Dated 02 February **2024**

Formal Instrument of Agreement for General Conditions of Contract

Contract No: INSW3587

Barangaroo Cutaway Cultural Facility

Infrastructure NSW (ABN 85 031 302 516)

FDC Construction (NSW) Pty Limited (ACN 608 609 427)

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Details

Parties:

Principal

Name	**Infrastructure NSW**
ABN	85 031 302 516
Address	Level 27, 201 Kent Street, Sydney NSW 2000
Attention	[redacted]

Contractor

Name	**FDC Construction (NSW) Pty Limited**
ACN	608 609 427
Address	22-24 Junction Street, Forest Lodge NSW 2037
Attention	[redacted]

Recitals

A The Principal intends to undertake fitout works to deliver the Cutaway Cultural Facility at Barangaroo, Sydney ("**Project**").

B 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.

C In reliance on the representations in Recital B, the Principal wishes to engage the Contractor to perform the work in connection with the Contract on the terms set out in the Contract.

The parties agree as follows:

1 Definitions and Interpretation

1.1 Terms defined in the Contract

Unless the contrary intention appears:

(a) a term which has a defined meaning in the General Conditions has the same meaning when used in the Formal Instrument of Agreement; and

(b) capitalised terms have the meaning set out below.

Contract Documents means:

(a) the Formal Instrument of Agreement;

(b) the Contract, including:

- GC21 General Conditions of Contract;
- GC21 Schedules and Attachments; and

(c) the Principal's Documents:

i. the Preliminaries;

ii. the Principal's Project Requirements, including annexures:

- Project Brief and Change Register;
- Principal Design Consultant; and
- Barangaroo Loading Plans & Potential Construction Zones;

iii. the Design, as per the:

- Drawings;
- Technical Specifications;
- Schedules; and
- Other Documents (Models, Kitchen, Reports); and

iv. the 'Other Contract Documents' listed in Contract Information item 25.

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

Formal Instrument of Agreement means this formal instrument of agreement.

General Conditions means the document titled "GC21 (Edition 2) (Modified) General Conditions of Contract" attached to 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 taken to be the next Business Day.

1.4 Next Day

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

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) Schedule 32 – FDC Qualifications, Departures and Clarifications;

(v) the Principal's Documents;

(vi) the Preliminary Design;

(vii) the remaining Schedules;

(viii) the Other Contract Documents listed in Contract Information item 25; and

(ix) 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 discrepancy, inconsistency or ambiguity, 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 clause 2.2(a).

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 take 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) bind the Contractor and any other person intended to be bound under the Contract; or

(b) 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 77 of the General Conditions.

(b) The provisions of the Contract survive expiry or termination of the Contract to the extent necessary to give effect to clause 3.13(a).

EXECUTED as an agreement

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

[redacted] .....
Signature of witness

[redacted] .....
Name of witness (block letters)

[redacted] .....
Signature

Executed by **FDC Construction (NSW) Pty Limited** (ACN 608 609 427) in accordance with section 127 of the *Corporations Act 2001* by being signed by those persons who are authorised to execute documents on behalf of the company:

[redacted] .....
Signature of Director

[redacted] .....
Signature of Director/Secretary

[redacted] .....
Name of Director

[redacted] .....
Name of Director/Secretary

Barangaroo Cutaway Cultural Facility Main Works Contract

GC21 (Edition 2) (Modified)

General Conditions of Contract

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GC21 (Edition 2) General Conditions of Contract

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NSW Department of Finance & Services
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I. Title.

Acknowledgments

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

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

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

Government Codes and Guidelines

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

- NSW Government *Code of Practice for Procurement*
  https://buy.nsw.gov.au/
- Work Health and Safety Management Systems and Auditing Guidelines (Edition 6)
- Quality Management Systems Guidelines for Construction (Edition 4)
- Environmental Management Systems Guidelines (Edition 3)
- Training Management Guidelines
- Policy on Aboriginal Participation in Construction
- NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines)
  www.industrialrelations.nsw.gov.au

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Preface

The GC21 Edition 2 General Conditions of Contract

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

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

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

Using this document

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

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

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

Contract framework

Roles and relationships

A1 Background

.1 The Principal has been selected by the NSW Government as the proponent for the development and delivery of the *Project*.

.2 The Contractor acknowledges the importance of:

.1 a whole of project approach to the *Project* and the importance of co-ordination and co-operation with other *Project* participants (including *Separate Contractors*);

.2 the safety of the public and all *Project* participants during the construction of the Works;

.3 the minimisation of disruption to the community; and

.4 the need to approach the performance of the work in connection with the Contract in a co-operative and positive manner.

.3 Following completion of the *Tender Process*, the Principal selected the Contractor as the successful proponent to design and construct the Works in consideration of the *Contract Price* in accordance with the terms of the Contract.

.4 The Principal has reposed trust in the Contractor to carry out the work in connection with the Contract:

.1 in accordance with the Contract;

.2 consistently with the matters set out in this clause A1; and

.3 consistently with the Contractor's representation that it has the resources and expertise to perform the work in connection with the Contract in accordance with the Contract.

.5 In reliance on these representations made by the Contractor and on the basis of the trust reposed by the Principal in the Contractor, the Principal has engaged the Contractor to perform the work in connection with the Contract on the terms of the Contract.

1 General responsibilities

.1 The Contractor must:

.1 if required by the Principal, provide such assistance as may be reasonably required by the Principal to enable the Principal to obtain the *Planning Approval*;

.2 remediate the Site as required by the Contract;

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

.4 perform and observe all of its other obligations under the Contract.

.2 The Principal must:

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

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

.3 Other than as expressly provided for in the Contract, the Contractor is not entitled to an adjustment to the *Contract Price*.

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

1A Authorities

.1 This Contract will not in any way unlawfully restrict or affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any *Statutory Requirements*.

.2 The Contractor acknowledges and agrees that, without limiting clause 1A.1, anything which the Principal does, fails to do or purports to do pursuant to its functions and powers

under any *Statutory Requirements* will be deemed not to be an act or omission by the Principal for the purposes of the Contract and the Contractor releases the Principal from any and all *Claims* which the Contractor might have against the Principal, whether under the Contract, for breach thereof, in negligence or otherwise, arising out of or in connection with such matters.

.3 The Contractor acknowledges and agrees that:

.1 there are many authorities (other than the Principal) with jurisdiction over aspects of the work in connection with the Contract, parts of the Site and areas affected by the work in connection with the Contract;

.2 such authorities may from time to time exercise their functions and powers (whether statutory or otherwise) in such a way as to disrupt, interfere with or otherwise affect the work in connection with the Contract; and

.3 it bears the full risk of all occurrences of the kind referred to in clause 1A.3.2 and any associated delay, disruption or interference and will have no *Claim* against the Principal arising out of or in any way in connection with such occurrences (including in circumstances where the Principal may have become involved in matters relating to the work in connection with the Contract with a relevant authority).

2 Authorised persons

Contractor's Authorised Person

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

Principal's Authorised Person

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

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

.4 The *Principal's Authorised Person* may delegate any of its contractual functions and powers to others by written notice to the Contractor. Delegation of any functions or powers of the *Principal's Authorised Person* does not prevent the *Principal's Authorised Person* from exercising those functions or powers.

3 Cooperation

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

4 Duty not to hinder performance

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

5 Early warning

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

6 Evaluation and monitoring

Reports

.1 From the Date of Contract until the *Actual Completion Date*, the Contractor must give the Principal:

.1 weekly progress reports on the work in connection with the Contract covering such matters as the Principal shall require; 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 6.1.1 at least 2 *Business Days* before each weekly site meeting under clause 6.5.2; and

.2 the monthly progress report under clause 6.1.2 within 5 *Business Days* after the end of each month.

.3 From the *Actual Completion Date* until the end of the *Defects Liability Period*, the Contractor must give the Principal regular reports on the rectification of *Defects* and the completion of outstanding work in connection with the Contract.

.4 The Contractor must undertake a dilapidation survey and produce a dilapidation report in accordance with the requirements of the *Preliminaries*.

Meetings

.5 The parties must meet:

.1 monthly at a location agreed by the parties (or at the Site if the parties fail to agree); and

.2 weekly at the Site,

to evaluate and monitor performance of the Contract.

.6 The Principal shall notify the Contractor who must participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, stakeholders, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.

.7 The Contractor must provide minutes of each meeting to all attendees within 2 *Business Days* of the date of the meeting.

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

.9 Participants in the evaluation and monitoring meetings must meet their own costs for attendance.

Contractor's records

.10 During the performance of the work in connection with the Contract, the Contractor must ensure that a complete set of:

.1 the Contract;

.2 the *Contractor's Documents*;

.3 the *Contractor's Project Plans*;

.4 *Approvals* obtained for the work in connection with the Contract; and

.5 all other written information supplied by or produced by the Principal and the Contractor in connection with the Contract,

is kept at the Site and is available at all times for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.

.11 During the manufacture or assembly of any *Materials* off-Site (if any), a set of the information and documents referred to in clause 6.10 relevant to that part of the work in connection with the Contract must:

.1 be kept at the place of manufacture or assembly; and

.2 be available for inspection by the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them upon reasonable notice.

.12 The Contractor must, and must ensure all Subcontractors, Suppliers and Consultants keep and maintain complete and detailed records in respect of the Contract ("***Records***"). Such *Records* must be kept in accordance with generally accepted accounting principles.

.13 The Contractor must provide the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them with access to the *Records*, allow them to take copies of the *Records* and allow them to extract *Records* from data stored on computer files to enable the Principal to verify, to its reasonable satisfaction:

.1 the proper performance of the work in connection with the Contract; and

.2 the Contractor's compliance with its obligations under the Contract.

.14 The Contractor must allow the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them access to the *Contractor's Personnel* and provide reasonable assistance to the Principal, the *Principal's Authorised Person* and any persons nominated in writing by them in accessing and reviewing the *Records*.

.15 The Contractor must preserve the *Records* until 7 years after the expiry of the last *Defect Liability Period*.

6A Contractor's obligations unaffected

.1 The Contractor's warranties and obligations under the Contract, including to perform the work in connection with the Contract in accordance with the Contract, remain unaffected notwithstanding:

.1 the performance of the *Preliminary Design* by any person;

.2 any receipt, review, comment, approval or silence by or on behalf of the Principal or the *Principal's Authorised Person* in relation to:

.1 the documents prepared or provided by the Contractor or the *Contractor's Personnel*, including the *Design Documentation* or the *Contractor's Project Plans*;

.2 the design, *Materials*, construction equipment and methods of working used by the Contractor;

.3 the Subcontractors, Suppliers and Consultants engaged by the Contractor;

.4 any work in connection with the Contract performed or the way any work in connection with the Contract is performed; or

.5 the Principal's consent to subcontract under clause 29;

.3 any test or inspection witnessed by or carried out by or on behalf of the Principal or the *Principal's Authorised Person* or any failure to witness by the Principal or the *Principal's Authorised Person*; or

.4 the Contractor's use of any information, design, *Materials*, construction equipment or work methods prepared, provided or suggested by or on behalf of the Principal or the *Principal's Authorised Person*.

The Contract

7 Separable Portions

.1 The interpretation and application of:

.1 *Completion*;

.2 *Contractual Completion Date*; and

.3 *Actual Completion Date*,

and clauses 50, 51, 64 and 67 apply separately to each *Separable Portion* and references to the Works and the work in connection with the Contract means those parts of the Works or the work in connection with the Contract comprised in the relevant *Separable Portion*.

.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,

applicable to such *Separable Portions*.

8 Scope of the Works, Temporary Work and work methods

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

.1 all work specifically referred to in or contemplated by the Contract;

.2 all work and items necessary to achieve the effective and efficient use and occupation of the Works; and

.3 all work and items necessary for the Works to be *Fit for Purpose*.

.2 The work in connection with the Contract includes:

.1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;

.2 all work and items necessary to carry out and complete the Works properly; and

.3 all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract.

.3 The Contractor acknowledges that:

.1 it is both experienced and an expert in work of the type, complexity and scale of the Works;

.2 it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and

.3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.

.4 The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works or the work in connection with the Contract.

.5 Unless the Contract specifies 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 Work* required to perform its obligations under the Contract;

.2 ensure that all *Temporary Work* is of suitable quality and maintained in excellent condition; and

.3 ensure the *Temporary Work* is established at locations and positions on the Site that minimise the impact on the Works, the Site and adjoining properties.

9 Assignment and Change in Control

No assignment by Contractor

.1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's written consent (which may be withheld in the Principal's absolute discretion).

.2 Subject to clause 9.3, the Contractor must ensure that no *Change in Control* occurs in respect of the Contractor 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.

.3 The consent referred to in clause 9.2 is not required for a *Change in Control* resulting from a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange.

Transfer by the Principal

.4 The Contractor acknowledges and agrees that following the *Actual Completion Date*, the Principal may elect to transfer, assign or novate the Contract, and any of its rights, benefits, interests or obligations under or in connection with the Contract to the *Operator*.

.5 If the Principal elects to transfer, assign or novate this Contract pursuant to clause 9.4, the Contractor:

.1 consents to any such transfer, assignment or novation; and

.2 acknowledges that such transfer, assignment or novation may be effected (at the Principal's sole discretion) by way of:

.1 statutory vesting order;

.2 a deed of assignment between the Principal and the relevant assignee; or

.3 entry by the parties and the relevant transferee or novatee into a *Novation Deed*.

.6 Where the Principal proposes to transfer or 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*.

10 Governing law of the Contract

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

11 Notices and instructions

.1 Unless stated otherwise, notices must be sent via email to the relevant persons at the addresses in Contract Information items 4 to 11 or 50, or at the address for service most recently notified in writing by the addressee.

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

.3 Notices are taken to be received:

.1 if sent by post, 3 days after posting; or

.2 if sent by email:

.1 when the sender receives an automated message confirming delivery; or

.2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

11A Benefit of indemnities

.1 The Principal holds the benefit of any indemnity given by the Contractor in favour of an *Indemnified Party* (including the right to recover any *Loss*) for itself and on trust for each *Indemnified Party* and is entitled to enforce the Contract (including any indemnity), whether by way of equitable, legal or statutory relief, for itself and on behalf of any *Indemnified Party*.

11B Information Documents

.1 The parties acknowledge that:

.1 at the Date of Contract, the Principal has provided in good faith the *Information Documents*;

.2 the *Information Documents* do not form part of the Contract;

.3 the Principal does not guarantee or warrant the accuracy, quality or completeness of the *Information Documents*;

.4 the Principal has no duty of care in connection with the *Information Documents*, or with having provided them; and

.5 the Principal makes no representation, gives no warranty and assumes no duty of care, in respect of:

.1 the Site, the *Site Conditions* or the *Information Documents*; or

.2 the adequacy or suitability of the Site, *Site Conditions* or the *Information Documents* for the performance of the work in connection with the Contract.

.2 The Contractor warrants that it:

.1 has made its own inquiries concerning the Site, *Site Conditions* and the *Information Documents*;

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

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

.4 did not, and will not, rely on the accuracy, quality or completeness of the *Information Documents*; and

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

.3 The Contractor is not entitled to any *Claim* arising out of or in connection with, the inaccuracy, incompleteness or inadequacy of, or the reliance by the Contractor upon, any *Information Documents*.

.4 The Contractor acknowledges that the Principal has entered into the Contract in reliance on the acknowledgments and warranties given by the Contractor in clause 11B.2.

Statutory and Government Requirements

12 Statutory Requirements and Approvals

.1 The Principal must ensure that the *Approvals* listed in Contract Information item 14 are obtained and paid for.

.2 The Contractor is responsible for:

.1 compliance with all *Statutory Requirements*;

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

.3 providing the Principal with such assistance as may be reasonably required by the Principal and the *Principal's Authorised Person*;

.4 obtaining all *Approvals* necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and

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

.3 The Contractor must:

.1 carry out the work in connection with the Contract in accordance with, and ensure the Works comply with, all *Statutory Requirements* and *Approvals*, including the conditions and requirements attached to any *Approval*; and

.2 comply with and discharge the conditions and requirements of all *Approvals* (whether obtained by the Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the *Approvals* to comply with, carry out and discharge, other than those conditions listed in Contract Information item 14A.

.4 The Contractor must:

.1 give the Principal copies of all notices, reports and submissions it gives to authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, authorities; and

.2 give the Principal copies of all documents (including *Approvals* and other notices) that authorities issue to it.

.5 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all *Approvals* and other documents issued by or to authorities or providers of services in connection with the Works or the Site.

13 Procurement Policy Framework, Codes and Guidelines

.1 The NSW Government Procurement Policy Framework (Procurement Framework) provides a consolidated view of government procurement objectives and requirements as they apply to each step of the procurement process.

.2 The NSW Government Supplier Code of Conduct (the 'Code') outlines the ethical standards and behaviours expected from the Principal and the Contractor.

.3 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.

.4 The Contractor must comply with the Procurement Framework, the Code and the NSW Guidelines.

Terminology

.5 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the NSW Industrial Relations Guidelines: Building and Construction Procurement (as published by the NSW Treasury July 2013 and updated in September 2017) ("***NSW Guidelines***") and the NSW Government Code of Practice for Procurement ("***NSW Code***"). The *NSW Code* is available at https://buy.nsw.gov.au/ and *NSW Guidelines* are available at www.industrial relations.nsw.gov.au.

Primary obligation

.6 The Contractor must comply with and meet any obligations imposed by the *NSW Code* and the *NSW Guidelines*.

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

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

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

Access and information

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

.11 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

.1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;

.2 inspect any work, material, machinery, appliance, article or facility;

.3 access information and documents;

.4 inspect and copy any record relevant to the *Project*;

.5 have access to personnel; and

.6 interview any person,

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

.12 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

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

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

.15 Where a sanction is imposed:

.1 it is without prejudice to any rights that would otherwise accrue to the parties; and

.2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:

.1 record and disclose details of noncompliance with the *NSW Code* or NSW *Guidelines* and the sanction; and

.2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the *NSW Code* and *NSW Guidelines* apply.

Compliance

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

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

.18 Where a change in the Contract or Works is proposed, and that change may, or may be likely to, affect compliance with the *NSW Code* and *NSW Guidelines*, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:

.1 the circumstances of the proposed change;

.2 the extent to which compliance with the *NSW Code* and *NSW Guidelines* will be, or is likely to be, affected by the change; and

.3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety ("**WHS**") Management Plan),

the Principal will direct the Contractor as to the course it must adopt within 10 *Business Days* of receiving notice.

National Construction Code (NCC) 2022

.19 If required by *Contract Information* item 37B, the Contractor must comply with the requirements of the *National Construction Code 2022* (Cth) ("**NCC 2022**").

14 No collusive arrangements

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

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

15 Compliance with NSW Government Requirements

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

.1 the *NSW Guidelines*;

.2 the Work Health and Safety Management Guidelines (for Construction Procurement);

.3 the Quality Management Guidelines (Construction Procurement) (including any requirements set out in section 4.1 of the *Preliminaries)*;

.4 the Environmental Management Guidelines (Construction Procurement);

.5 the Skills and Training in Construction guide, including the Infrastructure Skills Legacy Program (including any requirements set out in section 4.3 of the *Preliminaries)*; and

.6 Aboriginal Procurement Policy (including any requirements set out in section 4.2 of the *Preliminaries*).

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

.3 The *Contractor's Project Plans* must comply with all requirements of the relevant *NSW Government Policy and Guidelines* and the Contract, including any requirements set out in section 4.1 of the *Preliminaries*.

.4 The Contractor must:

.1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, and procedures required under clause 15.1 and the *Contractor's Project Plans*;

.2 review and update its systems, procedures and the *Contractor's Project Plans* to ensure ongoing compliance with the Contract;

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

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

16 Workplace Health and Safety

Compliance and cooperation

.1 The Contractor warrants to the Principal that it is familiar with and has the capability and resources to comply with all applicable *WHS Legislation*.

.2 The Contractor must:

.1 comply with, and ensure that any and all of the *Contractor's Personnel* comply with:

.1 all applicable *WHS Legislation*;

.2 the provisions of this clause 16;

.3 the workplace health and safety requirements set out in section 5 of the *Preliminaries*; and

.4 the *WHS Plan*;

.2 upon reasonable request by, or on behalf of, the Principal, demonstrate such compliance including by providing written evidence of measures taken to achieve such compliance;

.3 allow the Principal, the *Principal's Authorised Person* or a person nominated by the Principal to audit the Contractor's compliance with this clause 16;

.4 if the Principal exercises its right to audit compliance pursuant to clause 16.2.3, promptly provide reasonable assistance and access to information to enable the Principal or a person nominated by the Principal to carry out such audit;

.5 without limiting clause 37A and clause 37B, cooperate with *Separate Contractors* as necessary to ensure (where reasonably practicable) safety practices at the Site are consistent;

.6 cooperate with the Principal to enable the Principal to comply with its obligations under applicable *WHS Legislation*;

.7 immediately advise the Principal in writing of any act, fact or circumstances relevant to the ability of the Contractor to carry out its obligations under the Contract without risk to health or safety;

.8 supply all items necessary to ensure the work in connection with the Contract is being performed without risk to health or safety; and

.9 ensure that all items supplied by it, including *Materials*, are maintained in a safe condition and without risk to any person including providing written evidence of measures taken to achieve compliance with this clause 16.

WHS Plan

.3 The Contractor's high level draft *WHS Plan* at the Date of Contract is included in Schedule 20.

.4 The Contractor must, within 15 *Business Days* after the Date of Contract and at least 10 *Business Days* before first mobilising to the Site, prepare and submit a *WHS Plan* to the Principal under clause 32A.3.

.5 The *WHS Plan* must:

.1 be consistent with the high level draft *WHS Plan* in Schedule 20;

.2 set out in detail how the Contractor proposes to comply with its obligations under the *WHS Legislation* and the Contract;

.3 detail the interface arrangements between the Principal, *Separate Contractors* and the Contractor for health and safety, including emergency response, incident reporting and security, including assigned responsibilities;

.4 comply with:

.1 the Contract, including the *Project Brief* and the workplace health and safety requirements set out in section 5 of the *Preliminaries*;

.2 all applicable *Statutory Requirements*;

.3 all relevant NSW Government Guidelines; and

.5 include any other information required by the Contract, any applicable *Statutory Requirements* or the Principal.

.6 The Contractor acknowledges that:

.1 the *WHS Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and

.2 compliance with the *WHS Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.

.7 The Contractor must not commence any works on Site unless and until the *WHS Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *WHS Plan* in accordance with clause 32A.8.1 and either:

.1 the Contractor has resubmitted the *WHS Plan* in accordance with clause 32A.8.2 and the resubmitted *WHS Plan* has not been commented on; or

.2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *WHS Plan*.

Contractor's responsibilities

.8 The Contractor must:

.1 before commencement of the work in connection with the Contract, undertake an assessment of the risks associated with the Site and the work in connection with the Contract and identify and implement appropriate measures to control all such risks;

.2 provide details of the risk assessment and evidence of implementation of adequate risk control measures to the Principal in accordance with any reasonable request by, or on behalf of, the Principal;

.3 immediately notify the Principal and any relevant authority in accordance with applicable *WHS Legislation* and the *WHS Plan* (and, in any case, within 24 hours) of any accident, notifiable incident (being an incident which is notifiable under applicable *WHS Legislation*), injury, property or environmental damage which:

.1 occurs during the performance of the Contractor's obligations;

.2 is associated with the Site or the work in connection with the Contract; or

.3 is otherwise required by *WHS Legislation* to be notified;

.4 within 24 hours of any such accident, notifiable incident, injury, property or environmental damage, provide the Principal with a written report giving details of the accident, notifiable incident, injury, property or environmental damage and evidence that the requirements of the *WHS Legislation* have been met;

.5 promptly provide investigation reports and details of root causes, action and remedial work to be undertaken in connection with any such accident, notifiable incident, injury, property or environmental damage; and

.6 appoint statutory position holders for the purposes of applicable *WHS Legislation* as requested by the Principal or the *Principal's Authorised Person*.

.9 Without limiting any other provision of this clause 16, the Contractor must ensure, so far as is reasonably practicable:

.1 the health and safety of workers carrying out the work in connection with the Contract;

.2 that the workers under its control and supervision take reasonable care while carrying out the work in connection with the Contract;

.3 the provision and maintenance of safe systems of work;

.4 that workers:

.1 receive the necessary information, training, instruction and supervision in order to comply with the *WHS Legislation* and any rules, regulations, policies and guidelines issued from time to time by the Contractor;

.2 are aware of, and comply with, all requirements and directives relating to work health and safety which is issued by the Contractor from time to time; and

.5 the health and safety of other persons is not put at risk from activities in connection with the Works.

.10 The Principal may request the Contractor to:

.1 immediately cease or modify any activity that does not materially comply with the *WHS Plan* or the *WHS Legislation*; and

.2 provide evidence of action taken to meet the Contractor's obligations under this clause 16.10.

.11 If the Contractor receives a direction or instruction from the Principal or the *Principal's Authorised Person* that it considers will:

.1 require it to breach this clause 16 or any applicable *WHS Legislation*; or

.2 give rise to circumstances which present actual or potential risk to life or serious injury,

the Contractor shall, as soon as is reasonably practicable, and in any event prior to complying with such direction or instruction, notify the *Principal's Authorised Person* in writing.

.12 The Contractor acknowledges and agrees that:

.1 the audits referred to in clause 16.2.3 do not relieve, limit or otherwise affect the Contractor's responsibilities under *WHS Legislation* and the Contract; and

.2 any corrective work or action which the audit identifies as necessary to rectify any departure from the Contractor's responsibilities under *WHS Legislation* and the Contract must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the departure.

.13 Where the Contractor or the *Contractor's Personnel* are required to visit or work on any site that is not part of the Site or is not otherwise controlled by the Contractor, the Contractor must, and must ensure that the *Contractor's Personnel*, comply with all directions, procedures and policies of the person that has control or management of that site.

.14 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 16.

16A Appointment of principal contractor for WHS

.1 Unless otherwise stated in the Contract, the Contractor:

.1 is engaged as principal contractor for:

.1 the Works until the earlier of the *Actual Completion Date* or the termination of the Contract; and

.2 in respect of any part of the *Works* in respect of which the Contractor is performing work during the *Defects Liability Period*, while the Contractor is performing that work,

in accordance with clause 293 of the *WHS Regulation 2017*;

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

.3 must perform the duties of:

.1 a principal contractor, as specified in the *WHS Regulation (2017)*; and

.2 a person with management or control of a workplace as specified in the *WHS Legislation* and the *WHS Regulation (2017)*; and

.4 must notify the Principal promptly of any matter affecting workplace health and safety where consultation with the Principal is necessary.

.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 16A.

17 Commonwealth OHS Accreditation

.1 If required by Contract Information item 16B, the Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme ("**Scheme**") established by the *Federal Safety Commissioner Act 2022* (Cth) ("***FSC Act***") while building work (as defined in section 5 of the *FSC Act*) is carried out. The Contractor must comply with all conditions of Scheme accreditation.

18 Working hours and working days

.1 The Contractor must observe:

.1 *Statutory Requirements* which regulate working hours and working days; and

.2 any requirements in Contract Information item 18.

19 Authorisation to release and use information

.1 The Contractor authorises the Principal to:

.1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor's performance, to other Commonwealth, State or local government agencies at any time or for any reason; and

.2 take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.

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

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

20 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.

21 Registration and licences

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

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

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

21A PPSA

PPSA further steps

.1 If either party ("**Party A**") determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, the other party ("**Party B**") agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Party A asks and considers necessary for the purposes of:

.1 ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;

.2 enabling Party A to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Party A; or

.3 enabling Party A to exercise rights in connection with the security interest.

Costs of further steps and undertaking

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

Negative pledge for the purposes of the PPSA

.3 For the purposes of clause 21A.4, "**Personal Property**" means all personal property of the Principal or the Contractor (as applicable) the subject of a security interest granted in favour of the other party under the Contract.

.4 Each party agrees:

.1 not to create any security interest or lien over any of the other party's Personal Property;

.2 not to sell, lease or dispose of its interest in the other party's Personal Property;

.3 not to give possession of the other party's Personal Property to another person except where the other party expressly authorises it to do so;

.4 not to permit any of the other party's Personal Property to become an accession to or commingled with any asset that is not part of the Works;

.5 to give the other party details about any "motor vehicle", "watercraft", "aircraft" or "intellectual property" (each as defined in the *PPSA* or the *Personal Property Securities Regulations 2010* (Cth) (as applicable)) used for the purpose of carrying out the Works comprising part of the other party's Personal Property that has a value of more than [redacted]; and

.6 to notify the other party at least 14 days before:

.1 it changes its name, principal place of business or place of registration or incorporation;

.2 any ABN, ARBN or ARSN allocated to it changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or one is allocated, or otherwise starts to apply, to it); and

.3 it becomes trustee of a trust, or a partner in a partnership.

Exclusion of PPSA provisions

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

.1 sections 142 and 143 of the *PPSA* are excluded and the relevant secured party need not comply with the following provisions of the *PPSA*: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the *PPSA* notified to the grantor by the relevant secured party after the Date of Contract; and

.2 the Principal need not give any notice required under any provision of the *PPSA* (except section 135).

.6 This clause applies despite any other clause in the Contract.

Management duties

22 Time management

Contract Program

.1 The Contractor must submit a *Contract Program* to the Principal within 7 days after the Date of Contract. The program set out in Schedule 16 is the *Contract Program* until the Contractor submits a *Contract Program* under this clause 22.1.

.2 The *Contract Program*, including any updated *Contract Program*, must:

.1 in respect of the *Contract Program* submitted under clause 22.1, be consistent with the *Contract Program* set out in Schedule 16;

.2 reflect *Scheduled Progress* and show the *Contractual Completion Date* for the whole of the Works;

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

.4 show the start and finish dates and the percentage complete or, in the case of future activities, the intended start and finish dates, of all design and construction activities including any work specified against *Provisional Sums* and other significant events;

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

.6 show the dates when the Contractor:

.1 will require information, documents or materials from the Principal;

.2 will require instructions from the Principal, including an instruction to carry out work specified against a *Provisional Sum* where a delay in issuing such an instruction will result in a delay to *Completion*; and

.3 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 section 2.6 of the *Preliminaries* and any reasonable requirements of the Principal.

