

Major Works Contract – [insert relevant procurement model e.g. Design and Construct]

[Insert Project name]

ABN [insert ABN] (Principal)

[insert Contractor entity]

ABN [insert ABN] (Contractor)

Major Works Contract

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Formal Instrument of Agreement

Date of Contract

Parties

Name

ABN

Short form name

Principal

Notice details

[address]

Phone: [insert relevant office/general phone number]

Email: [insert Contract Manager email]

Attention: [insert Senior Manager or Contract Manager name and role/title]

Name

[insert Contractor entity]

ABN

[insert ABN]

Short form name

Contractor

Notice details

[insert office/street address]

Phone: [insert phone number]

Email: [insert email]

Attention: [insert Senior Manager or Contract Manager name]

Background

- A The Contractor must perform the WUC and all other obligations of the Contractor in accordance with the Major Works Contract.
- B The Principal must pay for the WUC and perform all other obligations of the Principal in accordance with the Major Works Contract.

1. Contract Documents

- (a) This Major Works Contract comprises:
- (i) this Formal Instrument of Agreement;
 - (ii) the Common Terms;
 - (iii) the applicable Additional Terms;
 - (iv) the Special Conditions (if any);
 - (v) the Contract Particulars (completed for the relevant Project Delivery Model); and
 - (vi) the completed schedules (except for the Contract Particulars, where a Schedule is a Pricing Reference Document or a Program).
- (b) In the event of any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the Major Works Contract, subject to clause 8.1 of the Common Terms, the order of precedence of the terms and conditions shall be as set out in this clause 1 with clauses 1(a)(i) being the highest precedence.

2. Security

2.1 Provision

- (a) Security must be provided by the Contractor to the Principal:
 - (i) in the amount set out in Item 5 of the Contract Particulars;
 - (ii) in the form set out in Item 6 of the Contract Particulars; and
 - (iii) within the time period specified in Item 7 of the Contract Particulars.
- (b) The Principal has a discretion to approve or disapprove the form of unconditional undertaking and the financial institution giving it or other form of Security offered.
- (c) Security is for the purpose of ensuring the due and proper performance of this Major Works Contract and to provide for the bearing of the risk of financial burden during the time of any unresolved dispute or difference.

2.2 Recourse to Security

- (a) The Principal may at any time, and from time to time, call on, convert non-cash Security into cash and have recourse to the cash proceeds of either cash or converted non-cash Security where:
 - (i) the Principal has a bona fide claim against the Contractor or has become entitled to exercise a right under the Major Works Contract in relation to the Security;
 - (ii) in order to satisfy any entitlement of the Principal to damages from the Contractor or any debts or other moneys due to the Principal from the Contractor; or
 - (iii) the Security is due to expire, provided that the Principal may only have recourse to the cash proceeds of the converted non-cash Security when it is entitled to have recourse to cash proceeds of the Security in accordance with clause 2.2(a)(i) or 2.2(a)(ii).
- (b) Notwithstanding clause 2.5, if the Principal has purported to exercise its rights under clause 2.2(a) and it is subsequently determined that the Principal was not entitled to exercise those rights, the Contractor's sole remedy will be the return of the cash amount wrongfully obtained through the purported exercise by the Principal.

2.3 Principal to have the benefit of security

The Contractor must not take any steps, including the seeking of an injunction or other order of any court, to prevent the Principal from calling upon any Security or enjoying the benefit of any Security.

2.4 Reduction and release

- (a) On the date set out in Item 8 of the Contract Particulars, the Principal's entitlement to Security (other than Security provided in respect of any unfixed plant and materials) will be reduced by an amount equal to the lesser of:
 - (i) the amount of the First Bank Guarantee; or
 - (ii) an amount determined by the Superintendent to be reasonable to ensure that the Principal's interests are not prejudiced,and the reduction must be released and returned within 20 Business Days to the Contractor.
- (b) The Principal's entitlement to Security provided in respect of any unfixed plant and materials will cease 20 Business Days after incorporation into the Works of the plant and materials for which that Security was provided.
- (c) The Principal's entitlement otherwise to Security will cease 20 Business Days after:
 - (i) the period specified in Item 9 of the Contract Particulars; and

- (ii) the Contractor has:
 - (A) executed the Deed of Release in the required form; and
 - (B) complied with all of its obligations under this Major Works Contract.

2.5 Trusts and interest

The Principal:

- (a) is not obliged to pay the Contractor interest on:
 - (i) the Security;
 - (ii) the proceeds of the Security if it is converted into cash; or
 - (iii) any monies retained under clause 2.4; and
- (b) does not hold the proceeds or money referred to in clause 2.5(a) on trust for the Contractor.

2.6 Parent Company Guarantee

If specified in Item 10 of the Contract Particulars, the Contractor must provide a Parent Company Guarantee in the form set out in Schedule 10 duly executed and enforceable by it and its guarantor with 10 Business Days after the Date of Contract.

3. General

3.1 Defined terms

Words defined in the Common Terms have the same meaning in this Formal Instrument of Agreement.

3.2 Risk allocation

Despite anything to the contrary, as between the Principal and the Contractor, the Contractor bears all risks (whether or not identified at the Date of the Contract) and costs it incurs in performing the WUC and its obligations under the Major Works Contract, except to the extent the Major Works Contract expressly imposes that risk or cost on the Principal.

3.3 Entire agreement

The Major Works Contract contains the entire agreement and understanding between the parties in relation to the Works and supersedes any prior agreement or understanding on anything connected with that subject matter.

3.4 Variation

The Major Works Contract may only be varied with the agreement of both parties in writing.

3.5 Counterparts

- (a) This Major Works Contract may be executed in a number of counterparts or copies, with signatures appearing on different counterparts or copies, and this has the same effect as if the signatures on the counterparts or copies were on a single copy of this document.
- (b) Without limiting clause 3.5(a), if any of the signatures on behalf of one party are on different counterparts or copies of this Major Works Contract, this shall be taken to be, and have the same effect as, signature on the same counterpart and on a single copy of this Major Works Contract.
- (c) A party who has executed a counterpart of this Major Works Contract may exchange it with another party by registered post.

3.6 Contractor as trustee

If the Contractor enters into this Major Works Contract in its capacity as trustee of a trust, it represents and warrants to the Principal that:

- (a) it has full power and authority to execute this Major Works Contract and to perform its obligations under this Major Works Contract and it has, and will, at all times sign all documents constituting the trust to enter into and perform its obligations under this Major Works Contract;
- (b) the agreements in this Major Works Contract shall be binding on the party in its own right and in its capacity as trustee of the trust;
- (c) the party is the sole trustee of the trust;
- (d) no action has been taken or proposed to remove it as the trustee of the trust;
- (e) there are no restrictions on its rights to be indemnified out of the assets of the trust, except where the party acts fraudulently;
- (f) its rights of indemnity as trustee of the trust have not been limited in any way by any breach of trust or the trust deed;
- (g) it will not do anything to prejudice its rights of indemnity as trustee for the trust; and
- (h) it will exercise all rights of indemnity which, as trustee, it possesses in relation to the assets of the trust at the request of any other party.

3.7 Electronic execution

The parties agree that:

- (a) a party may execute this Major Works Contract by electronically signing a soft copy of this Major Works Contract, and the parties intend to bind themselves accordingly (including through their electronic signature appearing in the document);
- (b) this will be taken to satisfy any statutory or other requirements for this Major Works Contract to be in writing and signed by that party;
- (c) any soft copy of this Major Works Contract so signed will constitute an executed original counterpart, and any print-out of the copy with the relevant signatures appearing will also constitute an executed original counterpart; and
- (d) where a party prints out this Major Works Contract after all parties that are signing electronically have done so, the first print-out by that party after all signatories who are signing through electronic means will also be an executed original counterpart of this document. Each signatory confirms that their signature appearing in this Major Works Contract, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

3.8 Governing law and jurisdiction

The law in force in the State of Victoria governs this Major Works Contract and, to the extent permitted by law, all matters in connection with this Major Works Contract including any non-contractual matters. The parties submit to the non-exclusive jurisdiction of the courts of that place.

Execution page

EXECUTED as an agreement.

Executed by its authorised representative under Instrument of Delegation current at the time of signing:

Signature of authorised representative

Name of authorised representative in full

Position of authorised representative

Date

Executed by **[insert Contractor entity]** (ABN **[insert]**) in accordance with section 127 of the *Corporations Act 2001* (Cth) by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director

Name of Director in full

Signed by **#Name of signatory#** as attorney for **[insert Contractor name]** under power of attorney dated **[date of power of attorney]** in the presence of

Signature of witness

Name of witness (print)

Signature of **#name of signatory#**

Schedule 1 – Contract Particulars

Project	[insert]
1. Project Number	[insert]
2. Project Delivery Model (clause 1.1 of the Common Terms)	Construct Only model ☐ Design and Construct model ☐ Equipment Supply (with optional install) model ☐ Material Supply model ☐ Renewal Works model ☐
3. Special Conditions (clause 1 of the Formal Instrument of Agreement)	☐ Yes – apply ☐ No – do not apply <i>If nothing stated, no Special Conditions apply</i>
4. Security (amount) (clause 2.1(a)(i) of the Formal Instrument of Agreement)	[Construct Only or Design and Construct]: See Item 59. of the Contract Particulars] [Renewal Works]: See Item 35D of the Contract Particulars and Item 59 of the Renewal Works Order Contract Particulars (if applicable)] [Equipment Supply (with optional install)]: [X]% of the Contract Sum] [Material Supply]: [X]% of the Contract Sum]
5. Security (form) (clause 2.1(a)(ii) of the Formal Instrument of Agreement)	[Construct Only or Design and Construct]: See Item 60 of the Contract Particulars] [Renewal Works]: See Item 35E of the Contract Particulars and Item 60 of the Renewal Works Order Contract Particulars (if applicable)] [Equipment Supply (with optional install)]: [Two unconditional bank guarantees in the form set out in Schedule 9 or as otherwise approved by the Principal, each in the amount of X% of the amount set out in Item 5 of the Contract Particulars] [Material Supply]: [Two unconditional bank guarantees in the form set out in Schedule 9 or as otherwise approved by the Principal, each in the amount of X% of the amount set out in Item 5 of the Contract Particulars]
6. Security (timing) (clause 2.1(a)(iii) of the Formal Instrument of Agreement)	[Construct Only or Design and Construct]: See Item 61 of the Contract Particulars] [Renewal Works]: See Item 35F of the Contract Particulars and Item 61 of the Renewal Works Order Contract Particulars (if applicable)] [Equipment Supply (with optional install)]: Within 5 Business Days of the Date of Contract [Material Supply]: Within 5 Business Days of the Date of Contract
7. First date of release of Security (clause 2.4(a) of the Formal Instrument of Agreement)	[Construct Only or Design and Construct]: See Item 62 of the Contract Particulars] [Renewal Works]: See Item 35G of the Contract Particulars and Item 62 of the Renewal Works Order Contract Particulars (as applicable). [Equipment Supply (with optional install)]: Later of the achievement of Administrative Completion and the issue of the Certificate of Completion] [Material Supply]: Later of the achievement of Administrative Completion and the issue of the Certificate of Completion]
8. Final date of release of Security (clause 2.4(c) of the Formal Instrument of Agreement)	[Construct Only or Design and Construct]: See Item 63 of the Contract Particulars] [Renewal Works]: See Item 35H of the Contract Particulars and Item 63 of the Renewal Works Order Contract Particulars (if applicable)]

	[Equipment Supply (with optional install): On the expiry of the last Defects Liability Period] [Material Supply: On the expiry of the last Defects Liability Period]	
9. Parent Company Guarantee (clause 2.6 of the Formal Instrument of Agreement)	☐ Yes – a Parent Company Guarantee is required ☐ No – a Parent Company Guarantee is not required	
10. Superintendent (clause 1.1 of the Common Terms)	Name: [insert] Attention: [insert] Address: [insert] Email: [insert] Phone: [insert]	
11. Document Management System ((clause 1.1 of the Common Terms)	[insert applicable system e.g. Aconex, Content Manager] <i>If nothing is stated, no Document Management System</i>	
12. Contractor's Key Personnel (clause 1.1 of the Common Terms)	Person [insert] [insert]	Role [insert] [insert]
13. Principal-supplied documents (clause 8.2 of the Common Terms)	[Description of documents (if any) to be supplied by the Principal and number of copies] 1 x digital copy of the Project Requirements	
14. OH&S compliance (clause 12.5 of the Common Terms)	The Principal can engage a third party to review OH&S compliance. [Alternative 2: The Principal cannot engage a third party to review OH&S compliance.]	
15. Public liability insurance – alternative (clause 17 of the Common Terms)	Alternative 1 (Contractor) ☐ Alternative 2 (Principal) ☐	
16. Public liability insurance – detail (clause 17 of the Common Terms)	Amount: Not less than \$X per single occurrence. <i>Item 17 applies only if Alternative 1 applies in Item 16</i>	
17. Professional indemnity insurance – alternative (clause 18 of the Common Terms)	Alternative 1 (Required)..... ☐ Alternative 2 (Not required)..... ☐ <i>If nothing selected, and the Major Works Contract is a Design and Construct Contract, Alternative 1 applies.</i> <i>If nothing selected, and the Major Works Contract is a Construct Only Contract, Equipment Supply (with optional install) Contract or Material Supply Contract, Alternative 2 applies.</i>	
18. Professional indemnity insurance – detail (clause 18 of the Common Terms)	Amount: \$ X] <i>If nothing stated, \$X</i> Period: X years <i>Item 19 applies only if Alternative 1 applies in Item 18</i>	

	Categories of Consultants 	Minimum levels of cover <i>If nothing stated, \$X for each category</i>
	Period of cover for Consultants:	
19. Asbestos insurance (clause 19 of the Common Terms)	☐ Yes ☐ No If yes, amount: \$ <i>If nothing stated, \$X</i>	
20. Additional insurances to be taken out by the Contractor (clause 20 of the Common Terms)	☐ Property insurance on the Contractor's tools and equipment	Amount: \$ Period: At all times that the Contractor is performing the Works
	☐ Demolition insurance	Amount: \$ Period:
	☐ Equipment Supply (with optional install): Product Liability Insurance]	Amount: \$ Period:
	☐ Material Supply: Product Liability Insurance]	Amount: \$ Period:
	☐ e.g. Transit insurance]	Amount: \$ Period:
	<i>If nothing stated, no additional insurances required</i>	
21. Additional Qualifying Causes of Delay (clause 1.1 of the Common Terms)	"None" or [any additional Qualifying Causes of Delay specific to this project/procurement] <i>If nothing stated, there are no additional Qualifying Causes of Delay</i>	
22. Frequency of reporting (clause 33.8 of the Common Terms)	Monthly before the end of each calendar month and otherwise in accordance with Project Requirements.	
23. Additional reporting requirements (clause 33.8 of the Common Terms)	"In accordance with the additional reporting requirements (if any) specified in the Project Requirements" or [any additional reporting requirements specific to this project/procurement] <i>If nothing stated, this item is blank</i>	
24. The rate of interest on overdue payments (clause 38.8 of the Common Terms)	per cent per annum <i>If nothing stated, the interest at the rate set by the Attorney General under the Penalty Interest Rate Act 1983</i>	

25. Dispute Resolution Process (clauses 43.5 and 43.6 of the Common Terms)	☐ Expert Determination Option 1 (any dispute) ☐ Expert Determination Option 2 (only disputes which do not exceed the amount in Item 27 below) ☐ Arbitration
26. Threshold for a binding Expert Determination process (clause 43.5 of the Common Terms) <i>This Item 27 only applies if Expert Determination Option 2 is selected in Item 26</i>	Total value of claims is \$X <i>If nothing is stated, the threshold is \$X</i>
27. Does the Social Procurement Framework apply under this Major Works Contract? (clause 44 of the Common Terms) Which Social Procurement Framework / Building Equality Policy alternative applies? (clause 44A of the Common Terms)	☐ Yes ☐ Alternative 1: Social Procurement Framework without the Building Equality Policy ☐ Alternative 2: Social Procurement Framework plus the Building Equality Policy ☐ Alternative 3: Building Equality Policy only <i>If 'Yes' selected but no alternative is selected, then Alternative 2 applies.</i> ☐ No <i>If nothing stated, No is selected</i>
28. Frequency when Social Procurement Performance Reports and the Local Jobs First Policy reports are required (clause 44A.4 and 45.5 of the Common Terms)	 <i>To be advised by , otherwise if nothing stated, six monthly</i>
29A. Local Jobs First reporting – are six monthly reports required? (clause 45.5 of the Common Terms)	☐ Yes ☐ No <i>If nothing stated, Yes is selected</i>
29. Does the Local Jobs First Policy apply under this Major Works Contract? (clause (a) of the Common Terms)	☐ Yes ☐ No <i>If nothing stated, Yes is selected</i>
30. Payments to Tip Truck Owner Driver – adjustment to account for project specific requirements (clause 48.2(b)(v) of the Common Terms)	 <i>If nothing stated, No adjustment applies</i>
31. Does the Contractor Performance and Shared Reporting Regime apply under this Major Works Contract? (clause 49 of the Common Terms)	☐ Yes ☐ No <i>If nothing stated, Yes is selected</i>
	☐ Yes ☐ Alternative 1 ☐ Alternative 2 ☐ No

	<i>If nothing stated, No is selected</i>
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Construct Only or Design and Construct Contract Particulars

The following additional Contract Particulars apply if the Project Delivery Model is Construct Only or Design and Construct.

