of Conduct (the 'Code') replaced the NSW Government Code of Practice for Procurement in February, 2020. The Code is available at www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct.

Primary Obligation

- .3 The parties must comply with and meet any obligations imposed by the Code and the NSW Guidelines.
- .4 The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .5 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the Code and the NSW Guidelines.
- .6 The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Code or NSW Guidelines

Access and information

- .7 The Contractor must maintain adequate records of compliance with the Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities
- .8 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
 - .2 inspect any work, material, machinery, appliance, article or facility;
 - .3 access information and documents;
 - .4 inspect and copy any record relevant to the project;
 - .5 have access to personnel; and
 - .6 interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.
- .9 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means

Sanctions

- .10 The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the Code and NSW Guidelines apply.
- .11 If the Contractor does not comply with, or fails to meet any obligation imposed by, the Code or NSW Guidelines, a sanction may be imposed against it in connection with the Code or NSW Guidelines.
- .12 Where a sanction is imposed:
- .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - .1 record and disclose details of noncompliance with the Code or NSW Guidelines and the sanction; and
 - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the Code and NSW Guidelines apply.

Compliance

- .13 The Contractor bears the cost of ensuring its compliance with the Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- .14 Compliance with the Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any *Defect* in the works or from any other legal liability, whether or not arising from its compliance with the Code and NSW Guidelines.
- .15 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- .1 the circumstances of the proposed change;
 - .2 the extent to which compliance with the Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - .3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety (WHS) Management Plan); and
- the Principal will endeavour to direct the Contractor as to the course it must adopt within 10 *Business Days* of receiving the notice.

Schedule 42 – Schedule of Rates (Contamination)

Refer to clause 54 of the General Conditions of Contract.