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

.1 on the first *Business Day* of each month until the *Actual Completion Date*;

.2 whenever there is a significant change in scheduling;

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

.4 when required to comply with the notification requirements of clause 50.1.3;

.5 when required to comply with clause 50.4; and

.6 following the grant of an extension of time under clause 50.

.4 Updated *Contract Programs:*

.1 must take account of the Contractor's actual progress to the date of the update, unless clause 22.4.3 applies;

.2 must be submitted promptly to the Principal; and

.3 where submitted in accordance with clause 22.3.4, must comply with the specific requirements of clause 50.1.3.

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

Scheduled Progress

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

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

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

Minimisation of delay

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

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

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

23 Intellectual property

Project IP

.1 All *Project IP* vests in the Principal upon its creation.

.2 To the extent clause 23.1 does not vest ownership of the *Project IP* in the Principal, the Contractor assigns or otherwise transfers the *Project IP*, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Project IP* in the Principal.

.3 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Project IP* is assigned or otherwise transferred to the Principal upon its creation.

.4 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Project IP* solely for the purposes of performing the Contractor's obligations under the Contract.

Contractor Background IP

.5 The Contractor grants to the Principal and the *Operator* a perpetual, world-wide royalty-free, non-exclusive, transferable, irrevocable licence to use, copy, reproduce, modify and adapt the *Contractor Background IP* for any purpose relating to the work in connection with the Contract, the Works and the *Project*, including the operation, maintenance and use of the Works.

.6 The licence granted pursuant to clause 23.5 shall be capable of sub-licence and will be assignable by the Principal.

.7 Licences referred to in clause 23.5 apply in perpetuity from the Date of Contract or (if the *Contractor Background IP* has not then been created) from the date the *Contractor Background IP* is created.

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

Indemnity for IP infringement

.9 The Contractor indemnifies the *Indemnified Parties* against any claims (including *Claims*) or actions made or brought against the *Indemnified Parties* or any *Loss* suffered or incurred by the *Indemnified Parties*, arising out of or in connection with any failure to make payments under clause 23.8 or any infringement or alleged infringement of *Intellectual Property Rights* in relation to the *Project IP, Contractor Background IP* or the Works.

.10 The Contractor warrants that *Project IP,* the *Contractor Background IP*, the Works or the *Indemnified Parties*' use of the *Project IP*, the *Contractor Background IP* or the Works will not infringe any *Intellectual Property Rights*.

.11 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used by the Contractor or the *Contractor's Personnel* for the purposes of the Contract.

Moral rights

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

.1 need not identify the Contractor or any author as the author(s) of any *Project IP* or *Contractor Background IP*; and

.2 may:

.1 materially distort, destroy, mutilate, alter or in any other way change;

.2 add to, delete from, retitle; and

.3 reproduce, publish, copy and adapt,

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

24 Confidentiality and privacy

.1 The Contractor must maintain all *Confidential Information* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Confidential Information* which is generally available to the public or which is required to be disclosed by law.

.2 If under the Contract the Contractor is required to disclose *Personal Information*, the Contractor must:

.1 if the disclosure is not authorised under the *Privacy Act*, obtain the consent of the natural person to whom that *Personal Information* relates in relation to the Principal's collection and use of that *Personal Information* for the purposes of the Contract or the purposes authorised by the Contract;

.2 ensure that the *Personal Information* disclosed is accurate; and

.3 inform that natural person:

.1 that the *Personal Information* has been collected by or on behalf of Principal; and

.2 of any other matters required by the *Privacy Act*.

.3 The Contractor must:

.1 return to the Principal all *Confidential Information* in the possession or control of the Contractor; and

.2 provide a Statutory Declaration (Confidential Information) in a form to be agreed between the parties (each acting reasonably),

within 7 days of the earlier of:

.3 the date of termination of the Contract; or

.4 *Final Completion* of the Works.

25 Media releases and enquiries

.1 The Contractor must obtain the Principal's prior written consent in respect of:

.1 any press release, ceremony, event, promotional advertisement or any other external communication it wishes to make, place or undertake concerning the Contract, the Principal or the Works; and

.2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.

.2 The Contractor must refer any media or other enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media or other enquiry without the Principal's prior written consent.

.3 The Contractor must ensure that all *Contractor's Personnel* comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.

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

25A Stakeholder Management and Community Relations

Stakeholder Management and Community Engagement

.1 The Contractor:

.1 acknowledges that:

.1 the Works and the areas where the work in connection with the Contract are being carried out are of great importance to many people, including local residents, businesses and the travelling public; and

.2 there are numerous stakeholders who have an interest in the successful delivery and ongoing operation of the 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 Requirements*;

.6 the Contractor's use or occupation of the Site or the Works; or

.7 loss of or damage to the Site, the Works or any adjacent property or the injury to or death of any person.

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

.1 other than where clause 25A.4 applies, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 25A.2 in accordance with the *Planning Approval*;

.2 other than where clause 25A.4 applies, take all measures to resolve those matters as soon as possible (including defending any proceedings); and

.3 keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 25A.2, which:

.1 is in a form or uses a system approved by the Principal; and

.2 contains full details of:

.1 each complaint, proceedings, letter of demand, order and direction; and

.2 the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction; and

.3 is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and

.4 may be inspected by the *Principal's Authorised Person* whenever the *Principal's Authorised Person* reasonably requires.

.4 The Principal will (at its own cost) be responsible for handling all complaints, proceedings, demands, orders or directions that:

.1 relate to the Principal's authority to carry out the *Project*; or

.2 provided the Contractor has complied with the Contract, arise under the *EPBC Act*.

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

.5 The Contractor must notify anyone who may be adversely affected by the work in connection with the Contract before the relevant work is carried out including notification of:

.1 the likely duration of that work; and

.2 the name and contact details of the Contractor's community relations manager in case any person wishes to make a complaint.

25B GIPA Act

The parties acknowledge that:

.1 the Principal may be required to disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:

.1 the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and

.2 to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability;

.2 within 15 *Business Days* of the date of the Contract the Contractor must notify the Principal in writing identifying any provisions of the Contract it considers to be commercial-in-confidence (as defined in the GIPA Act);

.3 the Principal will take reasonable steps to consult with the Contractor before disclosing any part of the Contract that the Contractor has notified that it considers to be commercial-in-confidence (as defined in the GIPA Act); and

.4 nothing in clauses 25B.2 or 25B.3 will limit or otherwise affect the discharge of the Principal 's obligations under the GIPA Act.

25C Existing Improvements and Existing Operations

Damage to Existing Improvements

.1 The Contractor must not damage the *Existing Improvements*.

.2 The Contractor must promptly repair and make good any damage to the *Existing Improvements* caused by the Contractor, the *Contractor's Personnel* or arising from or in connection with the Works.

Use of Existing Improvements

.3 The Contractor acknowledges that the *Existing Operations* will continue to be conducted by the *Adjoining Owners* at the *Existing Improvements* during the performance of the Works.

.4 Except to the extent:

.1 expressly permitted by the Contract; or

.2 agreed with the *Principal's Authorised Person*,

the Contractor must:

.3 minimise disturbance to, disruption to or interference with the daily operations, use and trading of the *Existing Improvements* and the *Existing Operations*;

.4 program and coordinate all Works so as to minimise the effect that the Works has on the *Existing Improvements* and *Existing Operations*; and

.5 not:

.1 block or impair access to the *Existing Improvements*;

.2 interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Site or *Existing Improvements*; or

.3 use, nor allow any *Contractor's Personnel* to use, whether for parking or any other purposes, any part of any of the *Existing Improvements* other than as expressly allowed by the Contract or as directed or agreed by the *Principal's Authorised Person* from time to time.

.5 Without limiting any other requirement of the Contract, the Contractor bears the cost and risk of ensuring the Works interface effectively with the *Existing Improvements* and the *Existing Operations*.

Interference with Utilities

.6 The Contractor must:

.1 give the *Principal's Authorised Person* 20 *Business Days* prior written notice of any disconnection or other interference with *Utilities* for the *Existing Improvements* which is required to perform the Works;

.2 endeavour to ensure that, to the maximum extent possible, any disconnection or other interference with *Utilities* for the *Existing Improvements* takes place outside the trading or operating hours of the *Existing Improvements*;

.3 provide such alternative temporary *Utilities* as are required to ensure that there is no disruption to the *Existing Operations*; and

.4 immediately repair and make good any damage to the *Utilities* to the *Existing Improvements* arising from or in connection with the Works (to the *Principal's Authorised Person's* satisfaction).

.7 The Contractor must undertake all action under clause 25C.6 at the Contractor's cost.

.8 The Contractor is not entitled to any *Claim* as a result of compliance with this clause 25C.

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

Obligations of care

.1 Until the earlier of *Completion* or the termination of the Contract, and in respect of any part of the Works in respect of which the Contractor is performing work during the *Defects Liability Period*, the Contractor is responsible for all of the following:

.1 preventing personal injury or death;

.2 preventing loss of or damage to the Site and the Works;

.3 preventing loss of or damage to the *Existing Improvements*, adjoining and other properties and the *Environment* arising in connection with carrying out the Works or the work in connection with the Contract;

.4 locating and preventing loss of or damage to the existing *Utilities*;

.5 repairing or making good loss of or damage to the Works and the Site and the existing *Utilities*; and

.6 bearing the cost of repairing, or making good, loss of or damage to the *Existing Improvements,* 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, at any time prior to the earlier of the *Actual Completion Date* or the termination of the Contract, or in respect of any part of the Works in respect of which the Contractor is performing work during the *Defects Liability Period*, the Principal forms the opinion that urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), and the Principal's costs of doing so will be recoverable (subject to clause 26.5) as a debt due and payable from the Contractor to the Principal.

Indemnities for property, personal injury or death

.3 The Contractor indemnifies the *Indemnified Parties* against all *Loss* arising from or in connection with any loss of or damage to:

.1 the Works, from the date the Contractor begins carrying out the work in connection with the Contract; and

.2 the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site,

until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases to apply to that part when that part is occupied or taken into use and the indemnity in clause 26.4 then applies to that part of the Works as if the *Actual Completion Date* had been achieved with respect to that part.

.4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the *Indemnified Parties* against all *Loss* arising from or in connection with any loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:

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

.2 which occurred during the period of time to which clause 26.3 applies.

.5 The Contractor's liability for *Loss* under clauses 26.3 and 26.4, and the Contractor's responsibility under clause 26.1 is reduced to the extent that the loss or damage is contributed to or caused by:

.1 any negligent act or omission of, or breach of the Contract by, the Principal or its agents or employees or any use or occupation of the Works prior to Completion under clause 64;

.2 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 all *Loss* arising from or in connection with any the following where they arise in connection with carrying out the Works or the work in connection with the Contract:

.1 all damage to property other than property covered under clause 26.3.1;

.2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3.1; and

.3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury or death.

.7 The Contractor's liability to indemnify the *Indemnified Parties* under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by the Principal.

Limitation of liability

[redacted]

Consequential loss

[redacted]

[redacted]

Exclusion of proportionate liability

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

Contractor jointly and severally liable

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

26A Environmental liability

Compliance

.1 The Contractor must carry out the work in connection with the Contract:

.1 in an environmentally responsible manner so as to protect the *Environment*; and

.2 in accordance with the *Environmental Management Plan* and all *Environmental Statutory Requirements* (including the *Planning Approval*).

.2 The Contractor must comply with, and ensure the *Contractor's Personnel* comply with, all *Environmental Statutory Requirements* (including the *Planning Approval*) and the environmental requirements set out in section 6 of the *Preliminaries*.

.3 The Contractor must immediately notify the *Principal's Authorised Person* in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any *Approval* or any *Environmental Statutory Requirements* in the carrying out of the work in connection with the Contract.

.4 If there is a legal challenge in relation to the assessment or determination of the Works under:

.1 the *Environmental Planning and Assessment Act 1979* (NSW);

.2 the *EPBC Act*; or

.3 any other *Statutory Requirements*,

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

.4 ordered by a court; or

.5 directed by the Principal.

Environmental Management Plan

.5 The Contractor's high-level draft *Environmental Management Plan* at the Date of Contract is included in Schedule 19.

.6 The Contractor must, within 15 *Business Days* after the Date of Contract, and at least 10 *Business Days* before first mobilising, prepare and submit an *Environmental Management Plan* to the Principal under clause 32A.3.

.7 The *Environmental Management Plan* must:

.1 be consistent with the high-level draft *Environmental Management Plan* in Schedule 19;

.2 set out in detail how the Contractor proposes to comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract;

.3 comply with:

.1 the Contract and the environmental requirements set out in section 6 of the *Preliminaries*;

.2 the *Project Brief*; and

.4 include any other information required by the Contract, any applicable *Statutory Requirement*, or the Principal.

.8 The Contractor acknowledges that:

.1 the *Environmental Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and

.2 compliance with the *Environmental Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.

.9 The Contractor must not commence any work on the Site unless and until the *Environmental Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *Environmental Management Plan* in accordance with clause 32A.8.1 and either:

.1 the Contractor has resubmitted the *Environmental Management Plan* in accordance with clause 32A.8.2 and the resubmitted *Environmental Management Plan* has not been commented on; or

.2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *Environmental Management Plan*.

.10 Not used

.11 Not used

.12 Not used

.13 Not used

.14 Not used

.15 Not used

Asbestos Management Plan

.16 The Contractor must, within 10 *Business Days* after the Date of Contract, prepare and submit an *Asbestos Management Plan* to the Principal under clause 32A.3.

.17 The *Asbestos Management Plan* must:

.1 comply with and include all conditions required by any *Statutory Requirement* and the *Planning Approval*;

.2 set out in detail how the Contractor proposes to:

.1 comply with its obligations under any applicable *Environmental Statutory Requirements* and the Contract with respect to asbestos management and disposal (if applicable);

.2 remediate and dispose (if applicable) of all asbestos as required by the Contract; and

.3 comply with and include any other information required by the Contract.

.18 The Contractor acknowledges that:

.1 the *Asbestos Management Plan* is only an aid to achieve and document compliance with the Contract, and will not limit the Contractor's responsibility to comply with the Contractor's obligations under the Contract; and

.2 compliance with the *Asbestos Management Plan* does not of itself modify or release the Contractor from any of the Contractor's obligations arising under or in connection with the Contract.

.19 The Contractor must not commence any work on the Site unless and until the *Asbestos Management Plan* has been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.5 or, where the *Principal's Authorised Person* has provided comments, the Contractor has revised the *Asbestos Management Plan* in accordance with clause 32A.8.1 and either:

.1 the Contractor has resubmitted the *Asbestos Management Plan* in accordance with clause 32A.8.2 and the resubmitted *Asbestos Management Plan* has not been commented on; or

.2 the *Principal's Authorised Person* has confirmed that the Contractor does not need to resubmit the revised *Asbestos Management Plan*.

Environment audits

.20 The Contractor must, in accordance with the *Environmental Management Plan* and any applicable *Statutory Requirements*:

.1 regularly conduct *Environment* audits of its (and the *Contractor's Personnel's*) systems, procedures and work methods;

.2 retain copies of such audits; and

.3 provide the Principal and its auditors with written copies of all such audits.

.21 The Principal may:

.1 direct the Contractor to carry out *Environment* audits of the Contractor's (or the *Contractor's Personnel's*) systems, procedures and work methods; or

.2 on giving notice to the Contractor, itself (or instruct a third party to on its behalf) carry out such audits of the Contractor's (and the *Contractor's Personnel's*) systems, procedures and work methods,

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

.22 The Contractor must procure that a *Site Audit Statement* is prepared and provided to, and for the benefit of, the Principal and the *Operator* as a condition precedent to *Completion*.

Contamination

.23 The Contractor must remediate any and all *Contamination* present on the Site and leave the site in a clean condition as a precondition to achieving *Completion*. All remediation of the Site and any *Contamination* by the Contractor must be carried out in accordance with:

.1 the requirements of the Contract, including the *Project Brief* and the *Preliminaries*;

.2 the *Asbestos Management Plan* and the *Environmental Management Plan*; and

.3 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).

.24 Without limiting the Contractor's obligations under clause 26A.23, if the Contractor is required by:

.1 the *Asbestos Management Plan* or the *Environmental Management Plan*; or

.2 any applicable *Statutory Requirements* or *Approvals* (including the *Planning Approval*),

to remove from the Site and dispose of any *Contamination*, the Contractor must remove from the Site and dispose of such *Contamination* in accordance with:

.3 the *Asbestos Management Plan* and the *Environmental Management Plan*; and

.4 all applicable *Statutory Requirements* and *Approvals* (including the *Planning Approval*).

.25 In performing its obligations in connection with the Contract, the Contractor must:

.1 prevent any *Contamination* or the release, discharge or escape of any *Contamination* into the *Environment* by the Contractor or the *Contractor's Personnel*; and

.2 implement all necessary safety measures to avoid any such *Contamination*.

.26 Without limiting clauses 26A.23 and 26A.24, the Contractor must only dispose of *Contamination* at sites where such disposal is permitted by *Statutory Requirements*.

.27 The Contractor must:

.1 without limiting the requirements of clause 37, immediately give notice to the Principal upon the discovery or release of any *Contamination*;

.2 take any urgent action required to protect people, property and the *Environment*;

.3 where feasible, sort and separate all *Contamination* in accordance with its waste material classification;

.4 take all reasonable steps to ensure that *Contamination* is quarantined from other in-situ or excavated materials so as to prevent cross-contamination; and

.5 provide waste classification reports and documents demonstrating that cross-contamination has not occurred.

.28 The Contractor must procure that any *Contamination* report provided by a Consultant or Subcontractor in connection with the Works or the Site is provided for the benefit of the Principal and the *Operator*.

.29 The Contractor indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's failure to comply with this clause 26A.

.30 Notwithstanding any other provision of the Contract, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the remediation, removal, treatment, management, handling and disposal of any *Contamination* or any waste associated with the demolition of structures.

27 Insurance

.1 If Contract Information item 21 or 22 states that the Principal is responsible to effect insurance covering the Works or public liability, the Principal must, not later than 10 *Business Days* after the Date of Contract, effect that insurance in accordance with the Contract Information item, on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by the Principal before the Date of Contract. The Principal must provide or make available to the Contractor a copy of the relevant insurance policy.

.2 If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:

.1 a Works policy of insurance to cover loss or damage to the Works; and

.2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.

.3 Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 23, 24, 24A, 24B, 24C and 24D as follows:

.1 workers compensation and related liability insurance in accordance with Contract Information item 23, which satisfies the requirements of the *Workers Compensation Act 1987* (NSW) and where possible, is extended to indemnify the Principal against statutory liability to persons employed by the Contractor;

.2 if stated in Contract Information item 24, a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;

.3 construction plant and equipment insurance in accordance with Contract Information item 24A, which must cover plant and equipment to be used at the Site for the purpose of the Works, including loading and unloading and storage during transit, against insurable risks of loss or damage (whether or not caused by an insured);

.4 comprehensive motor vehicle insurance covering compulsory third party bodily injury and third party property damage, as specified in in Contract Information item 24B;

.5 asbestos liability insurance to cover the risks associated with asbestos decontamination work, as specified in Contract Information item 24C; and

.6 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 24D.

.4 The Contractor must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.

.5 The Contractor must ensure that every Subcontractor, Supplier, Consultant and all *Contractor's Personnel* are insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) at all times.

.6 Unless otherwise instructed by the Principal, the Contractor must:

.1 make and manage all insurance claims; and

.2 notify the Principal at the same time as the Contractor receives or gives any notice concerning a policy, and at least 7 days before any notified cancellation of a policy.

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

.8 Contract Works Insurance and Public Liability Insurance 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 Not used.

.10 The Contractor must:

.1 ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 27 by the Contractor or any Subcontractor, Supplier or Consultant, it:

.1 does not do anything which prejudices any insurance;

.2 if necessary, rectifies anything which might prejudice any insurance;

.3 reinstates an insurance policy if it lapses;

.4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;

.5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and

.6 gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and

.2 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and

.3 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.

.11 The Contractor must give the Principal a certificate of currency evidencing that that all insurance policies required to be effected by the Contractor under the Contract are current:

.1 before starting work in connection with the Contract; and

.2 whenever requested in writing by the Principal.

.12 The Contractor must allow the Principal (or its broker) to review copies of all insurance policies it is required to effect and maintain (but excluding any policy of professional indemnity insurance) whenever requested in writing by the Principal.

.13 If the Principal has a reasonable objection to any conditions of an insurance policy and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five *Business Days* after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.

.14 If the Contractor fails to comply with clauses 27.11, 27.12 or 27.13, the Principal may effect and maintain the relevant insurance policy and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due from the Contractor to the Principal.

.15 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event related to the Contract that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. However, the Contractor shall not be required to comply with this clause 27.15 in respect of any claims which the Principal may have against the Contractor.

.16 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:

.1 all settlement amounts must be paid by the insurer directly to the Principal;

.2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract;

.3 the Contractor must reinstate the Works if instructed to by the Principal and, except as provided in clause 27.16.4.2 may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement;

.4 if the Principal elects to have the Works reinstated:

.1 to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled to receive from the settlement moneys received, payment in respect of the reinstatement Works carried out by the Contractor; and

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

Contractor's Personnel

28 Subcontractor relationships

.1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.

.2 The Contractor indemnifies the Principal against all claims (including *Claims),* actions, Loss or damage and all other liability arising out of any acts or omissions of Subcontractors.

.3 The Contractor must include in every Subcontract:

.1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;

.2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;

.3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.13.3; and

.4 when possible, a right of termination for convenience.

.4 In addition, the Contractor must include:

.1 in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 28, written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements); and

.2 in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 28, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 29 after the Subcontractor has claimed payment in accordance with the Subcontract.

29 Engaging Subcontractors

Subcontracting generally

.1 The Contractor must not subcontract the whole of the Works but may subcontract parts of the Works in accordance with clauses 28 and 29.

.2 Subject to clause 29.3, the Contractor must not engage any Subcontractor in relation to the work in connection with the Contract without the prior written approval of the Principal (not to be unreasonably withheld). If the Principal reasonably objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.

.3 The Contractor is entitled to engage:

.1 the *Approved Subcontractors* for their respective scope of work set out in Contract Information item 12A; and

.2 Subcontractors whose Subcontract has a value of less than [redacted] (provided such Subcontract is not with a design consultant),

without requesting the Principal's further consent.

.4 If Contract Information item 30 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.

.5 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*.

.6 If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with an unpriced copy of the Subcontract and the name and address of the proposed or engaged Subcontractor (as applicable). The Contractor is to provide the requested information within 7 days of the Principal's request.

.7 The Contractor must ensure that each Subcontractor that will be responsible for handling and disposing of asbestos, holds all necessary qualifications, certificates, tickets and licences required to carry out such work.

30 Subcontractor warranties

.1 For each trade, item or area of work listed in Contract Information item 31, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).

.2 If the Contractor, acting reasonably, considers that the form of warranty contained in Schedule 1 is not appropriate in respect of any particular Subcontractor having regard to that Subcontractor's scope of work, the Contractor may propose an alternative form of warranty for the Principal's approval, which approval may be given or withheld in the Principal's absolute discretion.

.3 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

31 Consultant and Supplier relationships

.1 Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.

.2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.

.3 Where a Consultant is to carry out design work, the Contractor must, within 5 *Business Days* of the engagement of the Consultant provide the Principal with a deed of covenant (duly stamped) executed by the Consultant in the form of Schedule 25.

31A Key Personnel

.1 The Contractor must engage and maintain the *Key Personnel* throughout the performance of the work in connection with the Contract in the positions and in respect of the duties set out in Contract Information item 12.

.2 The Contractor must not remove or replace any members of the *Key Personnel* (unless such person dies, retires or resigns) without the prior written approval of the Principal.

.3 Any substitute personnel nominated by the Contractor must be at least equally qualified

for the duties of the position as the persons for whom they are substituted.

.4 The Contractor must provide an uninterrupted transition between the *Key Personnel* and their replacements.

31B Contractor's Personnel

Personnel

.1 The Contractor must provide and engage the personnel necessary for the proper and timely performance of the work in connection with the Contract.

.2 The Contractor must ensure that all *Contractor's Personnel* engaged in the performance of the Works:

.1 have the competence, skill, qualifications and experience required for the work to be performed by them;

.2 hold all necessary qualifications, certificates, tickets and licences required by any applicable *Statutory Requirement* to:

.1 undertake the work to be performed by them;

.2 operate any construction equipment they are required to operate; and

.3 comply with the Contract.

.3 The Contractor is responsible for ensuring that the *Contractor's Personnel* are adequately trained and have satisfactorily completed all inductions prior to commencing the work in connection with the Contract.

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

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

Replacement of Personnel

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

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

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

.3 does not satisfy the standards required by clauses 31B.2 or 31B.3; or

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

.7 Upon receipt of a notice pursuant to clause 31B.6, the Contractor must:

.1 remove that person from the Works and the Site;

.2 must not employ that person on the Site or in activities connected with the Works without the Principal's prior written approval; and

.3 promptly appoint a suitably qualified replacement.

Industrial relations

.8 The Contractor:

.1 has sole responsibility for and must manage all aspects of workplace relations in connection with the Works and the Site; and

.2 must keep the *Principal's Authorised Person* fully and promptly informed of workplace relations problems or issues which affect or are likely to affect the performance of the Contractor's obligations under the Contract.

Carrying out the Works

Starting

32 Start-up workshop

.1 The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.

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

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

32A Contractor's Project Plans

Requirements

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

Compliance

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

Submission

.3 The Contractor must prepare and submit the *Contractor's Project Plans* and updated drafts of the *Contractor's Project Plans* to the *Principal's Authorised Person* for comment:

.1 progressively, at a steady rate and in an appropriate sequence so that the *Principal's Authorised Person* has a reasonable opportunity to complete its review within the time required by clause 32A.4; and

.2 in any event, by the time required by the *Preliminaries* or, if no time is specified, at least 20 *Business Days* before the Contractor uses the *Contractor's Project Plans*.

.4 The Contractor must allow for the period permitted under clause 32A.5 for the *Principal's Authorised Person's* review of the updated *Contractor's Project Plans* in the *Contract Program*.

Comments

.5 The *Principal's Authorised Person* may, within 10 *Business Days* after an updated *Contractor's Project Plan* is submitted under clause 32A.3, 32A.8 or 32A.9 (or such other period as is expressly permitted by the Contract), give the Contractor written comments on the *Contractor's Project Plan*.

.6 The Contractor must promptly provide any further information reasonably requested by the *Principal's Authorised Person* for the purposes of reviewing a *Contractor's Project Plans*.

.7 The *Principal's Authorised Person* is not required to check any document submitted by the Contractor for errors, omission, inconsistencies, ambiguities, discrepancies or compliance with the Contract.

Resubmission

.8 If the *Principal's Authorised Person* comments under clause 32A.5 on an aspect of an updated *Contractor's Project Plan* that does not comply with the Contract, the Contractor must promptly:

.1 revise the *Contractor's Project Plan* to rectify the non-compliance; and

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

Revisions

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

33 Security

Provision of Undertakings

.1 Within 10 *Business Days* after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts required under Contract Information items 32 and 33 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).

.2 *Undertakings* must be provided by a bank or financial institution 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 33.1 the Principal may withhold from any payment to the Contractor an amount up to the total amount of the *Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Undertakings* to the Principal or the Principal is required to return the *Undertakings*, whichever is earlier.

Expiry of Undertakings

.5 If an *Undertaking* contains an expiry date which is earlier than the date it is required to be returned pursuant to clause 33.13, the Contractor must, not less than 20 *Business Days* before the expiry date, provide a replacement *Undertaking*:

.1 in the same form as the original *Undertaking*; and

.2 for the amount of the original *Undertaking*.

.6 If the Contractor fails to provide the replacement *Undertaking* in accordance with clause 33.5, then the Principal may make a demand upon the original *Undertaking* and the Principal will hold the proceeds arising from such demand absolutely. The Principal may apply amounts held in accordance with clause 33.11.

.7 Upon receipt of a replacement *Undertaking* which complies with clause 33.5, the Principal must pay the remaining balance from any demand pursuant to clause 33.6 without interest to the Contractor.

Replacement events

.8 Within five *Business Days* of an *Undertaking Replacement Event* occurring, the Contractor must replace the *Undertaking* effected by the *Undertaking Replacement Event* with a replacement *Undertaking* which is:

.1 in the same form and for the same amount as the *Undertaking* being replaced; and

.2 effective from the date of receipt by the Principal.

.9 The Principal must, as soon as reasonably practicable after receipt of a replacement *Undertaking* provided in accordance with clause 33.8, return the original *Undertaking* to the Contractor.

Recourse to Undertakings

.10 The parties acknowledge and agree that the *Undertakings* are provided by the Contractor both as security for the Contractor's performance of its obligations under the Contract and for the purpose of apportioning the risk of disputes under or in relation to the Contract.

.11 Regardless of whether a dispute exists regarding the circumstances in which a demand on the *Undertakings* can be made, the Principal may make demand upon any *Undertaking* provided pursuant to the Contract and use the proceeds of such demand:

.1 to recover any *Loss* suffered or incurred by the Principal, or which the Principal reasonably considers it will suffer or incur, under or in connection with the Contract for which the Contractor is, or will be, liable under or in connection with the Contract;

.2 to recover any moneys or debt due from the Contractor to the Principal;

.3 in respect of any bona fide claim made by the Principal against the Contractor under or in connection with the Contract;

.4 where the Contract is terminated by the Principal in accordance with clause 73.12; or

.5 where the Contractor is insolvent.