32. Commencement Date (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, the Date of Contract</i>						
33. Contract Sum (clause 1.1 of the Common Terms)	The Contract Sum is \$[insert] excluding GST but including Margin The following Provisional Sum Cost (Allowance) is included in the Contract Sum: <table border="1"> <thead> <tr> <th>Item</th><th>Amount (\$)</th></tr> </thead> <tbody> <tr> <td>[Insert Provisional Sum Work item]</td><td>[Insert allowance amount]</td></tr> <tr> <td></td><td></td></tr> </tbody> </table> <i>If nothing stated, no Provisional Sum Cost (Allowance) is included</i>	Item	Amount (\$)	[Insert Provisional Sum Work item]	[Insert allowance amount]		
Item	Amount (\$)						
[Insert Provisional Sum Work item]	[Insert allowance amount]						
34. Date for Completion or period of time for Completion (clause 1.1 of the Common Terms)	[Insert specific date or period of time or insert: [As set out in Schedule 15]]						
35. Additional Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
36. Date for Administrative Completion (clause 1.1 of the Common Terms)	X weeks after the Date of Completion						
37. Additional Administrative Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
38. Defects Liability Period (clause 1.1 of the Common Terms)	X months <i>If nothing stated, X months</i>						
39. Description of the Site and Site Plan (clause 1.1 of the Common Terms)	Site: [Insert [Site reference/details] or “Generally as shown on drawing number [insert reference]”] Site Plan: [Insert [Site Plan reference/details] or “As shown in Project Requirements”]						
40. OH&S Plan and Principal Contractor (clauses 12.3 and 12.4 of the Common Terms)	Is an OH&S Plan required? ☐ Yes ☐ No Principal Contractor Will the Contractor be the Principal Contractor for the WUC? ☐ Yes - Contractor accepts appointment as Principal Contractor ☐ No - Contractor is not Principal Contractor						

	<i>If nothing stated, an OH&S Plan is required and the Contractor is and accepts appointment as the Principal Contractor</i>
41. Time for giving access and preconditions for access (clause 26.1 of the Common Terms)	Time: [insert [details]] or "Within X Business Days after the Date of Contract" <i>If nothing stated, within C Business Days of the date from the Date of Contract.</i> Preconditions: The Contractor must have: (a) provided evidence of insurance in accordance with clause 21.1; (b) provided the Contractor's Management Plan which is an environmental and safety management plan in accordance with clause 26.6; (c) provided Security in accordance with clause 2 of the Formal Instrument of Agreement; and
42. Contractor's Management Plans (clause 26.6 of the Common Terms)	Are Contractor's Management Plans Required? ☐ Yes ☐ No <i>If nothing stated, Contractor's Management Plans are required</i>
45A. Design Management Plans (paragraph 1.9 of the Additional Terms) <i>This Item only applies if the WUC includes Design</i>	Is a Design Management Plan Required? ☐ Yes ☐ No <i>If nothing stated, a Design Management Plan is not required</i> Timing for providing a Draft Design Management Plans [insert] <i>If nothing stated, X Business Days after the Date of Contract</i>
43. Access hours for WUC (clause 26.3 of the Common Terms)	[insert [details]] or "In accordance with Project Requirements" <i>If nothing stated, X to X hours Monday to Friday (excluding any public holiday in Melbourne, Victoria)</i>
44. Initial Design (clause 1.1 of the Common Terms)	(a) Is an <i>Initial Design</i> included in the <i>Principal's Project Requirements</i>? ☐ Yes ☐ No <i>If neither selected, an initial design is not included (unless the Major Works Contract is a Design and Construct contract)</i> (b) The <i>Design Documents</i> for the <i>Initial Design</i> are included in Schedule 5. <i>If nothing selected, and the Major Works Contract is a Construct Only Contract, an Initial Design is not included.</i> <i>If nothing selected, and the Major Works Contract is a Design and Construct Contract, an Initial Design is included.</i>
45. Maximum inspection period for Principal Supplied Materials (clause 30.4(d) of the Common Terms)	[insert] Business Days] <i>If nothing stated, then X Business Days</i>

46. Reliance Information (clause 1.1 of the Common Terms)	[Insert details] <i>If nothing stated, no Reliance Information provided</i>	
47. Subcontracts that require approval (clause 9.2(b) of the Common Terms)	<i>Subcontract work or package</i> [Specify which works or packages. Alternatively insert: " All subcontracts " or " All, excluding [work, package or nominated subcontractor details] "	
48. Novation from Principal to Contractor (clause 9.4(b) of the Common Terms)	<i>Subcontractor or consultant as the case may be</i>	<i>Particular part of the initial design or selected subcontract work, as the case may be</i>
		
49. WUC or items for which collateral warranties are required (clause 9.6 of the Common Terms)	As set out in Schedule 13	
50. Other Contractors (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>	
51. Liquidated damages, Completion rate (clause 35.9(b)(iii) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
52. Liquidated damages, Administrative Completion rate (clause 35.9(b)(iv) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
53. Maximum Delay Costs (clause 35.10(c) of the Common Terms)	\$ [insert] per working day; and \$ [insert] in the aggregate	
54. Times for making payment claims (clause 38.1(a) of the Common Terms)	☐ Progressively on 20th day of each month for WUC done to the 20th day of that month ☐ On 20th day of the month after the completion of each milestone set out in Schedule 15	
55. Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works (clause 38.6(a) of the Common Terms)	[Insert details] or " Nil, unless stated in Project Requirements"]	
56. Security (amount) (clause 2.1(a)(i) of the Formal Instrument of Agreement)	☒ % of the Contract Sum OR [Each amount set out in Item 59A. of the Separable Portions table for each Separable Portion.]	

57. Security (form) (clause 2.1(a)(ii) of the Formal Instrument of Agreement)	[Two unconditional bank guarantees in the form set out in Schedule 9 or as otherwise approved by the Principal, each in the amount of X % of the amount set out in Item 59 of the Contract Particulars] OR [The form set out in Item 60A. of the Separable Portions for each Separable Portion.]
58. Security (timing) (clause 2.1(a)(iii) of the Formal Instrument of Agreement)	[Within X Business Days of the Date of Contract] OR [Within the time set out in Item 61A. of the Separable Portions table for each Separable Portion.]
59. First date of release of Security (clause 2.4(a) of the Formal Instrument of Agreement)	[Later of the achievement of Administrative Completion and the issue of the Certificate of Completion] OR The later of achievement of Administrative Completion of the last Separable Portion and the issue of the Certificate of Completion for the last Separable Portion OR The later of the achievement of Administrative Completion and the issue of the Certificate of Completion for each Separable Portion]
60. Final date of release of Security (clause 2.4(c) of the Formal Instrument of Agreement)	[On the expiry of the last Defects Liability Period] OR On the date set out in Item 62A of the Separable Portions table for each Separable Portion]

Separable Portions

Separable Portion	[Insert description]
37A Date for Completion or period of time for Completion (clause 1.1 of the Common Terms)	[[Insert specific date or period of time] OR insert " As set out in Schedule 15 "]
39A Date for Administrative Completion (clause 1.1 of the Common Terms)	X weeks after the Date of Completion
54A Liquidated damages, Completion rate (clause 35.9(b)(iii) of the Common Terms)	\$(insert) per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>
55A Liquidated damages, Administrative Completion rate (clause 35.9(b)(iv) of the Common Terms)	\$(insert) per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>
56A Maximum Delay Costs (clause 35.10(c) of the Common Terms)	\$ (insert) per working day \$ (insert) in the aggregate

59A. Security (amount) (clause 2.1(a)(i) of the Formal Instrument of Agreement)	[#]% of the Contract Sum
60A. Security (form) (clause 2.1(a)(ii) of the Formal Instrument of Agreement)	[insert]
61A. Security (timing) (clause 2.1(a)(iii) of the Formal Instrument of Agreement)	[insert]
62A. Final date of release of Security (clause 2.4(c) of the Formal Instrument of Agreement)	On the expiry of the last Defects Liability Period

Equipment Supply (with optional install) Contract Particulars

The following additional Contract Particulars apply if the Project Delivery Model is Equipment Supply (with optional install).

32A. Equipment (Paragraph 3 of the Additional Terms)	[Insert a brief description of the Equipment]						
32B. Installation	Is installation of the Equipment required? ☐ Yes ☐ No						
35. Commencement Date (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, the Date of Contract</i>						
36. Contract Sum (clause 1.1 of the Common Terms)	The Contract Sum is \$[insert] excluding GST but including Margin The following Provisional Sum Cost (Allowance) is included in the Contract Sum: <table border="1"> <thead> <tr> <th>Item</th> <th>Amount (\$)</th> </tr> </thead> <tbody> <tr> <td>[Insert Provisional Sum Work item]</td> <td>[Insert allowance amount]</td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table> <i>If nothing stated, no Provisional Sum Cost (Allowance) is included</i>	Item	Amount (\$)	[Insert Provisional Sum Work item]	[Insert allowance amount]		
Item	Amount (\$)						
[Insert Provisional Sum Work item]	[Insert allowance amount]						
37. Date for Completion or period of time for Completion (clause 1.1 of the Common Terms)	[[Insert specific date or period of time]OR [As set out in Schedule 15]]						
38. Additional Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
39. Date for Administrative Completion (clause 1.1 of the Common Terms)	X weeks after the Date of Completion						
40. Additional Administrative Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
41. Defects Liability Period (clause 1.1 of the Common Terms)	X months <i>If nothing stated, X months</i>						
42. Description of the Site and Site Plan (clause 1.1 of the Common Terms)	Site: [insert] Site Plan: [insert]						
43. OH&S Plan & Principal Contractor (clauses 12.3 and 12.4 of the Common Terms)	Is an OH&S Plan required? ☐ Yes ☐ No Principal Contractor						

	Will the Contractor be the Principal Contractor for the WUC? ☐ Yes - Contractor accepts appointment as Principal Contractor ☐ No - Contractor is not Principal Contractor <i>If nothing stated, an OH&S Plan is required and the Contractor is and accepts appointment as the Principal Contractor</i>
44. Time for giving access and preconditions for access (clause 26.1 of the Common Terms)	Time: [insert] <i>If nothing stated, within X Business Days of the date from the Date of Contract.</i> Preconditions: The Contractor must have: (a) provided evidence of insurance in accordance with clause 21.1; (b) provided the Contractor's Management Plan which is an environmental and safety management plan in accordance with clause 26.6; (c) provided Security in accordance with clause 2; and (d) [insert other preconditions as appropriate, or delete paragraph (d)]
45. Contractor's Management Plans (clause 26.6 of the Common Terms)	Are Contractor's Management Plans Required? ☐ Yes ☐ No <i>If nothing stated, Contractor's Management Plans are required</i>
46. Access hours for WUC (clause 26.3 of the Common Terms)	[Insert] <i>If nothing stated, X to X hours Monday to Friday (excluding any public holiday in Melbourne, Victoria)</i>
47. Initial design (clause 1.1 of the Common Terms)	(a) Is an <i>initial design</i> included? ☐ Yes ☐ No <i>in the Principal's project requirements.</i> <i>If neither selected, an initial design is not included</i> (b) The <i>initial design documents</i> are included in Schedule 5. <i>If nothing selected, and the Major Works Contract is a Construct Only Contract, an Initial Design is not included.</i> <i>If nothing selected, and the Major Works Contract is a Design and Construct Contract, an Initial Design is included.</i>
48. Maximum inspection period for Principal Supplied Materials (clause 30.4(d) of the Common Terms)	[Insert] <i>If nothing stated, the X Business Days</i>
49. Reliance Information (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, no Reliance Information provided</i>

50. Subcontracts that require approval (clause 9.2(b) of the Common Terms)	<i>Subcontract work or package</i>	
51. Novation from Principal to Contractor (clause 9.4(b) of the Common Terms)	<i>Subcontractor or consultant as the case may be</i>	Particular part of the <i>initial design or selected subcontract work</i> , as the case may be
		
52. WUC or items for which collateral warranties are required (clause 9.6 of the Common Terms)	As set out in Schedule 13	
53. Other Contractors (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>	
54. Liquidated damages, Completion rate (clause 35.9(b)(iii) of the Common Terms)	[\$Insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
55. Liquidated damages, Administrative Completion rate (clause 35.9(b)(iv) of the Common Terms)	[\$Insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
56. Maximum Delay Costs (clause 35.10(c) of the Common Terms)	[\$Insert] per working day	
57. Times for making payment claims (clause 38.1(a) of the Common Terms)	On 20th day of the month after the completion of each milestone set out in Schedule 15	

Material Supply Contract Particulars

The following additional Contract Particulars apply if the Project Delivery Model is Material Supply.

34A Material (paragraph 4 of the Additional Terms)	[Insert a brief description of the Material]						
35. Commencement Date (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, the Date of Contract</i>						
36. Contract Sum (clause 1.1 of the Common Terms)	The Contract Sum is \$[insert] excluding GST but including Margin The following Provisional Sum Cost (Allowance) is included in the Contract Sum: <table border="1"> <thead> <tr> <th>Item</th><th>Amount (\$)</th></tr> </thead> <tbody> <tr> <td>[Insert Provisional Sum Work item]</td><td>[Insert allowance amount]</td></tr> <tr> <td> </td><td> </td></tr> </tbody> </table> <i>If nothing stated, no Provisional Sum Cost (Allowance) is included</i>	Item	Amount (\$)	[Insert Provisional Sum Work item]	[Insert allowance amount]		
Item	Amount (\$)						
[Insert Provisional Sum Work item]	[Insert allowance amount]						
37. Date for Completion or period of time for Completion (clause 1.1 of the Common Terms)	[Insert specific date or period of time or insert: [As set out in Schedule 15 (Milestones)]]						
38. Additional Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
39. Date for Administrative Completion (clause 1.1 of the Common Terms)	Three weeks after the Date of Completion						
40. Additional Administrative Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
41. Defects Liability Period (clause 1.1 of the Common Terms)	X months <i>If nothing stated, X months</i>						
42. Description of the Site and Site Plan (clause 1.1 of the Common Terms)	Site: [insert] Site Plan: [insert]						
43. OH&S Plan and Principal Contractor (clauses 12.3 and 12.4 of the Common Terms)	Is an OH&S Plan required? ☐ Yes ☐ No Principal Contractor Will the Contractor be the Principal Contractor for the WUC? ☐ Yes - Contractor accepts appointment as Principal Contractor ☐ No - Contractor is not Principal Contractor						

	<i>If nothing stated, an OH&S Plan is required and the Contractor is and accepts appointment as the Principal Contractor</i>
44. Time for giving access and preconditions for access (clause 26.1 of the Common Terms)	Time: [insert] <i>If nothing stated, within X Business Days of the date from the Date of Contract.</i> Preconditions: The Contractor must have: (a) provided evidence of insurance in accordance with clause 21.1; (b) provided the Contractor's Management Plan which is an environmental and safety management plan in accordance with clause 26.6; (c) provided Security in accordance with clause 2; and (d) [insert other preconditions as appropriate, or delete paragraph (d)]
45. Contractor's Management Plans (clause 26.6 of the Common Terms)	Are Contractor's Management Plans Required? ☐ Yes ☐ No <i>If nothing stated, Contractor's Management Plans are required</i>
46. Access hours for WUC (clause 26.3 of the Common Terms)	[Insert] <i>If nothing stated, X to X hours Monday to Friday (excluding any public holiday in Melbourne, Victoria)</i>
47. Initial design (clause 1.1 of the Common Terms)	(a) Is an <i>initial design</i> included? ☐ Yes ☐ No <i>in the Principal's project requirements.</i> <i>If neither selected, an initial design is not included</i> (b) The <i>initial design documents</i> are included in Schedule 5. <i>If nothing selected, and the Major Works Contract is a Construct Only Contract, an Initial Design is not included.</i> <i>If nothing selected, and the Major Works Contract is a Design and Construct Contract, an Initial Design is included.</i>
48. Maximum inspection period for Principal Supplied Materials (clause 30.4(d) of the Common Terms)	[Insert] <i>If nothing stated, the X Business Days</i>
49. Reliance Information (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, no Reliance Information provided</i>
50. Subcontracts that require approval (clause 9.2(b) of the Common Terms)	<i>Subcontract work or package</i>

51. Novation from Principal to Contractor (clause 9.4(b) of the Common Terms)	Subcontractor or consultant as the case may be	Particular part of the <i>initial design</i> or <i>selected subcontract work</i> , as the case may be
		
		
		
		
52. WUC or items for which collateral warranties are required (clause 9.6 of the Common Terms)	As set out in Schedule 13	
53. Other Contractors (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>	
54. Liquidated damages, Completion rate (clause 35.9(b)(iii) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
55. Liquidated damages, Administrative Completion rate (clause 35.9(b)(iv) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
56. Maximum Delay Costs (clause 35.10(c) of the Common Terms)	[\$insert] per working day	
57. Times for making payment claims (clause 38.1(a) of the Common Terms)	On 20th day of the month after the completion of each milestone set out in Schedule 15	

Renewal Works Contract Particulars

The following additional Contract Particulars apply if the Project Delivery Model is Renewal Works.

35A. Initial Term (section 2.1 of Schedule 3 (Additional Terms))	[Insert] <i>If nothing stated, X years from the Date of Contract</i>
35B. Further Term (section 2.1 of Schedule 3 (Additional Terms))	[Insert] <i>If nothing stated, X months</i>
35C. Estimated First Year Value (section 2.1 of Schedule 3 (Additional Terms))	\$ [insert]
35D. Security (amount) (clause 2.1(a)(i) of the Formal Instrument of Agreement)	[X] % of the Estimated First Year Value]
35E. Security (form) (clause 2.1(a)(ii) of the Formal Instrument of Agreement)	[Two unconditional bank guarantees in the form set out in Schedule 9 or as otherwise approved by the Principal, each in the amount of X% of the amount set out in Item 35D5 of the Contract Particulars]
35F. Security (timing) (clause 2.1(a)(iii) of the Formal Instrument of Agreement)	[Within X Business Days of the Date of Contract]
35G. First date of release of Security (clause 2.4(a) of the Formal Instrument of Agreement)	[On expiry of the Term]
35H. Final date of release of Security (clause 2.4(c) of the Formal Instrument of Agreement)	[On expiry of the last Defects Liability Period under all Renewal Works Order Contracts]
35I. Initial design (clause 1.1 of the Common Terms)	(a) Is an <i>initial design</i> included in the <i>Principal's project requirements</i>? ☐ Yes ☐ No <i>If neither selected, an initial design is not included</i> (b) The <i>initial design documents</i> are included in Schedule 5. <i>If nothing selected, an Initial Design is not included.</i>

The template Renewal Works Order is Annexure A to these additional particulars.

Annexure A - Template Renewal Works Order

This is a renewal works order under the Major Works Contract between [Contractor] and [Principal] dated [insert date] (Major Works Contract).

Renewal Works Order Contract Particulars

Items 1 – 34 of this Renewal Works Order are specified in Schedule 1 of the Major Works Contract.