.12 Where the Principal makes a demand upon an *Undertaking* that is not in accordance with the Contract, the Principal's sole liability arising from or in connection with such demand is limited to the repayment of any proceeds received by the Principal in excess of its entitlement and interest on such proceeds calculated in accordance with clause 62.

Return of Undertakings

.13 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:

.1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and

.2 the *Post-Completion Undertaking* at the time stated in Contract Information item 34 provided that at that time:

.1 there are no outstanding *Defects* or unresolved *Issues*; and

.2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal or claimed by the Principal to be payable.

.14 When any of the circumstances in clause 33.13.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.

.15 Regardless of whether a dispute exists regarding the circumstances in which a demand on an *Undertaking* can be made, the Contractor must not take any steps to restrain:

.1 the Principal from making any demand on the *Undertakings*;

.2 the issuer of an *Undertaking* from making payment under the *Undertaking*; or

.3 the Principal using the proceeds of any demand on an *Undertaking*.

.16 Where the Principal has converted an *Undertaking* into money, any interest earned on such monies shall be retained by the Principal.

.17 The Principal is not obliged to hold amounts realised on the calling of an *Undertaking* in any definable account.

.18 The Principal does not hold retention monies or amounts realised on the calling of an *Undertaking* on trust for the Contractor and the Contractor does not have ownership of, or any proprietary interest in, such amounts.

.19 Not used.

.20 Not used.

.21 Not used.

Cash security - Subcontracts

.22 If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.

.23 If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the

difference is held in trust for payment for the work done or *Materials* supplied.

.24 The Contractor must deposit all money it receives in trust, as described in clauses 33.22 and 33.23, into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:

.1 the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;

.2 the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and

.3 any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.

.25 Clauses 33.22, 33.23 and 33.24 do not apply to security of the type referred to in clause 33.16 and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2020* (NSW) applies instead.

34 Site access

.1 Subject to clause 34.2, the Principal must give the Contractor access to the Site in accordance with Schedule 18.

.2 The Principal shall not be obliged to provide the Contractor with access to the Site until all of the following conditions have been satisfied by the Contractor:

.1 the Contractor's *WHS Plan* and *Environmental Management Plan* have been submitted to the *Principal's Authorised Person* in accordance with clause 32A.3 and has not been commented on by the *Principal's Authorised Person* pursuant to clause 32A.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 that are required to access the Site and commence Works;

.4 all *Contractor's Personnel* that require access to the Site have completed site inductions;

.5 the Contractor has provided the *Contract Program* in accordance with clause 22.1 and the *Principal's Authorised Person* has not provided any comments on that *Contract Program* pursuant to clause 32A.5; and

.6 the Contractor has provided the *Completion Undertaking* and the *Post-Completion Undertaking* to the Principal in accordance with clause 33.1.

.3 If the Principal does not give the Contractor access to the Site as required by clause 34.1, such failure shall not constitute a breach of the Contract, and the Contractor has no remedy or entitlement other than:

.1 an extension of time in accordance with clause 50; and

.2 when an entitlement arises under clause 75, to terminate the Contract.

.4 The Contractor must permit the Principal, including its authorised employees and agents, to have access to the Site and to the premises of the Contractor at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. The Principal may require access to the Site for any purpose and access to the premises of the Contractor, Subcontractors and Consultants (as applicable) for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.

.5 The Contractor must, and must ensure that the *Contractor's Personnel*, comply with all *Site Access Conditions* when carrying out any work in connection with the Contract on the Site.

.6 The Contractor must:

.1 construct all temporary access required to access the Site;

.2 comply with all Site access and security protocols provided by the Principal;

.3 control and manage the use of, and access to and through, the Site (but nothing in this clause 34.6.3 affects or limits the Principal's rights under the Contract);

.4 only authorise vehicles and persons directly connected with the Works to enter the

Site;

.5 keep and maintain comprehensive details of all visitors authorised to enter the Site (including full name, employer and purpose of entering the Site) and, upon request by the *Principal's Authorised Person*, provide such details to the *Principal's Authorised Person*; and

.6 provide for the continuous safe passage of the public, service providers and road users on existing roads and access ways affected by the work in connection with the Contract in accordance with the Contract, which passage must, unless otherwise consented to in writing by the *Principal's Authorised Person*, be provided at a standard not less than that provided to the public, service providers and road users prior to the commencement of the work in connection with the Contract.

.7 The Contractor must access the Site only at the nominated points of entry and exit identified in the Contract or that the *Principal's Authorised Person* approves from time to time.

.8 The *Principal's Authorised Person* may revoke or amend any approval given in respect of any particular point of entry or exit at any time.

.9 Despite any other provision of the Contract, the Contractor is not entitled to any *Claim* arising out of or in connection with the revocation of or amendment to any approval pursuant to clause 34.8.

35 Not used

The Site

36 Not used

37 Site Conditions

.1 Subject to clauses 37.3 - 37.7, the Contractor assumes all risk associated with, and is not entitled to any *Claim* against the Principal arising out of or in connection with *Site Conditions*.

.2 Subject to clauses 37.3 - 37.7, the Contractor is solely responsible for dealing with any *Site Conditions*:

.1 so as to minimise delay;

.2 so as to minimise increased costs; and

.3 without awaiting any instruction from the Principal,

but must comply with any instruction given by the Principal.

Additionally, where clause 37.3 applies to the *Unidentified Site Conditions*, the Contractor must notify the Principal, prior to dealing with the *Site Conditions*, of any work it intends to carry out to deal with the *Unidentified Site Conditions* and when that work will commence.

.3 To the extent that the Contractor encounters *Unidentified Site Conditions* while performing the work in connection with the Contract the Contractor must notify the Principal as soon as practicable (and in any event within 10 days of discovery of the *Unidentified Site Conditions*) ("***Unidentified Site Conditions Notice***").

.4 An *Unidentified Site Conditions Notice* must be in writing and detail:

.1 the Unidentified Site Conditions encountered;

.2 any *Variation* that the Contractor considers is required to deal with the *Unidentified Site Conditions*;

.3 the Contractor's estimate of any increase or decrease to the *Contract Price* as a direct result of dealing with the *Unidentified Site Conditions*;

.4 any impact on the *Contract Program* (including any adjustment to the *Contractual Completion Date*) that will result from encountering and dealing with the *Unidentified Site Conditions*; and

.5 any other information which the *Principal's Authorised Person* reasonably

requires.

.5 Following receipt of an *Unidentified Site Conditions Notice*, the *Principal's Authorised Person* must, within 10 *Business Days*, notify the Contractor whether or not it agrees that the Contractor has encountered *Unidentified Site Conditions*.

.6 Subject to clause 37.7, to the extent that the *Unidentified Site Conditions* necessitate the Contractor carrying out additional works, the costs (not including the *Contractor's Percentage Margin* (which may be applied in the Principal's absolute discretion) or delay costs) associated with such additional works must be valued by the *Principal's Authorised Person* under clause 47 and the *Contract Price* will be adjusted accordingly.

.7 The Contractor is not entitled to any *Claim* in respect of the discovery of *Unidentified Site Conditions* unless:

.1 the Contractor has given the Principal an *Unidentified Site Conditions Notice* in accordance with clauses 37.3 and 37.4;

.2 either:

.1 the Principal has issued a notice under clause 37.5 confirming that the Contractor has encountered *Unidentified Site Conditions*; or

.2 it has been determined pursuant to clauses 68-71 that the Contractor has encountered *Unidentified Site Conditions*;

.3 in respect of any claim for additional costs, the Contractor has provided a fully substantiated written claim within 21 days of discovery of the *Unidentified Site Conditions*; and

.4 in respect of a claim for an extension of the *Contractual Completion Date*, the Contractor has complied with clause 50.

37A Interface with Separate Contractors

.1 The Contractor acknowledges that *Separate Contractors* will be performing works on, or in the vicinity of, the Site at the same time as the Contractor is carrying out the work in connection with the Contract. The *Principal's Authorised Person* shall notify the Contractor of the identity of each *Separate Contractor* prior to the *Separate Contractor* commencing works on the Site.

.2 The Contractor must:

.1 permit *Separate Contractors*, and provide *Separate Contractors* with sufficient access to the Site, to execute their works;

.2 fully cooperate and liaise with *Separate Contractors*;

.3 carefully plan, coordinate, program and integrate the work in connection with the Contract with the work carried out or to be carried out by *Separate Contractors*;

.4 not delay the work being performed by *Separate Contractors*;

.5 monitor the progress of work being performed by *Separate Contractors* and notify the *Principal's Authorised Person* of any interference or sequence activities which may affect the commencement, progress or completion of the work in connection with the Contract;

.6 attend all coordination meetings with *Separate Contractors* as required by the *Principal's Authorised Person*;

.7 take all necessary action to avoid loss or damage to the Works by *Separate Contractors*;

.8 not damage the work being carried out by the *Separate Contractors*; 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 make any *Claim* as a result of compliance with this clause 37A or the presence of any *Separate Contractor*, except as expressly provided under this Contract; and

.2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with the Contractor's

failure to comply with this clause 37A.

37B Principal Contractor for Separate Contractors

.1 Without limiting clause 16A and clause 37A, the parties agree that:

.1 for the purposes of the *WHS Regulation (2017)*, the Works and any Separate Contractor Work are to be taken to be part of the same construction project;

.2 the Contractor's engagement as principal contractor extends to cover the Separate Contractor Work; and

.3 the authorisation in clause 16A.2 extends to cover any workplace forming part of the Site upon which Separate Contractor Work is carried out.

.2 In this clause 37B:

"**construction project**" has the meaning assigned to that term in the *WHS Regulation (2017)*; and

"**Separate Contractor Work**" means the works to be undertaken by a Separate Contractor, to the extent the Separate Contractor is not engaged as a principal contractor for these works.

37C Artefacts

.1 All *Artefacts* found on the Site will, as between the parties, belong to the Principal.

.2 The Contractor must:

.1 notify the Principal promptly if it discovers an *Artefact* on the Site;

.2 take every reasonable precaution to prevent the *Artefact* from being damaged, lost or removed until appropriate arrangements for dealing with, or removing, the *Artefact* have been made;

.3 continue to perform its obligations in accordance with the Contract, except to the extent otherwise:

.1 directed by the Principal;

.2 ordered by a court or tribunal; or

.3 required by a *Statutory Requirement*; and

.4 comply with any directions of the Principal in respect of the *Artefact*.

37D Site security, lighting and fencing

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

37E Site clean-up

.1 The Contractor must keep the Site free from all unnecessary obstruction and must store or promptly remove any surplus materials, clear away from the Site any wreckage, rubbish or temporary works for which it is responsible.

.2 Prior to *Completion*, the Contractor must:

.1 clear away and remove from the Site any temporary Site facilities, wreckage, rubbish and debris of any kind;

.2 leave the Site and the Works in a clean and safe condition; and

.3 unless otherwise directed by the Principal, disconnect all services that were only required for the Works.

37F Extra Land

.1 The Contractor must:

.1 at its own cost:

.1 identify any land in addition to the Site which is necessary or which it may deem requisite or necessary for the execution of the work in connection with the Contract ("**Extra Land**"); and

.2 procure for itself the occupation or use of or relevant rights over any *Extra Land*;

.2 prior to the occupation or use of, or exercise of relevant rights over, any *Extra*

Land, give to the *Principal's Authorised Person* a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the *Extra Land*; and

.3 as a condition precedent to *Completion*, provide the Principal with:

.1 a properly executed release on terms satisfactory to the Principal (the form set out in Part D of Schedule 23 is satisfactory) from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the *Extra Land* that includes confirmation that the *Extra Land* has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the *Extra Land*; or

.2 if the Contractor demonstrates to the satisfaction of the *Principal's Authorised Person*, acting reasonably, that the Contractor is unable to obtain a release under clause 37F.1.3.1 despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the *Extra Land* has failed or refused to execute such a release within 25 *Business Days* of it being provided by the Contractor to the owner, occupier or other person having an interest in the *Extra Land* following the proper completion of the work on that *Extra Land*.

.2 The Contractor must ensure that the use and rehabilitation of *Extra Land* is to the satisfaction of the owner, lessee or occupier (as applicable) of the *Extra Land* and all relevant authorities.

.3 The Contractor acknowledges that the Principal will not be liable for any *Claim* by the Contractor arising out of or in any way in connection with:

.1 identifying and obtaining access to *Extra Land*; or

.2 any delay, additional costs or other effects on the work in connection with the Contract related to the ability of the Contractor to obtain access to *Extra Land*.

37G Interface with Site Infrastructure

.1 The Contractor must ensure that the Works integrate with the *Site Infrastructure*.

.2 The Contractor acknowledges and agrees that:

.1 the Contractor will be performing works on, in, or around, *Site Infrastructure*;

.2 the Contractor is solely responsible for liaising with the relevant authority, owner or operator of the *Site Infrastructure* and obtaining any access to the *Site Infrastructure* required to perform its obligations under the Contract;

.3 the relevant authority may be operating the *Site Infrastructure* at the same time as the Contractor's performance of the work in connection with the Contract on or around the *Site Infrastructure*; and

.4 any shutdown of the *Site Infrastructure* outside of the agreed shutdown must only be undertaken with the prior written consent of the relevant authority.

.3 The Contractor must:

.1 coordinate, cooperate and liaise with the relevant authority and the *Principal's Authorised Person* with respect to any potential interface required with the *Site Infrastructure*;

.2 not interfere with the relevant authority's operation of the *Site Infrastructure*;

.3 only carry out works that interface with the *Site Infrastructure* during the agreed shutdown periods;

.4 take all necessary actions to avoid loss or damage to the *Site Infrastructure*;

.5 comply at all times with the relevant authority's safety standards and policies; and

.6 immediately notify the *Principal's Authorised Person* and the relevant authority if it considers a change is or will be required to the agreed shutdown schedule.

.4 The Contractor must not, in performing the work in connection with the Contract, interfere with or damage the *Site Infrastructure*. The Contractor must promptly report to the *Principal's Authorised Person* and the relevant authority any interference with or damage to the *Site Infrastructure* and promptly remedy any damage to the *Site Infrastructure* caused by the Contractor.

.5 Subject to clauses 50 and 51, the Contractor:

.1 is not entitled to any *Claim* as a result of compliance with this clause 37G; and

.2 indemnifies the *Indemnified Parties* from and against all claims (including *Claims*) made or brought against the *Indemnified Parties* and any *Loss* suffered or incurred by the *Indemnified Parties* arising out of or in connection with 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*.

Design

38 Faults in Design Documentation

.1 The Contractor is responsible for, and must correct, any *Faults* or errors in or between any of the *Design Documentation* irrespective of whether those documents have been reviewed, approved or commented on by the *Principal's Authorised Person*.

.2 The Contractor is not entitled to any *Claim* arising out of or in connection with any *Fault* or error in or between any of the *Design Documentation.*

39 Design by Contractor and Design Documentation

Design responsibilities

.1 The Contractor must carry out all design work necessary to complete the *Design Documentation.*

.2 The Contractor must carry out and complete the design of the Works so that the Works are *Fit for Purpose* and comply with the requirements of the Contract.

.3 Design or design development will not give rise to a *Variation* or reduce the Contractor's design responsibilities under clause 39.

.4 The Contractor warrants to the Principal that:

.1 the Contractor has checked and carefully considered the *Project Brief,* the *Preliminary Design,* the *Planning Approval* and the other *Contract Documents* and that:

.1 the *Project Brief* and the *Preliminary Design* are each accurate, suitable and adequate for the purpose of designing and constructing the Works so as to comply with the requirements of the Contract;

.2 it has satisfied itself that there are no Faults in or between any of the *Project Brief,* the *Preliminary Design,* the *Planning Approval* and the other *Contract Documents*; and

.3 the design, engineering and construction of the Works in accordance with such documents will enable the Contractor to carry out the work in connection with the Contract and to comply with the requirements of the Contract;

.2 the *Design Documentation* will:

.1 satisfy the requirements of the *Project Brief* and the other requirements of the Contract including:

.1 *Statutory Requirements*;

.2 the Principal's instructions;

.3 the National Construction Code (NCC) 2022 (if stated in Contract Information item 37B) 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 the Contract or may be necessitated by any of the factors referred to in clause 39.7.2;

.3 be *Fit for Purpose* such that the Works will, if constructed in accordance with the *Design Documentation* be *Fit for Purpose* and comply with the Contract;

.4 be prepared by appropriately accredited and experienced personnel;

.5 be completed in accordance with the requirements of the Contract; and

.6 integrate all the design elements;

.3 the Works when constructed in accordance with the *Design Documentation* will satisfy the requirements of the *Project Brief* and the other requirements of the Contract;

.4 the Works will:

.1 be completed in accordance with, and satisfy the requirements of, the Contract; and

.2 upon *Completion*, be *Fit for Purpose*;

and

.5 at and after the *Actual Completion Date*, the Works have been designed so that the design life of each part of the Works meets or exceeds, and continues to meet or exceed, the design life standards specified in the *Project Brief*.

.5 The Contractor, in preparing the *Design Documentation*, if any change in accordance with clause 39.4.2.2 is necessary from the *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 materially increase the whole of life user or maintenance costs of the Works.

.6 The Contractor agrees that its obligations under, and the warranties given in, this clause 39 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Works and notwithstanding:

.1 any design work, including design work carried out by others (including the Principal and its consultants), prior to the date of the Contract and incorporated in the Contract; or

.2 the performance of the *Preliminary Design* by the Principal and its consultants; or

.3 any *Variation* the subject of a direction by the Principal.

and that the development of the *Design Documentation* in accordance with clause 39 does not amount to a *Variation.*

.7 The Contractor is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor, third parties or anyone claiming through the Contractor, may suffer or incur arising out of or in connection with:

.1 the design of the Works in accordance with the *Project Brief* and the *Preliminary Design*, and the construction of the Works in accordance with the *Design Documentation*, including costing more or taking longer than anticipated; or

.2 any differences between the Works which the Contractor is required to design or construct and the *Preliminary Design* including:

.1 differences necessitated by the *Site Conditions* or characteristics of the Site, the *Environment* or their surroundings; or

.2 differences required to ensure that the Works will be *Fit for Purpose* 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 39.4 to 39.6.

Design review

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

.1 the *Design Documentation*; and

.2 the documents which the *Document Submission Schedule* requires the Contractor to submit to the *Principal's Authorised Person* for review,

to the *Principal's Authorised Person* for review:

.3 as soon as practicable after the document is complete;

.4 before the Contractor commences any part of the work in connection with the Contract which is dependent on that document; and

.5 where the Contract or the *Document Submission Schedule* sets out a date for submission, on or before that date.

.9 The Contractor must deliver to the *Principal's Authorised Person*:

.1 one electronic copy in the form specified in the *Document Submission Schedule*; and

.2 three hard copies,

of each document required to be submitted under clause 39.8.

.10 Any *Design Documentation* submitted for review must be prepared to a level of detail sufficient to permit the *Principal's Authorised Person* to determine if the *Design Documentation* complies with the Contract.

.11 Each document submitted by the Contractor pursuant to clause 39.8 must be accompanied by a certificate:

.1 provided by the Consultant responsible for preparing the relevant document;

.2 that certifies that the design and engineering contained in such documents complies with the Contract (including the *Project Brief*) and is appropriate for construction; and

.3 in the form set out in Part A of Schedule 23.

.12 The *Principal's Authorised Person* may request additional information to assist it in reviewing any *Design Documentation* or other documents submitted by the Contractor for review. The Contractor must promptly provide such information.

.13 The *Principal's Authorised Person* may review each document submitted in accordance with clause 39.8 within the later of:

.1 10 *Business Days* after receipt by the *Principal's Authorised Person* of any such document; or

.2 10 *Business Days* after receipt by the *Principal's Authorised Person* of the additional information requested under clause 39.12,

(the "**Design Review Period**").

.14 If any such document does not comply with the Contract or is not complete, the *Principal's Authorised Person* may, within the *Design Review Period*, give the Contractor a notice setting out those non-compliances and requiring the Contractor to rectify them.

.15 Within 5 *Business Days* of receipt of the *Principal's Authorised Person's* notice under clause 39.14, the Contractor must modify the document to take the *Principal's Authorised Person's* comments under clause 39.14 into account and re-submit the document to the *Principal's Authorised Person*. Clauses 39.13, 39.14 and 39.15 shall apply to the resubmitted document.

.16 If, having been provided with *Design Documentation* under clause 39.8, the *Principal's Authorised Person* does not object to the *Design Documentation* within the period stated in clause 39.13, the *Design Documentation* will be the approved *Design Documentation*.

.17 The Contractor must not use for construction purposes any *Design Documentation* unless that *Design Documentation* has been approved in accordance with clauses 39.8 to 39.16.

.18 The Contractor must not depart from any approved *Design Documentation* unless the Contractor has first submitted to the *Principal's Authorised Person* an amended document, the process in clause 39.13 has been followed and no non-compliance notice has been given under clause 39.14 in respect of that amended document.

.19 The Contractor:

.1 is solely responsible for obtaining approval from all relevant authorities in respect of any *Design Documentation* that relates to *Utilities* or infrastructure that are owned or operated by that authority;

.2 must make appropriate allowance in the *Contract Program* for any review of the *Design Documentation* required by an authority; and

.3 is not entitled to any *Claim* against the Principal arising out of or in connection

with any review of the *Design Documentation* by a relevant authority, including in respect of the time taken by an authority to review the *Design Documentation*.

40 Innovation

.1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:

.1 the proposed change to the Works and the proposed change in the *Contract Price*;

.2 potential risks to the Principal and the Contractor if the proposal is accepted;

.3 any changes required to *Contractual Completion Date*;

.4 projected changes in operating and maintenance costs;

.5 projected changes in whole-of-life costs;

.6 any other benefit the Principal will receive; and

.7 any benefit the Contractor will receive.

.2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.

.3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.

.4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the proposal, subject to any conditions imposed by the Principal, in writing.

.5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in *Contract Information* item 38 unless the parties otherwise agree.

41 Principal's Documents

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

Construction

42 Setting out the Works and survey

.1 The Contractor must set out the Works in accordance with the Contract.

.2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 14 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.

.3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:

.1 the Contractor must notify the Principal; and

.2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.

.4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.

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

43 Construction

.1 The Contractor must supply all *Materials* and construct the Works in accordance with all

of the following:

.1 the Contract;

.2 the approved *Design Documentation* and the *Contractor's Project Plans*;

.3 *Statutory Requirements*;

.4 the Principal's instructions;

.5 the National Construction Code (NCC) 2022 (if stated in Contract Information item 37B) and relevant Australian Standards; and

.6 *Best Industry Practice*.

Utilities and consumables

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

Commencement of the work in connection with the Contract

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

Materials

.4 The Contractor must provide all *Materials* and any anything else necessary for the performance of the work in connection with the Contract and the Contractor's other obligations under the Contract.

.5 The Contractor must transport all *Materials* to the Site.

.6 The Contractor must:

.1 use good quality, new and undamaged *Materials* for the Works; and

.2 ensure the *Materials* for the works are of merchantable quality and *Fit for Purpose*.

.7 The Contractor must inspect the loading and unloading of all *Materials* to ensure that all *Materials* are adequately and securely stored during transit.

Construction warranties

.8 The Contractor warrants to the Principal that:

.1 it has the skill, experience, expertise, resources and qualifications to design and construct the Works and carry out the work in connection with the Contract;

.2 it has all relevant licences and registrations necessary to perform the work in connection with the Contract;

.3 it will, at all times, employ suitably qualified and experienced *Contractor's Personnel* in the performance of the work in connection with the Contract;

.4 the work in connection with the Contract will be performed:

.1 in accordance with the Contract and all *Statutory Requirements*:

.2 diligently, effectively and to a high professional standard; and

.3 in a proper and workmanlike manner;

.5 construction will be carried out in accordance with the approved *Design Documentation*;

.6 the Works will:

.1 be safe and *Fit for Purpose*;

.2 comply with the Contract, all *Statutory Requirements*, applicable Australian Standards and *Best Industry Practice*; and

.3 at the *Actual Completion Date* have been designed so that the design life of the Works meet or exceed and, at all times thereafter, meet or exceed the design life standards specified in the *Project Brief* for each part of the Works; and

.7 the *Materials* incorporated into the Works will be:

.1 new and unused;

.2 *Fit for Purpose*; and

.3 free from *Defects* and of a merchantable quality.

44 Testing

.1 The Contractor must *Test* all parts of the Works that are specified in the Contract to be

Tested, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.

.2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.

.3 If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim,* that complies with clause 68.3, for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test.* Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.

.4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests,* as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects

.1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.

.2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.

.3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:

.1 the cost of doing so will be a debt due from the Contractor to the Principal; and

.2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.

.4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.

.5 If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:

.1 promptly notify the Principal; and

.2 carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.

46 Acceptance with Defects not made good

.1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.

.2 Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.

.3 If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.

.4 If the Contractor agrees with the proposed terms but not with the proposed deductions then the Principal must assess the value of the adjustment in accordance with clause 47.5 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 69.

.5 If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the specified *Defects*.

.6 The Contractor remains liable for all *Defects* (whether known or not known) other than the specific *Defects* identified in a written agreement made under clause 46 as not to be made good.

Changes to work and time

47 Valuation of changes

.1 If the Contractor submits a *Claim* complying with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price* or *Contractual Completion Date(s)*, then the parties must endeavour to reach agreement on the

adjustments. If agreement cannot be reached then within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and clause 50 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.

.2 The Principal is not required to assess a *Claim* until the Contractor provides all the information specified in clause 68.3.

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

.4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71.9 apply.

Valuation principles

.5 When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the principles set out in clauses 47.6 - 47.8 (inclusive) shall apply.

.6 Subject to clause 47.7, if the Contractor is entitled to an increase in the *Contract Price* for additional work or for unavoidable additional costs, the value of the increase is to be assessed or determined as the sum of:

.1 the additional reasonable direct cost to the Contractor including labour, *Materials* and plant (not including the *Contractor's Percentage Margin*);

.2 the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional work or in responding to the unavoidable circumstances (not including the *Contractor's Percentage Margin*);

.3 an additional amount for the *Contractor's Percentage Margin*, calculated as the percentage stated in Contract Information item 42 of the total of the costs under clauses 47.6.1 and 47.6.2; and

.4 any delay costs due under clause 51, subject to the requirements of clause 50.

.7 A valuation under clause 47.5 must not include:

.1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;

.2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract;

.3 not used;

.4 any amount that the Contractor is not entitled to claim under clause 49.6 or 68.2; or

.5 where a *Variation* includes the omission of any work in connection with the Contract, any deduction in respect of the *Contractor's Percentage Margin*.

.8 A valuation under clause 47 must take into account:

.1 the rates and prices contained in the *Schedule of Rates*, to the extent it is reasonable to use them; and

.2 the specific matters required by that clause.

Application of adjustments

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

48 Variations

Instructing and commencing Variations

.1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) by issuing a notice identified as a "Variation Order" ("***Variation Order***"). The Contractor must comply with all *Variation Orders*.

.2 The Contractor must not carry out a *Variation* unless directed by the Principal by a *Variation Order*.

.3 Without limiting clause 48.1, the Principal may request the Contractor to provide a proposal with respect to a proposed *Variation* ("***Variation Request***").

.4 Within 10 *Business Days* after receipt of a *Variation Request*, the Contractor must provide the Principal with a written proposal ("***Variation Proposal***") setting out:

.1 the effects of the proposed *Variation* on the *Contract Price*, to be provided as:

.1 the price (of the proposed *Variation* excluding all costs of delay or disruption), including details of how such amounts have been calculated; plus

.2 delay costs as per clause 51 for the number of days by which the time for achieving *Completion*, as advised in clause 48.4.2, is affected;

.2 the 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*; and

.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

.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.

.5 The Principal is under no obligation to issue a *Variation Order* after receiving a *Variation Proposal* from the Contractor.

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

.7 If the Principal has issued a *Variation Order* and the parties have not agreed in writing on the effects of a proposed *Variation*, the Contractor must carry out the *Variation* in accordance with the *Variation Order* and may make a *Claim*, that complies with clause 68.3*,* for:

.1 an extension of time in accordance with clause 50 and delay costs under clause 51, or the Principal may assess a reduction in time in accordance with clause 50; and

.2 an adjustment to the *Contract Price* to be valued in accordance with clause 47, or the Principal may assess a deduction from the *Contract Price* to be valued in accordance with clause 47.

.8 A *Variation* may involve the omission of any part or parts of the Works. The Principal may engage others to perform that or parts of the Works which have been omitted.

.9 No omission will constitute a basis to allege that the Principal has repudiated the Contract regardless of the subject matter, the extent or timing of the omission.

Variations proposed by the Contractor

.10 The Contractor may make a written proposal for a *Variation* for the Contractor's convenience ("***Contractor's Variation Proposal***").

.11 A *Contractor's Variation Proposal* must set out:

.1 a full description of the proposed *Variation*;

.2 the matters required by clause 48.4;

.3 a full description of the proposed *Variation*;

.4 the proposal for sharing any cost savings or increases with the Principal, including the amount;

.5 any benefits that would flow to the Principal; and

.6 the expected effect upon the future cost of operating and maintaining the Works.

.12 The Principal may accept or reject the *Contractor's Variation Proposal* in its absolute discretion. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the *Contractor's Variation*

Proposal, the Principal must instruct a *Variation* by way of *Variation Order,* stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.

.13 If the Contractor considers that the Principal has issued a direction which constitutes a *Variation* but has not been instructed by way of a *Variation Order*, the Contractor must notify the Principal within 2 days after the Contractor receives such direction, and in any event before the Contractor complies with the direction, that the Contractor considers the direction to be a *Variation*.

.14 Within 5 *Business Days* after receipt of the Contractor's notice pursuant to clause 48.13, the *Principal's Authorised Person* must advise whether the direction is in its view a *Variation* and:

.1 if the *Principal's Authorised Person* agrees with the Contractor, the *Principal's Authorised Person* may:

.1 issue a *Variation Order*;

.2 issue a *Variation Request*; or

.3 withdraw the direction; or

.2 if the *Principal's Authorised Person* does not agree with the Contractor, the Principal will notify the Contractor and the Contractor must comply with the direction. The Contractor may dispute the decision of the *Principal's Authorised Person* in accordance with clause 69.

.15 The Contractor must not carry out any work in relation to the direction notified to the Principal under clause 48.13 until the earlier of:

.1 a *Variation Order* is issued by the *Principal's Authorised Person*;

.2 or notification under clause 48.14.2.

.16 The Contractor is not entitled to any *Claim* in respect of such direction unless the Contractor has provided the notice required by clause 48.13 within the required time period and:

.1 the *Principal's Authorised Person* has issued a *Variation Order*; or

.2 it has been determined pursuant to clause 69 that such direction amounts to a *Variation*.

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

48A Pre-Agreed Variations

.1 The *Principal's Authorised Person* may, in its absolute discretion and without being under any obligation to do so, direct by way of *Variation* any *Pre-Agreed Variation* by giving written notice to the Contractor.

.2 The Principal and the Contractor agree that if a notice pursuant to clause 48A.1 is given in respect of a *Pre-Agreed Variation* by the relevant date specified in the table in Schedule 10, the Contract, including any relevant components of the *Contract Price*, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 10 from the date the Contractor receives such notice.

.3 Where the *Principal's Authorised Person* directs a *Pre-Agreed Variation* by giving written notice to the Contractor by the relevant date referred to in clause 48A.2, the Contractor, in respect of that *Pre-Agreed Variation*:

.1 must carry out and complete the preparation of all necessary *Design Documentation* in respect of the *Pre-Agreed Variation* and must submit that *Design Documentation* for review and approval by the Principal's Authorised Person in accordance with the process in clauses 39.8 to 39.19;

.2 must carry out its obligations under the Contract as amended by clause 48A.2; and

.3 acknowledges and agrees that:

.1 any adjustment to the *Contract Price* made pursuant to clause 48A.2 will be full compensation for all costs and any damage, expense, loss, liability or delay that the Contractor suffers or incurs arising out of or in connection with the issue of such a notice or the performance of the *Pre-Agreed Variation* and no further adjustment will be made to the *Contract Price* under clause 47 or this clause 48A; and

.2 the Contractor is not entitled to make any *Claim* for:

.1 any acceleration to the carrying out of the work in connection with the Contract which the Contractor must perform at any time in order to achieve *Completion* by the *Contractual Completion Date*; or

.2 any extension of time for any delay to the carrying out of the work in connection with the Contract,

in connection with the issue of such a notice or the amendment of the Contract pursuant to clause 48A.2.

.4 Nothing in clauses 48A.1 to 48A.3 prevents the *Principal's Authorised Person* from instructing a *Variation* pursuant to clause 48.1 that involves the same (or similar) changes to the Works as a *Pre-Agreed Variation* after the relevant date for giving notice of the *Pre-Agreed Variation* specified in Schedule 10.

.5 If the *Principal's Authorised Person* issues a *Variation Order* pursuant to clause 48.1 which involves the same or similar changes to the Works as are required by a *Pre-Agreed Variation* and which is issued or directed after the relevant date in Schedule 10 for that *Pre-Agreed Variation*, the Principal and the Contractor agree that clause 47 and 48 will apply to such *Variation*.

49 Changes to Statutory Requirements

.1 If the Contractor becomes aware of a *Change in Statutory Requirements* that requires a change to the Works, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the *Change in Statutory Requirements*. The notification must include details of:

.1 the *Change in Statutory Requirements*;

.2 why the *Change in Statutory Requirements* should not reasonably have been expected by the Contractor at the Date of Contract;

.3 the changes to the Works that the Contractor considers necessary to comply with the *Change in Statutory Requirements*;

.4 any delays in achieving *Completion* as a result of the change to the Works;

.5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price* as a result of the change to the Works; and

.6 any other matters the Contractor considers relevant.

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

.3 After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works.

.4 If the Principal agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works and if the Contractor has given the notice required by clause 49.1 then:

.1 the parties may agree in writing on the effects of the *Change in Statutory Requirements* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and

.2 if the parties have not agreed in writing as to the effects of the *Change in Statutory Requirements* within 10 *Business Days* after receipt of the Contractor's notice under clause 49.1:

.1 if the Principal instructs a *Variation*, in connection with the *Change in Statutory Requirements*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim*, that complies with clause 68.3, for:

.1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any delay incurred by it as a result of the *Change in Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and

.2 an increase in the *Contract Price* to be valued in accordance with

clause 47 for unavoidable additional costs incurred by the Contractor as a result of the *Change in Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or

.2 if no *Variation* in connection with the *Change in Statutory Requirements* is instructed, the Contractor may make a *Claim*, that complies with clause 68.3, for:

.1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and

.2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the *Change in Statutory Requirements*.

.5 If the Principal does not agree that there has been a *Change in Statutory Requirements* that requires a change to the Works, the Contractor may notify an *Issue* under clause 69.

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

[redacted]

[redacted]

[redacted]

50 Changes to Contractual Completion Dates

Extensions of time

.1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Date* if:

.1 the Contractor is or will be delayed in achieving *Completion* by an *Excusable Delay Event*;

.2 the delay is to an activity or activities on the critical path of the then current *Contract Program*;

.3 the Contractor has given the Principal an initial notice in writing within 7 days

after the first occurrence of the *Excusable Delay Event* which:

.1 sets out the *Excusable Delay Event* and the steps taken or to be taken to minimise the delay;

.2 sets out any relevant facts; and

.3 includes a copy of the *Contract Program,* verified as current at the start of the delay, which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and

.4 the Contractor has given the Principal a *Claim* for an extension of time which includes the other information required by clauses 50.3 and 50.4.

.2 The Contractor must take all reasonable steps to avoid delay and its effects.

.3 If the Contractor is delayed in achieving *Completion*, it may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50. The *Claim* must:

.1 identify the extension of time claimed and include other information sufficient for the Principal to assess the *Claim;*

.2 be submitted within 14 days after the first occurrence of the *Excusable Delay Event*; and

.3 be updated every subsequent 10 *Business Days* while the delay continues.

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

.5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work 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 49.6.

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

.9 It is a condition precedent to the Contractor's entitlement to an extension of time to the *Contractual Completion Date* that:

.1 the Contractor has been, or will be, delayed by an *Excusable Delay Event*;

.2 the delay is demonstrable on the critical path for the work in connection with the Contract of the current *Contract Program*;

.3 the *Excusable Delay Event* was not directly or indirectly caused by an act or omission of, or a breach of the Contract by, the Contractor or the *Contractor's Personnel*;

.4 the Contractor has taken all reasonable steps to mitigate the effects of the delay on the progress of the work in connection with the Contract;

.5 the Contractor has submitted the notices strictly as required under this clause 50; and

.6 the *Excusable Delay Event* has delayed the Contractor in achieving *Completion*.

.10 If any of the conditions precedent set out in clause 50.9 are not met, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant *Excusable Delay Event* or period of delay.

.11 A delay by the *Principal's Authorised Person* or a failure by the *Principal's Authorised Person* to grant a reasonable extension of time in accordance with this clause 50 shall not cause the *Contractual Completion Date* is 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 50.9 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 50.3 issue a written notice advising the Contractor of its determination as to the period, if any, by which the *Contractual Completion Dates* are to be extended.

51 Delay costs and liquidated damages

Delay costs

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

[redacted]

.2 Any *Claim* for delay costs must be submitted to the Principal at the same time as the Contractor's *Claim* for an extension of time under clause 50. The Principal will provide its determination of the delay costs payable to the Contractor at the same time as it provides its notice under clause 50.13.

.3 Delay costs are calculated for the number of days by which the time for achieving *Completion* is extended because of a cause listed in clause 51.1, subject to the limitations in clause 49.6.

.4 Delay costs shall:

.1 be limited to the Contractor's reasonably and necessarily incurred additional direct costs incurred by the Contractor because of the delay (and exclude any off-site overheads or profit);

.2 be based on any prior agreement or any applicable rates and prices in the Contract (as applicable); and

.3 not exceed the daily delay damages cap stated in Contract Information item 47.

.5 Notwithstanding clause 51.2, the Contractor:

.1 is not entitled to delay costs for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs; and

.2 shall only claim delay costs in respect of days which are 'working days' for the purposes of clause 18.

.6 The Contractor has no remedy or entitlement connected with delay or disruption to the work in connection with the Contract (including any delay or disruption caused by a breach of Contract by the Principal) other than:

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

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

Liquidated damages

.7 If Contract Information item 48 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*.

.8 If the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion*

Date, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 48, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*.

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

.10 Liquidated damages for which the Contractor is liable are a debt due and immediately payable from the Contractor to the Principal. The Principal may, at any time, give the Contractor a written demand for any liquidated damages payable by the Contractor, whether or not *Completion* has been achieved. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.

.11 The Contractor's liability for liquidated damages shall not exceed the amount set out in Contract Information item 20. Prior to the Contractor's liability under clause 51.8 reaching the limitation stated in Contract Information item 20, the Contractor may, on one occasion only, elect to increase the amount stated in item 20 by an additional amount equal to the amount stated in item 20.

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

.13 The Contractor and the Principal acknowledge that the rates for liquidated damages in Contract Information item 48 are a genuine pre-estimate of the Principal's loss (including in respect of liability to users of the Works in connection with any failure by the Contractor to achieve *Completion* of the Works by the *Contractual Completion Date*) and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.

.14 If it is determined that the Contractor's liability to pay the liquidated damages is deemed to be or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), the Principal may claim general damages for the Contractor's failure to achieve *Completion* by the *Contractual Completion Date*.

.15 The payment by the Contractor of liquidated damages does not in any way relieve the Contractor from any of its obligations to achieve *Completion* or from any other obligations and liabilities under the Contract including by way of general damages.

52 Acceleration

.1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.

.2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:

.1 its price (excluding all costs of delay or disruption) for a proposed acceleration; and

.2 the effect of a proposed acceleration on any other matter specified by the Principal.

.3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.

.4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, the Contractor may make a *Claim*, that complies with clause 68.3, for an adjustment to the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

53 Principal's suspension

.1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.

.2 The Contractor must resume carrying out the Works when instructed by the Principal.

.3 Other than a *Claim*, that complies with clause 68.3, for:

.1 an extension of time in accordance with clause 50; and

.2 delay costs in accordance with clause 51,

the Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

54 Contractor's suspension

.1 If the Contractor suspends work at any time in accordance with the *Building Payment Act* and subject to clause 54.2, it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption. If the Contractor is delayed, it may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50.

.2 Where clause 56.5 is applicable and where the Contractor has not complied with clause 56.5.3, the Contractor will not be entitled to any extension of time or to any payment for delay or disruption if it suspends work in accordance with the *Building Payment Act*.

.3 Clause 54 is not intended to limit any rights of the Contractor under the *Building Payment Act*.

54A COVID-19 Management Plan

[redacted]

[redacted]

Payment

55 The Contract Price

.1 Except where expressly provided in the Contract, the Contractor acknowledges that it shall not be entitled to any adjustment to the *Contract Price*.

.2 The *Contract Price* includes all labour, *Materials*, construction equipment, *Temporary Work*, consumables, fees, *Taxes* (other than GST) and anything else necessary to carry out and complete the Works and the performance of the Contractor's obligations under the Contract.

.3 The *Contract Price* is payable in Australian Dollars. The Contractor is not entitled to:

.1 receive payment in a currency other than Australian Dollars; or

.2 any adjustment to the *Contract Price* for any foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

Provisional Sums

.4 If Contract Information item 40 states that the *Contract Price* includes a *Provisional Sum*, then:

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

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

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

.1 the Contractor must comply with the instruction;

.2 the *Contract Price* (as applicable) must be adjusted by deducting the *Provisional Sum* and adding:

.1 the additional reasonable cost to the Contractor of the work specified against the *Provisional Sum*, being the direct costs of labour, *Materials* and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 41 as included in the *Provisional Sum* margin; and

.2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 41 to the cost calculated in accordance with clause 55.4.3.2.1; and

.4 where the Principal instructs the Contractor to carry out work specified against a *Provisional Sum*, the Contractor will not be entitled to an extension of time for that work. However, clause 50 applies where, following notification under clause 22.2.6.2, there is an unreasonable delay in the issue of an instruction to proceed with the work. Clause 50 only applies to any additional delay caused by the late instruction.

56 Goods and Services Tax (GST)

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

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

.3 The parties may agree in writing from time to time which supplies are excluded supplies. 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.

.4 If Contract Information item 44 states that the Principal is responsible for issuing the tax

invoice, then:

.1 the Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply made by the Contractor to the Principal and will issue an adjustment note for any adjustment event;

.2 the Contractor must not issue a tax invoice in respect of any taxable supply it makes to the Principal; and

.3 each party must notify the other party if it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

.5 If Contract Information item 44 states that the Contractor is responsible for issuing the tax invoice, then:

.1 following the provision by the Principal of the *Payment Schedule,* the Contractor must immediately issue a tax invoice to the Principal for each taxable supply made by the Contractor to the Principal, and must issue an adjustment note for any adjustment event;

.2 the Contractor must not issue a tax invoice in respect of any taxable supply it makes to the Principal, other than under this clause; and

.3 The tax invoice must be:

.1 issued within 2 *Business Days* after the provision by the Principal of the relevant *Payment Schedule*; and

.2 for the Scheduled Amount identified in the Payment Schedule.

The tax invoice is to show the *Scheduled Amount* excluding GST, the GST component and the total *Scheduled Amount* including the GST component.

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

Reimbursable expenses

.7 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("**reimbursable expense**") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:

.1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

.2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

57 Not used

58 Payment Claims

.1 As specified in Contract Information item 44 and subject to clause 58.2, the Contractor must submit a *Payment Claim* each month:

.1 on and from the specified date in the month, for work carried out up to that date;

.2 to the person authorised to deal with *Payment Claims*; and

.3 at the address shown for the submission of *Payment Claims*.

.2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.

.3 Unless otherwise instructed, the Contractor must not issue a tax invoice with, or as part of, its *Payment Claim*.

.4 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.

.5 *Payment Claims* may only include a claim for payment for the *Value Completed* and any other amounts then due to the Contractor pursuant to the provisions of the Contract.

.6 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.

.7 Every *Payment Claim* must:

.1 identify the work and *Materials* to which the *Payment Claim* relates;

.2 state the value of that work and those *Materials*;

.3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;

.4 state the amount of interest, if any, that the Contractor claims under clause 62; and

.5 state the *Claimed Amount,* after allowing for payments already made.

.8 Every *Payment Claim* must be accompanied by:

.1 a completed and true *Subcontractor's Statement* and *Supporting Statement*, executed on the date of the *Payment Claim*;

.2 all relevant calculations of the amounts claimed;

.3 sufficient evidence to enable the *Principal's Authorised Person* to value any work and *Materials* for which payment has been claimed in the relevant *Payment Claim*;

.4 all relevant *Conformance Records*; and

.5 any other information specified in the Contract.

Unfixed Materials

.9 *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.

.10 The Principal may have recourse to and use the proceeds of an *Undertaking* provided under clause 58.9.2 in respect of any bona fide *Claim* that the Principal has in connection with the relevant *Materials*.

.11 Subject to clause 58.10, the Principal must release the *Undertaking* provided by the Contractor under clause 58.9.2 when such *Materials* have been incorporated into the Works.

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

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

.14 If:

.1 the Contract or the Contractor's employment under the Contract is terminated by the Principal; or

.2 the Principal exercises its right to step-in following a *Step-In Event*,

the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

59 Payments

.1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:

.1 identifies the *Payment Claim* to which it relates;

.2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and

.3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld. Reasons why the *Scheduled Amount* is less than the Claimed Amount may include failure by the Contractor to comply with any outstanding obligations under:

.1 clause 33 (Security);

.2 clause 27 (Insurance);

.3 clause 58.7.1 (Combined Subcontractor's Statement and Supporting Statement (Schedule 6));

.4 clause 58.7.2 to 58.7.4 (other items to accompany a Payment Claim); and

.5 clause 58.8 (Unfixed Materials).

.2 In calculating the *Scheduled Amount*:

.1 the following amounts must not be included:

.1 any amount which the Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied; or

.2 any amount in respect of which the obligation of the Principal to make payment has been suspended under the Contract; and

.2 any amounts which:

.1 have become due from the Contractor to the Principal under the Contract;

.2 the Principal is entitled under the Contract to set-off against the progress payment; or

.3 the Principal is entitled under the Contract to withhold, deduct or retain from the progress payment,

are to be deducted.

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

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

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

60 Not used

61 Final payment

.1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. To the extent permitted by law, any *Claim* not submitted before or with the *Final Payment Claim* is barred, however this clause does not prevent the Contractor from:

.1 raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by the Principal; or

.2 making any claim against the Principal arising solely from a third party claim first brought against or communicated to the Contractor after the date by which a *Final Payment Claim* is due under this clause.

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

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

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

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

.1 arithmetical error; or

.2 resolution of:

.1 any *Claim* made in accordance with clause 61.1;

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

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

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

62 Interest on late payments

.1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 46, for the period the payment is late.

63 Set-off

.1 The Principal may:

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

.1 the amount of 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 the amount of any moneys or debt due from the Contractor to the Principal under or in connection with the Contract;

.3 the amount of any bona fide claim made by the Principal against the Contractor under or in connection with the Contract; and

.2 make a demand against the *Undertakings* provided under the Contract for any amount in excess of the amount to which the Contractor is otherwise entitled, in the circumstances set out in clause 33.11.

Completion

64 Early use

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

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

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

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

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

.4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of

Completion that are relevant to the parts of the Works to be used or occupied.

65 Completion

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

.2 The Contractor must give the *Principal's Authorised Person:*

.1 20 *Business Days*';

.2 10 *Business Days*'; and

.3 5 *Business Days*',

written notice of the date upon which the Contractor anticipates that the Works will achieve *Completion*.

.3 When the Contractor is of the opinion that the Works have achieved *Completion*, the Contractor must give a written notice to the *Principal's Authorised Person* stating that the Works have, in the Contractor's opinion, reached *Completion*.

.4 The parties must, within a reasonable time, and in any event within 10 *Business Days*, after receipt of the Contractor's notice under clause 65.3, carry out a joint inspection of the Works.

.5 Within 14 *Business Days* after the joint inspection, 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 23:

.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*.

.6 If the *Principal's Authorised Person* provides a notice to the Contractor pursuant to clause 65.5.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 65.3, 65.4 and 65.5 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Completion*.

.7 Notwithstanding that all the requirements of *Completion* have not been met, the *Principal's Authorised Person* may at any time, in its sole and absolute discretion, issue a *Certificate of Completion*.

.8 The issue of a *Certificate of Completion* will not:

.1 operate as approval by the Principal of the Contractor's performance of its obligations in connection with the Contract;

.2 be taken as an admission that the Works comply with the Contract; or

.3 prejudice any of the Principal's rights against the Contractor.

66 Close-out workshop

.1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works or such other period as the parties agree.

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

67 Rectification of Defects

.1 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;*

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

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

.2 In respect of any *Defect* rectified during a *Defect Liability Period,* a new *Defect Liability Period* for the rectified works will commence from the date of completion of the rectification of the *Defect* and continue for the longer of:

.1 the remainder of the original *Defects Liability Period*; or

.2 a period of [redacted],

provided that the maximum duration of the *Defects Liability Period* as extended under this clause shall be [redacted] from the *Actual Completion Date*.

.3 The Principal must give the Contractor reasonable access (having regard to the operation of the Works) to the Works and the Site to enable the Contractor to perform its obligations under this clause 67.

.4 In carrying out any rectification work pursuant to this clause 67, the Contractor must:

.1 do so diligently and promptly;

.2 do so in accordance with any directions given by the *Principal's Authorised Person*; and

.3 do so at the times directed by the Principal and in the manner which causes minimum interruption to the Principal or the operation of the Works.

.5 If:

.1 the Principal or the operator of the Works considers that a *Defect* requires urgent rectification; and

.2 it is not practical or possible to provide the Contractor with an opportunity to rectify the *Defect*,

then:

.3 the Principal or the operator of the Works may have the *Defects* made good by others and:

.1 the cost of doing so will be a debt due from the Contractor to the Principal; and

.2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.

.6 Nothing in clause 67 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.

.7 Clause 67 does not affect the Principal's rights under clause 46.

67A Certificate of Final Completion

.1 As soon as the Works, in the opinion of the Contractor, reach the stage of *Final Completion*, the Contractor must give a written notice to the *Principal's Authorised Person*.

.2 The Contractor must provide a *Deed of Release* with its notice under clause 67A.1.

.3 The *Principal's Authorised Person* must, within a reasonable time after the later of:

.1 receipt of the Contractor's notice under clause 67A.1; or

.2 receipt of the *Deed of Release*, duly executed by the Contractor,

either:

.3 issue a *Certificate of Final Completion* in the form set out in Part C of Schedule 23 stating that *Final Completion* has been achieved; or

.4 notify the Contractor in writing that the Works have not achieved *Final Completion* and of any *Defects* that must be remedied before *Final Completion* can be achieved.

.4 If the *Principal's Authorised Person* notifies the Contractor of any outstanding *Defects*, the Contractor must then remedy those *Defects* and the procedures described in clauses 67A.1 and 67A.2 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Final Completion*.

Claim and Issue resolution

Claim resolution

68 Contractor's Claims

.1 If the Contractor makes:

.1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or

.2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,

the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.

.2 If the Contractor fails to make a *Claim* within the time specified in clause 68.1, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant event giving rise to the *Claim*.

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

.4 The Contractor must ensure its Claim complies with clause 68.3 and in that regard, the Contractor's attention is directed to the provisions of clause 47.2. As well, the period of 28 days specified in clause 68.7 will not commence until the Contractor has provided the information specified in clause 68.3. The Principal may, but is not obliged to, notify the Contractor of any non-compliance in the Contractor's Claim.

.5 If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price* or an adjustment to *Contractual Completion Date(s)*:

.1 any claimed adjustment to *Contractual Completion Date*(s) is to be valued in accordance with clause 50;

.2 any claimed adjustment to the *Contract Price*, including any applicable delay costs, is to be valued in accordance with clause 47; and

.3 the parties are to follow the process in clause 47.1 to resolve the adjustments claimed.

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

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

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

Issue resolution

69 Notification of Issue

.1 The Contractor may dispute an assessment or instruction of the Principal or the *Principal's Authorised Person*, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the Principal's senior executive named in *Contract Information* item 7) of an *Issue* within 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 (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 20 *Business Days* after becoming aware of the *Issue*.

.3 Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71.9 before either commences litigation or takes similar action.

.4 If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61 or clause 68.2.

.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 69, 70 and 71.9 does not prevent a party from seeking an urgent declaration or injunction from a court.

70 Resolution by senior executives

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

.2 If the senior executives are unable to resolve an *Issue* within 20 *Business Days* of notice of the *Issue* being given under clause 70.1, the senior executives shall attempt to agree upon other ways in which the *Issue* may be resolved, including by *Expert Determination*.

.3 A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's senior executive) within the time stated in *Contract Information* item 49.

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

71 Expert Determination

.1 The representative of the Principal for the purposes of clause 71 is the person named in *Contract Information* item 50. This person may differ from the *Principal's Authorised Person*.

.2 If the senior executives agree to refer an *Issue* to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in *Contract Information* item 51. That person must not nominate:

.1 an employee of the Principal or the Contractor;

.2 a person who has been connected with the Works or the Contract; or

.3 a person who the Principal and the Contractor have already considered and not been able to agree on.

.3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:

.1 the *Issues* referred to the *Expert* for determination;

.2 the *Expert's* fees;

.3 the procedure for *Expert Determination* in Schedule 5 (Expert Determination Procedure); and

.4 any other matters which are relevant to the engagement.

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

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

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

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

.8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:

.1 does not involve paying a sum of money; or

.2 requires one party to pay the other an amount in excess of the amount stated in *Contract Information* item 52, calculated without having regard to:

.1 any interest that may be payable; and

.2 any amount that has been paid pursuant to the *Building Payment Act*.

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

72 Parties to perform the Contract

.1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.9.

Termination

72A 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 72A.1 on the occurrence of a *Contractor Default Event* for so long as the Contractor is complying with its obligations under clauses 73.2 to 73.5 in respect of that *Contractor Default Event*.

Notice

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

Consequences of the Principal exercising its rights

.4 During the exercise of the Principal's rights under clause 72A.1, the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise those rights.

.5 Except to the extent that the Contractor's obligations are suspended under clause 72A.4, the exercise by the Principal of its rights under clause 72A.1 will not affect any other obligation of the Contractor under the Contract.

.6 The exercise by the Principal of its rights under clause 72A.1 (or the cessation of such exercise) will not affect any other right of the Principal under the Contract.

Contractor to assist Principal

.7 The Contractor must:

.1 grant such access rights as are necessary and take all action that is necessarily required by the Principal to assist the Principal in exercising its rights under clause 72A.1;

.2 provide sufficient resources, including *Contractor's Personnel*, to assist the Principal in exercising its rights under clause 72A.1; and

.3 not do anything to hinder, disrupt or prevent the Principal in exercising its rights under clause 72A.1.

Limits on liability during step-in

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

.9 Where the Principal has exercised its rights under clause 72A.1 then any *Loss* suffered or incurred by the Principal in connection with the exercise by the Principal of its step-in rights will be a debt due and payable by the Contractor to the Principal.

.10 Subject to the express terms of the Contract, the Contractor acknowledges and agrees that:

.1 the Principal, when exercising its rights under clause 72A.1, is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the Principal exercises its rights under clause 72A.1; and

.2 the Contractor will not be entitled to make any *Claim* against the Principal, arising in connection with the exercise by the Principal of it rights under clause 72A.1 except to the extent caused by:

.1 a breach by the Principal of the Contract;

.2 a negligent act of the Principal in the course of it exercising its rights under clause 72A.1; and

.3 a fraudulent or reckless act or omission of the Principal in the course of it exercising its rights under clause 72A.1.

Cessation of step-in rights

.11 The Principal may, at any time, cease to exercise its rights in accordance with this clause 72A upon giving 5 *Business Days'* notice to the Contractor.

.12 The Principal must cease to exercise its rights in accordance with this clause 72A where:

.1 the *Contractor Default Event* or *Contractor Termination Event* (as the case may be) has been cured; and

.2 where the step-in rights are exercised in respect of the event set out in clause 72A.1.3, the relevant event ceases and its consequences have been remedied.

.13 If the Principal ceases to exercise its rights under clause 72A.1, the Contractor must immediately recommence carrying out any obligations suspended due to the exercise by the Principal of those rights and the Principal must, give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible. The assistance given by the Principal in respect of the process of transition will be at the Contractor's expense, which amount shall be a debt due and payable by the Contractor to the Principal on demand.

73 Contractor Default and Termination

Principal may issue Default Notice

.1 If the *Contractor Default Event* occurs, the Principal may give a written notice to the Contractor ("**Default Notice**"):

.1 stating that it is a notice under this clause 73.1;

.2 specifying the nature of the *Contractor Default Event*; and

.3 specifying 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 five *Business Days* after receipt of the *Default Notice*, prepare and submit a draft cure plan to the Principal describing the actions and measures which the Contractor will diligently pursue to remedy the *Contractor Default Event* and its impacts within the *Cure Period* ("**Draft Cure Plan**"). The Cure Period for breaches referred to in paragraphs 1.4 and 2 of the definition of *Contractor Default Event* must be more than 15 *Business Days*.

.3 Within 10 *Business Days* after receipt of the *Draft Cure Plan*, the Principal shall either:

.1 approve the *Draft Cure Plan* by notifying the Contractor; or

.2 reject the *Draft Cure Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.

.4 If the Principal approves a *Draft Cure Plan* pursuant to clause 73.3.1 ("**Approved Cure Plan**") the Contractor shall comply with and implement the *Approved Cure Plan* and remedy the *Contractor Default Event* within the *Cure Period*.

.5 If the Principal rejects a *Draft Cure Plan* pursuant to clause 73.3.2, the Contractor, in consultation with the Principal, shall amend the *Draft Cure Plan* to meet the Principal's requirements and submit the amended *Draft Cure Plan* to the Principal for approval within five *Business Days* after receipt of the Principal's notice issued under clause 73.3.2. Clauses 73.3, 73.4 and 73.5 will apply to the amended *Draft Cure Plan*. This clause 73.5 does not extend the *Cure Period*.

.6 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Cure Plan*.

Mitigation Plan

.7 If:

.1 a *Default Notice* has been given; and

.2 the *Contractor Default Event* is not capable of being remedied,

the Contractor shall, within five *Business Days* after receipt of the *Default Notice*, prepare and submit to the Principal a draft plan describing the actions and measures which the Contractor will diligently pursue to mitigate or overcome the effects of the *Contractor Default Event* and prevent the *Contractor Default Event* from re-occurring ("**Draft Mitigation Plan**").

.8 Within 10 *Business Days* after receipt of the *Draft Mitigation Plan*, the Principal shall either:

.1 approve the *Draft Mitigation Plan* by notifying the Contractor; or

.2 reject the *Draft Mitigation Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.

.9 If the Principal approves a *Draft Mitigation Plan* pursuant to clause 73.8.1 ("**Approved Mitigation Plan**"), the Contractor shall comply with and implement the *Approved Mitigation Plan*.

.10 If the Principal rejects a *Draft Mitigation Plan* pursuant to clause 73.8.2 the Contractor, in consultation with the Principal, shall amend the *Draft Mitigation Plan* to meet the Principal's requirements and submit the amended *Draft Mitigation Plan* to the Principal for approval within five *Business Days* after receipt of the Principal's notice issued under clause 73.8.2. Clauses 73.8, 73.9 and 73.10 will apply to the amended *Draft Mitigation Plan*.