35. Commencement Date (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, the Date of Contract</i>						
36. Contract Sum (clause 1.1 of the Common Terms)	The Contract Sum is \$[insert] excluding GST but including Margin The following Provisional Sum Cost (Allowance) is included in the Contract Sum: <table border="1"> <thead> <tr> <th>Item</th><th>Amount (\$)</th></tr> </thead> <tbody> <tr> <td>[Insert Provisional Sum Work item]</td><td>[Insert allowance amount]</td></tr> <tr> <td> </td><td> </td></tr> </tbody> </table> <i>If nothing stated, no Provisional Sum Cost (Allowance) is included</i>	Item	Amount (\$)	[Insert Provisional Sum Work item]	[Insert allowance amount]		
Item	Amount (\$)						
[Insert Provisional Sum Work item]	[Insert allowance amount]						
37. Date for Completion or period of time for Completion (clause 1.1 of the Common Terms)	[[Insert specific date or period of time] or [As set out in Schedule 15]]						
38. Additional Completion requirements (clause 1.1 of the Common Terms)	[insert] <i>If nothing stated, this item is blank</i>						
39. Date for Administrative Completion (clause 1.1 of the Common Terms)	[Insert period] after the Date of Completion						
40. Additional Administrative Completion requirements (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>						
41. Defects Liability Period (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, 12 months</i>						
42. Description of the Site and Site Plan (clause 1.1 of the Common Terms)	Site: [insert] Site Plan: [insert]						
43. OH&S Plan and Principal Contractor (clauses 12.3 and 12.4 of the Common Terms)	Is an OH&S Plan required? ☐ Yes ☐ No Principal Contractor Will the Contractor be the Principal Contractor for the WUC? ☐ Yes - Contractor accepts appointment as Principal Contractor						

	☐ No - Contractor is not Principal Contractor <i>If nothing stated, an OH&S Plan is required and the Contractor is and accepts appointment as the Principal Contractor</i>
44. Time for giving access and preconditions for access (clause 26.1 of the Common Terms)	Time: [insert] <i>If nothing stated, within X Business Days of the date from the date the Principal executes the Renewal Works Order</i> Preconditions: The Contractor must have: (a) provided evidence of insurance in accordance with clause 21.1; (b) provided the Contractor's Management Plan which is an environmental and safety management plan in accordance with clause 26.6; (c) provided Security in accordance with clause 2; and (d) [insert other preconditions as appropriate, or delete paragraph (d)]
45. Contractor's Management Plans (clause 26.6 of the Common Terms)	Are Contractor's Management Plans Required? ☐ Yes ☐ No <i>If nothing stated, Contractor's Management Plans are required</i>
46. Access hours for WUC (clause 26.3 of the Common Terms)	[Insert] <i>If nothing stated, X to X hours Monday to Friday (excluding any public holiday in Melbourne, Victoria)</i>
47. Initial design (clause 1.1 of the Common Terms)	(a) Is an <i>initial design</i> included in the <i>Principal's project requirements</i> ? ☐ Yes ☐ No <i>If neither selected, an initial design is not included</i> (b) The <i>initial design documents</i> are included in Schedule 5. <i>If nothing selected, and the Major Works Contract is a Construct Only Contract, an Initial Design is not included.</i> <i>If nothing selected, and the Major Works Contract is a Design and Construct Contract, an Initial Design is included.</i>
48. Maximum inspection period for Principal Supplied Materials (clause 30.4(d) of the Common Terms)	[Insert] <i>If nothing stated, the X Business Days</i>
49. Reliance Information (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, no Reliance Information provided</i>

50. Subcontracts that require approval (clause 9.2(b) of the Common Terms)	<i>Subcontract work or package</i>	
51. Novation from Principal to Contractor (clause 9.4(b) of the Common Terms)	<i>Subcontractor or consultant as the case may be</i>	<i>Particular part of the initial design or selected subcontract work, as the case may be</i>
		
52. WUC or items for which collateral warranties are required (clause 9.6 of the Common Terms)	As set out in Schedule 13	
53. Other Contractors (clause 1.1 of the Common Terms)	[Insert] <i>If nothing stated, this item is blank</i>	
54. Liquidated damages, Completion rate (clause 35.9(b)(iii) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
55. Liquidated damages, Administrative Completion rate (clause 35.9(b)(iv) of the Common Terms)	[\$insert] per calendar day <i>If nothing stated, damages are unliquidated and common law damages apply</i>	
56. Maximum Delay Costs (clause 35.10(c) of the Common Terms)	[\$insert] per working day	
57. Times for making payment claims (clause 38.1(a) of the Common Terms)	☐ Progressively on 20th day of each month for WUC done to the 20th day of that month ☐ On 20th day of the month after the completion of each milestone set out in Schedule 15	
58. Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works (clause 38.6(a) of the Common Terms)	[Insert]	
59. Security (amount) (clause 2.1(a)(i) of the Formal Instrument of Agreement)	[X% of the Estimated First Year Value]	
60. Security (form) (clause 2.1(a)(ii) of the Formal Instrument of Agreement)	[Two (2) unconditional bank guarantees in the form set out in Schedule 9 or as otherwise approved by the Principal, each in the amount of X% of the amount set out in Item 59 of the Contract Particulars.]	

61. Security (timing) (clause 2.1(a)(iii) of the Formal Instrument of Agreement)	[Within X Business Days of the Date of Contract]
62. First date of release of Security (clause 2.4(a) of the Formal Instrument of Agreement)	[On expiry of the Term.]
63. Final date of release of Security (clause 2.4(c) of the Formal Instrument of Agreement)	[On expiry of the Defects Liability Period.]

Counterparts

This Renewal Works Order may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

EXECUTED as an agreement

Date:.....

Signed for and on behalf
of the **Principal** by its
duly authorised
representative(s)

Signature of Authorised
Representative

Signature of Authorised
Representative

Name of Authorised
Representative

Name of Authorised Representative

Executed by the
Contractor 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

Name of Director / Company Secretary
(delete whichever is not applicable)

Annexure 1 to Renewal Works Order – Renewal Works Order Project Requirements

Appendix 2 to Renewal Works Order – Renewal Works Initial Delivery Program and Milestones

Appendix 3 to Renewal Works Order – Renewal Works Pricing Schedule

Schedule 2 – Common Terms

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1. Definitions and interpretation

1.1 Definitions

Additional Terms means:

- (a) where Item 3 of the Contract Particulars identifies the Project Delivery Model as Construct Only, there are no additional terms;
- (b) where Item 3 of the Contract Particulars identifies the Project Delivery Model as Design and Construct, the Design and Construct Terms;
- (c) where Item 3 of the Contract Particulars identifies the Project Delivery Model as Renewal Works, the Renewal Works Terms;
- (d) where Item 3 of the Contract Particulars identifies the Project Delivery Model as Equipment Supply (with optional install), the Equipment Supply (with optional install) Terms; and
- (e) where Item 3 of the Contract Particulars identifies the Project Delivery Model as Material Supply, the Material Supply Terms.

Administrative Completion means the satisfaction of the requirements set out at Item 40 of the Contract Particulars and the satisfaction of the following requirements:

- (a) the Deed of Release required by clause 35.7 has been completed, executed and provided to the Superintendent;
- (b) the Contractor has complied with the requirements of clause 9.6;
- (c) the Contractor has complied with clause 45; and
- (d) subject to the Contractor providing all documents which are required for Completion, the Contractor has provided all documents and other information required under the Major Works Contract which, in the Superintendent's opinion, are essential for the use, operation and maintenance of the Works.

As Built Documents means an accurate record of the Works as executed, which comply with the Project Requirements.

Background IP means any Intellectual Property Rights developed by a party independent of this Major Works Contract or prior to the Date of Contract that is used for the WUC.

Buildability Design Error means a design error:

- (a) which:
 - (i) causes a problem, difficulty or complexity relating to:
 - (A) the means, methods or techniques by which the WUC is to be performed; or
 - (B) the co-ordination or integration of the WUC;
 - (ii) results in a lack of compliance of the Works with a Legislative Requirement or any other requirement of the Major Works Contract; or
 - (iii) otherwise requires rework, additional work or any other changes to the design or construction of the Works or the WUC; and
- (b) which a prudent, competent and experienced contractor would reasonably have foreseen as involving additional work or changes to the Works, to ensure that the part of the Works to which the design error relates would be suitable for its intended purpose.

Business Day means any day other than a Saturday, Sunday, public holiday in Melbourne, Victoria or 27, 28, 29, 30 and 31 December.

Certificate of Completion has the meaning in clause 35.7.

Change in Control occurs where, at any time, any person alone or together with any associate (as defined in the Corporations Law, ceases or commences having control of a party, whether directly or indirectly. For the purposes of this definition, control means, in relation to a party:

- (a) having control or influence over, or the capacity to control or influence, the composition of the board or the decision making process in relation to the financial and operating policies (whether directly or indirectly);
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest in more than 20% of the securities (as defined in the Corporations Law).

Claim means any suit, action, claim, demand, cause of action, proceeding or the like of any kind whatsoever, including whether under contract, tort (including negligence), an indemnity, statute or otherwise and includes any claim for an extension of time or any adjustment to the Contract Sum, whether actual or contingent, past, present or future, or incurred jointly or severally with any other person.

Commencement Date means the date set out in the Contract Particulars or, if no date is set out in the Contract Particulars, the Date of Contract.

Common Terms means these terms set out in Schedule 2.

Compensable Cause means any breach of the Major Works Contract by the Principal.

Completion is that stage in the carrying out and completion of WUC when:

- (a) the Works are complete except for minor Defects:
 - (i) which do not prevent the Works from being reasonably capable of being Fit for Purpose;
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Works;
- (b) those Tests which are required by the Major Works Contract to be carried out and passed before the Works reach Completion have been carried out and passed;
- (c) any additional requirements for Completion set out in Item 38 of the Contract Particulars has been completed; and
- (d) the Contractor has done everything else which the Major Works Contract requires it to do as a condition precedent to Completion.

Conditional Certificate of Completion means the certificate which may be issued under clause 35.8.

Confidential Information means:

- (a) drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential;
- (b) trade secrets, know-how, scientific and technical information;
- (c) information in relation to the Major Works Contract or the WUC; and
- (d) any other information which a party notifies the other is confidential, or which the other party knows or ought to know is confidential.

Construction Plant means appliances and things used in the carrying out of WUC but not forming part of the Works.

Consultant means any person engaged by the Contractor to perform consultancy services in connection with WUC and includes any Principal's consultant whose prior contract is novated to the Contractor under clause 9.4(b).

Contract Particulars means the relevant details set out in Schedule 1.

Contract Sum means the amount set out in Item 36 of the Contract Particulars, which includes the Provisional Sum Cost (Allowance), as adjusted under the Major Works Contract.

Contractor means the person bound to carry out and complete WUC.

Contractor's Management Plans means:

- (a) those plans as set out in the Specification; and
- (b) any other plans described as such in the Major Works Contract.

Contractor Performance Report means the report included in Schedule 23.

Contractor's OH&S Plan means the plan required to be prepared under clause 12.3.

Contractor's Personnel means the Contractor's employees, agents, authorised representatives, directors, officers and Subcontractors, and any other person that the Contractor is responsible for, and employees, agents, authorised representatives, directors, officers and contractors of the Subcontractors.

Corporations Law means the *Corporations Act 2001* (Cth) and any regulations made under that Act, as amended from time to time.

Date for Administrative Completion means the last day of the period of time specified in Item 39, but if any EOT for Administrative Completion is directed by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom.

Date for Completion means the date set in Item 37 of the Contract Particulars, but if any EOT for Completion is directed by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom.

Date of Administrative Completion means:

- (a) the date evidenced in a certificate issued by the Superintendent as the date upon which administrative completion was achieved; or
- (b) where another date is determined in any arbitration or litigation as the date upon which administrative completion was achieved, that other date.

Date of Completion means:

- (a) the date evidenced in a Certificate of Completion or Conditional Certificate of Completion as the date upon which Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Completion was reached, that other date.

Date of Contract means the date specified on the Formal Instrument of Agreement.

Deed of Release means the deed of release in the form set out in Schedule 19.

Defects means any defects, shrinkage, fault or omission in the Works including any aspect of the Works or WUC which is not in accordance with the requirements of this Major Works Contract.

Defects Liability Period has the meaning in clause 36.

Design and Construct Terms means the terms set out in section 1 of Schedule 3.

Design Documents means the drawings, specifications and other information, samples, models, patterns and the like required by the Major Works Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works.

Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Dispute has the meaning in clause 43.

Document Management System means the document management system specified in Item 12 of the Contract Particulars, and includes any modified, upgraded or replacement document management system nominated in writing by the Principal.

EOT (from 'extension of time') has the meaning in clause 35.4.

Environment includes any aspect of the Site and the surroundings of the Site including:

- (a) the physical characteristics such as the land, the waters and the atmosphere;
- (b) the biological characteristics such as the animals, plants and other forms of life;
- (c) the aesthetic characteristics such as the appearance, sounds, smells, tastes and textures; and
- (d) the cultural, social and heritage characteristics.

Environmental Law means any law regulating or otherwise relating to the environment including, but not limited to, any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, storage and handling of dangerous goods, the health or safety of any person or any other matters relating to, but not limited to, the protection of the environment, health or property.

Equipment Supply (with optional install) Terms means the terms set out in section 3 of Schedule 3.

Excepted Risk has the meaning in clause 14.3.

Final Certificate has the meaning in clause 38.7.

Final Payment has the meaning in clause 38.7.

Final Payment Claim means the final payment claim referred to in clause 38.7.

Fit for Purpose means fit for the purpose stated in, or reasonably inferred from, the Major Works Contract.

Good Industry Practices means management, design (if any), construction, commissioning and defect rectification practices followed when Work is undertaken:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill in applying expert, competent and internationally accepted design, engineering, construction and maintenance procedures;
- (c) with due expedition and without unnecessary or unreasonable delays;
- (d) in a manner which allows for the work to be performed efficiently;
- (e) in accordance with all Legislative Requirements and approvals; and
- (f) using new materials of merchantable quality unless otherwise specified in the Project Requirements, which are Fit for Purpose.

GST means a goods and services tax and includes any replacement or subsequent similar tax.

GST Legislation means *A New Tax System (Goods and Services) Act 1999* (Cth).

Hazardous Circumstance means any Hazardous Material or other hazard relevant to the WUC or any other circumstance which might result in there being a risk of injury, illness or other adverse outcome to any person which may be impacted by the WUC.

Hazardous Materials means all materials, substances, gas, liquid, chemical, biological, mineral or other physical matter which is toxic, highly flammable or inherently harmful to the Environment or any life forms inhabiting the Environment.

Information Documents means:

- (a) the Site Information; and

- (b) any other document or information issued or made available:
- (i) on, before or after the date of submission of the tender; or
 - (ii) on, before or after the Date of Contract, other than any information, data, or document which the Principal is obliged by the terms of the Major Works Contract to provide to the Contractor and the Contractor is expressly obliged by the terms of the Major Works Contract to rely on,
- to the Contractor in respect of WUC which is marked, called, or otherwise described as, an 'Information Document' or as being 'for tendering purposes' or 'for tenderers' information only', or has been provided for that purpose,

but excludes the Reliance Information.

Initial Design means the documents stated in Item 47 of the Contract Particulars.

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right.

Item means an Item in the Contract Particulars.

Key Personnel means the key personnel identified in Item 13 of the Contract Particulars.

Latent Condition has the meaning in clause 27.1.

Legislative Requirement includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where WUC or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of WUC; and
- (c) fees and charges payable in connection with the foregoing.

Losses means losses, damages, costs, charges, expenses (including reasonable legal costs), penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Major Works Contract means the agreement comprising the documents referred to in clause 1 of the Formal Instrument of Agreement.

Margin means the dollar value relevant to the 'Margin' set out in the Pricing Schedule.

Material Supply Terms means the terms set out in section 4 of Schedule 3.

Modern Slavery Legislation means the *Modern Slavery Act 2018 (Cth)* and any similar legislation in force from time to time in Victoria.

Moral Rights means the moral rights granted to authors under the *Copyright Act 1968 (Cth)*, and any similar rights existing under foreign laws.

Notice of Dispute has the meaning in clause 43.

Occupational Health and Safety Requirements includes:

- (a) the Principal's occupational health and safety policies;
 - (b) all Legislative Requirements relating to occupational health and safety;
 - (c) to the extent that it is not inconsistent with paragraphs (a) and (b) above, the Contractor's OH&S Plan; and
 - (d) the documents referred to (if any) in the Preliminaries Document,
- as may be applicable or relevant to WUC.

Other Contractors means:

- (a) the persons listed in Item 53 of the Contract Particulars; and

- (b) any other persons notified by the Superintendent to the Contractor in writing from time to time.

Parent Company Guarantee means a deed from the Contractor's guarantor (being the party approved by the Principal to guarantee the Contractor's obligations under this Major Works Contract) provided in accordance with clause 2.6 of the Formal Instrument of Agreement.

payment schedule has the meaning in clause 38.3.

Performance Issue occurs where:

- (a) the Contractor wrongfully suspends carrying out any part of the WUC;
- (b) the Contractor substantially departs from a Program without the Superintendent's approval;
- (c) there is no Program, the Contractor fails to proceed with due expedition and without delay;
- (d) the Contractor fails to achieve any milestone (if any) under the Major Works Contract (including any milestone set out in the Program) within 10 Business Days after the prescribed date;
- (e) the Principal (acting reasonably) forms the view that the Contractor will be unable to achieve Completion within 10 Business Days after the Date for Completion;
- (f) the Contractor's total liability to pay liquidated damages under clause 35.9 reaches 10% of the Contract Sum;
- (g) the Contractor fails to pay any amount due to a subcontractor within 10 Business Days of the due date for such payment;
- (h) the Contractor fails to comply with clauses 9.1, 21.1, 33.5(b) or 52.4; or
- (i) the Principal exercises its step-in rights under clause 33.6.

PPSA means *Personal Property Security Act 2009* (Cth).

Preliminaries Document means the document described as such, which forms part of the Specification.

Prescribed Notice has the meaning in clause 42.1.

Pricing Schedule means Schedule 6.

Pricing Reference Document means:

- (a) any document set out in Schedule 7; and
- (b) any schedule of rates, schedule or prices, bill of quantities or other breakdown of a monetary amount,

which was used as part of a tender process or pre-contractual process and does not form part of the Major Works Contract.

Principal means the Principal stated in the Formal Instrument of Agreement.

Principal Contractor has the meaning given to it under the Legislative Requirements relating to occupational health and safety.

Principal Contractor Obligations means the obligations required to be discharged or functions required to be performed by a Principal Contractor and all fees and costs associated with those obligations and functions.

Principal Supplied Materials means the material set out in Schedule 8.

Principal's Policies and Procedures includes:

- (a) all policies, plans, manuals, guidelines, instructions and other requirements of the Principal as set out, or referred to, in the Preliminaries Document (as updated, amended or replaced); and

- (b) any new Principal's Policy or Procedure provided to the Contractor by the Principal after the Date of Contract.

Project Requirements means the Principal's written requirements for the Works described in Schedule 5 and where stated in the Contract Particulars includes an Initial Design.

Program has the meaning in clause 33.3.

Prohibited Cladding Products means:

- (a) aluminium composite panels with a core of less than 93% inert mineral filler (inert content) by mass in external cladding as part of a wall system; and
- (b) expanded polystyrene products used in an external insulation and finish (rendered) wall system.

Project Delivery Model means the relevant project delivery model specified in Item 3 of the Contract Particulars.

Provisional Sum Cost (Actual) has the meaning given to that term in clause 3.1.

Provisional Sum Cost (Allowance) has the meaning given to that term in clause 3.1, as set out in the Contract Particulars.

Provisional Sum Margin means the percentage value relevant to the 'Provisional Sum Margin' set out in the Pricing Schedule.