.11 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Mitigation Plan*.

Termination for Contractor Termination Event

.12 If a *Contractor Termination Event* occurs, the Principal may, by written notice to the Contractor, immediately terminate the Contractor's employment under the Contract.

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

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

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

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

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

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

.6 the Principal may make provisional assessments of the amounts payable to the Principal under clause 73.13.5 and may, without limiting any other right of recourse, demand them against the *Undertakings*.

.14 If the Principal terminates the Contractor's employment under clause 73, the rights of the Principal will be the same as they would have been at law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.

.15 Termination of the Contract does not affect the rights and obligations of the parties under the Contract which accrued prior to the date of termination.

74 Termination for Principal's convenience

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

.2 The Contractor must comply with any instructions of the Principal to wind down and stop work.

.3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work*, *Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site.

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

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

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

.3 the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs; 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 74, the Principal must return the *Undertakings*, subject to its rights under the Contract.

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

75 Termination for Principal's default

.1 If the Principal fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.

.2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

76 Termination notices

.1 Notices under clauses 73, 74 and 75 must be in writing and be delivered by hand, registered post or equivalent. A copy of the notice is to be emailed to the *Principal's Authorised Person* or the *Contractor's Authorised Person* (as applicable) at the same time as it is issued.

77 Survival

.1 Without limiting the survival of any clause by operation of law, clauses 23, 24, 25, 63 and all indemnities in the Contract survive termination.

Meanings

78 Interpretation

.1 Words in the singular include the plural, and vice versa.

.2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.

.3 "Including" and similar words are not words of limitation.

.4 The word "day", unless qualified, for example as "Working Day" or "Business Day", has its common English meaning according to context, namely a period of 24 hours or a calendar day.

.5 Headings and notes are provided to guide the parties and form part of the Contract.

.6 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.

.7 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.

.8 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.

.9 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.

79 Definitions

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

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

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

Acceleration Notice

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

Actual Completion Date

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

Adjoining Owners

The owner(s) of the *Existing Improvements*.

Approvals

Any authorisation, approval, authority, permit, licence, certificate, consent, direction, notice, permission, privilege or exemption, granted by the State, the Commonwealth or any other authority relating to the Works, the Site, the *Environment*, the Contract or the

performance of the Contractor's obligations under the Contract, including the *Planning Approval*.

Approved Cure Plan

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

Approved Mitigation Plan

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

Approved Subcontractors

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

Artefacts

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

Asbestos Management Plan

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

Best Industry Practice

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

.1 using effective procurement methods;

.2 using good quality, new, or where appropriate suitable recycled materials, undamaged equipment and materials for the Works, which are suitable for the purpose for which they are required;

.3 ensuring that all workmanship and construction techniques are of the quality and standards as required by the Contract; and

.4 complying with all relevant *Statutory Requirements*.

Building 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 65.5.

Certificate of Final Completion

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

Change in Control

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

Change in Statutory Requirements

Means:

.1 the enactment of any new *Statutory Requirement*;

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

Claimed Amount

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

Completion

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

.1 the Works are complete with no *Defects* or omissions, except for *Defects* not known;

.2 the Contractor has provided to the Principal:

.1 all *Subcontractor's* warranties and any Consultant's deeds of covenant required by clause 31.3;

.2 all operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;

.3 all certificates, authorisations, approvals and consents (including *Approvals*) from statutory authorities and service providers;

.4 those certificates required for the occupation, use and maintenance of the Works;

.5 a *Site Audit Statement* that has been prepared and certified in accordance with all applicable *Statutory Requirements*;

.6 each Consultant certificate required under clause 39.11;

.7 where clause 37F.1.3 applies, a properly executed release which complies with clause 37F.1.3.1 or a statement signed by the Contractor which complies with clause 37F.1.3.2 (as applicable); and

.8 all other documents required by the Contract to be provided as a condition to *Completion*;

.3 the Contractor has carried out and successfully completed all *Testing* required by the Contract;

.4 the Contractor has provided all of the "work as executed" drawings as required by section 1.12 of the *Preliminaries*;

.5 the Contractor has provided all training required by the Contract;

.6 all debris, rubbish, building materials, temporary works and construction equipment has been removed from the Site and the Site has been cleaned; and

.7 all other pre-conditions to achieving *Completion* set out in the Contract have been satisfied.

Completion Undertaking

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

Confidential Information

Any of the following:

.1 the terms of the Contract;

.2 all *Data*; and

.3 all other documents and information in any form whatsoever in the possession or knowledge of a party which:

.1 is disclosed to the other party; and

.2 is identified at the time of such disclosure as being confidential or proprietary (or which the other party should reasonably have considered as being confidential or proprietary),

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

Conformance Records

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

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 set out in Schedule 13.

Contamination

.1 Any waste, asbestos, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils.

.2 Without limiting paragraph .1, has the meaning given to 'Contamination' in the *Contaminated Land Management Act 1997* (NSW).

Contract

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

Contract Documents

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

Contract Information

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

Contract Price

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

Contract Program

The program described in clause 22.

Contractor

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

Contractor Background IP

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

.1 exists prior to the Date of Contract or is developed or acquired by the Contractor or the *Contractor's Personnel* independently of the Contract; and

.2 is used by the Contractor or the *Contractor's Personnel* in the performance of the work in connection with the Contract or otherwise made available to the Principal under or in connection with the Contract, but does not include the *Project IP*.

Contractor Default Event

Any of the following events or circumstances:

.1 a substantial breach of the Contract by the Contractor. A substantial breach includes, but is not limited to, any of the following:

- .1 suspending progress of the carrying out of the work in connection with the Contract in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
- .2 the Contractor engaging in fraud, collusion or dishonest conduct in the performance of the work in connection with the Contract;
- .3 failing to make payment to the Principal when such amount is due and payable under the Contract;
- .4 significantly failing to achieve *Scheduled Progress*;
- .5 failing to comply with an instruction in writing or confirmed in writing by the Principal;
- .6 failing to carry out the Works with professional skill, care and competence;
- .7 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
- .8 failing to provide *Undertakings* as required under clause 33;
- .9 failing to comply with any provision of the Contract or any *Statutory Requirement* relating to the *Environment* or workplace health and safety;
- .10 the Contractor assigning a right or benefit under the Contract without first obtaining the Principal's written consent;
- .11 failing to effect and maintain insurance policies as required under the Contract; or
- .12 failing to rectify a *Defect* in accordance with a *Defect Notice*; or

.2 no earlier than [redacted] after the *Date of Contract,* (and not more than once every three months after that date), the *Principal's Authorised Person* determines on reasonable grounds that there is no reasonable prospect that the Contractor will achieve *Completion* by the date that is [redacted] after the *Contractual Completion Date.*

Contractor Insolvency

Any of the following applying to the Contractor:

.1 the Contractor is insolvent;

.2 the Contractor indicates it does not have the resources to perform the Contract;

.3 an application for winding up is made which is not stayed within 14 days;

.4 a winding-up order is made;

.5 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;

.6 a mortgagee enters into possession of any property of the Contractor;

.7 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or

.8 any actions having a similar effect are taken.

Contractor Termination Event

Any of the following events or circumstances:

.1 a *Default Notice* has been given under clause 73.1 and the Contractor fails to:

.1 if the *Contractor Default Event* is capable of being remedied:

.1 remedy the *Contractor Default Event* within the Cure Period;

.2 where clause 73.2.4 applies, submit a *Draft Cure Plan* in accordance with clause 73.2.4 or a revised *Draft Cure Plan* in accordance with clause 73.5; or

.3 comply with and implement the *Approved Cure Plan*, and otherwise diligently pursue the remediation of the *Contractor Default Event*; or

.2 if the *Contractor Default Event* is not capable of being remedied:

.1 submit a *Draft Mitigation Plan* in accordance with clause 73.7 or a revised *Draft Mitigation Plan* in accordance with clause 73.10; or

.2 comply with and implement the *Approved Mitigation Plan*;

.2 the Contractor abandoning the whole or a substantial part of the work in connection with the Contract;

.3 a *Change in Control* of the Contractor;

.4 *Contractor Insolvency*;

.5 the Contractor's aggregate liability to the Principal exceeds the amount set out in Contract Information item 19;

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

.7 the Contractor has notified the Principal that it agrees to refresh the liquidated damages liability cap set out in Contract Information item 20 prior to the liquidated damages liability cap being reached, and the Contractor's liability to the Principal for liquidated damages equals or exceeds the refreshed cap.

Contractor's Authorised Person

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

Contractor's Documents

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

Contractor's Percentage Margin

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

The amount is calculated as per clause 47.6.3 based on the percentage stated in Contract Information item 42.

The *Contractor's Percentage Margin* includes allowances for:

.1 the cost of supervision and administration services required for the extra work (or where applicable unavoidable additional costs are incurred) including any additional required supervision and administration services; and

.2 the utilisation of personnel, plant and services, either on-Site or off-Site, that are normally engaged in the Works.

Contractor's Personnel

.1 the *Contractor's Authorised Person*;

.2 any Subcontractor, Supplier or Consultant;

.3 any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of the Contractor, the *Contractor's Authorised Person* or a Subcontractor, Supplier or Consultant, including the *Key Personnel*; and

.4 any other person engaged or employed by or on behalf of the Contractor in the performance of the work in connection with the Contract.

Contractor's Project Plans

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

Contractor's Variation Proposal

The written variation proposal that may be made by the Contractor pursuant to clause 48.10.

Contractual Completion Date

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

Control

Means:

.1 control as defined in section 50AA of the *Corporations Act*; or

.2 the power (whether legally enforceable or not) to, whether directly or indirectly:

  .1 determine the management or policies of the entity;

  .2 control the membership of the board or other governing body of the entity; or

  .3 control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the entity,

  regardless of whether the power is in writing or not, enforceable or unenforceable, expressed or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise.

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

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

Means the plan set out in Schedule 29.

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-19 Pandemic

Means the coronavirus disease which has been declared a pandemic by the World Health Organisation on 11 March 2020.

Cultural Heritage Artefacts

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

Cure Period

The cure period referred to in clause 73.1.3.

Data

The *Contractor's Documents* and all other drawings, sketches, specifications, digital

records, computer software, data and information relating to the Contract.

Date of Contract

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

Deed of Release

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

Default Notice

A notice issued by the Principal pursuant to clause 73.1.

Defect

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

Defects Liability Period

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

Defect Notice

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

Design Documentation

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

Design Review Period

The design review period stated in clause 39.13.

Document Submission Schedule

The document set out in Schedule 17.

Draft Cure Plan

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

Draft Mitigation Plan

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

[redacted]

Encumbrance

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

Environment

Means components of the earth, including:

.1 land, air and water, and

.2 any layer of the atmosphere, and

.3 any organic or inorganic matter and any living organism, and

.4 human-made or modified structures and areas,

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

Environmental Management Plan

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

Environmental Statutory Requirements

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

EPBC Act

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

Excusable Delay Event

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

[redacted]

Existing Improvements

[redacted]

Existing Operations

The businesses carried on by the *Adjoining Owners* in the *Existing Improvements*.

Expert

A person engaged to determine *Issues* under clause 71.971.

Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 71.9 and the procedure in Schedule 5 (Expert Determination Procedure).

Extra Land

Has the meaning given in clause 37F.

Fault

Ambiguity, error, omission, inconsistency or discrepancy.

Final Completion

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

Final Payment Claim

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

Final Payment Schedule

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

Fit for Purpose

Means:

.1 when used in the context of the Works that they:

.1 are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the General Conditions, the *Project Brief* and the *Preliminary Design*;

.2 are capable of remaining fit for their intended purposes, functions and uses (as specified or reasonably inferred from the General Conditions, the *Project Brief* and the *Preliminary Design*); and

.3 otherwise meet the requirements set out in or which can be reasonably inferred from the Contract; and

.2 when used in any other context, that the products, materials or other things:

.1 are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the General Conditions, the *Project Brief* and the *Preliminary Design*; and

.2 otherwise meet the requirements set out in or which can be reasonably inferred from the Contract.

Force Majeure Event

The following events or circumstances:

.1 earthquake, fire, flood, lightning or landslide;

.2 a cyclone (provided it has been named by the Bureau of Meteorology);

.3 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, act of public enemies, sabotage, malicious damage, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;

.4 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Subcontractors, Consultants or Suppliers; or

.5 strikes, industrial disputes or industrial action on a national or state-wide basis,

provided such event or circumstance:

.6 is beyond the reasonable control of the affected party;

.7 is not caused or contributed to by a breach of the Contract, or a negligent or unlawful act or omission of, the affected party or its respective contractors, consultants, employees, directors or agents;

.8 causes or results in default, or delay in the performance, by the affected party of any of its obligations under the Contract; and

.9 could not reasonably have been expected to have been prevented, avoided or overcome by the affected party exercising a standard of care and diligence consistent with that of a prudent and competent person in the circumstances.

Formal Instrument of Agreement

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

Inclement Weather

Means the occurrence of climatic conditions (such as wet weather, hail, snow, high wind, severe dust storm, extreme high temperature or any combination) and their consequent effects during the execution of the Works, by virtue of which it is neither safe nor reasonable to continue to work on Site while those conditions or their consequent effects prevail.

Indemnified Parties

The Principal and the *Operator*.

Information Documents

Any information, data or document which is:

.1 listed or referred to in Schedule 26;

.2 issued or made available by, or on behalf of, the Principal or the New South Wales Government to the Contractor in connection with the Call for Expressions of Interest for the Project (Call for EOI), the Request for Tender for the Project (RFT), or the Project (including, without limitation, anything issued or made available through 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 Project (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 under clause 69.

Key Personnel

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

Loss

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

Materials

Includes materials, plant, equipment and other goods.

Novation Deed

A novation deed in the form set out in Schedule 13.

NSW Code

Means the NSW Government Code of Practice for Procurement.

NSW Guidelines

Means the NSW Industrial Relations Guidelines for Building and Construction Procurement described in clause 13.5.

NSW Government Policy and Guidelines

Means the policies and guidelines specified in clause 15.1.

Novated Consultants

Means the Principal's consultants identified as novated consultants in Contract Information item 30A.

Operator

Means:

.1 Placemaking NSW; and

.2 any successor in title to the Site or any entity which is owned or controlled by the State of New South Wales or any agency of the State of New South Wales that will be the operator of the Works.

Payment Claim

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

Payment Schedule

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

Personal Information

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

Planning Approval

Means the approval of a development application or applications which grants consent for the construction and operation of the *Project*.

Post-Completion Undertaking

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

PPSA

The *Personal Property Securities Act 2009* (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 30 for a specified trade or area of work.

Preliminaries

The document contained in Schedule 27.

Preliminary Design

The preliminary design included in Schedule 7.

Principal

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

Principal's Authorised Person

The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.

Principal's Documents

The Principal's Project Requirements, Project Brief, drawings, specifications, schedules and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works. The *Principal's Documents* include the Preliminaries, any Special Conditions and associated documents that further describe the requirements of the Contract.

Note that, unless stated otherwise, the Principal's Documents also include documents prepared by the Principal's consultant and provided to the Contractor prior to the date of a novation of the Principal's consultant to the Contractor.

Privacy Act

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

Project

Means the design, construction and commissioning of Barangaroo: The Cutaway Project.

Project Brief

The Principal's requirements for the Works that is described by the Principal's Documents.

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

RCTI

Means the tax invoice referred to in clause 56.3.

Records

Means the records referred to in clause 6.12.

Reimbursable Expense

Means the type of expense defined in clause 56.7.

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 59.1.2.

Schedule of Rates

Means the document contained in Schedule 15.

Scheduled Progress

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

Scheme

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

Separable Portion

A portion of the Works directed by the *Principal's Authorised Person* pursuant to clause 7.

Separate Contractor

.1 A contractor engaged by the Principal or the *Operator* (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 and is performing work on or in the vicinity of the Site.

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 the Principal's Documents.

Site Access Date

The dates for access to the Site set out in the Principal's Documents.

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 its intended use as a large event space.

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 including any *Utilities*.

Stakeholder Management and Community Engagement Plan

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

Statutory Requirements

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

Step-In Event

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

Subcontract

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

Subcontractor

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

Subcontractor Statement

The form prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations 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.

Tender Process

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

Test

Examine, inspect, measure, prove and trial, including uncovering any part covered up, if

necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

Undertaking

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

Undertaking Replacement Event

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

.1 the providing financial institution becomes insolvent;

.2 the providing bank or financial institution suffers a drop in its long term credit rate to less than the *Required Rating*;

.3 the Principal having recourse to all or part of the *Undertaking*; or

.4 the *Undertaking* becomes invalid or unenforceable.

Unidentified Site Conditions

[redacted]

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 68.7.

Utilities

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

Value Completed

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

Variation

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

Variation Order

A Variation Order as described in clause 48.1.

Variation Proposal

A 'Variation Proposal' as described in clause 48.4.

Variation Request

A 'Variation Request' as described in clause 48.3.

WHS Legislation

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

WHS Plan

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

WHS Regulation (2017)

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

work in connection with the Contract

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

.1 all work stated in the *Project Brief* and the *Preliminaries*;

.2 all work that is not specifically mentioned in the Contract but can be reasonably inferred by an experienced and competent contractor as being required for the proper performance of the Works as if such works were expressly stipulated in the Contract; and

.3 the work associated with any *Variation*.

Works

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

Contract Information

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

Contract

Item

1 Contract name

The Contract name is:	Barangaroo Cutaway Cultural Facility
The Contract number is:	INSW3587

2 Site

Defined in clause 79

The Site is:	The Cutaway, Barangaroo (located beneath Barangaroo Reserve). Refer FJC-A-12000[1].

3 Description of the Works

Mentioned in clause 8

The Works are:	As described in the Principal's Documents and the Contract Documents

Principal's details

4 Principal

Defined in clause 79

The Principal is:	Infrastructure NSW ABN 85 031 302 516

5 Principal's Authorised Person

Mentioned in clause 2

The *Principal's Authorised Person* is:	[redacted]

6 Notices to the Principal

Mentioned in clause 11

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]

7 Principal's senior executive

Mentioned in clauses 69 & 70

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:	FDC Construction (NSW) Pty Limited (ACN 608 609 427)

9 Contractor's Authorised Person

Mentioned in clause 2

The *Contractor's Authorised Person* is:	[redacted]

10 Notices to the Contractor

Mentioned in clause 11

Office address: (for delivery by hand)	22-24 Junction Street Forest Lodge NSW 2037
Postal address: (for delivery by post)	22-24 Junction Street Forest Lodge NSW 2037
e-mail address:	[redacted]

11 Contractor's senior executive

Mentioned in clause 70

The Contractor's senior executive is:	[redacted]
Office address: (for delivery by hand)	22-24 Junction Street Forest Lodge NSW 2037
Postal address: (for delivery by post)	22-24 Junction Street Forest Lodge NSW 2037
e-mail address:	[redacted]

12 Key Personnel

Mentioned in clause 31A.1

The *Contractor's Key Personnel* are:

[redacted]

12A Approved Subcontractors

Mentioned in clause 29

The *Approved Subcontractors* are:

[redacted]

Dates and times

13 Time for Completion

The *Contractual Completion Date* is: [redacted]

Statutory and Government requirements

14 Fees, charges, consents and approvals

Mentioned in clause 12

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:

SSDA lodgement fee to DPE
Project registration for Green Star to GBCA
Section 94 contribution (if required)
SSDA Approval
FER Approval

14A Conditions of Approvals

Mentioned in clause 12

Conditions of the *Planning Approval* that will be discharged by the Principal are:	Refer to Schedule 8

15 Compliance with NSW Government guidelines

A - Work Health and Safety (WHS)

Mentioned in clause 15

Is the Contractor required to implement a Corporate WHS Management System acceptable to the Principal? (Yes/No)	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 15

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 15

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 15

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 - Skills Development and Training

Mentioned in clause 15

Is the Contractor required to meet and report on commitments for engaging apprentices and trainees for the Contract work? (Yes/No)	Yes ("Yes" applies if not filled in).
Additionally, is the Contractor required to meet and report on commitments for engaging 'learning workers', women in trade related work, workers under 25 yrs. and local workers for the Contract work in accordance with the Infrastructure Skills Legacy Program (ISLP)? (Yes/No)	Yes ("No" applies if not filled in).

F - Aboriginal Participation

Mentioned in clause 15

The requirements of the Aboriginal Procurement Policy apply to the Contract (Yes/No):	Yes ("Yes" applies if not filled in).
The APP Contract Value for Aboriginal Participation in this Contract is:	3.1% of the *Contract Price*
An Aboriginal Participation Plan must be provided:	Within 21 days after the Date of Contract ("within 21 days after the Date of contract" applies if not filled in).
A final Aboriginal Participation Report must be provided:	Prior to Completion of the whole of the Works (prior to Completion of the whole of the Works applies if not filled in)

16 Requirements for Commonwealth Funded projects

16A – Not used

16B – Australian Government Work Health and Safety Accreditation Scheme

Mentioned in clause 17

Is the Contractor required to maintain accreditation under the Australian Government Work	No

Health and Safety Accreditation Scheme?	

17 Principal contractor

Mentioned in clause 16A

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

18 Working hours and working days

Mentioned in clause 18

Working hours and working days are:	As stated in the *Planning Approval*.

Liability

19 Limitation of liability

Mentioned in 26.8

Subject to clause 26.9, the limit of the Contractor's liability to the Principal in connection with loss or liability:	[redacted]

20 Cap on liquidated damages

Mentioned in clause 51.11

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

Insurance

21 Works insurance

Mentioned in clauses 27.1 & 27.2

The party responsible for effecting Works insurance is:	The Contractor
Minimum cover is:	[redacted]
Additional cover required:	
Named Insureds:	To include the Principal
Period of cover is:	Until the expiry of the *Defects Liability Period*.
Maximum deductible is	Not applicable

22 Public liability insurance

Mentioned in clause 27.1 & 27.2

The party responsible for effecting public liability insurance is:	The Contractor
Minimum cover is:	[redacted]
Named Insureds	To include the Principal
Period of cover is:	Until the expiry of the *Defects Liability Period*.
Maximum deductible is:	Not applicable

23 Workers compensation insurance

Mentioned in clause 27.3.1

Minimum cover is:	As required by law.
Extension	[redacted]
Period of cover is:	Until the expiry of the *Defects Liability Period.*

24 Professional indemnity insurance

Mentioned in clause 27.3.2

Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No)	Yes
Minimum cover is:	[redacted]
Indemnity to Principal	
Period of cover is:	Until the date that is 7 years after the *Actual Completion Date*.
Maximum deductible	Not applicable

24A Construction Equipment insurance

Mentioned in clause 27.3.3

Insured Property	All construction equipment
Minimum cover is:	[redacted]
Period of cover is:	Until the expiry of the *Defects Liability Period*.
Maximum deductible	Not applicable

24B Motor Vehicle insurance

Mentioned in clause 27.4.4

Minimum cover for third party bodily injury or damage to property is:	[redacted]
Minimum cover for compulsory third party:	As required by law
Period of cover is:	Until the expiry of the *Defects Liability Period*.
Maximum deductible	Not applicable

24C Asbestos liability insurance

Mentioned in clause 27.3.5

Minimum cover is:	Not applicable
Period of cover is:	
Maximum deductible	

24D Marine liability insurance

Mentioned in clause 27.3.6

Is a Marine Liability insurance policy to be held by the Contractor? (Yes/No)	» NO
Minimum cover is:	
Period of cover is:	

Contract Documents

25 Other Contract Documents

Mentioned in definition of Contract Documents

Other *Contract Documents* (not listed in the Formal Instrument of Agreement) are:	All as listed in the Formal Instrument of Agreement; and • Vol 3 – SSDA Planning Application • Relevant information from Tender Schedules

Principal's Documents

26 Copies of Principal's Documents

Mentioned in clause 41

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

Contractor's Documents

27 Copies of Contractor's Documents

Mentioned in the definition of Contractor's Document

The number of copies of the *Contractor's Documents* to be provided to the Principal is:	1 hard copy, 1 soft copy (PDF or native format as otherwise required by contract)

Subcontract work

28 Inclusion of consistent requirements in Subcontracts

Mentioned in clause 28.4

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

29 Payment period for Subcontracts

Mentioned in clause 28.4.2

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 28, is:	20 *Business Days.*

30 Subcontractors and Consultants

Mentioned in clause 29.4

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

30A Novated Consultants

Mentioned in clause 29.5

Consultants of the Principal who will be novated to the Contractor:	Refer *Principal's Documents*

31 Subcontractor's warranty

Mentioned in clause 30.1

Trades or areas of work requiring a Subcontractor's warranty are:	All of the *Approved Subcontractors* listed in item 12A and any other Subcontractor whose scope of work exceeds [redacted] in value

Undertakings

32 Completion Undertaking

Mentioned in clause 33.1

The amount of the *Completion Undertaking* is:	[redacted]

33 Post-Completion Undertaking

Mentioned in clause 33.1

The Amount of *Post-Completion Undertaking* is:	[redacted]

34 Return of Post-Completion Undertaking

Mentioned in clause 33.2

The period at the end of which the *Post-Completion Undertaking* must be returned is:	Within 20 *Business Days* after the issue of a *Certificate of Final Completion*

Cultural Heritage Artefacts

35 Not Used

36 Cultural Heritage Artefacts

Mentioned in the definition of Cultural Heritage Artefacts

The *Cultural Heritage Artefacts* are:	The discovery of the following *Artefacts* on or under the Site: • European cultural heritage • Indigenous cultural heritage, except where the Contractor was made aware of the existence and location of such *Site Conditions* prior to the Date of Contract.

Design and documentation

37 Scope of design activities

37A - Not Used

37B - National Construction Code (NCC) 2022

Mentioned in clauses 39 & 43

Does the National Construction Code (NCC) 2022 apply? (Yes/No)	Yes ("Yes" applies if not filled in).

Innovation

38 Innovation

Mentioned in clause 40.5

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

Payments

39 Contract Price

Mentioned in the definition of Contract Price

The Contract Price is:	$103,485,286.20 (exclusive of GST) as detailed in Schedule 30 - Contract Price Schedule

40 Provisional Sums

Mentioned in clause 55.4

Provisional Sum items referred to in clause 55.4 are:	Detailed in Schedule 31 – Provisional Sums

41 Provisional Sum margin

Mentioned in clause 55.4

The *Provisional Sum* margin includes profit and off Site overheads:	[redacted]
The *Provisional Sum* margin is:	[redacted]

42 Contractor's Percentage Margin

Mentioned in clauses 47 and 79

The *Contractor's Percentage Margin* includes profit and off-Site overheads:	[redacted]
The percentage for *Contractor's Percentage Margin* is:	[redacted]

43 Not used

44 Date for Payment Claims

Mentioned in clause 58.1

The date in the month for making *Payment Claims* is:	The last *Business Day* prior to the end of each calendar month, and if this Contract is terminated, within 10 *Business Days* of the date of termination.
The person authorised to deal with *Payment Claims* is:	The *Principal's Authorised Person* ("the Principal's Authorised Person" applies if not filled in).
The address for submission of *Payment Claims* is:	An address shown in Contract Information item 6 for 'Notices to the Principal' ("an address shown in Contract Information item 6 for 'Notices to the Principal'" applies if not filled in).
The party responsible for issuing the tax invoice for a *Payment Claim* (after a *Payment Schedule* has been issued by the Principal) is: (the Principal / the Contractor)	The Contractor.

45 Not Used

46 Interest on late payments

Mentioned in clause 62

The rate of interest per annum is:	[redacted]

Delay costs and Liquidated damages

47 Delay costs cap

Mentioned in clause 51

Upper limit per day for which delay costs payable:	[redacted]

48 Liquidated damages

Mentioned in clause 51.8 & 51.13

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

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

Expert Determination

49 Time to refer Issue to Expert Determination

Mentioned in clause 70

The time within which either party may refer an *Issue* to *Expert Determination* is:	28 days after becoming entitled under clause 70.2.

50 Expert Determination representative

Mentioned in clause 71.9

The representative of the Principal for all of the purposes in clause 71.9, and under Schedule 5 (Expert Determination Procedure) is:	The Principal's senior executive shown in Contract Information item 7 until the Principal notifies otherwise.
Office address: (for delivery by hand)	As shown in Contract Information item 7.
Postal address: (for delivery by post)	As shown in Contract Information item 7.
e-mail address:	As shown in Contract Information item 7.

51 Person to nominate an Expert

Mentioned in clause 71.9

The person is:	Chief Executive Officer Australian Disputes Centre Lockhart Chambers Lower Ground Floor 233 Macquarie Street Sydney NSW 2000
Telephone number:	(02) 9239 0700
Facsimile number:	N/A

52 Threshold amount for litigation

Mentioned in clause 71.9

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

Defects Liability

53 Defects Liability Period

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

Barangaroo Cutaway Cultural Facility

New South Wales Government

GC21 (Edition 2)

Schedules & Attachments

Schedule 1 – Subcontractor's Warranty

Refer to clause 30 of the GC21 General Conditions of Contract.

Details

Deed		
	between	
Subcontractor:	Name	**[insert]**
	ABN/ACN/ARBN	**[insert]**
	Address	**[insert]**
	Email	**[insert]**
	Attention	**[insert]**
	AND	
Contractor:	Name	FDC Construction (NSW) Pty Limited
	ACN	608 609 427
	Address	22-24 Junction Street Forest Lodge NSW 2037
	Email	[redacted]
	Attention	[redacted]
	AND	
Principal:	Name	Infrastructure New South Wales
	ABN	85 031 302 516
	Address	Level 27, 201 Kent Street, Sydney NSW 2000
	Email	[redacted]
	Attention	[redacted]
	concerning	
Subcontract Work:	**[insert]**	

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 Principal, the Contractor and the Subcontractor wish to set out the obligations that the Subcontractor will owe the Principal 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 Principal against the Contractor or the Subcontractor.

Terms of Deed

1 Definitions

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

1. **Contract** means the contract between the Principal and the Contractor dated [**insert**] for the Works.
2. **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.
3. **Details** means the section of this Deed headed Details.
4. **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.
5. **party** means the Subcontractor or the Principal.
6. **Related Body Corporate** has the meaning it has in the *Corporations Act 2001* (Cth).
7. **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.
8. **Subcontract** means the contract between the Contractor and the Subcontractor dated [**insert**] for the Subcontract Work.
9. **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.

10. **Warranty Period** means [**Insert in accordance with the required warranty period under the *Principal's Documents***] years 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 Principal 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 Principal 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 Principal:
      .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 Principal the same warranties, guarantees and indemnities that it has given the Contractor under the Subcontract and agrees that the Principal 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 Principal may notify the Subcontractor in writing if it considers there has been any breach of this Deed or if the Principal 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 Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
2. If the Subcontractor fails to complete the work by the date specified in clause 11 of this Deed, or another date agreed by the parties, the Principal may have the work carried out by others, and any Loss suffered or incurred by the Principal will be a debt due from the Subcontractor to the Principal.

8 **Indemnity**

1. The Subcontractor indemnifies the Principal against claims (including *Claims*, actions and Losses) brought against, suffered or incurred by the Principal 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 the:
   - .1 Principal exercising or refraining from exercising any or all of their rights against the Contractor, at law or in equity; or
   - .2 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 Principal or any person authorised by the Principal 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 Principal 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 Principal taking action under clause 11 does not affect the warranty or any other obligation of the Subcontractor under this Deed.
3. Any Loss suffered or incurred by the Principal as a consequence of the Principal taking action under clause 11 will be a debt due from the Subcontractor to the Principal.

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 Principal (which may be given or withheld in the Principal's absolute discretion).

2. The Principal may assign or otherwise deal with its rights under this Deed in any way it considers appropriate. If the Principal 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 Principal.

12 **Material Notices**

1. The Subcontractor must give the Principal:
   .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 Principal, 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 Principal) 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 Principal.
3. The Subcontractor acknowledges and agrees that the Principal 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 Principal 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 Principal 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 Principal 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 Principal.

Executed as a deed

Signing page

DATED: _____

PRINCIPAL

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

CONTRACTOR

EXECUTED by **FDC Construction (NSW) Pty Limited (ACN 608 609 427)** in accordance with section 127(1) of the *Corporations Act 2001* (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

SUBCONTRACTOR

EXECUTED by **[SUBCONTRACTOR]** in accordance with section 127(1) of the *Corporations Act 2001* (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 2 – Undertaking

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

[redacted]

[redacted]

Schedule 3 – Payment Claim Worksheet

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

The Contractor:	FDC Construction (NSW) Pty Limited ACN 608 609 427
The Contract:	The contract between the Principal and the Contractor
Contract Name:	Barangaroo Cutaway Cultural Facility
Contract Number:	INSW3587

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				$
Less retention for the *Completion Amount* under clause 60, if applicable				$
Claimed Amount				**$**

Schedule 4 – Not used

Schedule 5 – Expert Determination Procedure

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

1 Questions to be determined by the Expert

1. For each *Issue,* the *Expert* must determine the following questions, to the extent that they are applicable to the *Issue* and unless otherwise agreed by the parties:
   - .1 Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *Issue* if no compensation is claimed:
     - .1 under the Contract,
     - .2 for damages for breach of the Contract, or
     - .3 otherwise in law?
   - .2 If so:
     - .1 what is the event, act or omission?
     - .2 on what date did the event, act or omission occur?
     - .3 what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
     - .4 is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim or other legal right?
   - .3 In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
     - .1 what compensation, if any, is payable by one party to the other and when did it become payable?
     - .2 applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
     - .3 if compensation is not claimed, what otherwise is the resolution of the *Issue*?
2. The *Expert* must determine, for each *Issue*, any other questions identified or required by the parties, having regard to the nature of the *Issue*.

2 Submissions

- .1 The procedure for submissions to the *Expert* is as follows:
  - .1 The party to the Contract which referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
  - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
  - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.

.4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.

2. The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.

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

4. All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 50.

3 Conference

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

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

4 Role of Expert

.1 The Expert:

.1 acts as an *Expert* and not as an arbitrator;

.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and

.3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.

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

Schedule 6 – Combined Subcontractor's Statement and Supporting Statement

Refer to clauses 58 and 59 of the GC21 General Conditions of Contract.

Part 1

New South Wales

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – 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 .....
(Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(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 ...../...../..... **(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.....

(g) Position/Title ..... Date ...../...../.....

Part 2

New South Wales

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 – Preliminary Design

[redacted]

Schedule 8 – Planning Consent Conditions Responsibility Matrix

Refer to clause 12 of the GC21 General Conditions of Contract.

OFFICIAL

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OFFICIAL

Schedule 9 – Subcontract requirements

Refer to clause 28.4.1 of the GC21 General Conditions of Contract.

1 General requirements for specified subcontracts

In addition to its obligations under clauses 28.3 and 28.4, for all Subcontracts valued at or over the amount stated in Contract Information item 28, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 3 - Co-operation
2. clause 4 - Duty not to hinder performance
3. clause 5 - Early warning
4. clause 6 - Evaluation and monitoring
5. clause 10 - Governing law of the Contract
6. clause 13 – Procurement Policy Framework, Codes and Guidelines
7. clause 14 - No collusive arrangements
8. clause 16.2 - Workplace Health and Safety
9. clause 15.1.6 - Aboriginal Participation in Construction
10. clause 23 - Intellectual property
11. clause 24 - Confidentiality and privacy
12. clause 25 - Media releases and enquiries
13. clause 26 - Care of people, property and the environment, indemnities and limitations
14. clauses 27.5, 27.10.1.1, 27.10.1.2, 27.10.1.5 and 27.10.1.6 - Insurance
15. clause 28 - Subcontractor relationships
16. clause 58 - Payment Claims
17. clause 59 - Payments
18. Schedule 1 (Subcontractor's Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
19. Schedule 9 (Subcontract requirements)

Schedule 10 – Pre-Agreed Variations

Refer to clause 48A of the GC21 General Conditions of Contract.

[redacted]

[redacted]

Schedule 11 – Statement regarding Materials

Refer to clause 58.9 of the GC21 General Conditions of Contract.

I am a representative of FDC Construction (NSW) Pty Limited (ACN 608 609 427) in the capacity of [**insert**] 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

[**insert list of materials**]

Principal

Infrastructure New South Wales (ABN 85 031 302 516)

SIGNED……

DATE:……

Schedule 12 – Not used

Schedule 13 – Novation Deed

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Schedule 14 – Not used

Schedule 15 – Schedule of Rates

[redacted]

Schedule 16 – Contract Program

Refer to clause 22 of the GC21 General Conditions of Contract.

[redacted]

Schedule 17 – Document Submission Schedule

Refer to clause 39 of the GC21 General Conditions of Contract.

Document	Submission
Draft *Environmental Management Plan*	Date of Contract
Final *Environmental Management Plan*	within 15 *Business Days* after the Date of Contract
Workplace relations management plan	Within 10 *Business Days* after the Date of Contract
Quality Management Plan	Within 10 *Business Days* after the Date of Contract
WHS Management Plan	Within 10 *Business Days* after the Date of Contract
Aboriginal Participation Plan	Within 10 *Business Days* after the Date of Contract
Skills Development and Training	Within 10 *Business Days* after the Date of Contract
All other Management Plans required under Schedule 27 and Schedule 33	Within 15 *Business Days* after the Date of Contract

Schedule 18 – Site Access Schedule – Not used

Refer to clause 34 of the GC21 General Conditions of Contract.

Schedule 19 – Environmental Management Plan

Refer to clause 26A of the GC21 General Conditions of Contract.

To be submitted in accordance with Schedule 17.

Schedule 20 – Work Health and Safety Plan

Refer to clause 16 of the GC21 General Conditions of Contract.

To be submitted in accordance with Schedule 17.

Schedule 21 – Not used

Refer to clause 25A of the GC21 General Conditions of Contract.

Schedule 22 – Not used

Schedule 23 – Certificates

Refer to clauses 37F, 39, 65 and 67A of the GC21 General Conditions of Contract.

Part A – Consultant's Design Certificate

To: Infrastructure New South Wales (ABN 85 031 302 516)

From: [**Insert Consultant's name**]
(ABN [**Insert Consultant's ABN**])
("***Consultant***")

In accordance with the terms of clause 39.11 of the contract between the Principal and FDC Construction (NSW) Pty Limited (ACN 608 609 427) ("**Contractor**") dated [**insert date**] with respect to the Works, we certify that the attached *Design Documentation* prepared by or on behalf of the Contractor:

(a) complies with all the requirements of the Consultant's agreement with the Contractor, including the *Project Brief* (as defined in the Consultant's agreement); and

(b) complies with the Project Brief; and

(c) is documented to enable construction of the Works in compliance with the Contract.

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

.....

Signed for and on behalf of
[**Insert Consultant's name**]

Part B – Certificate of Completion

[ON PRINCIPAL'S LETTERHEAD]

[**Insert date**]

CERTIFICATE OF COMPLETION

Dear [**insert Contractor's Authorised Person**]

Contract for [insert] between Infrastructure New South Wales (ABN 85 031 302 516) and FDC Construction (NSW) Pty Limited (ACN 608 609 427) 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 65.5.1 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 C – Certificate of Final Completion

[ON PRINCIPAL'S LETTERHEAD]

[**Insert date**]

CERTIFICATE OF FINAL COMPLETION

Dear [**insert Contractor's Authorised Person**]

Contract for [insert] between Infrastructure New South Wales (ABN 85 031 302 516) and FDC Construction (NSW) Pty Limited (ACN 608 609 427) 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 67A.3 of the Contract. We advise you that on [**insert date**] *Final Completion* was achieved.

Yours sincerely

.....

[ ]

[**Principal's Authorised Person**]

Part D – Property Owner's Certificate

(clause 37F)

This Deed Poll is in favour of:

Infrastructure New South Wales of Level 27, 201 Kent Street, Sydney NSW 2000 (ABN 85 031 302 516) and its successors and permitted assigns ("**Principal**")

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 Principal 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

_____
Signature of witness

_____
Name of witness in full

Schedule 24 – Deed of Release

Refer to clause 67A of the GC21 General Conditions of Contract.

This Deed Poll is in favour of:

Infrastructure New South Wales of Level 27, 201 Kent Street, Sydney NSW 2000 (ABN 85 031 302 516) ("**Principal**")

THIS DEED OF RELEASE IS EXECUTED on **[Insert date]**

BY: FDC Construction (NSW) Pty Limited (ACN 608 609 427).

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 67A.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 Principal 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 Principal from all causes of action, proceedings, claims or demands which it has or may in the future have against the Principal 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 67A.3 in reliance on the warranties and releases contained in this deed.

4 This deed may be pleaded by the Principal 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 the Principal; or

(ii) making any claim against the Principal 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 **FDC CONSTRUCTION (NSW) PTY LIMITED (ACN 608 609 427)** in accordance with section 127(1) of the *Corporations Act 2001* (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 25 – Consultant's Deed of Covenant

Refer to clause 31 of the GC21 General Conditions of Contract.

This Deed Poll is in favour of:

Infrastructure New South Wales of Level 27, 201 Kent Street, Sydney NSW 2000 (ABN 85 031 302 516) ("**Principal**")

Recitals

A The Principal has engaged FDC Construction (NSW) Pty Limited (ACN 608 609 427) ("**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**") 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 Principal.

Operative

1 Duty of care

The Consultant warrants to the Principal that in performing the Design Work and in providing any certificate under clause 31.3 of the Contract:

(a) it will owe a duty of care to the Principal;

(b) it will exercise reasonable skill and care; and

(c) it is aware that the Principal 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 the Principal 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 named, in place of the Contractor, the Principal and the Contractor jointly and severally; and

(b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Professional Services Agreement.

Executed as a deed poll

EXECUTED by **[Insert Consultant's details]** in accordance with section 127(1) of the *Corporations Act 2001* (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

[insert description of design work]

Schedule 26 – Information Documents

Refer to clauses 11B and 37 of the GC21 General Conditions of Contract.

[redacted]

Schedule 27 – Preliminaries

Refer to clauses 6, 15, 16, 22, 26A and 32A of the GC21 General Conditions of Contract.

Refer to the attached Preliminaries document.

Preliminaries

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Preliminaries

1 General

1.1 Application

For the avoidance of doubt, all actions and obligations specified in this document are the responsibility of the Contractor unless stated otherwise.

1.2 Electronic communications

The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

1.3 Use of Qualified Designers, engineers and specialists

Use persons professionally qualified and experienced in the relevant disciplines when completing the design of the Works.

In this clause 'Building Work' means each part of the Works that comprises 'building work' as that term is defined in section 6.1 of the *Environmental Planning and Assessment Act 1979 (NSW)*, regardless of whether the relevant sections of the EP&A Act apply to that part of the Works.

Use only accredited practitioners (fire safety) for functions related to fire systems as specified in the Environmental Planning and Assessment Regulation 2000 (NSW).

The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

1.4 Use of Qualified Tradespersons

Use qualified tradespersons to carry out the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

1.5 Licences, consents and approvals

The Principal has obtained the licences, approvals and consents for the Site and the Works as listed in Contract Information item 14.

Refer to General Conditions of Contract Schedule 8 – **Planning Consent and Conditions Responsibility Matrix** and Clause 12 - **Statutory Requirements and Approvals** for Contractor responsibilities.

1.6 Development consent (Not Used)

1.7 Certification of compliance with building and fire regulations

Definitions

The following definitions apply in this clause.

The terms: '**building work**', '**Certifier**', '**Compliance Certificate**', '**Construction Certificate**', '**Crown building work**', '**Occupation Certificate**', and '**Principal Certifier**' have the meanings given to these terms (without capitalisation, as applicable) under sections 6.1 and 6.4 of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act).

'**Development Consent**' means development consent granted under Part 4 of the EP&A Act

PC means the Certifier appointed in accordance with this clause to perform the role and functions of a Principal Certifier in respect of the Building Work (as if the appointment of a Principal Certifier had been required for the Building Work under Part 6 of the EP&A Act).

The following terms apply regardless of whether the relevant sections of the EP&A Act apply to that part of the Works or the work in connection with the Contract:

- 'Building Work' means each part of the Works or work in connection with the Contract that comprises 'building work';
- 'CC' means a Crown Design Verification Certificate equivalent to, and having the same effect and content as, a Construction Certificate; and
- 'OC' means a Crown Occupation Verification Certificate equivalent to, and having the same effect and content as, an Occupation Certificate. Where a Development Consent does not apply, the certificate is to satisfy the requirements of an Occupation Certificate that would be issued if the relevant statutory approvals, certificates and mitigation measures applying for the purposes of Part 5 of the EP&A Act were a Development Consent.

  The certificate must:

  (a) certify that the Works fully comply with all applicable building and fire regulation requirements pursuant to any Statutory Requirements; and

  (b) address such other matters as are required to be addressed in a Compliance Certificate under the EP&A Act.

The Principal has sought and obtained a proposal from Group DLA to be appointed to perform the role and functions of the Principal Certifier in respect of the Building Work (Crown Certification), and the scope of work included in the Principal's documents (including all fees payable). Group DLA is an approved subcontractor, and the Contractor is required to engage its services for the role of Principal Certifier for this Project. Refer Principal's Project Requirements clause 4.2.1.

The Contractor shall be responsible for all design, coordination and works required to obtain relevant certifications from the Principal Certifier to carry out the Works, including provision of all necessary materials for the issuance of the Crown Design Verification Certificate(s) and the Crown Occupation Verification Certificate(s) and pay the fees for these services.

The Contractor is to submit a satisfactory Crown Design Verification Certificate as a condition precedent to the Contractor starting any site works.

As a precondition to Completion, the Contractor must provide to the Contractor, a satisfactory Crown Occupation Verification Certificate (or all Certificates) obtained from the Principal Certifier in accordance with the Environmental Planning and Assessment Act 1979 (NSW), stating that the Works fully comply with all applicable building and fire regulation Statutory Requirements, and those certificates required for the occupation, use and maintenance of the Works.

Even if a CC and/ or an OC are not required for the Building Work, ensure that (unless otherwise instructed by the Principal or where doing so would prevent the Contractor from complying with a specific requirement of the Contract):

- prior to the commencement of any Building Work, everything that would be necessary to enable the PC to issue a CC in respect of the Building Work including the satisfaction of any building and fire regulation requirements is carried out;
- the Building Work is not commenced until the PC has issued a CC in respect of the Building Work, as if a Construction Certificate was required for the Building Work under the EP&A Act;
- the Building Work is not commenced until such other preconditions for the commencement of the Building Work have been satisfied; and
- as a condition of achieving *Completion* of the relevant *Milestone* or the Works, as applicable:
  - everything that would be necessary to enable the PC to issue an OC in respect of the Building Work including the satisfaction of any applicable building and fire regulation requirements, is carried out; and
  - the PC issues an OC in respect of the Building Work.

With particular reference to General Conditions of Contract clause 12 – **Statutory Requirements** and clause 15.4 of the General Conditions of Contract – **Compliance with NSW Government Requirements**:

- cooperate with the PC in planning for and carrying out its functions;
- promptly arrange for and provide all necessary certificates, reports, compliance declarations, compliance certificates, documents and other evidence reasonably requested by the PC;
- identify and notify the Principal of any design changes required for compliance with the National Construction Code; and
- where any item provided by the Contractor to the PC is incomplete or deficient, rectify the deficiency within 3 *Business Days* of being notified, unless otherwise agreed by the Principal.

1.8 Annual Fire Certificate

The Contractor is responsible for providing the first Annual Fire Certificate as a precondition to *Completion*. The Principal may choose to have their own Fire Engineer attend Site to witness the Annual Fire Certification. The Contractor shall provide sufficient notice, no less than 2 weeks, prior to annual certification inspection.

1.9 Contractor performance reporting

During the course of the Contract, the Contractor's performance may be monitored and assessed in accordance with *Performance management* in the construction section of the buy.nsw website at https://buy.nsw.gov.au/categories/construction

1.10 Exchange of information between government agencies

The Contractor authorises the Principal and its employees and agents to make information concerning the Contractor and its performance available to other government agencies and local government authorities, which may take such information into account in considering whether to offer the Contractor future opportunities for work.

The Principal regards the provision of information about the Contractor to any government agency or local government authority as privileged under the *Defamation Act 2005* (NSW). The Contractor agrees that it will have no entitlement to make any *claim* against the Principal in respect of any matter arising out of the provision or receipt of such information.

1.11 The Independent Commissioning Agent (ICA)

Appointing an Independent Commissioning Agent

The Contractor is responsible for engaging an Independent Commissioning Agent (ICA), 6 months prior to Completion of the final 'build' Milestone, suitable to the Principal to perform the role of the Independent Commissioning Agent. The Contractor must maintain that engagement for 3 months following Completion of the final commissioning milestone or unless the Principal requests otherwise.

Before engaging the ICA, the Contractor must provide the Principal with documentation demonstrating previous experience and suitability for the role.

Role of the Commissioning Agent

The Role of the Independent Commissioning Agent (The Role) is to act independently, oversee, manage and coordinate (to perform The Role, as required by the Works):

- Commissioning
- Testing and
- Training

The ICA reports to the Principal. Final Reports and formal advice prepared and sent to the Principal are to be provided to the Contractor by the ICA. Where the Contractor does not agree with any findings or advice to the ICA, then the Contractor shall write to the ICA with a copy the Principal.

The ICA must cooperatively resolve the matter in collaboration with the Contractor.

A finding of the ICA does not limit or waive the Principal's powers and the Principal does not have to agree or accept the ICA's finding.

The Role includes:

- At least monthly reporting to the Principal
- Arrange meetings, inspections and oversight of the relevant tasks for the completion of Contractor works, including by meetings, where required by the Principal and the Contractor.
- Prepare for the commissioning process including by developing site specific witness testing and demonstration, training and commissioning (the Asset Commissioning and Handover Manual)
- Identify *Defects*, prior to and after *Completion*, coordinate action plans;
- Certify the Testing, Training and Commissioning process was completed in accordance with the Manual;
- Provide recommendations directly to the Principal
- Schedule Training and Provide copies of Training Reference Material

Nothing in this clause relieves the Contractor from the obligations of performing the works under the Contract. The Role of the Independent Commissioning Agent is separate and an additional service provided to the Principal and the Contractor must not rely, use or reference any finding as an agreement or instruction from the Principal.

Requirement

The Contractor must support the ICA to deliver The Role, including by:

- Providing reasonable access to information requested by the ICA
- Providing materials and information to support the development of Asset Commissioning and Handover Manual (The Manual).
- Attend Meetings and promptly resolving queries;
- Coordinating subcontractors for relevant testing, training and commissioning activities;
- Producing relevant reference materials for use in testing, training and commissioning activities.
- Promptly close out outstanding actions.
- Professionally completing the activities included in the Manual to the satisfaction of the ICA.
- Ensuring professional indemnity insurance is held by the ICA

1.12 Handover and Commissioning of the Works

Building and Commissioning Plan:

The Contractor is responsible for the handover and commisioning of the Works. At least 6 months prior to *Completion*, the Contractor must prepare and execute a building and commisioning plan and provide a copy to the Principal for review and approval. The Contractor must also establish a 'building handover and commissioning group' and provide details of this group in the building and commisioning plan. The Contractor must incorporate any amendments to the plan requested by the Principal.

The building and commisioning plan must outline the roles and responsibilities of the Contractor's services manager(s), including how the interface with the Principal and the Facilities Manager will be managed during the commissioning and handover process.

The building handover and commissioning group must plan and coordinate commissioning in consultation with staff from the Facility. Planning and coordination activities that must be incorporated in the Plan include:

- Developing the ICT program and interface of service connections. The plan must outline the process of managing this interface.
- Developing the list and timing of Certification reports and test results to be provided. Reports must contain a level of detail acceptable to the Principal.

- Implementation of prototype rooms to assist with training of staff for the Facility, FF&E use and orientation.
- Training strategy for training to be provided to staff for the Facility during the commissioning stage of the project.
- Developing a programme outlining all building commissioning and witness testing activities.
- Witness testing items of each discipline (i.e. all services and FF&E)
- Witness testing of integrated fire/life safety/power/security tests for fire trip and power loss after completion of all testing for each discipline.
- Equipment handover process.
- Security handover process.
- Asset Management System requirements to the extent relating to the Works.
- Submission, during commissioning and handover and as a precondition to Completion, of the following in accordance with the Contract:
    - Works As Executed drawings, Operation and Maintenance Manuals, warranties and guarantees
    - Information for updating the Facility Asset Register
    - All equipment and furniture lists
    - Keys, locks, door and window hardware and locking schedules, door and window schedules, with all keys tagged and scheduled for hand-over, and transmittal documents
    - All written compliance certifications pertaining to the part(s) of the Works to be handed over, including as-built and fitness for purpose certification
- Processes for *Defect* identification and rectification

The Contractor is to undertake coordination meetings with the Principal.

The Principal requires time to operationalize the building and the Works. The Contractor will provide appropriate resourcing to coordinate and facilitate the Principal operational readiness activities. Should it be required, the Contractor must allow activities as agreed to take place prior to *Completion*.

Testing, Training and Commissioning:

The Contractor's responsibility for commissioning and handing over the completed Works includes, but is not limited to, the following:

- Supporting the ICA's development of a Building and Commissioning Handover Manual (the Manual)
- Submission of a Building and Commissioning Handover Manual (the Manual) at least 6 weeks prior to anticipated handover/ occupation of the facility
- Submission, during Commissioning and Handover, of the following in accordance with the Contract:
    - Work As Executed drawings, Operation and Maintenance Manuals, warranties and guarantees
    - Information for updating the end user Asset Register
    - All equipment and furniture lists
    - Keys, locks, door and window hardware and locking schedules, door
    - and window schedules, with all keys tagged and scheduled for hand-over, and transmittal documents
    - All written Compliance Certifications pertaining to the part(s) of the Works to be handed over, including as-built and fitness for purpose certification
    - Details of maintenance services to be provided by the Contractor during the Post Completion Period and any specified maintenance Milestones.
    - Witness Testing, including Air tightness testing;
    - Integration and the Consolidation of a complete and electronic operations and Maintenance Manual:
        - Alphabetically categorised into trade folders, consisting of:

- Sub-folders (including operations manuals, work-as-executed drawings, certification, product operations instructions and warranty, maintenance schedule, spare parts)
- Asset listing - capture a complete listing of all assets that can be filtered by relevant trade and type of asset, including warranty listing, aintenance intervals and maintenance requirements
- Maintenance schedule - Produce a comprehensive maintenance schedule and manage and arrange for maintenance and production of maintenance records following each maintenance event
- Work as executed drawings (WAE Drawings)
- Certificates

Completion of all commissioning activities included in The Manual, including supporting the ICA

Building and Commissioning Handover Manual

The Building and Commissioning Handover Manual (The Manual) is to include, though not be limited to, the following information (as applicable to the Contract):

- Outline the general commissioning process for the Contractor to perform;
- Program for commissioning and handover,
- Safe access (and operations) map, clearly showing delineation between site and public areas/ interface.
- Equipment handover processes
- Security handover processes
- Orientation processes for local end-user staff
- BCA Certification documentation
- Security and Communications commissioning processes
- Air Conditioning commissioning processes
- IT cabling commissioning processes
- Commissioning processes for other engineering services
- Defect management processes, including identification and rectification
- Areas to be handed over and temporary measures to be put in place
- FAQs
- Testing Arrangements & Witness Testing
- Training, including training for end local users and comprehensive training reference material.

Asset Management Schedule

The Contractor is to provide an Asset Management Schedule in an Excel file or flat file format. The Asset Management Schedule is to be provided at two milestones:

- At the end of the design process – so that an initial asset data module can be modelled to determine lifecycle costing.
- At project handover – to update the difference between the design and as-built.

The Asset Management Schedule is to include the properties and components listed below:

- Property Code, Property Name
- Component Group, Component Type, Component Name – all replaceable, renewable, and maintainable assets including both equipment and building fabric.
- Condition Grade (C1 Very good - to C5 Very Poor).
- Quantity - matching the reference unit of measure e.g. Wall finish in m2, Lifts as a count (1 line item per lift as to record the make model serial number and ongoing maintenance against each one).

- The unit of measure and quantity of each component.
- The location (functional location) of each component.
- Expected useful life of each component – recognising it's environment and how utilised.
- Maintenance regimes – listing the services and scheduled maintenance of each component including cycles and costs in today's currency.
- The Gross Replacement Cost of each component – this is the unit rate that would be applied to each measured component.
  - Make
  - Model
  - Serial number
  - Unit rate
  - Comment
  - Description
  - Barcode
  - Location (free text field that further identifies the component)
- The Contractor is to assist the Principal with a physical audit of the built components, reconciling the asset register collated through the project with a physical audit to verify the existence, location, and associated attribute data including bar codes.

2 Documents

2.1 Inclusions in Contractor's documents

The *Contractor's Documents* must include, without limitation:

Provision of all Design Deliverables required by the *Principal's Documents* and provision of all construction documentation for the Works.

Construction documentation includes but is not limited to; the completion of detailed design development and production of the construction drawings; the verification; the coordination of the design including the structure and the services; development of shop drawings, detailed methodologies, site analysis, completion of construction design detailing and a completion of the specification.

2.2 Works as Executed drawings (Not Used)

Refer to Principal's Project Requirements clause 4.6.5.

2.3 Operation and maintenance manuals

General

As a precondition to *Completion*, produce operation and maintenance manuals written in clear, concise English containing all necessary information for the satisfactory operation and maintenance of the Works and covering the various building elements, assemblies, equipment, service installations and systems incorporated into the Works. Comply with this Clause - **Operation and Maintenance Manuals** and any detailed requirements contained in the Technical Specification.

Contents

Include the following documents and information:

- **Table of Contents**: A table of contents for each volume.
- **Introduction and Scope**: A description of the systems, with a separate description of each system, the approach taken and other relevant information to ensure facilities staff have an understanding of the equipment and its intended purpose;
- **Help and Contact Directory**: Names, email addresses and telephone numbers of the Contractor and relevant subcontractors, suppliers and consultants who may be used by the Principal to support the operation and maintenance of the assets. Include emergency contact details.

- **Warranties and Certificates**: All warranties (both contracted and procured through suppliers and manufacturers) and certificates issued as part of the Works including from relevant authorities .
- **Drawings and Technical Data** - lists of all final Works As Executed (WAE) drawings, specifications and other relevant documents forming the final contract scope and other relevant attachments - like product manuals, specifications and the like relevant to the proper operation and maintenance of the Works.
- **Equipment Descriptions -** a general description of the equipment installed; start and stop procedures, and operational procedures; identification of equipment suppliers/manufacturers, including names, addresses and telephone numbers;
- **Operations Data** : Detailed operating instructions for safe and efficient operation of the assets, including manufacturers' technical literature.
- **Maintenance**: Records of any maintenance completed by the Contractor. Detailed instructions and recommended frequency for preventive and corrective maintenance procedures to ensure proper function of the assets.
- **Spare Parts** - listed items or components required to complete maintenance or operation tasks or for replacements
- **Asset Management Schedule** - detailed schedule of all financial assets data, maintainable assets data, items and locations all reconciled to the total project value in a form approved by the Principal. One month prior to the *Contractual Completion Date*, the Contractor must prepare and provide to the Principal a draft Asset Management Schedule for approval by the Principal, make any adjustments to the Asset Management Schedule directed by the Principal and reissue the Asset Management Schedule for approval by the Principal.
- **Inspection and Test Plans –** required for all elements of the project and to be incorporated into each manual.