Provisional Sum Work means the work or goods so specified in the Contract Particulars.

public liability policy has the meaning in clause 17.

Qualifying Cause of Delay means:

- (a) a breach of the Major Works Contract by the Principal;
- (b) any other negligent or wrongful act or omission of the Superintendent, the Principal or its consultants, agents or Other Contractors;
- (c) a Variation the subject of a direction by the Superintendent or deemed to be a Variation under the Major Works Contract;
- (d) a change in Legislative Requirement which meets the criteria in clause 11.2(a);
- (e) a suspension of the WUC by the Principal pursuant to clause 34.1(d);
- (f) a Buildability Design Error other than where the Project Delivery Model is Design and Construct;
- (g) State wide industrial action in Victoria which was not caused by or contributed to by the Contractor; or
- (h) any other additional causes that is stated in Item 22 of the Contract Particulars,

but does not include inclement weather of any kind.

Relevant Authority means a:

- (a) government, semi-governmental, local government, administrative or judicial body;
- (b) provider of Services Infrastructure or utility services (whether statutory or not); or
- (c) a person authorised to carry out any functions, powers, duties or responsibilities over the Site or the carrying out of the WUC.

Reliance Information means the documents or information set out in Item 49 of the Contract Particulars, if any.

Renewal Works Terms means the terms set out in section 2 of Schedule 3 and the Design and Construct Terms (if applicable).

Resolution Institute means the dispute resolution organisation located at Compass Offices – Melbourne Tower 4, Level 10, World Trade Centre, 18–38 Sidddeley Street, Docklands, VIC 3008 and contactable via email at nominations@resolution.institute.com.au.

Sample means any sample of an item, material or work described as such in the Project Requirements or as otherwise prescribed by the Superintendent.

Schedule of Rates means schedule of rates set out in the Pricing Schedule which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, Provisional Sum Work, other sums, quantities and prices.

Security means an approved unconditional undertaking given by a financial institution approved by the Principal.

Security of Payment Legislation means the *Building and Construction Industry Security of Payment Act 2002* (Vic).

Selected Subcontract Work has the meaning in clause 9.3.

Selected Subcontractor has the meaning in clause 9.3.

Separable Portion means a portion of the Works identified as such in the Major Works Contract or by the Superintendent pursuant to clause 4.

Services Infrastructure means any services or utilities infrastructure:

- (a) on, over the surface, under or in the vicinity of the Site; or
- (b) external to the Site required to provide services or utilities to the Site,

including any roads or footpaths, electricity, gas or water supply, communications cables, drainage, sewerage or other services or utilities infrastructure required for or in connection with the Works.

Site means the lands and other places to be made available to the Contractor by the Principal for the purpose of the Major Works Contract as described in Item 42 of the Contract Particulars.

Site Conditions means:

- (a) any physical conditions on, under or over the surface of, or at or in the vicinity of, the Site including:
 - (i) ground water, ground water hydrology and the effects of any de-watering;
 - (ii) physical and structural conditions above, upon and below the ground including any in-ground services or works and partially completed structures;
 - (iii) topography, ground surface conditions and geology including seismic conditions, rock, other materials and sub-surface conditions; and
 - (iv) climatic and weather conditions, rain, fog, surface water run-off and drainage, water seepage, wind-blown dust and sand, and seasons; and
- (b) industrial conditions at, or in the vicinity of, the Site.

Site Information means:

- (a) any document, specification, drawing, calculation, information, data, report or sample (whatever its form) marked or described as being 'for tendering purposes only', 'for tenderer's information only' or 'site information' or marked or described in a similar fashion and made available or provided to the Contractor by or on behalf of the Principal prior to the Commencement Date;
- (b) any borehole core or borehole log made available or provided to the Contractor by or on behalf of the Principal, whether prior to or after the Commencement Date; and
- (c) any document, specification, drawing, calculation, information, data, report or sample (whatever its form) made available or provided to the Contractor by or on behalf of the Principal, whether prior to or after the Commencement Date, regarding Site Conditions.

Site Plan means the plan referred to in Item 42 of the Contract Particulars.

Special Conditions means the terms set out in Schedule 4.

Specification means the document or documents described as such in the Project Requirements.

Statutory Declaration means a statutory declaration in the form of Schedule 17.

Subcontractor means any person engaged by the Contractor to perform any part of the WUC or deliver any part of the Works, and includes a Consultant.

Superintendent means the person stated in Item 11 of the Contract Particulars as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative.

Superintendent's Representative means an individual appointed in writing by the Superintendent under clause 23.

Supplier Code of Conduct means the Supplier Code of Conduct issued by the Victorian Government for suppliers providing works or services to the Victorian Government (as amended from time to time).

survey mark in clause 28 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring WUC.

Temporary Works means work used in carrying out and completing WUC, but not forming part of the Works.

Test has the meaning in clause 32.1 and includes examine and measure.

the Works means the whole of the work to be carried out and completed in accordance with the Major Works Contract, including Variations provided for by the Major Works Contract, which by the Major Works Contract is to be handed over to the Principal.

Variation has the meaning in clause 37.

Variation Margin Allowance means the percentage stated in the Pricing Schedule to be applied to the actual cost of a Variation.

Variation Preliminaries Allowance means the percentage stated in the Pricing Schedule to be applied to the actual cost (excluding any amount for preliminaries or on- or off-site overheads) of a Variation.

WUC (from 'work under the Contract') means the work which the Contractor is or may be required to carry out and complete under the Major Works Contract and includes Variations, remedial work, the provision of Construction Plant and Temporary Works.

1.2 Interpretation

In this Major Works Contract:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the Major Works Contract must, if it ends on a Saturday, Sunday or Statutory or public holiday in Melbourne, Victoria, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or public holiday in Melbourne, Victoria;
- (c) clause headings are for ease of reference only and do not form part of, nor are to be used in the interpretation of, the Major Works Contract;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;

- (e) communications between the Principal, the Superintendent and the Contractor must be in the English language;
- (f) measurements of physical quantities must be in legal units of measurement of Victoria, Australia;
- (g) unless otherwise provided, prices are in Australian Dollars and payments must be made in Australian Dollars;
- (h) unless otherwise provided, prices are exclusive of GST;
- (i) the law governing the Major Works Contract, its interpretation and construction is the law of Victoria, Australia;
- (j) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (k) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) a reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (m) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

2. Nature of Major Works Contract

2.1 Performance and payment

- (a) The Contractor must carry out and complete WUC in accordance with the Major Works Contract and Directions authorised by the Major Works Contract.
- (b) The Principal must pay the Contractor the Contract Sum, as adjusted by any additions or deductions made pursuant to the Major Works Contract.

2.2 Contractor's warranties

Without limiting the generality of clause 2.1, the Contractor warrants to the Principal that:

- (a) **(qualified personnel)** the Contractor at all times must be suitably qualified and experienced, and must exercise due skill, care and diligence in the carrying out and completion of WUC;
- (b) **(workmanship)** all workmanship will be proper and tradesmanlike and to the standards specified in the Major Works Contract, and to the extent that such standards are not specified, then to standards commensurate with Good Industry Practice;
- (c) **(carrying out WUC)** the Contractor is fully responsible for executing and completing the WUC in accordance with the Major Works Contract including the methodology for performing its obligations;
- (d) **(Information Documents)** the Contractor did not in any way rely upon:
 - (i) the Information Documents; or
 - (ii) the accuracy, adequacy, suitability or completeness of the Information Documents,
 for the purposes of entering into the Major Works Contract and warrants that it entered into the Major Works Contract based on its own investigations, interpretations, deductions, information and determinations, and has had the opportunity to obtain appropriate professional and technical advice;
- (e) **(Major Works Contract documents):**
 - (i) it has carefully read the several documents forming the Major Works Contract and there are no discrepancies, inconsistencies or ambiguities in or between those

- documents that would be apparent to an experienced and competent contractor;
and
- (ii) it has made proper allowance for all matters contained in or capable of inference from the several documents forming the Major Works Contract;
- (f) **(the Works)** the Contractor must carry out and complete WUC in accordance with the Major Works Contract so:
 - (i) that the Works, when completed, meet and satisfy all performance levels and performance requirements stated in the Major Works Contract;
 - (ii) as to comply with all applicable laws, Legislative Requirements and the Principal's Policies and Procedures;
 - (iii) as to comply with all the requirements of the Major Works Contract, including the Project Requirements;
- (g) **(labour)** it has informed itself completely as to the availability and cost of labour including the costs of complying with obligations imposed by any agreement between relevant building industry unions and employers relating (whether directly or indirectly) to the Works; and
- (h) **(Contract Sum)** it has satisfied itself that the Contract Sum covers the cost of complying with all of its obligations under the Major Works Contract.

2.3 Acknowledgement of reliance

The Contractor acknowledges that the Principal:

- (a) has entered into the Major Works Contract in reliance upon each of the acknowledgements, representations, warranties and agreements provided by the Contractor in clauses 2.2 and 2.7; and
- (b) would not have entered into the Major Works Contract but for those acknowledgements, representations, warranties and agreements.

2.4 Warranties unaffected

The Contractor acknowledges and agrees that:

- (a) the warranties in clause 2.2, and the Contractor's warranties, obligations and liabilities under the Major Works Contract and at law remain unaffected; and
- (b) the Contractor will bear and continue to bear full liability and responsibility in accordance with the Major Works Contract for the performance of WUC,

notwithstanding any one or more of the following:

- (c) that design work has been carried out by or on behalf of the Principal and included in the Project Requirements;
- (d) if the Superintendent receives or reviews, or gives comment or Direction on, any document prepared by the Contractor; or
- (e) any Variation.

2.5 Quantities

- (a) Subject to clause 2.6, the Contractor will not be entitled to make any Claim against the Principal if the items of work or quantities are incorrect in that they:
 - (i) contain an incorrect quantity;
 - (ii) contain an item which should not have been included; or
 - (iii) omit an item which should have been included.
- (b) Quantities in a schedule of rates are estimated quantities only.

- (c) The Superintendent is not required to give a Direction by reason of the actual quantity of an item required to perform the Major Works Contract being greater or less than the quantity shown in the schedule of rates.

2.6 Adjustment for actual quantities

Where, otherwise than by reason of a Direction to vary WUC, the actual quantity of an item required to perform the Major Works Contract is greater or less than the quantity shown in the schedule of rates:

- (a) the Principal accepted a lump sum for the item, the difference is deemed to be included in that lump sum and the Contractor shall have no entitlement to submit a Claim in relation to the actual quantity; or
- (b) the Principal accepted a rate for the item, the rate will apply to the greater or lesser quantities.

2.7 No duty of care or liability imposed on the Principal

- (a) Neither the Principal nor the Superintendent assumes or owes any duty of care to the Contractor in respect of any review, comment or Direction by or on behalf of the Principal or the Superintendent concerning:
 - (i) any document or information provided by the Contractor;
 - (ii) any work, plant, equipment, materials or other aspect of WUC; or
 - (iii) any of the things mentioned in clause 2.4.
- (b) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any document prepared by the Contractor or any other Direction by the Superintendent concerning any of the things listed in clause 2.7(a) will:
 - (i) relieve the Contractor from, or alter or affect the Contractor's liabilities or responsibilities, whether under the Major Works Contract or otherwise according to law;
 - (ii) except as expressly stated in the Major Works Contract, give rise to any entitlement for the Contractor to make any Claim against the Principal;
 - (iii) prejudice the Principal's rights against the Contractor, whether under the Contract or otherwise according to law; or
 - (iv) constitute an admission that the Principal, the Superintendent or any of their agents or employees have checked the things mentioned in clause 2.7(a) for errors, omissions or compliance with the requirements of the Major Works Contract.

2.8 All work included

- (a) The Contractor has allowed for the provision of all work, Construction Plant, Temporary Works and any other work necessary for the completion of the Works, whether or not expressly mentioned in the Project Requirements or otherwise set out in the Major Works Contract.
- (b) Any such Work, Construction Plant, Temporary Works or any other work necessary for the completion of the Works:
 - (i) must be undertaken and provided by the Contractor; and
 - (ii) forms part of WUC and will not entitle the Contractor to make a Claim except as otherwise provided for in the Major Works Contract.

3. Provisional Sum Work

3.1 Provisional Sums Generally

- (a) The Provisional Sum Work is included as part of the WUC.
- (b) The Contract Particulars includes an initial estimated amount on account of the Provisional Sum Work, which is the **Provisional Sum Cost (Allowance)**.
- (c) The Superintendent must keep a running tally of the actual cost of each item of Provisional Sum Work over the course of carrying out the WUC, which is the **Provisional Sum Cost (Actual)**.

3.2 Direction in relation to Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Superintendent will give the Contractor a Direction either:
 - (i) deleting the item of Provisional Sum Work from the Major Works Contract; or
 - (ii) requiring the Contractor to proceed with the item of Provisional Sum Work.
- (b) If any item of Provisional Sum Work is deleted from the Major Works Contract:
 - (i) the Contractor must not carry out that item of Provisional Sum Work;
 - (ii) the Principal may engage Other Contractors to carry out the item of Provisional Sum Work; and
 - (iii) to the extent permitted by law, the Contractor will not be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with the Provisional Sum Work (including the deletion of the Provisional Sum Work).

3.3 Tendering Provisional Sum Work

Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Superintendent, be carried out under subcontracts entered into by the Contractor as follows:

- (a) after the Design Documents for the item of Provisional Sum Work have been prepared, the Contractor must invite tenders:
 - (i) if directed by the Superintendent, from at least 3 persons proposed by the Contractor and approved by the Superintendent; and
 - (ii) on the terms of a subcontract containing similar terms to the Major Works Contract and approved by the Superintendent;
- (b) the Contractor must give the Superintendent such details of each tender as the Superintendent may require;
- (c) the Contractor must recommend to the Superintendent which tenderer it believes should be accepted and, if this tender is not the lowest price tenderer, it must give reasons why the lowest price tenderer is not recommended; and
- (d) the Contractor must then enter into a subcontract with a tenderer as instructed by the Superintendent.

3.4 Provisional Sums Cost (Actual) for Tendered Provisional Sum Work

- (a) After the Contractor is instructed to enter into a subcontract for an item of Provisional Sum Work under clause 3.3, the item of Provisional Sum Work will be valued progressively as the Provisional Sum Works are performed under clause 37.4 as the amount payable by the Contractor to the Subcontractor for the Provisional Sum Work, disregarding any amount:
 - (i) payable by the Contractor to the Subcontractor due to any breach of the subcontract by the Contractor or the Subcontractor; and

- (ii) on account of profit, overhead or margin of the Contractor.
- (b) The amount determined under this clause 3.4 will be added to the Provisional Sum Cost (Actual).

3.5 Provisional Sum Cost (Actual) for Other Provisional Sum Work

- (a) If the Superintendent directs that any item of Provisional Sum Work is to be carried out but is not to be tendered under clause 3.3, the item of Provisional Sum Work will be valued as:
 - (i) an amount agreed by the parties; or
 - (ii) failing agreement, an amount determined by the Superintendent under clause 37.4 as if the item of Provisional Sum Work were a Variation, but excluding any amount on account of the Variation Margin Allowance and Variation Preliminaries Allowance.
- (b) This amount will be added to the Provisional Sum Cost (Actual).

3.6 Adjustment to the Contract Sum for Provisional Sum Work

- (a) The Superintendent must:
 - (i) adjust the Contract Sum by substituting the Provisional Sum Cost (Allowance) with the Provisional Sum Cost (Actual); and
 - (ii) undertake a reconciliation between the Provisional Sum Cost (Allowance) and the Provisional Sum Cost (Actual),
 as part of the assessment of any payment claim in relation to any Provisional Sum Work.
- (b) Where the Provisional Sum Cost (Actual) is:
 - (i) less than the Provisional Sum Cost (Allowance), the Contract Sum will be reduced by:
 - (A) the difference between the Provisional Sum Cost (Allowance) and the Provisional Sum Cost (Actual);
 multiplied by:
 - (B) the Provisional Sum Margin; and
 - (ii) more than the Provisional Sum Cost (Allowance), the Contract Sum will be increased by:
 - (A) the difference between the Provisional Sum Cost (Allowance) and the Provisional Sum Cost (Actual);
 multiplied by:
 - (B) the Provisional Sum Margin,
 and the Superintendent must include its calculation of the same as part of an assessment of any payment claim in relation to any Provisional Sum Work.

4. Separable portions

4.1 Separable portion particulars

Separable Portions may be directed by the Superintendent, who must clearly identify in the Contract Particulars for each, the:

- (a) portion of the Works;
- (b) Date for Completion; and

- (c) respective amounts for liquidated damages and delay damages (all calculated pro-rata according to the ratio of the Superintendent's valuation of the Separable Portion to the Contract Sum).

4.2 Application of Major Works Contract

- (a) The interpretations of:
 - (i) Date for Completion;
 - (ii) Date of Completion;
 - (iii) Completion; and
 - (iv) clauses 2.1 and 2.2 of the Formal Instrument of Agreement; and
 - (v) clauses 14, 35, 36 and 38,shall apply separately to each Separable Portion and references therein to the Works and to WUC shall mean so much of the Works and the WUC as is comprised in the relevant Separable Portion.
- (b) If the Major Works Contract does not make provision for, the amount of Security or liquidated damages applicable to a Separable Portion, the respective amounts applicable shall be:
 - (i) in relation to Security, the value of the WUC; and
 - (ii) in relation to liquidated damages, such proportion of the liquidated damages applicable to the whole of the WUC as the value of the Separable Portion bears to the value of the whole of the WUC.

5. Prior Works

The terms of the Major Works Contract apply to all of the work performed by the Contractor in connection with WUC even if it was performed prior to the Commencement Date. Any payment made to the Contractor by the Principal prior to the Commencement Date will be treated as a payment under the Major Works Contract and will be in part discharge of the Principal's obligation to pay the Contract Sum.

6. Principal's Policies and Procedures

- (a) The Contractor:
 - (i) acknowledges the importance that the Principal places on compliance with the Principal's Policies and Procedures;
 - (ii) must inform itself completely of all the Principal's Policies and Procedures in relation to the Works, including the steps and costs which are required to comply with all such Principal's Policies and Procedures; and
 - (iii) must comply with, and must ensure the Contractor's Personnel comply with, all Principal's Policies and Procedures, as updated, amended or replaced from time to time.
- (b) If, after the Date of Contract:
 - (i) the Principal updates, amends or replaces one or more of the Principal's Policies and Procedures; or
 - (ii) the Principal adopts a new policy, plan, manual, guideline, instruction or other requirement which becomes a Principal's Policy and Procedure,and the Contractor's compliance with the updated, amended, replaced or new (as relevant) Principal's Policy and Procedure will, or will likely, cause the Contractor to incur more cost than it otherwise would have incurred, the Contractor must submit a written

notice to the Principal and the Principal must direct the Contractor as to whether or not the Contractor is required to comply with the updated, amended, replaced or new (as relevant) Principal's Policy and Procedure.