Format – Hard Copy

Bind each copy of the manuals in A4 size, 4 ring binders, no more than 75 mm thick, with durable, commercial quality, hard plastic covers. Limit the filling of binders to 85% of capacity. Index each binder and mark the spine and cover with relevant building elements. Divide and subtitle each section. Number all pages. Include manufacturers' printed data and associated diagrams.

Format – Electronic Copy

Provide the specified documentation in PDF or equivalent electronic file format. The PDF document must have the capability to search text.

Submission

Operation Manuals must be prepared in consultation with the Principal and the Principal's Facility Manager, so that they interface with, and complement, the existing Facility Operational Manuals.

The operation and maintenance manual must be developed and submitted to the Principal progressively for review as work proceeds. All draft submissions are to be submitted electronically with all relevant sections completed. The Contractor shall allow no less than 10 *Business Days* for review by the Principal.

Not less than 7 days before *Completion* of the Works is reached, submit 3 hard copies and 1 electronic copy of the final version of the operation and maintenance manuals.

As a condition of achieving *Completion*, operation and maintenance manuals that comply with the specification must be submitted.

2.4 Restricted documents (Not Used)

2.5 NATSPEC subscription

If any of the *Contractor's Documents* are based on NATSPEC, provide to the Principal proof of the Contractor's current NATSPEC subscription.

2.6 Contract Program Progress Report

Submit by the 5th *Business Day* of the month, a progress report comparing the current *Contract Program* provided in accordance with clause 22.3.1 of the General Conditions of Contract - **Contract Program** with the *Contract Program* provided for the previous month. Include the following in the report:

- reasons for any change in the Scheduled Progress of significant activities and any proposed steps to make good any shortfall in Scheduled Progress;
- reasons for any divergence in activity logic or sequencing in the Contract Program, including where the Contract Program has been updated due to a change in scheduling;
- any changes in the critical path and the reasons for those changes; and
- any critical path activities which are being delayed or at risk of being delayed due to an act of the Principal.

Additionally, include in the Progress Report:

- a schedule showing for each *Milestone* or where there are no *Milestones*, the whole of the Works, the anticipated date for *Completion* compared with the current agreed *Contractual Completion Date*;
- reasons if the updated *Contract Program* is predicting *Completion* will be achieved ahead of *Scheduled Progress*, that is, ahead of the agreed *Contractual Completion Date*; and
- a register of *Claims* for extensions of time submitted under clause 50 of the General Conditions of Contract – **Changes to Contractual Completion Dates** and complying with clause 68.3 of General Conditions of Contract – **Contractor's Claims** including their reason, submission date and current status of approval or assessment by the Principal or Valuer with respect to the relevant clauses in the General Conditions of Contract.

Software

Submit all *Contract Programs* as electronic documents. The software used must be the latest version of MS Project or as otherwise agreed with the Principal.

2.7 Training

The Contractor must develop in consultation with the Principal, a training programme prior to Completion to undertake a thorough demonstration of the new systems incorporated into the Works which includes their location, purpose, operation and maintenance. All training must be documented (inclusive of attendance registers) by the Contractor and provided as part of the Operation and Maintenance manuals.

Training in operating of the building will be provided as follows, as a minimum:

- training in respect of all specialist equipment (as required by the Principal)
- training in respect of all AV systems
- one day for electrical, communications, lighting and security services
- one day for mechanical services
- one day for hydraulic and fire services
- one day for miscellaneous services (e.g. lifts)
- two half-days for non-services-related components of the building.

Any training that is deemed necessary for the successful operations of the site will be undertaken and managed by the Contractor for a period of 6-months post-completion

2.8 Master keying

The whole of the Building is to be master keyed by the Contractor prior to Completion. The Contractor is to propose a draft keying hierarchy for review and approval by the Principal (allow approval period of 2 months). Subject to the hierarchy review, keying at minimum is expected to include access cards with dual technology encrypted, as well as manual keys as required.

3 Contracting

3.1 Application of Schedule of Rates (Not Used)

3.2 Application of Tendered Rates (Not Used)

3.3 Payment claims for lump sum items (Not Used)

3.4 Currency fluctuation (Not Used)

3.5 Customs Duty

Requirement

If the Contract includes a completed Tender Schedule 4 - **Schedule for Adjustment of Customs Tariffs**; and

- an item in the Schedule is imported into Australia after the 14th day prior to the date on which tenders closed; and
- upon importation, the customs duty tariff rate on the item (other than dumping duty) is greater or less than the tariff rate on the 14th day prior to the date on which tenders closed,

then the actual extra cost or saving resulting solely from the change in the tariff rate shall be paid or allowed by one party to the other as the case may require. Provide, on request, proof of the amount paid as customs duty and the date of payment.

3.6 Preferred Subcontractors (Not Used)

3.7 Priced Builder's Bill Of Quantities

Lodge with the Principal a priced Builder's Bill of Quantities.

Separately identify, quantify and price within the Builder's Bill of Quantities the Preliminaries and all Technical Sections of the Specification. The prices and rates as extended must, on addition, equal the Lump Sum.

Prices in the Builder's Bill of Quantities do not form part of the Contract. Their purpose is to assist in making valuations of works carried out but the Principal is not bound to use them.

4 Administration

4.1 Quality management requirements

Quality Management System

Maintain the Contractor's Quality Management System. Obtain evidence from proposed subcontractors and certify that subcontractors' quality management systems meet the requirements of the Contractor's Quality Management System.

Quality Management Plan

Develop and implement a Quality Management Plan that complies with the current NSW Government Quality Management Guidelines for Construction *(Quality management guidelines - construction procurement) (QM Guidelines).* The *QM Guidelines* are available on the Buy.nsw website at https://buy.nsw.gov.au/categories/construction

Submit the Quality Management Plan to the Principal within the time stated in Contract Information item 15C together with *Appendix C -Quality Management Plan Assessment Checklist* from the *QM Guidelines*, completed by the Contractor, with cross-referencing of the AS/NZS ISO 9001:2016 clause numbers to the Contractor's Quality Management Plan.

Completion of the checklist provides a valuable check of the Contractor's Quality Management Plan.

The Quality Management Plan must cover the relevant elements of the Contractor's Quality Management System and include an index of the Contractor's quality procedures and proposed Inspection and Test Plans and associated checklists.

Include a schedule of internal audits for the Contract. Submit a copy of each audit report within 14 days of the date of audit.

Design Management Plan

Prior to commencing design work, prepare and implement a Design Management Plan complying with the *QM Guidelines,* covering each phase of *Design* and addressing the key activities. Refer Principal's Project Requirements clause 4.3.

Managing work quality

Prepare and implement Inspection and Test Plans, complying with the *QM Guidelines,* incorporating the Hold and Witness points specified in the Contract.

Submit copies of Inspection and Test Plans and checklists not less than 7 days before commencing the work to which they apply. Also submit certification that the relevant quality management plans and Inspection and Test Plans of subcontractors and Consultants meet the requirements of the *QM Guidelines.* Do not start any work before the relevant documentation is submitted.

Give at least 48 hours notice prior to reaching a Hold or Witness point.

Do not proceed beyond a Hold point without endorsement by the Principal.

The Principal, at its discretion, may inspect the work at a Witness point, but work may proceed without endorsement.

Endorsement by the Principal at a Hold or Witness point does not release the Contractor from its obligations to achieve the specified requirements of the Contract.

The Principal. at its discretion, may undertake surveillance (monitoring) of any or all work associated with the Contract.

Conformance records

Submit copies of *Conformance Records* as specified, including but not limited to:

Conformance Records	Time when records are required
Management reports including WHS and environmental monthly reports	No later than the fifth (5th) *Business Day* of each month, or as otherwise specified.
Crown Design Verification Certificate	Prior to commencement of the Works
Crown Occupation Certificate	As a precondition to *Completion*
Quality Audits	Copy of each audit report within 10 *Business Days* of the date of audit
Completed Inspection & Test Plans and associated checklists	With each *Payment Claim*. Quality records for work completed over multiple payment periods must be submitted progressively.
Design & Construction Conformance Certificate for each design discipline nominating compliance with the Project Brief	With each *Payment Claim.*
Product and service Conformance Records	Not less than 7 days before *Completion* of the Works is reached.
Requirements detailed in the Technical Specification (Architectural, Electrical, Mechanical, Fire, Hydraulic, Structural, etc.)	Refer to the Technical Specification
Dilapidation surveys and related documents and records	Before commencing any other physical works on Site
Noise, Movement, Vibration and air monitoring results, including any clearance certificates	With each *Payment Claim*, unless required sooner, due to a breach or notifiable concern.

Approvals from Regulatory Authorities including Road Opening and closure permits, and payment of fees.	5 *Business Days* before the related work is due to commence.
Set-out and survey records: • External walls • Internal walls (witness point) • Sandstone Wall	Progressively
Services Rough-in records	Progressively
WAE performance testing records	At completion of the Works and with the as-executed information, including correct integration into the relevant Operation and Maintenance Manuals
All quality, test and compliance records of materials to be incorporated into the Works (including from manufacturers)	2 *Business Days* before being incorporated into the Works
Register of product conformity records	At completion of the relevant *Milestone* and with the as-executed information, including correct integration into the relevant Operation and Maintenance Manuals
Temporary Services metered consumption	With each *Payment Claim*
Environmental Clearance certificate/s	Within 3 *Business Days* following receipt
Formwork compliance certificate	Within 3 *Business Days* following receipt
Geotechnical Compliance certificates	Within 3 *Business Days* following receipt
Structural Compliance certificates	Within 3 *Business Days* following receipt
Waterproofing Test and Compliance certificate	Within 3 *Business Days* following receipt
Operation and Maintenance Manuals	Within 3 *Business Days* following receipt

Failure to Comply

If the Contractor fails to comply with the requirements of this clause – **Quality Management**, the Principal may implement such inspections and tests as the Principal determines and the cost incurred by the Principal shall be a debt due from the Contractor. Alternatively, the Principal may make deductions from payments due to the Contractor for work not carried out.

4.2 Aboriginal participation

Definitions

The following definitions apply to Contract requirements dealing with Aboriginal participation.

Aboriginal Business means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such by Supply Nation, the NSW Indigenous Chamber of Commerce or a similar acceptable indigenous business verification organisation.

Aboriginal Employee means an employee of the Contractor or Subcontractor, who is a person of Aboriginal or Torres Strait Islander descent as verified by the Contractor in accordance with guidance provided under the Aboriginal Procurement Policy. Refer to website.

Aboriginal Participation Requirement means the mandatory minimum requirement for Aboriginal participation in the Contract as determined by:

- at least 1.5% of the specified APP Contract Value is subcontracted to Aboriginal Businesses;
- at least 1.5% of the full time equivalent (FTE) Australian based workforce deployed on the Contact are Aboriginal Employees, on average, over the duration of the Contract, excluding Milestones that do not include design or construction;
- at least 1.5% of the specified APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Contract; or
- any combination of the above, such that the combined percentages add up to at least 1.5%.

Note that the 1.5% figure expresses mathematically the extent of Aboriginal Participation required by combining financial and non-financial factors.

Aboriginal Procurement Policy means the NSW government's "Aboriginal Procurement Policy" and published at https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy.

Actual Aboriginal Participation means the percentage of actual Aboriginal participation in the Contract, as determined by combining:

- the percentage of the APP Contract Value that is subcontracted to Aboriginal Businesses;
- the percentage of the full time equivalent Australian based workforce deployed on the Contract who are Aboriginal Employees, on average over the period of the Contract, excluding Milestones that do not include design or construction; and
- the percentage of the APP Contract Value that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Contract.

APP Contract Value is the *Contract Price* less exclusions accepted or determined by the Principal.

Unmet Percentage is the difference between the Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Contract.

Application of requirements

The APP Contract Value for Aboriginal Participation in this Contract is the amount listed in Contract Information item 15F.

Provide an Aboriginal Participation Plan (APP) setting out how the Aboriginal Participation Requirement for the Contract will be achieved within the time stated in Contract Information item 15F.

The APP is to be developed from the Tendered Aboriginal Participation Plan (TAPP) that sets out how the Tenderer plans to meet the Aboriginal Participation Requirement.

Comply with and implement the APP to meet the Aboriginal Participation Requirement.

Reporting

Provide an Aboriginal Participation Report within 5 *Business Days* after 31 March, 30 June, 30 September and 31 December, during the Contract period, or as otherwise instructed.

The report must detail how the Contractor's APP is being implemented and quantify, with appropriate calculations, the Actual Aboriginal Participation being achieved to date. The report is to include verifiable evidence to support the Actual Aboriginal Participation reported.

Submit a final Aboriginal Participation report at the time listed in Contract Information item 15F.

The report must detail how the Contractor's APP has been implemented and quantify the Actual Aboriginal Participation for the Contract. It is to include verifiable evidence to support the Actual Aboriginal Participation reported. Where the Actual Aboriginal Participation by the Contractor is less than the Aboriginal Participation Requirement, the report is to include a calculation of the Unmet Percentage.

All reports must be in a format acceptable to the Principal and utilize the DCS Reporting Portal, where applicable. Access to the portal will be provided by the Principal. Contact the Principal for access at least 10 Business Days before the first report is due.

The submission of an acceptable final Aboriginal Participation Report is a condition of *Completion*.

Additionally, provide any information or other assistance, as reasonably requested, to enable the Principal to meet its obligations under the Aboriginal Procurement Policy.

Implementation assessment

Audits and/ or reviews may be carried out by, or on behalf of, the Principal of the Contractor's actual Aboriginal participation in accordance with General Conditions of Contract clause 15 - **Compliance with NSW Government Requirements**,

Where an Unmet Percentage has been assessed by the Principal, the Contractor will be liable to pay the Principal an amount equal to the Unmet Percentage multiplied by the APP Contract Value. The amount so calculated will be a debt due from the Contractor and General Conditions of Contract clause 63 – **Set-off** will apply.

The obligations of the Contractor under this clause survive termination of this Contract.

4.3 Skills, training and diversity in construction

Refer to the requirements of the NSW Government Construction Guidelines: Skills and Training shown on the website: https://buy.nsw.gov.au/categories/construction.

Implement the commitments made in the accepted tender in Tender Schedule 18 - **Schedule of skills, training and diversity in construction**.

From the Date of Contract until *Completion*, at intervals of no greater than three months, provide reports to the Principal, giving details of the apprentices engaged on work under the Contract and demonstrating that the Contractor is meeting (or will meet by *Completion* of the Works) its commitments to skills development.

Additionally, include in the above reports, a report on the Contractor's compliance with the commitments made in the table: *Infrastructure Skills Legacy Program Targets,* included in the accepted tender in Tender Schedules - **Schedule of skills, training and diversity in construction**. The report should demonstrate that the Contractor is meeting (or will meet at Completion) its commitments to skills development under the Infrastructure Skills Legacy Program (ISLP).

4.4 Protection of children and other vulnerable people

Code of behaviour

Ensure that all persons working on the Site, including but not limited to the Contractor's employees and managers, consultants, subcontractors and suppliers (Contractor Employees) understand and comply with the requirements shown below:

- Obtain permission to enter a facility before commencing work and only enter approved areas. The Contractor's representative or where a Subcontractor is working without the supervision of the Contractor, the Subcontractor's representative must report their presence to the person in charge of the facility on arrival each day and record, in the Site Visit Log, the details of all Contractor's or Subcontractor's employees working at that Site that day.
- Avoid talking with, touching or interacting with any children or residents or other users of the facility except where the work requires it or in an emergency or safety situation.
- Use only approved toilets and other facilities, unless the person in charge of the facility gives written authority to use alternative arrangements.
- Ensure that work areas are not able to be used or accessed by children, or residents or other users of the facility while work is in progress. Erect clear signs and barricades (where appropriate) to prevent any inadvertent or unauthorised access.
- Ensure that appropriate privacy is maintained when working on toilets and similar facilities. Verify that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform work, and that work does

not continue when use of the facilities is required. Where practicable male employees should perform work on male facilities and female employees on female facilities.

- Wear clothing that is tidy and in good condition, including a shirt and shorts, trousers or a skirt at all times.
- Report any concerns about children's behaviour or child abuse to the person in charge of the facility.
- Wear or carry an identity card at all times when on the Site.

Ensure that all persons working in areas considered high risk or as otherwise identified complete a written declaration that they have not been convicted and are not awaiting trial for a *Disqualifying Offence* as defined in Schedule 2 of the *Child Protection (Working with Children) Act 2012* (NSW). Keep copies of the declarations with site induction records.

4.5 Code of Conduct

The Contractor must take responsibility for the suitability of all workers and Subcontractors on the Site, set reasonable standards of conduct, investigate complaints about their behaviour (including when required by the Principal) and take appropriate action including removal of persons from Site if so warranted.

The Contractor must:

- establish a code of conduct for all Contractor's personnel working at the Site for the *Principal's Authorised Person*'s approval;
- inform the Contractor's personnel of the requirements contained in the code of conduct (in the form approved by the *Principal's Authorised Person*) at the safety induction session;
- provide a printed copy of the approved code of conduct to all of the Contractor's personnel; and
- take immediate action to remedy any non-compliance with the approved code of conduct by the Contractor's personnel.

Where the *Principal's Authorised Person* becomes aware of repeated non-compliance with the approved code of conduct by any of the Contractor's personnel, the *Principal's Authorised Person* may direct the Contractor to remove the offending Contractor's personnel from the Site, and prevent that person returning to the Site, and the Contractor must comply with the direction.

4.6 Audit and review

Make available, on request, all records, including those of or relating to subcontractors or suppliers, relevant to compliance with requirements of the Contract, for the purposes of audit, review or surveillance. Provide all reasonable assistance during the audits or reviews including attendance by the Contractor.

Promptly implement effective corrective action on matters disclosed by audit or review.

4.7 Product sourcing

The Contractor must investigate, and where possible, ensure materials sourced for the Project do not adversely impact indigenous sacred sites, or come from companies who have negatively impacted sacred sites in the past and not improved practices and made appropriate reparations.

4.8 Dilapidation Report

Carry out and submit a completed Dilapidation Report for the work areas, its surroundings and each property or asset adjacent to which the work is to be carried out. No works are to be started prior to the Dilapidation Report being submitted to the Principal.

Arrange for an inspection of any neighbouring and/or existing property and assets at a time that suits the owner (may be outside normal working hours). In the course of a single visit, recover all the information required to prepare the Dilapidation Report. The condition of the adjacent items prior to construction of the works is to be recorded.

The Dilapidation Report will take the form of a report with digital photographs and a video recording of all the items within and adjacent to the work and also including both

exterior and interior of neighbouring facilities, including tunnels and basements; all pits (including interiors). All photos in the report must be suitably labelled with a statement of the extent and severity of the defect, its exact location, street name, direction faced, and any other relevant comments annotated.

The Dilapidation Report must clearly state the exact location of the defects so that the records can be used efficiently on a later date by anyone. Video and still photography may be required is to be of sufficient high quality to show all defects clearly, and must be provided to the principal in a format compatible with a generic media player.

Any cracks that are identified in the Dilapidation Report will be measured and marked with glass "tell tales" under the supervision of a structural engineer, engaged by the Contractor. Comply with the (City of Sydney) Sydney Streets Technical Specifications. Particular attention must be paid to the condition of basements, tunnels, and waterproofing membranes. Any evidence of leakage or water damage must be recorded.

Scope of Dilapidation Report

The Dilapidation Report must cover the following items as a minimum:

- The ground and first storeys of all buildings immediately adjacent to and opposite the work site, including buildings in the side streets (Merriman St);
- Sandstone rock wall at Entry and east side of the Cutaway space;
- Basements
- All existing street furniture and signage including seats, public telephones, post boxes, parking meters, and the like;
- All existing lighting poles, traffic poles and signs;
- All existing footpaths and kerbstones;
- All existing services and utilities where recording is possible;
- All existing pit covers that are to be reused;
- Interiors of all existing service pits;
- Traffic facilities, e.g. thresholds, speed humps etc.;
- Include particular reference to any infrastructure, which during the execution of the works the Contractor will be required to temporarily remove and reinstall or replace at a later date; and
- Inspect the interior of all existing services and utility pits with the relevant utility authority representative and record the outcome of the inspection.
- The Dilapidation Report must cover any of the above items that are within approximately 6m of the works.
- Typically the Dilapidation Report is to include details of the following:
- Materials of construction;
- General condition of materials;
- Location and description of any defects including structural defects; and Location, sizes, and description of any cracking.

RECORD OF DAMAGE

The Contractor is required to create a Record of Damage for the Site. This is required to determine who is responsible for damage to any assets should matters be raised in the future. The Record of Damage must document any damage to property or assets within the extent of area occupied by the Contractor during the Works, or affected by the Works, including areas proposed for storage and floating of plant.

5 Site

5.1 Order of work (Not Used)

[redacted]

[redacted]

[redacted]

[redacted]

5.3 Existing services

Generally, upon location of existing services throughout the Site outlined under this Section 5.3 of the Preliminaries, the Contractor must adhere to access requirements to site under standard expectations for the relevant utility providers assets that are identified in their investigations (e.g., Ausgrid, Sydney Water, etc.).

A diagram of an Ausgrid Easement near to the site in Nawi Cove has been included for information only, which requires unimpeded access (by truck in all weather conditions) to these services. This diagram has been provided in **Tender Volume 4 Part H– Ausgrid Access**

Preventing Unplanned Contact with Live Services

Take responsibility for locating existing services, including underground essential services, and isolating them where necessary to prevent unplanned contact with live services. In doing so, comply with the NSW Government *Code of Practice Construction Work* available on the Safework NSW website.

Locating Existing Services

Before starting construction work:

- appoint a Site manager or Contractor's representative to be responsible for locating and preventing unplanned contact with existing services; and
- verify the precise locations of all underground and other existing services at the Site, and in areas adjacent to the Site that may be affected by the work under the Contract.

To locate existing services, a combination of different methods should be used, including:

- obtain advice from Dial Before You Dig and the owners of the services (do not rely on WAE or as-built drawings)
- engage a services locator;
- examine the Site and surrounding areas for indications of services; and
- where any service is underground, use pot-holing (or equivalent non-destructive techniques) to locate the service (ensure all holes are promptly backfilled to reduce safety risks).

Mark prominently on the Site the locations of all existing services. Document the locations of services on a site plan and provide a copy of the plan to each Subcontractor before the Subcontractor starts work on the Site.

Provide written confirmation to the Principal that these actions have been completed before starting construction work.

Isolation of Existing Services

Before undertaking any work involving cutting into, penetrating, or otherwise breaking into building fabric (floor, walls or ceiling), ensure the services are isolated in the relevant work area.

Wherever reasonably practical and with the prior agreement of the Principal, isolate electrical and gas services for the whole building where work is being carried out, before starting work on existing building services.

Notify the Principal and the appropriate persons within the facility of any proposed disruption of services in sufficient time to enable affected personnel to be informed and any changes to operations to be made. Consult with the Principal prior to issuing the notification.

Include in the notification:

- details of the service to be disrupted;
- the date and time that the disruption will commence;
- the estimated duration of the disruption and when the service will resume operation;
- the possible impact of the disruption (e.g. loss of power, loss of gas); and
- any other relevant information.

On completion of the work and the resumption of the services, check all penetrations for live or damaged services and give the following to the Principal:

- a clearance certificate that affected utilities and equipment (e.g. heaters, boilers) have been tested and are functioning appropriately; and
- the name and phone number of a responsible person, appointed by the Contractor, who can be contacted if problems are experienced with any of the affected utilities or equipment.

Interference with Existing Services

Deal with existing services (such as drains, watercourses, public utilities, telecommunications and other services) obstructing the Works or damaged in the course of the Contract as follows:

- if the service is to be continued: repair, divert or relocate as required;
- if the service is to be abandoned: cut and seal or disconnect and make safe as required;
- record all changes made to the services on drawings, with sufficient detail to allow changes to be identified.

Cost and Delay

Where an existing service obstructs the Works and requires diversion or relocation, bear all resulting costs and delays except to the extent that there is an entitlement to an adjustment of the *Contract Price* or payment for a *Variation* in accordance with General Conditions of Contract clause 37 - **Site Conditions**.

Where an existing service is damaged by the Contractor for any reason whatsoever, bear all costs and any delays for repairing or disconnecting the service.

Notification

Notify the Principal immediately upon discovering any damaged services or services that obstruct the Works and are not shown in the *Principal's Documents* or identified in the Contractors investigations of existing services in line with the above. Refer to the above for requirements for existing services identification, and definition of *Principal's Documents* with regard to services included in documents prepared by the Principal.

5.4 Protection of Survey Marks

Preventing unplanned disturbance of Survey Marks

Take responsibility for locating, protecting and replacing Survey Marks. Survey Marks include Permanent Survey Marks and Cadastral (Boundary & Reference) Marks.

Locating and protecting Survey Marks

Before starting construction work:

- appoint a Site manager or Contractor's representative to be responsible for locating, documenting, protecting and replacing Survey Marks;
- verify the precise locations of all Survey Marks likely to be affected by carrying out work under the Contract, including in areas outside the Site, by:
  - referring to publications by the NSW Department of Consumer Services (DCS) - Spatial Services, particularly the information sheet *Protecting Survey Marks* available in *Information sheets* under the Publications tab at: https://www.spatial.nsw.gov.au/;
  - complying with subsections 1 and 3 of the section *How to protect survey marks – before Works commence* in the above Information sheet;
  - utilizing the services of a Registered Surveyor where Survey Marks, including Cadastral Marks, are not readily identified or are likely to be disturbed during searches.
- document the locations of Service Marks (if any) on the site plan showing existing services that is provided to subcontractors. Extend the plan, as required, to show Survey Marks outside the Site that may be affected by work under the Contract; and
- provide written confirmation to the Principal that this action has been completed before starting construction work.

Disturbing or removing Survey Marks

Where Survey Marks are required to be removed, disturbed or replaced, engage a Registered Surveyor to manage the process in compliance with Surveyor-General's Directions, Direction No. 11, *Preservation of Survey Infrastructure* available under the Surveying tab at: https://www.spatial.nsw.gov.au/

Notification

Notify the Principal immediately upon discovering any unauthorised removal, disturbance or destruction of Survey Marks. Utilize the services of a Registered Surveyor to notify the Surveyor General and receive advice, as required, on further action(s) regarding the replacement or re-establishment of the affected Survey Marks.

5.5 Work health and safety management

Design

There are obligations under section 22 of the WHS Act, for persons who design plant, substances and Structures. Consult with the Principal to identify any risks to health and safety arising from the design.

Ensure, in carrying out the design that, so far as is reasonably practicable, the *Works* and *Temporary Work*, including all structures and plant, are designed to be without risks to anyone who constructs, uses, maintains, or demolishes the *Works* and *Temporary Work*.

When undertaking design, carry out any calculations, analysis, testing or examination that may be necessary to eliminate or minimise risks. Provide current relevant information on any risks arising from the design to anyone who constructs the *Works* and *Temporary Work.*

Provide a Safe Design Report for design carried out for the *Works* and *Temporary Work*, particularly the design of any structures and plant. Record any hazards not eliminated in the design that may impose a risk to those constructing, using, maintaining or demolishing the Works and Temporary Work.

The Safety in Design Report must comply with Statutory Requirements and be aligned (at minimum) with the SafeWork NSW: Safe Design of Structures – Code of Practice, and include design risks for the life of the asset.

The Contractor must ensure that risks identified in the Safety in Design Report are incorporated into the Project Specific Safety Risk Register and are continually updated within the register throughout the performance of the Works. The Contractor must ensure that the Register is made available and utilised by all workers, employees of the Contractor, Consultants and Subcontractors on the project.

Provide an updated copy of the Safe Design Report to the Principal at *Completion* or at the date the Works commence being occupied or taken over, whichever is earlier.

WHS Management Plan

Develop and implement a WHS Management Plan that covers the work under the Contract and complies with the NSW Government *Work Health and Safety Management Guidelines for Construction 6th Edition (WHSM Guidelines).*

Submit the WHS Management Plan to the Principal within the time stated in Contract Information item 15A, together with checklists (1-12) of *Appendix D – Sample WHSMP Audit Report* from the *WHSM Guidelines,* completed and signed by the Contractor. As a minimum the completed checklists should include page and section references for the relevant listed procedures and activities. Completion of the checklist provides a valuable check of the Contractor's WHS Management Plan.

Ensure the following risks are covered in the WHS Management Plan:

- Working in close proximity to a natural rockface
- Demolition
- Public/Contractor interface including Public Domain users
- Traffic and Vehicles management
- Noise, Dust and Vibration
- Underground Services including Electricity
- Formwork
- Heavy and overhead lifting
- Moving Plant and Machinery
- Confined Spaces
- Working at heights

This list of risks is not exhaustive and must not be relied upon by the Contractor. Undertake a detailed analysis of all work health and safety risks involved with work under the Contract.

Include a program indicating the timetable and resources allocated for *Inspection, testing and servicing* and *Internal review* (*WHSM Guidelines*, refer to appendix D checklist for elements 7 and 11).

Nominate the resources allocated for *Incident management and corrective action* (*WHSM Guidelines*, refer to appendix D checklist for element 8).

Consult with all occupiers of the Site to coordinate the Contractor's emergency and evacuation plan with their emergency and evacuation plans.

WHS Management Monthly Report

No later than the fifth (5th) *Business Day* of each month, submit a WHS Management Monthly Report, detailing *Inspection, testing and servicing* activities, *Internal reviews* and *Incident management and corrective action*, as evidence of the implementation of the WHS Management Plan during the previous month.