- (c) If the Principal directs the Contractor to comply with the updated, amended, replaced or new (as relevant) Principal Policy or Procedure under clause 6(b), the Contractor must comply with the updated, amended, replaced or new (as relevant) Principal Policy of Procedure and the increased cost of compliance must be assessed by the Superintendent and added to the Contract Sum in accordance with clause 37.

7. Service of notices

7.1 Permissible methods of delivery

- (a) Subject to clause 7.7(c), a notice or other communication required or permitted to be given by one party to another under this Major Works Contract must be in writing, addressed to the other party, specifically referencing the nominated representative and, subject to clauses 40.2, 40.7 and 43, sent using the Document Management System to the nominated representative.
- (b) Without limiting clause 7.1(a), any notice from the Contractor to the Principal under clauses 40.2, 40.7 and 43 must be copied to the Principal's company secretary.

7.2 When effective

Communications take effect from the time they are received or taken to be received under clause 7.3 (whichever happens first) unless a later time is specified.

7.3 When taken to be received

Communications are taken to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by registered post, 3 days after posting (or seven days after posting if sent from one country to another); or
- (c) if sent by the Document Management System, when uploaded to the Document Management System.

7.4 Receipt outside of business hours

Despite clauses 7.2 and 7.3 if communications are received or taken to be received under clause 7.3 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

7.5 Address for services

For the purpose of this clause, the address of a party is the address set out in the Major Works Contract or the address which that party notifies to the other party in writing.

7.6 Payment schedules

The Superintendent may serve a payment schedule under clause 38.3 by the Document Management System.

7.7 Document Management System

- (a) Unless the Principal notifies the Contractor otherwise in writing, the parties agree to implement the Document Management System for the purpose of notices and other correspondence in connection with this Major Works Contract.
- (b) The Contractor must register itself on the Document Management System and comply with any user guide or other protocols issued to it by the Principal from time to time.

- (c) If a party is unable to use the Document Management System as a result of the failure of the Document Management System, that party must deliver the relevant communication by post (or email if agreed by the Principal).

8. Major Works Contract documents

8.1 Discrepancies

- (a) The order of precedence of the documents comprising the Major Works Contract is as set out in clause 1(a) of the Formal Instrument of Agreement, except that in the event of any ambiguity, discrepancy or inconsistency in or between any specification or technical document comprising the Major Works Contract:
 - (i) figured will prevail over scaled dimensions; and
 - (ii) a higher standard, quality or quantum will prevail.
- (b) Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out WUC, that party must give the Superintendent written notice of it within 10 Business Days of becoming aware of the inconsistency, ambiguity or discrepancy. The Superintendent, within 10 Business Days of any such notice, will direct the parties as to the interpretation and construction to be followed.
- (c) If compliance with any other Direction under this clause causes the Contractor to incur more or less cost than otherwise would have been incurred had the Direction not been given, the difference must be assessed by the Superintendent and added to or deducted from the Contract Sum in accordance with clause 37.

8.2 Principal-supplied documents

- (a) The Principal must supply to the Contractor the documents and number of copies thereof, both stated in Item 14 of the Contract Particulars.
- (b) They will:
 - (i) remain the Principal's property and be returned to the Principal on written demand; and
 - (ii) not be used, copied nor reproduced for any purpose other than WUC.

8.3 Contractor-supplied documents

- (a) All documents and information required by the Major Works Contract, unless elsewhere stated in the Major Works Contract, must be supplied not less than 10 Business Days before the WUC is commenced and must be in a form satisfactory to the Superintendent.
- (b) Without limiting clause 2.7, if the Contractor submits a document to the Superintendent, then:
 - (i) the Superintendent is not required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Major Works Contract; and
 - (ii) notwithstanding clause 2.1, any Superintendent's acknowledgment or approval will not prejudice the Contractor's obligations.
- (c) Copies of documents supplied by the Contractor will be the Principal's property.

8.4 Information Documents

- (a) Prior to the Date of Contract, the Principal provided the Information Documents to the Contractor for the information only of the Contractor.
- (b) The Contractor acknowledges and agrees that:

- (i) the Principal did not and does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
- (ii) the Principal did not and does not owe any duty of care to the Contractor with respect to the Information Documents; and
- (iii) the Information Documents do not form part of the Major Works Contract;
- (iv) to the extent permitted by law, the Principal will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with:
 - (A) the provision of or the purported reliance upon, or use of, the Information Documents by the Contractor or any other person to whom the Information Documents are disclosed; or
 - (B) a failure to provide any other information, data or documents to the Contractor.

8.5 Non-reliance

Without limiting clauses 2.2(d), 8.4 or 27, the Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document, including any Information Documents, made by or provided to the Contractor by the Principal or anyone on behalf of the Principal; or
 - (ii) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into the Major Works Contract except to the extent that such information, data, representation, statement or document is Reliance Information;
- (b) warrants that it enters into this Major Works Contract based on its own investigations, interpretations, deductions, information and determinations and has had the opportunity to obtain appropriate professional and technical advice; and
- (c) acknowledges that it is aware that the Principal has entered into the Major Works Contract relying upon the acknowledgements and warranties in paragraphs (a) and (b) above and clauses 2.2(d), 8.4 and 27.

8.6 Availability

The Contractor must keep available to the Superintendent and the Principal:

- (a) on Site, one complete and current set of documents affecting WUC which has been supplied by the Contractor, Subcontractors, Consultants, any party engaged by the Contractor, the Superintendent or the Principal; and
- (b) at the place of manufacture or assembly of any significant part of WUC off Site, a complete and current set of the documents affecting that part.

8.7 Confidential information

- (a) Subject to clause 8.7(c), a party must keep confidential, not disclose, and must ensure that its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth), employees, agents and contractors do not, disclose Confidential Information or use Confidential Information for purposes unrelated to the Major Works Contract.
- (b) The Contractor shall:
 - (i) return to the Principal any Confidential Information of the Principal on demand; or
 - (ii) when directed by the Principal, delete or destroy any Confidential Information of the Principal obtained or stored electronically,

except to the extent that the Confidential Information is incorporated into this Major Works Contract or in respect of documents which the Contractor is required to return under any Legislative Requirement.

- (c) A party may disclose Confidential Information where such disclosure is:
 - (i) required by a Legislative Requirement, government policy, court order or the listing rules of the Australian Stock Exchange;
 - (ii) required to be made to a Related Body Corporate, employee, agent, contractor or consultant of the Contractor for the purposes of carrying out the WUC provided that the party to whom the information is disclosed agrees to maintain the confidentiality of any such Confidential Information; and
 - (iii) required to be made in relation to any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.
- (d) If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Payment Claim or the earlier termination of the Major Works Contract.
- (e) If a party is required by a Legislative Requirement to disclose any Confidential Information to a third person, that party must:
 - (i) notify the other party before doing so;
 - (ii) give the other party a reasonable opportunity to take any steps that the other party considers necessary to protect the confidentiality of that information;
 - (iii) notify the third person that the information is Confidential Information; and
 - (iv) disclose only that portion of the Confidential Information which is required to disclose.

8.8 Media

The Contractor must not disclose any information concerning the Major Works Contract or the project for distribution through any communications media without the Principal's prior written approval (which may be withheld at the Principal's absolute discretion). The Contractor must refer to the Principal any enquiries from any media concerning the project.

9. Assignment and subcontracting

9.1 Assignment

- (a) The Contractor must not assign or novate the Major Works Contract or any payment or any other right, benefit or interest thereunder without the Principal's prior written consent, which may be:
 - (i) withheld by the Principal at the Principal's absolute discretion; or
 - (ii) subject to such terms and conditions as the Principal may determine, including the provision of such additional Security as the Principal may require.
- (b) There must not be any Change in Control of the Contractor without the prior written consent of the Principal.

9.2 Subcontracting generally

- (a) The Contractor must engage and retain the Subcontractors identified in the Contractor's tender.
- (b) The Contractor must not without the Superintendent's prior written approval (which may be withheld at the Superintendent's absolute discretion):
 - (i) subcontract or allow a Subcontractor to subcontract any work described in Item 50 of the Contract Particulars; or

- (ii) allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.
- (c) With a request for approval, the Contractor must give the Superintendent written particulars of the work to be subcontracted and the name and address of the proposed Subcontractor. The Contractor must give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.
- (d) Within 10 Business Days after the Contractor's request for approval, the Superintendent must give the Contractor written notice of approval or of the reasons why approval is not given.
- (e) Approval may be conditional upon the subcontract including:
 - (i) provision that the Subcontractor will not assign nor subcontract without the Contractor's written consent;
 - (ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
 - (iii) provision that if the Major Works Contract is terminated and upon the Subcontractor being paid the sum certified by the Superintendent as owing to the Subcontractor, the Contractor and the Subcontractor must, after the Principal has done so, promptly execute a deed of novation in the form of Schedule 11. For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and
 - (iv) where the Subcontractor is a Consultant, the Subcontractor must effect and maintain professional indemnity insurance on the same terms as are required under Item 19 of the Contract Particulars.

9.3 Selected subcontract work

- (a) If the Principal has included in the invitation to tender a list of one or more selected subcontractors for particular work (**Selected Subcontractor**), the Contractor must subcontract that work to a Selected Subcontractor and thereupon give the Superintendent written notice of that Selected Subcontractor's name.
- (b) If no subcontractor on the Principal's list will subcontract to carry out the Selected Subcontract Work, the Contractor must provide a list of prospective subcontractors for the written approval of the Superintendent.

9.4 Novation of Principal engaged consultants or subcontractors

- (a) This clause 9.4 applies only where the Project Requirements include an Initial Design or the Major Works Contract includes Selected Subcontract Work.
- (b) When directed by the Principal, the Contractor, without being entitled to compensation, must promptly:
 - (i) execute a deed of novation in the form of Schedule 12, such deed being between the Principal, the Contractor and the Consultant, Subcontractor or the Selected Subcontractor stated in Item 51 of the Contract Particulars for the particular part of the Initial Design or Selected Subcontract Work. For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly;
 - (ii) procure that the relevant Consultant, Subcontractor or Selected Subcontractor also execute the deed of novation in the form of Schedule 12; and
 - (iii) provide an original deed of novation executed by the Contractor and the relevant Subcontractor or Selected Subcontractor to the Superintendent.

9.5 Contractor's responsibility

- (a) The Contractor will be liable to the Principal for the acts, defaults and omissions of Subcontractors (including Selected Subcontractors) and employees and agents of Subcontractors as if they were those of the Contractor.
- (b) Approval to subcontract will not relieve the Contractor from any liability or obligation under the Major Works Contract.

9.6 Warranties from Subcontractors

- (a) The Contractor must, as a prerequisite to Administrative Completion, procure and provide the Principal with duly completed and executed deeds of collateral warranty from the Subcontractors undertaking or supplying the work or other items stated in Item 52 of the Contract Particulars. These deeds of collateral warranty must be in the form set out in Schedule 14 and must be in favour of the Principal.
- (b) In addition to clause 9.6(a), the Contractor also must assign to the Principal in a form acceptable to the Principal the benefit of all warranties obtained by the Contractor from Subcontractors and from manufacturers and suppliers of plant, equipment, materials and other items incorporated into the Works where such warranties continue to operate beyond the expiration of the Defects Liability Period. These collateral warranties and the assigned rights must be such that they can be directly enforced by the Principal against the parties giving the warranties. The warranties and documents evidencing the assignment of rights must be delivered to the Superintendent at the times required by the Major Works Contract or, if no time is stated, prior to the issue of the Final Certificate.
- (c) Nothing in this clause 9.6, nor any Subcontractor Warranty Deed or assignment of rights as contemplated by this clause 9.6, will limit or affect any of the Contractor's obligations or liabilities, or derogate from any rights which the Principal may have against the Contractor, in respect of the subject matter of the deeds of collateral warranty or the assigned warranties.

9.7 Contractor's liabilities and obligations unaffected

- (a) None of the following:
 - (i) the naming in the Major Works Contract of any Subcontractors or the inclusion in the Major Works Contract of a list of prospective subcontractors as mentioned in clause 9.3;
 - (ii) any approval given by the Superintendent under clause 9.2;
 - (iii) the provision of any Subcontractor Warranty Deed or the provision or the assignment of any warranty under clause 9.6;
 - (iv) the subcontracting of any work to a Subcontractor;
 - (v) the subcontracting of any work by a Subcontractor; or
 - (vi) the termination or rescission of a subcontract,will relieve the Contractor from any liability or obligation under the Major Works Contract.
- (b) The Contractor:
 - (i) is responsible for WUC notwithstanding that the Contractor has subcontracted the performance of any part of WUC; and
 - (ii) is liable to the Principal for the acts, defaults and omissions of Subcontractors and their employees and agents as if they were acts, defaults or omissions of the Contractor.
- (c) Nothing in this Major Works Contract renders the Principal liable to the Contractor for the performance, non-performance, default or selection of Subcontractors.

10. Intellectual property rights

10.1 Warranties and indemnities

- (a) The Principal warrants that, unless otherwise provided in the Major Works Contract, the Project Requirements, design, materials, documents and methods of working, each specified in the Major Works Contract or provided or directed by the Principal or the Superintendent will not infringe any Intellectual Property Right.
- (b) The Contractor warrants that any other design, materials, documents and methods of working, each provided by the Contractor, will not infringe any Intellectual Property Right.
- (c) Each party must indemnify the other against such respective infringements.

10.2 Intellectual property rights granted

- (a) Copyright and property in any design (including Design Documents created by or on behalf of the Contractor), materials, documents and methods of working (excluding any Background IP) (the **Information**) hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the Information for WUC. Such vesting will not extend to components of the design which have been developed by the Contractor for general use in the Contractor's work and have not been specially developed for incorporation in the Design Documents.
- (b) Each party retains ownership of Intellectual Property Rights in any Background IP.
- (c) The Contractor must do everything necessary to perfect such vesting.
- (d) The Contractor must ensure that all Design Documents are used, copied and supplied only for the purpose of WUC.
- (e) The Contractor must ensure that it procures for the Principal a perpetual licence in respect of any software it provides documentation in the format of, for the purpose of the Principal enjoying the benefit of the output of the undertaking of the WUC.
- (f) The Principal grants to the Contractor a non-exclusive licence to use the Principal's Background IP to the extent necessary for the Contractor to perform the WUC.

10.3 Moral rights

The Contractor warrants that:

- (a) the Principal may do or authorise any acts or omissions in relation to any copyright works assigned or licensed under this Major Works Contract without infringing any Moral Rights in respect of the copyright works; and
- (b) it will obtain or procure all consents or waivers necessary to ensure that the Principal may do or authorise any acts or omissions in relation to any copyright works assigned or licensed under this Major Works Contract without infringing any Moral Rights in respect of the copyright works.

11. Legislative Requirements and Principal's Policies and Procedures

11.1 Compliance

- (a) The Contractor must satisfy all Legislative Requirements.
- (b) The Contractor, upon finding that a Legislative Requirement is at variance with the Major Works Contract or the Project Requirements, must promptly give the Superintendent written notice thereof.

11.2 Changes

- (a) If a Legislative Requirement (other than in respect of Prohibited Cladding Products):
 - (i) necessitates a change:

- (A) to the Project Requirements;
 - (B) to the Works;
 - (C) being the provision of services by a Relevant Authority; or
 - (D) in a fee or charge or payment of a new fee or charge;
 - (ii) comes into effect after the Commencement Date but could not reasonably then have been anticipated by a prudent, competent and experienced contractor; and
 - (iii) causes the Contractor to incur more or less cost than otherwise would have been incurred,
- the reasonable difference will be assessed by the Superintendent and added to or deducted from the Contract Sum and the Contractor will be entitled to claim an EOT in accordance with clause 35.4.
- (b) The Contractor must use all reasonable endeavours to minimise or mitigate the effects of a change in Legislative Requirements.

11.3 Privacy

- (a) In this clause 11.3:
 - (i) 'Code of Practice' means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic);
 - (ii) 'Information Privacy Principles' means the principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic);
 - (iii) 'Personal Information' means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
 - (iv) 'Privacy Laws' means the *Privacy Act 1988* (Cth) including the Australian Privacy Principles contained within it, the *Spam Act 2003* (Cth) and any Legislative Requirement or industry code in relation to the handling of Personal Information.
- (b) The Contractor must
 - (i) comply with:
 - (A) all Privacy Laws;
 - (B) any privacy requirements set out in the Principal's Policies and Procedures; and
 - (C) any reasonable directions from the Principal connection with the disclosure or handling of any Personal Information, in the performance of its obligations under this Major Works Contract; and
 - (ii) not do anything that would cause the Principal to breach or be taken to breach a Privacy Law.
- (c) Without limiting clause 11.3(b), the Contractor agrees in respect of Personal Information held in connection with this Major Works Contract:
 - (i) that it shall be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or good engaged in by the Contractor for the purposes of this Major Works Contract, in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal; and
 - (ii) to immediately notify the Principal where it becomes aware of a breach of clause 11.3(c)(i) by it or any of its agents or employees.

12. Protection and safety

12.1 Protection of people and property

- (a) The Contractor must:
 - (i) take measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (b) If any act or omission by the Contractor damages property, the Contractor must promptly rectify the damage and pay any compensation which the law requires the Contractor to pay.
- (c) If the Contractor fails to comply with an obligation under this clause, the Principal, after the Superintendent has given reasonable written notice to the Contractor and in addition to the Principal's other rights and remedies, may have the obligation performed by others. The cost thereby incurred will be certified by the Superintendent as moneys due from the Contractor to the Principal.

12.2 Environment

- (a) Without limiting the generality of any other provision of this Major Works Contract, the Contractor must in relation to the performance of the Works comply with all environmental obligations imposed on the Contractor under the Major Works Contract, contained in the Preliminaries Document and under any applicable Environmental Law, including but not limited to procedures specified in documentation relating to the Contractor's environmental management system.
- (b) The Contractor must supervise and monitor the performance of all environmental obligations imposed on the Contractor under the Major Works Contract, contained in the Preliminaries Document and under any applicable Environmental Law. The Contractor must report to the Principal on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under the Major Works Contract and contained in the Preliminaries Document upon request by the Principal.
- (c) The Contractor will be liable for and indemnifies the Principal against all Claims and Losses of any kind arising from or in connection with:
 - (i) any breach by the Contractor of this clause 12.2 or any Environmental Law; or
 - (ii) the discharge, release or emission of any Hazardous Material, smell or noise into the environment caused or contributed to by the Contractor or any Subcontractor.
- (d) If the Contractor fails to comply with any of its environmental obligations under the Major Works Contract, the Principal may take whatever action is necessary to remedy such failure and deduct the cost of such action from moneys due or becoming due to the Contractor.