As a minimum, the WHS Management Monthly Report must include the following information:

Contract Details

- Contract name
- Contractor
- Contractor's representative
- signature and date
- period covered

Implementation of *Inspection, testing and servicing* procedures

Summary of WHS inspections and tests carried out for:

- plant and equipment
- incoming products
- work Site access and exits
- personal protective equipment (PPE)
- compliance with and completeness of Risk Assessments, Safe Work Method Statements and Site Safety Rules

Implementation of *Incident management and corrective action* procedures re

Details of:

- WHS incidents or WHS issues, including non-compliance with WHS processes and procedures and near misses
- implementation of incident management
- implementation of corrective action
- WHS statistics for the Contract including:

Work Health & Safety Metric	**Current reporting period (Insert month)**	**Life of Project**
1. Hours worked		
2. 1st aid injuries **(FAI)**		
3. Medical treatment injuries **(MTI)**		
4. Lost time injuries **(LTI)**		
5. Days lost due to injury		
6. WHS site inspections		
7. Workers inducted		
8. Toolbox talks conducted		
9. WHS Committee meetings conducted		
10. High Risk Workshops (HRW) conducted		
11. Near misses		
12. SafeWork NSW Inspections		
13. Number of notifications to SafeWork		
14. Improvement Notices or fines from SafeWork		
15. Total recordable injury frequency rate (**TRIFR)** [(Total fatalities, LTI's, MTI's x 1 ,000,000)/total hours worked] (2 decimal places)		
16. Lost time injury frequency rate (**LTIFR)** (Total LTI's x 1,000,000)/total hours worked) (2 decimal places)		

Implementation of *Internal Reviews*

Details of internal reviews, including audits and inspections, undertaken to verify that on-site WHS processes and practices conform with the WHS Management Plan including:

- System element(s) and activities audited and/or reviewed
- Non-conformance(s), improvement(s) identified and corrective action(s) taken
- Details of auditors and reviewers and dates and durations of audits and reviews
- Copies of third party audit reports and details of the Contractor's responses to the reports.

Incident Reports

Ensure compliance with the notification and other requirements of the *Work Health and Safety Act 2011* (NSW) sections 35-39 for any notifiable incident, including immediate notification to SafeWork NSW.

Notify the Principal of any notifiable incident and any incident requiring medical treatment or involving lost time as soon as possible after the incident.

Provide a written report to the Principal within twenty-four hours after the incident, giving details of the incident and evidence that requirements of the *Work Health and Safety Act 2011* (NSW) have been met.

When requested, provide to the Principal a detailed Incident Cause Analysis Method (ICAM) investigation report (or a Principal-approved investigative methodology), including identification of the root cause of the incident and corrective actions taken, in the form directed.

Prohibition, Improvement, Non-disturbance and Penalty Notices

Immediately notify the Principal of any Prohibition, Improvement, Non-disturbance or Penalty Notice issued by SafeWork NSW for any work under the Contract. Provide the Principal with a copy of the Notice and written details of the corrective action taken by the Contractor and/or the applicable Subcontractor to rectify the breach and to prevent recurrence.

Electrical work

In compliance with clauses 154-156 of the *Work Health and Safety Regulation 2017* (NSW), ensure that electrical work is not carried out on electrical equipment while the equipment is energised, except when, in accordance with clauses 157–162 of the *Work Health and Safety Regulation 2017* (NSW), it is necessary in the interests of health and safety that the electrical work be carried out on the equipment while the equipment is energised.

At the completion of electrical work, provide a *Certificate of Compliance – Electrical Work* (CCEW) signed by a licensed electrician, setting out details of the installation work that has been carried out and confirming that the work complies with AS/NZS 3000 and is suitable for its intended use. The provision of the CCEW is a condition of achieving *Completion* of the relevant *Milestone* or the Works, as applicable.

Formwork

Comply with the relevant *Statutory Requirements*, standards, codes and guidelines in respect of the design, construction and use of formwork, including but not limited to:

- AS 3610-1995 *Formwork for Concrete;* and
- SafeWork NSW *Formwork Code of Practice*.

Ensure that, for both horizontal and vertical formwork, before a concrete pour where:

- the formwork surface is 3 metres or more above the lowest surrounding ground; or
- the area of the formwork surface is 16 square metres or greater,

an independent structural engineer, inspects and certifies that the formwork meets design specifications and complies with AS 3610–1995 *Formwork for Concrete*. The scope of any certification work must be documented to show what has been inspected and certified.

'Structural engineer' means a person qualified for member grade of the Australian Institution of Engineers having not less than 4 years professional engineering experience in the design of structures and formwork.

The engineer must not have a conflict of interest as defined in section 29 of the Building and Development Certifiers Act 2018.

Include the inspection and certification as actions in Safe Work Method Statements for the erection and use of formwork and as Hold points in the Contractor's and subcontractors' Inspection and Test Plans.

Submit formwork certification before commencing the use of the formwork. Do not use the formwork before this certification is submitted.

Scaffolding

To the extent that scaffolding is required for the purposes of the Works, the Contractor must (within 5 *Business Days* of the scaffolding being installed, whether in stages or whole) provide the Principal with certification from an independent and reputable engineer as to the following:

- the scaffolding design (including hoarding design) satisfies the requirements of the Contract for this particular project, including relevant *Statutory Requirements*, the NCC / BCA and Australian Standards;
- that the scaffold designer / certifier has adopted the appropriate wind region and terrain category, and this has been validated by the project's structural engineer; and
- the scaffolding as installed complies with this design, with the installation complying with the relevant *Statutory Requirements*, BCA and Australian Standards.

Any signage related to hoardings and scaffolding is to be in accordance with Preliminaries clause 5.10.

Failure to Comply

If at any time the Contractor has not carried out its obligations under the Contract in relation to work health and safety management, then notwithstanding any other provisions of the Contract, no payment will be due to the Contractor until the seventh (7th) day after the required action has been carried out.

5.6 Hazardous substances discovered unexpectedly on the Site

Definition

'**Hazardous substances'** are substances, whether solid, liquid or gas, that may cause harm to a person's health. They include chemicals listed in the Hazardous Chemical Information System (HCIS) documentation published by Safe Work Australia, restricted substances referenced in the NSW Work, Health and Safety Regulation (2017) and substances designated by their manufacturer or other authorities as hazardous.

Asbestos, material containing asbestos, polychlorinated biphenyl (PCB) and lead based paints are hazardous substances. For the purposes of this clause, these substances are referred to as 'Nominated Hazardous Substances'.

Other substances in certain situations are also considered hazardous and therefore require controlled handling in accordance with *Statutory Requirements*. Examples are glues, solvents, cleaning agents, paints, water treatment chemicals and materials containing silica.

Response to unexpected discovery

The requirements of this clause apply when a Nominated Hazardous Substance whose presence is not identified in the *Contract Documents* is discovered unexpectedly on the Site. General Conditions of Contract clause 37**– Site Conditions** does not apply.

If any Nominated Hazardous Substance is discovered unexpectedly on the Site, suspend all work that may result in exposure to the substance and notify the Principal immediately of the type of substance and its location. The suspension shall be deemed to be a suspension by the Principal under General Conditions of Contract clause 53 **– Principal's suspension** to the extent that it was required to prevent such exposure.

With the initial notification, or otherwise within 1 *Business Day* of discovery, submit details, to the extent available, including:

- the additional work and resources the Contractor estimates will be necessary to deal with the Nominated Hazardous Substance so that work and subsequent use of the Works may proceed safely and without risk to health;
- the Contractor's estimate of the cost of the measures necessary to deal with the Nominated Hazardous Substance;
- the Contractor's estimate of the anticipated effect on *Contractual Completion Dates*; and
- other details reasonably required by the Principal.

In planning and carrying out any work dealing with the Nominated Hazardous Substance, the Contractor must take all reasonable steps to:

- carry out the work concurrently with other work wherever possible; and
- otherwise minimise the effects of the work on the *Contractual Completion Date(s)*.

Control and decontamination

When notified that a Nominated Hazardous Substance has been discovered unexpectedly on the Site, the Principal may:

- suspend the whole or any part of the work, in accordance with General Conditions of Contract clause - **Principal's suspension**, until the substance is isolated or removed; or
- instruct the Contractor to take responsibility for the control of the Nominated Hazardous Substance and decontamination of the Site, and treat any necessary additional work as a *Variation*.

Where required, under the Contract or following an instruction from the Principal, to take responsibility for the control of hazardous substances and decontamination of the Site, handle, use, isolate, remove and dispose of such substances in accordance with *Statutory Requirements.*

The Environment Protection Authority or Waste Service NSW may advise suitable disposal sites.

Importing material onto the Site

The Contractor must ensure that imported *Materials* brought onto the Site, including fill material, is accompanied by a clearance certificate provided by the Supplier. The Contractor shall undertake and provide the *Principal's Authorised Person* with further testing (conducted by an independent party) when such imported *Materials* arrive on Site (and before using or incorporation into the Works) to verify that such *Materials* are free of hazardous substances (including Nominated Hazardous Substances).

Working Hours

When required to decontaminate occupied Sites containing hazardous substances, all such decontamination must be carried out outside normal hours of occupation unless otherwise approved in writing by the Principal.

5.7 Asbestos removal

Requirement

Comply with the relevant *Statutory Requirements*, standards, codes and guidelines in respect of any asbestos removal work, including but not limited to:

- SafeWork NSW requirements
- SafeWork NSW Code of Practice *How to manage and control asbestos in the workplace*
- SafeWork NSW Code of Practice *How to safely remove asbestos*
- SafeWork NSW *Managing Asbestos in or on Soil*
- *NSW Work, Health and Safety Regulation (2017)*

Comply with the requirements of any Asbestos Management Plan that applies to the Site or the building where removal is taking place.

Notification and Permit

Not less than 7 days prior to starting any asbestos removal work, notify the Principal of the intention to carry out that work. Provide a copy of the asbestos removal contractor's licence and a copy of any permit required for the work.

Monitoring

For all friable asbestos removal and for non-friable asbestos removal in occupied areas, provide air monitoring by an independent, licensed asbestos assessor:

- on each day during asbestos removal, immediately before asbestos removal work starts; and

- on completion of each area where removal has been undertaken.

Clearance Certificate

Submit to the Principal a clearance certificate from an independent licensed asbestos assessor at the completion of the asbestos removal work.

[redacted]

5.9 Temporary services provided by the Principal

The Contractor may use available services at the site, after arranging for any services diversion, reinstatement or other works required, including temporary, to maintain services operation to the facility.

Temporary Services to be used by the Contractor must be separately metered and consumption recorded and notified monthly in a form acceptable to the Principal,

with each payment claim, The Principal will seek direct reimbursement of actual costs for services consumed. Charges must be paid promptly and separately by the Contractor.

Remove any temporary metering and make good prior to Completion.

5.10 Signboard/ Signage

All full height hoarding signage is to be the design of the Principal and shall be installed on the outside face of the hoarding that surrounds the construction zone. The Principal requires the Contractor to arrange and pay for the production, installation, maintenance and cleaning of appropriately robust heavy duty mesh signage.

The Principal shall provide the Contractor with an electronic design file of the signage design and the Contractor will use that design in the manufacture and installation of the heavy duty mesh signage. If the signage is damaged, the Contractor shall replace the damaged signage with new matching signage as directed by the Principal. The signage will remain in place for the duration of the hoarding being in position.

Generally, the Contractor must first obtain the Principal's written consent before erecting or installing any signage or branding on or around the Site, any fencing horading or scaffolding, any cranes or machinery used and/ or generally on or around the Site.

The Contractor must provide an image reflecting the signage or branding to be erected or installed including all relevant details including dimensions and the intended location of the signage or branding to enable the Principal to assess the impact of the signage or branding.

The Principal will provide a written response to the Contractor within 5 Business Days confirming whether or not the Principal consents to the Contractor erecting the relevant

signage or branding. The Principal may grant or withhold its consent to signage or branding in its absolute discretion.

If approved, the Contractor must erect or install the signage or branding as approved and must not make any significant changes to that signage or branding without the written consent of the Principal. The Contractor must keep all such signage or branding at all times to a high standard of maintenance.

All signage as required for safe operations of the site and as necessary to comply with relevant acts, legislation and codes is to be provided by the Contractor.

5.11 Site Compound

Establish a Site compound suitable for the carrying out of the Works. The position and size of the compound shall be as agreed in consultation with the *Principal's Authorised Person*.

Ensure the compound is, as a minimum:

- Suitably enclosed with wheeled gates, and temporary fencing, including hoardings around the Skylight voids, Nawi Cove Entry and entry into the Cutaway loading dock as required.
- Integrated display of the Contractor's details, including afterhours contacts, site safety requirements, and kept clean and tidy at all times; and
- Locked when not in use.

Also ensure the personnel compound :

- Includes a site visitors register, to be made available to the *Principal's Authorised Person* on request;
- Includes overhead protection from falling objects; and
- Does not unnecessarily disturb the amenity or landscaped areas of the Barangaroo Reserve.

Return the compound area to its condition at the *Date of Contract* at the *Completion* of the Works.

5.12 Temporary Works, Bracing, Hoardings, Fences and Gantries

The Contractor must:

- Supply details of the systems to be utilised in the management of *Temporary Works*. This must include details of how *Temporary Works* will be designed, procured, erected, certified, maintained, inspected and removed from the Site;
- Pay all fees, obtain all permits and provide and maintain all necessary Site hoardings, temporary fences, gantries, dust screens and safety rails required for the duration of the Works to give adequate protection to the public, the Principal's personnel or persons legally permitted on the Site or in or about the vicinity of the Works;
- Include areas of storage, unloading of materials, hoisting and provide any necessary lighting;
- Include all costs associated with relocating, altering and adapting hoardings or fencing to suit the program of the Works;
- Obtain the necessary consents for hoardings or fences as required, pay all fees and charges, and construct hoardings in accordance with the requirements of the Principal, *Statutory Requirements* and appropriate authorities;
- Undertake all negotiations and obtain all agreements and approvals, relating to any *Temporary Works* required to complete the Works. Such *Temporary Works* include, but are not limited to:
    - ground anchors
    - tower crane approvals from neighbouring properties
    - tower crane approvals from aviation authorities.
- Undertake a regular maintenance review of all perimeter hoardings and fences. In addition, the Contractor is required to repair, re-work or replace such hoardings and fences as required or where requested by the Principal; and

- Remove, within 48 hours, any graffiti and or bill posters on the hoardings, fences and gantries.

5.13 Barriers and Barricades

The Contractor must provide and maintain appropriate barricades, guards, signs and adequate lighting at the Site (or for the purposes of the Works) for the protection of the public, residents, staff, students and others.

The Contractor must remove these items when no longer required. Barricades and guards shall be arranged to maintain access for pedestrians as appropriate.

5.14 Progressive Cleaning and Rubbish Removal

The Contractor must at all times:

- Keep the Site and the Works clean and tidy including all access roads and pathways;
- Restrict mud and dust getting on and spreading onto the public roads and Barangaroo Reserve pathways;
- Regularly clean public roads as required when conditions require it and/or at the request of any authority;
- Ensure the clean and orderly performance of the Works and shall make full provision for progressive sweeping up, clean up and the daily removal of rubbish, debris, surplus materials and the like, including those of every Subcontractor or Consultant and for the tidy disposal, stacking and storing of materials;
- Implement a system of recycling with records kept on an on-going basis for the period of the Works (refer to obligations set out in section 6 of Preliminaries); and
- Undertake regular cleaning of any construction traffic access roads and connections to private and public road networks.

5.15 Dust, Mud, Vibration and Noise Control

The Contractor must take all reasonable precautions to avoid nuisance or trespass of any nature to any surrounding or adjoining areas to the Site, as a result of undertaking the Works, including by way of dust, mud, debris, noise, obstruction, vibration, or by its employees, agents, Subcontractors or visitors or any other cause.

The Contractor must utilise reasonable methods (having regard to the use and operation of any existing educational facilities in close proximity to the Site) of noise and dust suppression on all compressors, jack-hammers and other machinery of whatsoever description to ensure that the noise and dust levels emanating from the Site during the Works are minimised.

Without limiting these requirements, the Contractor shall comply with all relevant codes and shall also erect screens (both visual and acoustic) or take other reasonably necessary preventative measures to prevent noise, dust and damage to surrounding or adjoining properties (public and private) and shall arrange for the programming of the Works so as to avoid or minimise any such issues occurring.

The Contractor shall comply with all instructions given by the Principal or any *Statutory Requirements* whether in regard to matters of noise or dust.

If noise, dust or mud (or any other issues the subject of this clause) interfere with normal educational operations, surrounding or adjoining areas to the Site or the use of roadways, the progress of the Works (or any part thereof) will be suspended until such time as the Contractor rectifies or implements a more appropriate work method to address these issues. The Contractor shall not be entitled to make a *Claim* or seek any compensation on account of any such suspension, including extensions of time or delay or disruption costs.

5.16 Security of Works

The Contractor must, for the duration of the Works until such time as Completion is achieved and Works handed over:

- Maintain security, both physical and electronic, of the Site and Works;
- Comply with any direction given in relation to the Principal's security requirements for the Site and Works, and ensure that its employees, agents and subcontractors also comply with any such direction;

- Take all proper and adequate precautions to prevent access by unauthorised persons to the Site and Works, to prevent all thefts, trespass and vandalism;
- Immediately replace and make good any loss and/or damage from theft, trespass and/or vandalism occurring to the Site and Works, by reason of the Contractor not complying with its obligations under this clause; and
- Maintain, and erect all required barricades / fences, to prevent injury in the event that Site access is gained by an unauthorised person outside working hours.

5.17 Other site requirements

Site Accommodation

The Contractor shall provide all necessary accommodation for its operations, employees and Subcontractors.

Temporary Site accommodation is to include suitable all-weather pathways between Site accommodation sheds / buildings, site entry and key work areas and introduce measures as necessary to minimise the tracking of mud and dirt into Site accommodation and work areas.

The Contractor is to keep Site accommodation clean, tidy and presentable (both internally and externally) at all times.

Tools Plant and Equipment

The Contractor must supply all tools, plant and equipment, together with trained and certified operators as appropriate, and as are necessary for the execution of the Works.

Removal of Temporary works, Construction Plant and Materials

Prior to *Completion*, the Contractor must remove all *Temporary Works*, plant, equipment, temporary offices and structures and disconnect temporary services including sanitary conveniences, mess rooms, sheds, hoarding, protective covers and coatings and the like, unless otherwise instructed.

Cameras

There are a number of existing surveillance cameras installed within the Barangaroo precinct. The Contractor is required, at its own expense, to install one or more additional time lapse cameras inside the Cutaway to capture all stages of the Works. The location is to be agreed with the Principal. All rights to the time lapse film are to be the Principal's.

[redacted]

[redacted]

[redacted]

[redacted]

6 Environmental protection

6.1 Environmental management

Environmental Management Plan

Develop and implement an Environmental Management Plan that complies with the current NSW Government *Environmental Management Guidelines (Construction procurement) (Edition 4) (EM Guidelines)*. The *EM Guidelines* are available on the Buy.nsw website at: https://buy.nsw.gov.au/categories/construction.

The Environmental Management Plan must address the following risks:

- Noise and vibration
- Dust supression and air monitoring
- Waste management and disposal
- Protection of existing vegetation
- Erosion control
- Stormwater runoff
- Waterways

This list of risks is not exhaustive and must not be relied upon by the Contractor. Undertake a detailed analysis of all environmental risks under the Contract.

Submit the Environmental Management Plan to the Principal within the time stated in Contract Information item 15D, together with *Appendix B – Environmental Management Plan Review Checklist* from the *EM Guidelines,* completed and signed by the Contractor.

Completion of the checklist provides a valuable check of the Contractor's Environmental Management Plan.

Environmental Management Monthly Report

No later than the fifth (5th) *Business Day* of each month submit an Environmental Management Monthly Report, signed by the Contractor's representative and including the information specified below, as evidence of implementation of the Environmental Management Plan.

Contract Details:

- Contract name
- Contractor
- Contractor's Representative
- signature and date
- period covered

Implementation of environmental management - details of:

- environmental risks and opportunities
- significant environmental impacts

- environmental objectives, targets and measures of performance (where practical)
- management actions, including environmental controls, training, inspections and testing

Implementation of *incident management*, including *emergency response* - details of:

- environmental incidents or emergencies
- non-compliance with environmental procedures and near misses
- implementation of incident and emergency response management
- implementation of corrective action.

Implementation of reviews - details of internal reviews, audits and inspections undertaken to verify that on-Site environmental processes and practices conform with the Environmental Management Plan, including:

- monitoring, measurement, evaluation and review of activities;
- the consequences of non-conformances;
- investigation, analysis, evaluation and follow-up verification; and
- corrective and preventive action taken.

Incident reports

Ensure compliance with the notification and other requirements of the *Protection of the Environment Operations Act 1997* (NSW) *(POEO Act).*

Immediately notify the Principal of any pollution incident that may cause material harm to the environment, providing evidence that notification requirements of the POEO Act have been met, where applicable.

Report immediately the details of any waste removed from the Site and not disposed of at a lawful facility.

When requested, provide an incident investigation report, including identification of the cause of the incident and corrective actions taken, in the form directed.

Failure to comply

If at any time the Contractor has not carried out its environmental management obligations under the Contract, then notwithstanding any other provisions of the Contract, no payment is due to the Contractor until the seventh (7th) day after the required action has been carried out.

6.2 Ecologically sustainable development

Requirement

Apply strategies to maximise the achievement of ecologically sustainable development in the design, construction and operation of the Works, including reducing pollutants, greenhouse gas emissions and demand on non-renewable resources such as energy sources and water.

Incorporate applicable strategies and objectives in the Environmental Management Plan.

Restricted timbers

Do not use the following timbers or their products for work under the Contract:

- rainforest timbers, unless certification is provided that they are plantation grown;
- timber from Australian high conservation forests.

6.3 Waste management

Requirement

Implement waste minimisation and management measures, including:

- recycling and diverting from landfill surplus soil, rock, and other excavated or demolition materials, wherever practical;
- separately collecting and streaming quantities of waste concrete, bricks, blocks, timber, metals, plasterboard, paper and packaging, glass and plastics, and offering them for recycling where practical.

Ensure that no waste from the Site is conveyed to or deposited at any place that cannot lawfully be used as a waste facility for that waste.

Monitoring

Monitor and record the volumes of waste and the methods and locations of disposal.

Submit a progress report no later than the fifth (5th) *Business Day* of every second month and a summary report before *Completion* of the Works, addressing the checklist factors/ questions in tables 1 to 5 in Section 3 *Management of waste on construction and demolition projects* of the EPA '*Construction and demolition waste'* toolkit available at: https://www.epa.nsw.gov.au/your-environment/waste/industrial-waste/construction-demolition

Note that the provision of the waste management summary report is a condition of achieving *Completion.*

Submit, with the progress and summary report, the waste disposal certificates and/or company certification confirming appropriate, lawful disposal of waste.

6.4 Pest control

Do not use any chemical pesticides or termicides for new construction work. Use preventive treatment by physical means to minimise the risk of pest infestations.

Chemical treatments may be used in existing buildings only as a last resort for the eradication of pest and termite infestations. Chemical pesticides used for this purpose must be registered by the Australian Pesticides and Veterinary Medicines Authority and applied by a Pest Control Operator licensed by SafeWork NSW or the NSW Environment Protection Authority.

Pest preventive methods must comply with AS 3660.1-2014 *Termite management – New building work* (except for references to chemical soil barriers), as well as supplementary standards for existing buildings.

7 Materials and workmanship

7.1 Standards

Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code shall be the one current at the closing date for tenders.

Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.

7.2 Cleaning up

Make good the Site and surroundings and ensure:

- all visible external and internal surfaces, including fittings, fixtures and equipment, are free of marks, dirt, dust, vermin;
- unwanted materials, temporary works and debris are removed; and
- unless otherwise agreed, the Contractor's plant, equipment and temporary construction facilities are removed,

prior to Completion.

Cleaning must be of a professional standard appropriate for operation of the facility.

The Contractor is expected to undertake a comprehensive clean of the existing sandstone wall as part of the cleaning works prior to Completion.

7.3 Samples

Match any approved samples throughout the Works. Do not commence work that requires approval of samples until the samples have been approved. Keep approved samples in good condition on the Site until *Completion*.

Samples required for approval are listed in the Technical Specifications.

7.4 Testing

Independent Testing Authority

Ensure that any testing required to be by an independent authority is carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

7.5 Proprietary items

Identification by the Principal of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

An alternative may be offered to any proprietary item. Apply in writing for approval to use the alternative. Provide details, including sufficient technical information, to describe how, if at all, the alternative differs from the proprietary item and how it would affect other parts of the Works, including performance and operation.

Except to the extent that the approval, if any, of the Principal includes a contrary provision, the approval is deemed to include the conditions that:

- use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- the Contractor must indemnify the Principal against any increase in costs;
- use of the alternative must not directly or indirectly cause any delay to the Works and if it does, the Contractor will compensate the Principal for any loss which the delay causes.

7.6 Items supplied by the Principal

Generally

The items in the Preliminaries schedule - **Schedule of Principal Supplied Items** will be supplied free to the Contractor for incorporation into the Works.

Take delivery, unload and inspect the items for *Defects*. Notify the Principal if the items are defective or unsuitable for the proposed use. Provide storage suitable to maintain the condition of the items until incorporated into the Works. Record the storage location on the delivery documents and submit copies of the delivery documents to the Principal. Notify the Principal if items are not delivered 5 *Business Days* before they are due to be incorporated into the Works or if items are lost from storage. Return unused items to the Principal.

Responsibility

If, in the opinion of the Principal, any damage to items supplied was due to *Defects* existing at the time of receipt, but not discoverable upon reasonable inspection, the Contractor shall not be held responsible for such damage. Refer also to General Conditions of Contract clause 50 - **Changes to Contractual Completion Dates** with respect to the Contractor's obligation to avoid delay.

7.7 Plant and equipment details

Undertake all necessary plant and equipment registrations with authorities including but not limited to SafeWork NSW. The Contractor is to provide a copy to the Principal for review prior to submission. All registrations are to be completed prior to *Completion*.

8 Schedules to Preliminaries

8.1 Schedule of Samples for Approval

Requirement

Samples are required for the following items:

- Refer to Technical Specifications.

[redacted]

[redacted]

[redacted]

END OF SECTION – PRELIMINARIES

Schedule 28 – Principal's Documents

[redacted]

Schedule 29 – COVID-19 Management Plan

Refer to clause 54A of the General Conditions of Contract

[redacted]

Schedule 30 – Contract Price Schedule

Refer Contract Information item 39 of the General Conditions of Contract

[redacted]

[redacted]

Schedule 31 – Provisional Sums

[redacted]

[redacted]

[redacted]

Schedule 32 – FDC Qualifications, Departures and Clarifications

[redacted]

[redacted]

[redacted]

[redacted]

OFFICIAL

[redacted]

Schedule 33 – Principal's Project Requirements

Attachments

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

Attachment 1	**GC21 Start-up Workshop**
Attachment 2	**Performance Evaluation (Example)**
Attachment 2A	**Performance Evaluation**
Attachment 3	**Performance Evaluation Record**

Attachment 1 – The GC21 Start-up Workshop

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Attachment 1 is intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Agenda

The agenda should include:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose and, guidelines;
- review of the proposed workshop agenda;
- overview of the Contract;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- identification of key concerns and solutions;
- opportunities for innovation;
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the NSW Government Procurement System for Construction on the ProcurePoint website.

Attachment 2 – Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 1 and 2 provide a structure for evaluation and discussion

Attachment 2 indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds.

They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract. Use Attachment 2A on the next page to develop a Contract-specific Performance Evaluation form

Contract name: ……..
Contract number: ……..
Date: ……..

Rating system
5 excellent
4 above expectation
3 meeting expectation
2 below expectation
1 unsatisfactory

Topic	*Objectives*	*Your rating (this period)*	*Team rating (this period)*	*Main Issue & Agreed Action*
Communication	• *co-operation between parties* • *duty not to hinder performance* • *early warning* • *evaluation and monitoring*	❑	❑	
Time	• *issues affecting time* • *extensions of time* • *expected completion dates*	❑	❑	
Financial	• *issues affecting the budget* • *extra work* • *payments* • *additional information required*	❑	❑	
Quality	• *quality standards* • *design requirements* • *fitness for purpose, innovation* • *Faults, Defects rectification*	❑	❑	
Safety	• *issues affecting safety on the Site* • *safety outside the Site.* • *safety risks* • *safety equipment*	❑	❑	
Relationships	• *open discussion* • *actions effective* • *working together* • *attendance*	❑	❑	
Environment	• *issues affecting the environment* • *noise and dust issues* • *healthy environment* • *waste management,*	❑	❑	
Contract Relations	• *Subcontractor and Supplier issues* • *workplace relations and Site amenities* • *interaction of workers with others*	❑	❑	

- **IMPORTANT**: During each meeting, the evaluation team should decide on an action plan for items needing improvement.

Attachment 2A – Performance Evaluation

Insert in the form below topics that are important to the Contract.

Contract name: ……
Contract number: ……..
Date: ……..

Rating system
5 excellent
4 above expectation
3 meeting expectation
2 below expectation
1 unsatisfactory

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
		❑	❑	
		❑	❑	
		❑	❑	
		❑	❑	
		❑	❑	
		❑	❑	
		❑	❑	
		❑	❑	

Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for topics needing improvement.

Attachment 3 – Performance Evaluation Record

Insert the Contract-specific topics. Record the participants' ratings for each topic to illustrate trends in the Team's performance.

Contract name: ……………………..
Contract number: ……………………..
Date: ……………………..

Rating system
5 excellent
4 above expectation
3 meeting expectation
2 below expectation
1 unsatisfactory

Meeting	Number	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
	Month												
	Year												

TOPIC													
Communication	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												
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	1												
	2												
	3												
	4												
	5												

Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

Contract name: …….
Contract number: …….
Date: ……

Rating system
5 excellent
4 above expectation
3 meeting expectation
2 below expectation
1 unsatisfactory

Meeting	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*
number												
month												
year												

Deteriorating Performance

Communication													
	5												
	4												
	3												
	2												
	1												

Steady Performance

Communication													
	5												
	4												
	3												
	2												
	1												

Improving Performance

Communication													
	5												
	4												
	3												
	2												
	1												