12.3 Occupational Health and Safety

- (a) If specified in Item 43 of the Contract Particulars, prior to commencing the WUC, the Contractor must:
 - (i) develop and implement the Contractor's OH&S Plan; and
 - (ii) within 10 Business Days of a request by the Superintendent, provide a copy of the Contractor's OH&S Plan to the Superintendent.
- (b) The Contractor:
 - (i) acknowledges that any Contractor's OH&S Plan forms part of the Occupational Health and Safety Requirements;
 - (ii) warrants that it is familiar with, and has the capabilities and resources to comply with the Occupational Health and Safety Requirements;

- (iii) must, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of this Major Works Contract, comply with all relevant health and safety related policy or procedures of the Principal relevant to the carrying out of the WUC and the Occupational Health and Safety Requirements (and to the extent any policy or procedure is inconsistent with the Occupational Health and Safety Requirements, the highest standard of safety will apply);
 - (iv) must not cause the Principal to contravene any Occupational Health and Safety Requirements;
 - (v) in performing the WUC, take all necessary precautions to ensure the health and safety of the Contractor's Personnel, the Principal's personnel and members of the public;
 - (vi) must, on the reasonable request of the Superintendent or Principal, demonstrate compliance with the Occupational Health and Safety Requirements, including providing evidence of measures taken to achieve such compliance;
 - (vii) must cooperate with the Other Contractors and the Principal to ensure that all parties are able to comply with the Occupational Health and Safety Requirements; and
 - (viii) must permit access to the Site to the Principal at any time to ensure that the Contractor is complying with its obligations under this clause 12.3.
- (c) In the event of any incident which has or has the potential to breach any Occupational Health and Safety Requirements or safety related policy or procedure of the Principal or if an accident, injury or property or environmental damage occurs during, or in association with, the carrying out of WUC ("incident"), the Contractor must:
- (i) promptly notify the Principal and the Superintendent of the incident and the Loss suffered;
 - (ii) within 24 hours after the incident occurring, provide a written report to the Principal and the Superintendent giving complete details of the incident including:
 - (A) the cause of the incident;
 - (B) the Loss suffered as a direct or indirect consequence of the incident, including a record of all injuries to persons;
 - (C) the treatment of any persons as a direct or indirect consequence of the incident (and, if applicable, details of any ongoing treatment after 24 hours after the incident must be provided in a written report to the Principal and the Superintendent every 20 Business Days thereafter); and
 - (D) a strategy for preventing the incident reoccurring, or an event of similar nature to the incident reoccurring,

and the Contractor must keep a consolidated copy of all such incident reports and must make the same available to the Principal or the Superintendent upon request; and
 - (iii) to the extent permitted by law, indemnify the Principal against any Losses which the Principal may incur arising out of, or as a result of, non-compliance or breach by the Contractor (or any of its Subcontractors) of this clause 12.3. This indemnity extends to include any costs incurred by the Principal in taking steps to ensure compliance by the Principal, the Contractor or any Other Contractors with the Occupational Health and Safety Requirements;
- (d) Any breach of this clause 12.3 entitles the Principal, at its option, to:
- (i) suspend the whole or part of WUC and the Contractor must bear the costs it incurs as a result of that suspension; or

- (ii) terminate the Major Works Contract immediately without further obligation to the Contractor.
- (e) Prior to commencing the WUC (other than the activities to comply with this clause 12.3), the Contractor must:
 - (i) inspect the areas which will be accessed, disturbed, or interfered with in order to undertake the WUC;
 - (ii) insofar as possible inform itself of the presence of asbestos and consult the Principal's asbestos register (if any);
 - (iii) carry out the inspection in a manner, with a degree of thoroughness and at a time such that the Contractor can identify any Hazardous Circumstance;
 - (iv) ensure that the Contractor's OH&S Plan and, where appropriate, the Contractor's Management Plan with respect to the Environment describe the way in which the WUC will be undertaken in order to:
 - (A) provide a risk assessment of all hazards and risks associated with the WUC and properly take account of any such Hazardous Circumstance; and
 - (B) enable the Contractor to undertake the WUC in compliance with the Major Works Contract and the Preliminaries Document, and in a manner which minimises the risk of injury, illness or other adverse outcome; and
 - (v) advise the Superintendent of the existence and nature of the Hazardous Circumstance and confirm to the Superintendent that the Contractor has complied with clause 12.3(e)(iv).
- (f) The Contractor must undertake the WUC in a manner which properly takes account of any Hazardous Circumstance and in a manner which minimises the risk of injury, illness or other adverse outcome.
- (g) If the Contractor encounters a Hazardous Circumstance it must immediately:
 - (i) advise the Superintendent of this and comply with any Direction of the Superintendent in relation to the Hazardous Circumstance; and
 - (ii) if any of that Hazardous Circumstance is asbestos:
 - (A) safely handle and manage the asbestos; and
 - (B) if the asbestos was not previously known to the Principal, report the asbestos to the Principal with sufficient detail to update the Principal's asbestos register (if any).

12.4 Principal Contractor

If specified in Item 43 of the Contract Particulars, the Contractor accepts appointment as the Principal Contractor and must comply with the obligations imposed on a Principal Contractor and discharge all of the Principal Contractor Obligations.

12.5 Compliance

- (a) If specified in Item 15 of the Contract Particulars, the Principal may engaged an independent third party to review the Contractor's compliance with clause 12 and the Occupational Health and Safety Requirements.
- (b) Any review, comment or assurance by a party engaged by the Principal under this clause 12.5 will not relieve the Contractor from its obligations under this clause or the Occupational Health and Safety Requirements.
- (c) Costs in connection with the third party review pursuant to this clause 12.5 will be borne by the Principal except where the review reveals a failure of the Contractor to comply with the Major Works Contract (including this clause).

13. Urgent protection

- (a) If urgent action is necessary to protect WUC, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal or the Superintendent on behalf of the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the Superintendent will certify the cost incurred as moneys due from the Contractor to the Principal.
- (b) If time permits, the Principal or the Superintendent (as applicable) will give the Contractor prior written notice of the intention to take action pursuant to this clause.

14. Care of the work and reinstatement of damage

14.1 Care of WUC

- (a) Except as provided in clause 14.3, the Contractor will be responsible for care of:
 - (i) the whole of WUC from and including the date of commencement of WUC to 4:00 pm on the Date of Completion, at which time responsibility for the care of the Works (except to the extent provided in clause 14.1(b)) will pass to the Principal; and
 - (ii) outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Completion until completion of outstanding work or compliance with clauses 31, 32 and 36.
- (b) Without limiting the generality of paragraph (a), the Contractor will be responsible for the care of unfixed items accounted for in a payment schedule and the care and preservation of things entrusted to the Contractor by the Principal or brought onto the Site by Subcontractors for carrying out WUC.

14.2 Reinstatement

- (a) If Loss or damage, other than that caused by an Excepted Risk, occurs to WUC during the period of the Contractor's care, the Contractor must at its cost, rectify such Loss or damage.
- (b) In the event of Loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor must to the extent directed by the Superintendent, rectify the Loss and such rectification will be a deemed Variation. If Loss or damage is caused by a combination of Excepted Risks and other risks, the Superintendent in pricing the Variation must assess the proportional responsibility of the parties.

14.3 Excepted risks

The Excepted Risks causing Loss or damage, for which the Principal is liable, are:

- (a) any negligent act or omission of the Superintendent, the Principal or its consultants, agents, employees or Other Contractors;
- (b) any risk specifically excepted elsewhere in the Major Works Contract;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or Relevant Authority;
- (d) 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 its Subcontractors or either's employees or agents; and
- (e) use or occupation of any part of WUC by the Principal or its consultants, agents or Other Contractors,

provided that the Loss or damage was not contributed to by the failure of the Contractor to comply with its obligations under the Major Works Contract.

15. General indemnity

15.1 Indemnity by Contractor

- (a) The Contractor must indemnify the Principal, the Superintendent, their employees, agents and contractors (**Indemnified Parties**) against all Losses arising in connection with:
 - (i) any damage to the Site, the Works or any property whether located on the Site or otherwise;
 - (ii) death or injury to any person whether located on the Site or otherwise;
 - (iii) a breach by the Contractor or Contractor's Personnel of a Legislative Requirement;
 - (iv) any actual or alleged infringement of any Intellectual Property Rights, caused by the Contractor's performance of the WUC including the performance by Contractor's Personnel or the use of any process, work, material, matter, thing or method used or supplied by the Contractor or Contractor's Personnel;
 - (v) a breach by the Contractor of an obligation or warranty under the Major Works Contract; and
 - (vi) any Losses or third party claims against the Principal pursuant to section 157 of the *Water Act 1989* (Vic),if the Losses arise in connection with any act, error or omission of the Contractor or Contractor's Personnel.
- (b) If the Losses are caused in part by any act, error or omission of an Indemnified Party then the Contractor's liability to indemnify that Indemnified Party under this clause 15 will be reduced proportionally to the extent that the Losses are caused by the act, error or omission of that Indemnified Party.

16. General insurance requirements

16.1 Insurance of the Works

- (a) Before the Contractor commences the WUC of the Site, the Principal must insure WUC. The Principal shall provide the Contractor with a copy of the certificate of currency upon request. The Principal must maintain such insurance while the Contractor has an interest in WUC.
- (b) The Contractor shall be liable to pay or reimburse the deductible in relation to the Principal's works insurance to the extent the Contractor or its Subcontractors caused or contributed to the relevant loss or damage in connection with the WUC.
- (c) Insurance under this clause 16.1 must cover the parties, Consultants and Subcontractors whenever engaged in WUC for their respective rights, interests and liabilities. The insurance must not contain an aviation exclusion, if the WUC is to be carried out airside.

16.2 Insurance of employees

- (a) Before commencing WUC, the Contractor must insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover must be for not less than the minimum amounts required by statute in each State and Territory in which WUC are to be performed or the Contractor's employees are employed or normally reside and must be maintained until completion of all WUC. The insurance must not contain an aviation exclusion, if the WUC is to be carried out airside.

- (b) Where permitted by law, the insurance policy or policies must be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.
- (c) The Contractor must ensure that all Consultants and Subcontractors have similarly insured their employees.

16.3 Motor vehicle insurance

- (a) Before the commencement of the WUC and for the duration of the carrying out of the WUC, the Contractor must effect and maintain third party property damage motor vehicle insurance in respect of all vehicles to be used by the Contractor in connection with the WUC for a minimum of \$30 million arising out of any one occurrence. The insurance must not contain an aviation exclusion, if the WUC is to be carried out airside.
- (b) The Contractor must ensure that every Subcontractor obtains insurance which complies with clause 16.3(a).

17. Public liability insurance

The alternative in Item 16 of the Contract Particulars applies.

Alternative 1: Contractor to insure

- (a) Before commencing WUC, the Contractor must effect and maintain for the duration of the Major Works Contract, a public liability policy.
- (b) The policy must:
 - (i) be in the joint names of the parties;
 - (ii) cover the:
 - (A) respective rights and interests; and
 - (B) liabilities to third parties,
 of the parties, the Superintendent, Consultants and Subcontractors and their respective employees from time to time, whenever engaged in WUC;
 - (iii) cover the parties' respective liability to each other for Loss to property including loss of use whether such property be damaged or not (other than property required to be insured by clause 16.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
 - (iv) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third party motor vehicle insurance policy;
 - (v) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Item 17 of the Contract Particulars;
 - (vi) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals will not be unreasonably withheld); and
 - (vii) not contain an aviation exclusion, if the WUC is to be carried out airside.

Alternative 2: Principal to insure

Before the Contractor commences the WUC, the Principal must effect in relation to WUC, a public liability policy nominating or stating the insurer. The Principal must maintain such insurance while the Contractor has an interest in WUC.

18. Professional Indemnity Insurance

The alternative in Item 18 of the Contract Particulars applies.

Alternative 1: Contractor to insure

- (a) Before commencing WUC, the Contractor must effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 19 of the Contract Particulars. The insurance must not contain an aviation exclusion, if the WUC is to be carried out airside.
- (b) The insurance must be maintained until the Final Certificate is issued and thereafter for the period as stated in Item 19 of the Contract Particulars.
- (c) The Contractor must ensure that every Consultant, if within a category stated in Item 19 of the Contract Particulars, effects and maintain professional indemnity insurance with levels of cover not less than stated in Item 19 of the Contract Particulars applicable to that category.
- (d) Each such Consultant's professional indemnity insurance must be maintained until the Final Certificate is issued and thereafter for the period as stated in Item 19 of the Contract Particulars.

Alternative 2: Professional Indemnity Insurance not required

The Contractor is not required to effect and maintain professional indemnity insurance in respect of the WUC.

19. Asbestos Liability Insurance

Where stated in Item 20 of the Contract Particulars, before commencing work under the Major Works Contract, the Contractor shall effect or have effected occurrence based asbestos liability insurance in respect of the site. The asbestos liability insurance in respect of any one occurrence shall be for an amount not less than the sum stated in Item 20 of the Contract Particulars, and in the aggregate, not less than the amount stated in Item 20 of the Contract Particulars.

20. Additional Insurances

The Contractor must effect and maintain the additional insurances set out in Item 21 of the Contract Particulars for the amounts and at the times set out in Item 21 of the Contract Particulars.

21. Inspection and provisions of insurance policies

21.1 Proof of insurance

- (a) Before the Contractor commences WUC and whenever requested in writing by the other party, a party liable to insure must provide evidence satisfactory to the Superintendent of such insurance effected and maintained.
- (b) Insurance must not limit liabilities or obligations under other provisions of the Major Works Contract.

21.2 Failure to produce proof of insurance

- (a) If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof will be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.
- (b) Where the Contractor is required to provide evidence of insurance, the provision of such evidence is a condition precedent to the right to claim any payment under the Major Works Contract and a precondition to access to the Site.

21.3 Notices from or to insurer

The party insuring under clause 17 or 18 must ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a Consultant or a Subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the Superintendent, a Consultant or a Subcontractor must be accepted by the insurer as a notice of claim given by both parties, the Superintendent, the Consultant and the Subcontractor; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

21.4 Notices of potential claims

A party must, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16.1, 17 or 18 and must keep the other party informed of subsequent developments concerning the claim. The Contractor must ensure that Consultants and Subcontractors in respect of their operations similarly inform the parties.

21.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16.1:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement, insurance moneys received must, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the Contractor reinstates the Loss, the Superintendent will certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor is entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any Loss suffered by the Contractor.

21.6 Cross liability and subrogation

Any insurance required to be effected in joint names in accordance with the Major Works Contract must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

22. Superintendent

22.1 Authority

- (a) The Principal must ensure that at all times there is a Superintendent.
- (b) The Contractor acknowledges that the Superintendent may be an employee of the Principal.

22.2 Directions

- (a) The Contractor must comply with any Direction given by the Superintendent under a provision of this Major Works Contract.
- (b) Except where the Major Works Contract otherwise provides, the Superintendent may give a Direction orally but must as soon as practicable confirm it in writing.

- (c) If the Contractor fails to comply with a Direction of the Superintendent by the prescribed timing of the Direction, in addition to any other remedies of the Principal, the Principal may have work carried out by other persons such that the Direction is complied with and the reasonable cost incurred by the Principal will be a debt due from the Contractor to the Principal.

22.3 Exercise of functions

- (a) The Principal must ensure that the Superintendent acts in good faith, honestly and in accordance with the Major Works Contract:
 - (i) when exercising the following 'Certification Functions':
 - (A) determining extensions of time under clause 35.6;
 - (B) determining whether to issue a direction for the Contractor to accelerate the performance of the WUC instead of granting an extension to the Date for Completion under clause 33.7(a)(ii);
 - (C) issuing a Completion Certificate to the Contractor specifying the Date of Completion under clause 35.7(c);
 - (D) determining whether Administrative Completion has been achieved;
 - (E) issuing a Final Certificate under clause 38.7;
 - (F) determining the amount of Security or liquidated damages applicable to a Separable Portion under clause 4;
 - (G) valuing Variations under clause 37.4;
 - (H) determining whether to adjust the Date for Completion when considering a Variation under clause 37;
 - (I) determining the amount set out in a payment schedule under clause 38.3; and
 - (ii) where the Major Works Contract expressly states that the Principal or the Superintendent must act reasonably.
- (b) In performing their other functions and exercising any of their other powers, duties, or discretions or authorities under the Major Works Contract other than those set out in clause 22.3(a), the Principal and Superintendent act in their absolute discretion and are not required to act reasonably.
- (c) The obligation under clause 22.3(a) to ensure the Superintendent acts reasonably does not require the Superintendent to:
 - (i) exercise a discretion in the Contractor's favour or otherwise subordinate the interests of the Principal to those of the Contractor; or
 - (ii) consider or allow any claim (including for a Variation or extension of time) where the Contractor has not strictly complied with the Major Works Contract in respect of that claim; or
 - (iii) limit any action by the Principal or the Superintendent to secure a legitimate interest, right or remedy granted to the Principal under the Major Works Contract.

23. Superintendent's Representative

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent's functions, provided that:

- (a) no aspect of any function will at any one time be the subject of delegation to more than one Superintendent's Representative;
- (b) delegation will not prevent the Superintendent exercising any function;

- (c) the Superintendent forthwith gives the Contractor written notice of respectively:
 - (i) the appointment, including the Superintendent's Representative's name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the Contractor makes any reasonable objection to the appointment of a Superintendent's Representative, the Superintendent must terminate the appointment.

24. Contractor's representative

- (a) The Contractor must superintend WUC personally or by a competent representative. Matters within a Contractor's representative's knowledge (including Directions received) will be deemed to be within the Contractor's knowledge.
- (b) The Contractor must give the Superintendent written notice of the representative's name and any subsequent changes.
- (c) The Contractor's representative must represent the Contractor for all purposes of the Major Works Contract unless the Contractor advises the Principal in writing otherwise. The Contractor warrants that the Contractor's representative is authorised to act on behalf of, and to bind, the Contractor in all matters related to WUC and the Major Works Contract.
- (d) If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor must terminate the appointment and appoint another representative.

25. Contractor's employees and subcontractors

25.1 Key Personnel

- (a) The Contractor must engage the Key Personnel for the performance of WUC.
- (b) The Contractor must not replace any of the Key Personnel unless:
 - (i) the Superintendent, in its absolute discretion, approves the substitution of a member of the Key Personnel;
 - (ii) an instruction is given by the Superintendent under clause 25.2(c) to remove a member of the Key Personnel;
 - (iii) a member of the Key Personnel dies, retires, resigns or is retrenched (other than to accept other employment with the Contractor or any associate of the Contractor) or otherwise suffers from ill health that prevents the member of Key Personnel from performing the relevant part of the Works; or
 - (iv) a member of the Key Personnel's section of WUC has been completed.
- (c) Any vacancy of Key Personnel must be promptly filled by the Contractor with a person of at least equivalent experience, ability and expertise approved by the Superintendent.

25.2 Control of Contractor's employees and subcontractors

- (a) The Contractor must supply all labour, supervisory and other personnel necessary for the performance of the WUC in accordance with the Major Works Contract.
- (b) The Contractor shall only engage, in activities connected with the WUC, persons who are careful, skilled and experienced in their respective trades and professions and suitably qualified and experienced to meet the Contractor's obligations under the Major Works Contract.
- (c) The Superintendent may direct the Contractor to have removed from the Site or from any activity connected with the WUC, within such time as the Superintendent directs, any person employed in connection with the WUC (including Key Personnel) who, in the

opinion of the Superintendent (acting reasonably), is unqualified, guilty of misconduct or is incompetent or negligent.

- (d) Any person removed in accordance with clause 25.2(c) shall not thereafter be engaged on the Site or on activities connected with the Works without the prior written approval of the Principal.
- (e) Where there is a direction given under this clause 25.2, the Contractor shall ensure that there is no interruption to the WUC.
- (f) A breach by the Contractor of this clause 25.2 will be a substantial breach for the purposes of clause 40.2.

25.3 Industrial relations

- (a) The Contractor is responsible for the due and proper conduct of industrial relations matters arising in the performance of the WUC and, subject to clause 35, all time and cost implications of those industrial relations matters.
- (b) The Contractor must keep the Principal informed of any issues or potential industrial issues arising in connection with the performance of the WUC.

26. Site

26.1 Access

- (a) Provided the Contractor has complied with those conditions set out in Item 44 of the Contract Particulars, the Principal must before the expiry of the time in Item 44 of the Contract Particulars, give the Contractor access to sufficient portion of the Site for commencement of WUC on Site. If the Principal has not given the Contractor access to the whole Site, the Principal must give the Contractor access to such further portions of the Site as may, from time to time, be necessary for carrying out WUC. Subject to clause 40.7, delay by the Principal in giving access will not be a breach of the Major Works Contract but will entitle the Contractor to claim an EOT in accordance with clause 35.4 and reasonable extra costs actually incurred in accordance with clause 35.10 as if the event were a Compensable Cause.
- (b) Access to the Site will confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out WUC and will exclude camping, residential purposes and any purpose not connected with WUC, unless approved by the Superintendent.

26.2 Access for Principal and others

- (a) The Contractor must at all reasonable times give the Superintendent access to WUC.
- (b) The Principal and the Principal's employees, consultants and Other Contractors may at any time have access to any part of the Site for any purpose. The Contractor must permit persons (including Other Contractors) engaged by the Principal to carry out work on the Site other than WUC and must cooperate with them. The Principal must give to the Contractor the names and roles of the persons so engaged.
- (c) The Contractor must:
 - (i) at all reasonable times allow access to the Site to the Other Contractors;
 - (ii) cooperate with the Other Contractors and avoid or minimise the extent to which the Contractor's work hinders, delays, disrupts or otherwise detrimentally affects the work of the Other Contractors;
 - (iii) use its best endeavours to facilitate the work of the Other Contractors;
 - (iv) protect the Other Contractor's work from damage caused by the Contractor and, if such damage occurs, reimburse the Other Contractor's costs for rectifying such damage;

- (v) coordinate and manage WUC with the work of the Other Contractors so as to avoid delays to the Date for Completion and the Program;
- (vi) ascertain from the Superintendent and the Other Contractors all information relating to the Other Contractors' obligations under this clause including, connection details, service connections, scheduling, staffing levels and requirements and any other information; and
- (vii) ensure that the Other Contractors are aware at all time of any industrial relations requirements on and affecting the Site, and be responsible for the control of and resolution of all industrial disputes on or affecting the Site.

26.3 Access hours

Unless otherwise agreed in writing between the Contractor and the Superintendent, the hours of access applicable to WUC to be carried out on site are those set out in Item 46 of the Contract Particulars.

26.4 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site will as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor must:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the Superintendent written notice of the discovery.

26.5 Site Information

- (a) The Principal does not warrant, guarantee, make any representation or assume any duty of care with respect to the completeness, accuracy or adequacy of the Site, Site Conditions or of any Site Information.
- (b) The Contractor acknowledges and agrees that:
 - (i) it did not place any reliance upon the completeness, accuracy or adequacy of any Site Information;
 - (ii) it entered into this Major Works Contract based upon its own investigations, interpretations, deductions, information and determinations;
 - (iii) the Site Information does not form part of the Major Works Contract; and
 - (iv) to the extent permitted by law, the Principal is not liable to the Contractor in relation to any Claim with respect to Information Documents (including the Site Information) or the Site Conditions.

26.6 Contractor's Management Plans

- (a) If, as at the Commencement Date and where required by Item 45 of the Contract Particulars, any of the Contractor's Management Plans have not been submitted to the Principal in a form that complies with the requirements of this clause 26.6, then the Contractor must complete those plans and provide copies to the Principal within the time directed by the Superintendent.
- (b) The Contractor's Management Plans must:
 - (i) comply with any relevant Legislative Requirement;
 - (ii) comply with the conditions of the Preliminaries Document;
 - (iii) not prescribe a lesser standard or requirement than the corresponding standard or requirement in any of the relevant Principal's Procedures and Policies;
 - (iv) support compliance with and the implementation of the relevant Principal's Procedures and Policies;

- (v) to the extent relevant in relation to the particular plan, describe how the Contractor will manage the undertaking of the WUC in accordance with the Major Works Contract and reveal how the Contractor will comply with the obligations imposed by the Major Works Contract;
 - (vi) describes how the Contractor will satisfy the relevant Legislative Requirements;
 - (vii) describes how the Contractor will provide evidence that it has satisfied the relevant Legislative Requirements;
 - (viii) comply with any other requirement specified in relation to the particular plan; and
 - (ix) otherwise comply with the reasonable requirements of the Superintendent.
- (c) The Principal is not obliged to perform any obligation or to bring about any state of affairs merely by reason of such obligation or state of affairs being referred to in the Contractor's Management Plans even if, the Contractor's Management Plans describe an obligation as being imposed on the Principal or being brought about by the Principal. Any such obligation or state of affairs is only imposed on the Principal or is the responsibility of the Principal if it is also imposed or provided for in the Major Works Contract (without regard to the Contractor's Management Plans). The Contractor is not entitled to rely upon any assumption contained in or capable of interference from the Contractor's Management Plans or any relief if such an assumption is not made good unless the assumption reflects, or is consistent with, an allocation of risk or responsibility otherwise provided for in the Major Works Contract (without regard to the Contractor's Management Plans).
- (d) The Contractor must implement and update the Contractor's Management Plans as directed by the Superintendent or as necessitated by the WUC. If the Contractor amends any of the Contractor's Management Plans, the Contractor must immediately provide a copy of the amended plan to the Superintendent.
- (e) If the Principal forms a view that any of the Contractor's Management Plans do not comply with this clause, and the Contractor is advised of this view and the reasons for this view, then the Contractor must amend the relevant plans so that the plans do comply with this clause.

27. Latent conditions

27.1 Scope

Latent conditions are physical conditions on or under the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should have been anticipated by a competent and experienced contractor at the time of the Contractor's tender or, in the absence of a tender, at the Commencement Date if the Contractor had inspected:

- (a) all written information made available by the Principal to the Contractor in writing for the purpose of tendering;
- (b) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the Site and its near surrounds.

27.2 Notification

- (a) The Contractor, upon becoming aware of a latent condition while carrying out WUC, must promptly, and where possible before the latent condition is disturbed, give the Superintendent written notice of the general nature thereof.
- (b) If required by the Superintendent promptly after receiving that notice, the Contractor must, as soon as practicable, give the Superintendent a written statement of:
 - (i) the latent condition encountered and the respects in which it differs materially;

- (ii) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the latent condition; and
- (iii) other details reasonably required by the Superintendent.

27.3 Deemed variation

The effect of the latent condition will be a deemed Variation, priced having no regard to any cost incurred before the date on which the Contractor gave the notice required by the first paragraph of clause 27.2 but so as to include the Contractor's costs for the Contractor's compliance with clause 27.2.

28. Setting out the Works

28.1 Setting out

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

28.2 Errors in setting out

The Contractor must rectify every error in the position, level, dimensions or alignment of any WUC after promptly notifying the Superintendent and unless the Superintendent within 3 Business Days directs otherwise.

28.3 Care of survey marks

- (a) The Contractor must keep in their true positions all survey marks supplied by the Superintendent.
- (b) The Contractor must reinstate any survey mark disturbed, after promptly notifying the Superintendent and unless the Superintendent within 3 Business Days directs otherwise.
- (c) The Contractor acknowledges that it is not entitled to make any Claim as a result of complying with this clause 28.3.

29. Cleaning up

- (a) The Contractor must keep the Site and WUC clean and tidy and regularly remove rubbish and surplus material.
- (b) Within 10 Business Days after the Date of Completion, the Contractor must remove Temporary Works and Construction Plant. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.
- (c) If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.
- (d) If:
 - (i) the Contractor fails to comply with such a Direction; and
 - (ii) that failure has not been made good within 5 Business Days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Superintendent will certify the cost incurred as moneys due and payable from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

30. Materials, Samples and Reference Work

30.1 Materials, labour and construction plant

- (a) Subject to clause 30.4 and where the Major Works Contract provides otherwise, the Contractor must supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities.
- (b) In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Major Works Contract, the Superintendent may direct the Contractor to:
 - (i) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
 - (ii) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.
- (c) The Superintendent may give the Contractor a written Direction not to remove materials or Construction Plant from the Site. Thereafter the Contractor must not remove them without the Superintendent's prior written approval (which will not be unreasonably withheld).

30.2 Samples

- (a) The Contractor must provide, to the Superintendent, the Samples. The Samples must be provided:
 - (i) at the time provided for by the Major Works Contract; or
 - (ii) if no time is provided, in sufficient time to enable the Superintendent to evaluate the Samples (such time being not less than 10 Business Days prior to the Contractor desiring to progress with the WUC to which the Sample relates).
- (b) If the Superintendent is of the view that the quality apparent from the Sample is not as required by the Major Works Contract, the Contractor must resupply modify or rectify the Sample so that the Sample is as required by the Major Works Contract. This clause will continue to apply until the quality apparent from the Sample is as required by this Major Works Contract.
- (c) Where a Sample has been approved by the Superintendent, all materials or work thereafter must be, at least, of equal quality to the Sample. No receipt of, acknowledgement of, review of, approval of or comment on the Sample will relieve the Contractor from any of its obligations under the Major Works Contract.

30.3 Reference Work

The Superintendent may, at any time, nominate part of the Works as 'reference work'. Where part of the Works has been nominated as 'reference work' all materials or work thereafter must be, at least, of equal quality to the 'reference work'. No nomination of part of the Works as 'reference work' must relieve the Contractor from any of its obligations under the Major Works Contract.

30.4 Principal Supplied Materials

- (a) The Principal shall procure and supply, free of charge, to the Contractor the quantity and type of Principal Supplied Materials specified in Schedule 8.
- (b) The Superintendent shall liaise with suppliers of the Principal Supplied Materials and keep the Contractor informed of expected delivery dates.
- (c) The Contractor shall accept delivery of the Principal Supplied Materials by the relevant supplier and transfer them to the Contractor's storage facility or, where applicable, the site.
- (d) Upon delivery of the Principal Supplied Materials to the Contractor, the Contractor must:

- (i) inspect the Principal Supplied Materials and promptly (and in any event within the time period set out in Item 48 of the Contract Particulars) give written notice to the Principal and the Superintendent of any shortage, defect or fault in the Principal Supplied Materials;
 - (ii) comply with any other requirements set out in the Major Works Contract for the acceptance of the Principal Supplied Materials by the Contractor; and
 - (iii) if required by the Principal or Superintendent, give the Superintendent or its nominated representative access to inspect the Principal Supplied Materials upon reasonable notice.
- (e) If the Contractor fails to provide a notice under clause 30.4(d)(i), within the time prescribed it shall be deemed to accept delivery of the Principal Supplied Materials.
- (f) From the date on which the Contractor accepts delivery of the Principal Supplied Materials until the Date of Completion, the Contractor is responsible for the care and custody of the Principal Supplied Materials, together with the risk of Loss or damage to the Principal Supplied Materials.
- (g) The Contractor must ensure that the Principal Supplied Materials are:
 - (i) insured against the risk of Loss or damage (resulting from any cause whatsoever) for an amount not less than the full value of the Principal Supplied Materials, with such insurance:
 - (A) to apply from the time of delivery by the relevant supplier until the Principal Supplied Materials are incorporated into the Works; and
 - (B) note the Principal's interest in the Principal Supplied Materials.
 - (ii) properly and safely stored, and adequately protected;
 - (iii) properly and safely transported;
 - (iv) properly unloaded and unpacked; and
 - (v) incorporated into the Works in accordance with the Major Works Contract.
- (h) Ownership of any Principal Supplied Materials supplied by the Principal remains with the Principal at all times.
- (i) The Principal does not warrant the accuracy of any quantities of Principal Supplied Materials or that any such quantities are adequate or sufficient to carry out the Works under this Major Works Contract.
- (j) The Principal does not warrant the suitability of any Principal Supplied Material to carry out the Works under the Major Works Contract.
- (k) If the Contractor gives written notice to the Principal in accordance with clause 30.4(d) that there is a shortage, defect or fault in the Principal Supplied Materials, the Principal will promptly inspect the Principal Supplied Materials and, if the Principal Supplied Materials are demonstrated to be short, defective or faulty, the Principal will replace such Principal Supplied Materials at no additional cost to the Contractor. The Contractor will not have any further claims or entitlements in respect of the Principal Supplied Materials.
- (l) If the Contractor does not give written notice to the Principal in accordance with clause 30.4(d), the Contractor will be deemed to have accepted delivery of the Principal Supplied Materials and will have no entitlement to claim for any shortage, defect or fault in the Principal Supplied Materials.
- (m) If the Contractor requires additional quantities of any Principal Supplied Materials, the Contractor must give written notice to the Principal and the Superintendent of the type and quantity of the additional Principal Supplied Materials required by the Contractor. Any notice given by the Contractor under this clause 30.4(m) must be given within a reasonable period of time prior to the date that the Contractor requires the additional Principal Supplied Materials.

- (n) The Principal will direct the Contractor as to whether the additional Principal Supplied Materials will be supplied by the Principal or are to be procured by the Contractor at the Contractor's cost and expense.
- (o) All costs and expenses incurred by the Principal in supplying any additional Principal Supplied Materials will be borne by the Contractor. Provided the Principal uses reasonable endeavours to supply any additional Principal Supplied Materials set out in a notice given by the Contractor in accordance with this clause 30.4 within the time specified in the notice, the Contractor will not be entitled to an extension of time under clause 35.4 as a Qualifying Cause of Delay for a failure by the Principal to supply the additional Principal Supplied Materials within the time specified in the notice.

31. Quality

31.1 Quality of material and work

Unless otherwise provided, the Contractor must use:

- (a) new materials which meet any quality requirements in the Specifications or ;and
- (b) proper and tradesmanlike workmanship.

31.2 Quality assurance

- (a) The Contractor must:
 - (i) plan, establish and maintain a quality system in accordance with this Major Works Contract; and
 - (ii) ensure that the Superintendent has access to the quality system of the Contractor, Consultants and Subcontractors so as to enable monitoring and quality auditing.
- (b) Any such quality system must be used only as an aid to achieving compliance with the Major Works Contract and to document such compliance. Such system will not discharge the Contractor's other obligations under the Major Works Contract.

31.3 Defective work

- (a) If the Superintendent becomes aware of work done (including materials provided) by the Contractor which does not comply with the Major Works Contract prior to the Date for Completion, the Superintendent must as soon as practicable give the Contractor written details thereof and may direct the Contractor to do any one or more of the following (including times for commencement and completion):
 - (i) remove the material from the Site;
 - (ii) demolish the work;
 - (iii) redesign, reconstruct, replace or correct the work; and
 - (iv) not deliver it to the Site.
- (b) If:
 - (i) the Contractor fails to comply with such a Direction within the time stated in the Direction or, if no time is specified, a reasonable time; and
 - (ii) that failure has not been made good within 6 Business Days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work rectified by others,

the Principal may have that work so rectified and the Superintendent will certify the cost incurred as moneys due from the Contractor to the Principal.
- (c) The Contractor acknowledges that it must attempt to rectify and/or complete all minor omissions and Defects prior to Completion and not leave them to be rectified after Completion.

31.4 Acceptance of defective work

Instead of a Direction pursuant to clause 31.3, the Superintendent may direct the Contractor that the Principal elects to accept the subject work, whereupon there will be a deemed Variation and the Contract Sum will be decreased by the greater of the following as assessed by the Superintendent:

- (a) the greater of:
 - (i) the cost of remedying the material or work valued under clause 37.4; or
 - (ii) the resulting decrease in the value to the Principal of the Works; and
- (b) any other Loss which the Principal is likely to suffer including the likely increase in operational and maintenance Losses which will be incurred by the Principal if it accepts the material or work.

31.5 General

- (a) The Superintendent may give a Direction pursuant to this clause at any time before the issue of the Final Certificate.
- (b) Except to the extent that to do so would be inconsistent with a direction given under clause 31.4, and notwithstanding that the Superintendent has not given a direction under clause 31.3, the Contractor must promptly remove, demolish, redesign, reconstruct, replace or correct any WUC or work that is not in accordance with the Major Works Contract.
- (c) A progress payment, or a test or a failure by the Superintendent or anyone else to disapprove any WUC or work does not prejudice the power of the Superintendent to subsequently give a direction under clauses 31.3, 31.4 or 31.5.
- (d) Nothing in clause 31 prejudices any other right, power or remedy which the Principal or the Superintendent may have under the Major Works Contract or at law arising out of the failure of the Contractor to provide WUC or work in accordance with the Major Works Contract (including under clause 36).
- (e) The Superintendent is not obliged to give a Direction under to clauses 31.4 or 31.5 to assist the Contractor.

31.6 Transfer of Ownership

- (a) Ownership of materials, plant, equipment and other items supplied under this Major Works Contract (other than Construction Plant) will transfer to the Principal, free of any security interest:
 - (i) when payment is made in accordance with clause 38.6;
 - (ii) when the item is delivered to the Site; or
 - (iii) when the item is incorporated into the Works,whichever occurs first.
- (b) Nothing in clause 31.6(a) limits or affects clauses 14.1, 14.2 and 14.3 and, notwithstanding that ownership of any item may have passed to the Principal, the Contractor must still ensure that the item is properly stored (and in the case of items being transported to the Site, adequately packaged), labelled the property of the Principal and adequately protected and insured.
- (c) The parties agree that the provisions of the Vienna Convention on the Sale of Goods is expressly excluded from the Major Works Contract and do not apply to the Major Works Contract or to any materials, plant or equipment supplied as part of the Works.

31.7 Buildability

- (a) The Contractor must within 20 Business Days after the Commencement Date, and at any later date nominated by the Superintendent in their discretion, undertake a proactive and

comprehensive review and check the Project Requirements and Design Documents for Buildability Design Errors.

- (b) The Contractor:
 - (i) unequivocally accepts responsibility for all work, cost, delay and disruption arising out of or in connection with Buildability Design Errors; and
 - (ii) agrees that the Principal will not be liable upon any Claim (insofar as it is permitted by law) arising out of or in connection with Buildability Design Errors, all of which the Contractor is deemed to have fully allowed for in the Contract Sum other than an extension of time under clause 35.4 caused by a Buildability Design Error.
- (c) The Superintendent may give the Contractor a direction as to how to overcome a Buildability Design Error, including relevant design details showing any changes to the Works or materials to be used to complete the Works.

32. Examination and testing

32.1 Tests

In addition to any requirements for testing set out in the Project Requirements or elsewhere in the Major Works Contract, at any time before the expiry of the last Defects Liability Period, the Superintendent may direct that any WUC be tested. The Contractor must give such assistance and samples and make accessible such parts of WUC as may be directed by the Superintendent.

32.2 Covering up

The Superintendent may direct that any part of WUC must not be covered up or made inaccessible without the Superintendent's prior written Direction.

32.3 Who conducts

Tests must be conducted as provided elsewhere in the Major Works Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent.

32.4 Notice

The Superintendent or the Contractor (whichever is to conduct the Test) must give reasonable written notice to the other of the date, time and place of the Test. If the other does not attend, the Test may nevertheless proceed.

32.5 Delay

Without prejudice to any other right, if the Contractor or the Superintendent delays in conducting a Test, the other, after giving reasonable written notice of intention to do so, may conduct the Test.

32.6 Completion and results

- (a) On completion of the Tests, the Contractor must make good WUC so that it fully complies with the Major Works Contract.
- (b) Results of Tests must be promptly made available by each party to the other and to the Superintendent.

32.7 Costs

Costs in connection with testing pursuant to this clause will be borne by the Principal except where the Major Works Contract otherwise provides or the Test is consequent upon, or reveals a failure of the Contractor to comply with the Major Works Contract (including this clause).

33. Programming

33.1 Provision of information

- (a) The Contractor must give the Superintendent reasonable advance notice of when the Contractor needs other information, materials, documents or instructions from the Superintendent or the Principal.
- (b) The Principal and the Superintendent are not obliged to give any information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the Commencement Date.

33.2 Directions as to sequence

- (a) The Superintendent may direct in what order and at what time the various stages or portions of WUC must be carried out.
- (b) No Direction of the Superintendent will be taken to constitute a Direction under this clause 33.2 unless the Direction is in writing, is signed by the Superintendent and expressly states that it is a Direction under this clause 33.2.
- (c) If compliance with any such Directions under this clause, except those arising out of or in relation to the Contractor's default, causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the Direction, the difference will be assessed by the Superintendent and added to or deducted from the Contract Sum.

33.3 Construction program

- (a) The Contractor must within 10 Business Days after the Commencement Date, prepare and provide to the Superintendent a copy of its proposed program which:
 - (i) shows the Contractor's bona fide planned work activities and sequences for bringing WUC to Completion in accordance with the Major Works Contract and based on the Initial Program set out in Schedule 15;
 - (ii) is in the form of a computer generated critical path network logic chart and in the form of a bar chart indicating the following (in a form capable of interpretation and manipulation by the Principal):
 - (A) sequence and duration of activities constituting the critical path and the interrelationship between activities not on the critical path (including float for all activities, whether on the critical path or not); and
 - (B) sufficient detail of administrative and trade activity to fully describe the Contractor's planning of WUC and the method of achieving Completion by the Date for Completion;
 - (iii) is in a form and contains such other details as the Superintendent may require; and
 - (iv) is consistent with Contractor's tender program, including the milestones shown in that tender program (if any).
- (b) The Superintendent must, within 10 Business Days after receipt of the proposed program, notify the Contractor in writing if it rejects the proposed program, in which case the:
 - (i) Superintendent must include the reasons for its rejection; and
 - (ii) Contractor must, within 5 Business Days after receipt of the Superintendent's notice of rejection, resubmit the proposed program in accordance with this clause 33.3.
- (c) If the Superintendent does not reject the proposed program under clause 33.3(b), the proposed program submitted under this clause 33.3 is the **'Program'**.
- (d) The Contractor must:

- (i) regularly (and at a minimum on a monthly basis) update the Program to take account of all changes, progress of WUC, delays and EOTs;
 - (ii) give the Principal or Superintendent electronic copies of the Program upon reasonable request (in a form capable of interpretation and manipulation by the Superintendent);
 - (iii) not depart from the Program; and
 - (iv) not make any changes to the Program without the prior written approval of the Superintendent.
- (e) The Program does not form part of the Major Works Contract but may be used by the Superintendent to monitor the progress of WUC and to assess EOT claims (but the Superintendent is not obliged to use the Program for this purpose).
- (f) The Contractor acknowledges that it has made an allowance for rostered days off, holidays, embargo periods and other breaks in the Program.

33.4 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, the proposed program, any other programming requirements stated in the Specification or elsewhere in the Major Works Contract, or an amendment to the Program by the Superintendent will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Major Works Contract, especially (without limitation) the obligation to achieve Completion by the Date for Completion;
- (b) evidence or constitute the granting of an EOT or an instruction by the Superintendent to accelerate, disrupt, prolong or vary any or all of WUC;
- (c) evidence or constitute a Direction by the Superintendent under clause 33.2; or
- (d) affect the time for performance of the Principal's or the Superintendent's obligations.

33.5 Corrective action

- (a) Without limiting the requirements of the Major Works Contract, if at any time the progress of WUC has fallen behind that shown in the Program or otherwise is not in accordance with the Major Works Contract, the Contractor must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with the Program and the Major Works Contract. Subject to clause 26.3, such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the work and the adjustment and rescheduling of activities. The Superintendent from time to time may direct the Contractor to provide details of the corrective action it plans to take under this clause 33.5.
- (b) If the Contractor fails to take corrective action in accordance with clause 33.5(a), the Superintendent may direct the Contractor as to the corrective action it is to take and the Contractor must comply with that Direction at its own cost.
- (c) No Direction by the Superintendent will be taken to constitute a Direction under clause 33.5(b) unless the Direction is in writing, is signed by the Superintendent and expressly states that it is a Direction under clause 33.5(b).

33.6 Step-in Rights

Without limiting any other provision of this Major Works Contract, if the Contractor fails to comply with a direction of the Superintendent under clause 33.5(b) within 10 Business Days of the direction, the Principal may, either itself or by engaging a third party, take such corrective action as it deems necessary. All costs so incurred by the Principal shall be a debt due from the Contractor to the Principal.

33.7 Acceleration

- (a) The performance of WUC may be accelerated:

- (i) to reach Completion before the Date for Completion for the convenience of either:
 - (A) the Contractor, with the prior written approval of the Superintendent, in which case:
 - (I) neither the Principal nor the Superintendent are obliged to take any action to assist or enable the Contractor to achieve Completion before the Date for Completion;
 - (II) the time for carrying out the Principal's and the Superintendent's obligations will not be effected; and
 - (III) the Contractor will not be entitled to any adjustment to the Major Works Contract Sum or to make any other Claim in relation to the acceleration; or
 - (B) the Principal, in which case, on receiving a Direction to accelerate from the Superintendent, the Contractor:
 - (I) must accelerate WUC to achieve Completion by the date specified in the Direction (which will be the new Date for Completion);
 - (II) will be entitled to Claim, in accordance with clause 37.4, an adjustment to the Contract Sum for its direct costs for accelerating WUC; and
 - (III) will not be entitled to make any other Claim against the Principal in relation to the Direction to accelerate other than as set out in clause 33.7(a)(i)(B)(II); or
- (ii) where the Contractor is entitled to an EOT to the Date for Completion, in which case on receiving a Direction to accelerate from the Superintendent to overcome the delay, the Contractor:
 - (A) must accelerate WUC to overcome the delay in accordance with the Superintendent's Direction;
 - (B) will be entitled to Claim, in accordance with clause 35.4, an adjustment to the Contract Sum for its direct costs for accelerating WUC; and
 - (C) will not be entitled to make any other Claim in relation to the delay or the Direction to accelerate other than as set out in clause 33.7(a)(ii)(B).
- (b) The Principal's right to claim liquidated damages under clause 35.9 will not be affected by this clause 33.7 if Completion is not reached by the Date for Completion.

33.8 Progress reports and meetings

- (a) The Contractor must submit reports on the progress of the WUC at the frequency set out in Item 23 of the Contract Particulars, covering:
 - (i) the status of all aspects of the WUC including work carried out by Subcontractors;
 - (ii) a current projection of the Date of Completion;
 - (iii) changes to the Program dates and reasons for the changes;
 - (iv) current or anticipated delays that may affect the Date of Completion, together with remedial action proposed by the Contractor;
 - (v) occupational health and safety, environment, quality, project organisation structure and staffing, industrial relations, contractor and subcontractor issues; and
 - (vi) incidents notified to the Principal or the Superintendent and outcomes of investigations; and
 - (vii) any other matter specified by the Superintendent from time to time or set out in Item 24 of the Contract Particulars.

- (b) The Superintendent must attend regular meetings arranged by the Superintendent or the Principal to review the progress of, and other problems, claims and matters related to, the WUC.
- (c) The Contractor consents to the information provided in accordance with clause 33.8(a) being used by the Principal for the purpose of preparing and submitting the Contractor Performance Report in accordance with clause 49.3.

34. Suspension

34.1 Superintendent's suspension

The Superintendent may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
 - (i) the Superintendent, the Principal or its employees, consultants, agents or Other Contractors; or
 - (ii) the Contractor, a Consultant, a Subcontractor or the employees or agents of any of them;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order;
- (d) for the convenience of the Principal; or
- (e) because of the occurrence of a Performance Issue.

34.2 Contractor's suspension

- (a) If the Contractor wishes to suspend the carrying out of the whole or part of WUC, otherwise than pursuant to clause 40.9, the Contractor must obtain the Superintendent's prior written approval. The Superintendent may approve the suspension and may impose conditions of approval.
- (b) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the WUC when instructed to do so under this clause 34.2 or pursuant to clause 40.9.

34.3 Recommencement

- (a) As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent must direct the Contractor to recommence suspended WUC as soon as reasonably practicable.
- (b) The Contractor must recommence WUC suspended pursuant to clause 34.2 or 40.9 as soon as reasonably practical after receiving notice from the Superintendent.

34.4 Cost

- (a) The Contractor will bear the cost of suspension pursuant to clauses 34.1(a)(ii) and 34.1(e) and clause 34.2.
- (b) If the Contractor made the protection, safety, court order or suspension of work necessary, the Contractor will bear the cost of suspension pursuant to clause 34.1(b) or 34.1(c).
- (c) If the suspension is made pursuant to clause 34.1(d) only, then the Contractor will be entitled to claim an EOT in accordance with clause 35.4.

- (d) If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference will be assessed by the Superintendent and added to or deducted from the Contract Sum.

35. Time and progress

35.1 Progress

The Contractor must ensure that it:

- (a) achieves Completion by the Date for Completion; and
- (b) achieves Administrative Completion by the Date for Administrative Completion.

35.2 Administrative Completion

This clause 35 applies to Administrative Completion and the Date for Administrative Completion in the same way as it does to Completion and the Date for Completion.

35.3 Early warning

If the Contractor becomes aware of anything which may cause delay to WUC it must promptly give the Superintendent and the Principal written notice of that cause and the estimated delay.

35.4 Claim

- (a) If the Contractor is, or is likely to be, delayed:
 - (i) prior to the Date for Completion, by a Qualifying Cause of Delay in a manner which will prevent it from achieving Completion by the Date for Completion; or
 - (ii) after the Date for Completion, by a Qualifying Cause of Delay in a manner which will prevent it from achieving Completion,the Contractor may submit a Claim for an extension of time ("**EOT**") to the Superintendent.
- (b) To claim an EOT the Contractor must:
 - (i) within 10 Business Days after the commencement of the cause of the delay, submit a written claim to the Superintendent for an extension of time to the Date for Completion which:
 - (A) gives detailed particulars of the delay and the cause of the delay; and
 - (B) states the number of days EOT claimed together with the basis of calculating that period; and
 - (C) annexes an updated Program detailing the impact of the delay; and
 - (ii) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the cause of the delay and the Contractor wishes to claim an EOT in respect of the further delay, submit a further written claim to the Superintendent:
 - (A) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
 - (B) containing the information required by clause 35.4(b)(i).
- (c) The Contractor will not be entitled to an EOT for an occurrence other than a Qualifying Cause of Delay.
- (d) The Major Works Contract is a code of the Contractor's entitlements to EOTs and the Contractor waives all rights at law or in equity to claim any relief due to an act of prevention by the Principal otherwise than in accordance with the Major Works Contract.

35.5 Assessment

- (a) Without limiting clause 35.6, when both non-qualifying and Qualifying Causes of Delay overlap, the Contractor will not be entitled to claim an EOT.
- (b) In assessing each EOT the Superintendent must have regard to what prevention and mitigation of the delay has not been effected by the Contractor.

35.6 Extension of time

- (a) It is a condition precedent to the Contractor's entitlement to an EOT to the Date for Completion that:
 - (i) the Contractor has submitted a claim for an EOT in accordance with clause 35.4 and in particular, within the time limits set out in clause 35.4;
 - (ii) the cause of the delay was beyond the reasonable control of the Contractor;
 - (iii) the Contractor must have actually been delayed:
 - (A) prior to the Date for Completion, by a Qualifying Cause of Delay in a manner which will prevent it from achieving Completion by the Date for Completion; or
 - (B) after the Date for Completion, by a Qualifying Cause of Delay in a manner which will prevent it from achieving Completion;
 - (iv) the Contractor must not have been given an instruction to accelerate under clause 33.7;
 - (v) the Contractor has taken all proper and reasonable steps, fully accounting for the particular characteristics and conditions of the Site, within its control to preclude the occurrence of the cause of the delay and to minimise the consequences of the delay and has demonstrated this to the satisfaction of the Superintendent; and
 - (vi) the Contractor has complied with its programming obligations under clause 33.
- (b) If the Contractor has complied with the conditions set out in clauses 35.6(a)(i) to 35.6(a)(vi), then within 20 Business Days after receiving the Contractor's claim for an EOT, the Superintendent must give to the Contractor and the Principal a written Direction evidencing the EOT so assessed.
- (c) Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the Final Certificate by written notice direct an EOT. The parties acknowledge that:
 - (i) the Superintendent is not required to exercise the Superintendent's discretion under this clause for the benefit of the Contractor;
 - (ii) this clause does not give the Contractor any rights; and
 - (iii) the exercise or failure to exercise the Superintendent's discretion under this clause is not capable of being the subject of a dispute or difference for the purposes of clause 43, or otherwise subject to review.
- (d) No delay, including a delay caused by any one or more of the Qualifying Causes of Delay, nor a failure by the Superintendent to grant an EOT or a reasonable EOT under this clause 35.6 or to do so within the time stated in this clause 35.6, nor the giving of a Direction to accelerate under clause 33.7 will:
 - (i) set the Date for Completion or any other time at large; or
 - (ii) render clause 35.9 unenforceable,but nothing in this clause 35.6(d) prejudices any right of the Contractor to damages for any breach of the Major Works Contract by the Principal.

35.7 Completion

- (a) The Contractor must give the Superintendent at least 10 Business Days written notice of the date upon which the Contractor anticipates that Completion will be reached.
- (b) When the Contractor is of the opinion that Completion has been reached, the Contractor must in writing request the Superintendent to issue a Certificate of Completion. Within 10 Business Days after receiving the request, the Superintendent must give the Contractor and the Principal either a Certificate of Completion evidencing the Date of Completion or written reasons for not doing so.
- (c) If the Superintendent is of the opinion that Completion has been reached, the Superintendent may issue a Certificate of Completion even though no request has been made.
- (d) It is a condition precedent to Administrative Completion, that the Contractor give the Principal an executed Deed of Release.

35.8 Conditional Completion

- (a) The Superintendent may, in its absolute discretion, instead of issuing a Certificate of Completion under clause 35.7, issue a Conditional Certificate of Completion where it is of the opinion that Completion has occurred except there are Defects which should not characterised as "minor defects".
- (b) A Conditional Certificate of Completion has the same effect as a Certificate of Completion under clause 35.7 (except in relation to the return of Security) and the date of completion will be the date nominated in the Conditional Certificate of Completion.
- (c) A Conditional Certificate of Completion must have a Defects list attached to it which will identify:
 - (i) the items which are Defects;
 - (ii) any work which is incomplete; and
 - (iii) Defects which are characterised by the Superintendent or the Principal as 'priority Defects'.
- (d) The Contractor must rectify or complete all items listed in the Defects list either:
 - (i) by the date nominated by the Superintendent (either in the list or subsequent to the issuing of the list); or
 - (ii) in the absence of the Superintendent nominating a date, as soon as practicable (which, in respect of a priority Defect, must, in any event, be no later than 20 Business Days after the date of the list).
- (e) If the Superintendent issues a Conditional Certificate of Completion, notwithstanding clause 2.4 of the Formal Instrument of Agreement, the Principal is entitled to hold the Security which would otherwise be released upon or after Completion until the expiration of 10 Business Days after the date on which the last of the items listed on the Defects list is completed.

35.9 Liquidated damages

- (a) The Contractor acknowledges and agrees that the Principal will suffer and incur Loss and damage if:
 - (i) Completion is not reached by the Date for Completion; or
 - (ii) Administrative Completion is not reached by the Date for Administrative Completion.
- (b) If WUC does not reach:
 - (i) Completion by the Date for Completion; or
 - (ii) Administrative Completion by the Date for Administrative Completion,

the Superintendent must certify, as a debt due and payable to the Principal:

- (iii) liquidated damages in Item 54 of the Contract Particulars for every day after the Date for Completion to and including the earliest of the Date of Completion, or termination of the Major Works Contract or the Principal taking WUC out of the hands of the Contractor; or
 - (iv) liquidated damages in Item 55 of the Contract Particulars for every day after the Date for Administrative Completion to and including the earliest of the Date of Administrative Completion, or termination of the Major Works Contract or the Principal taking WUC out of the hands of the Contractor.
- (c) If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal must forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.
- (d) The Contractor acknowledges and agrees that:
- (i) the amount of liquidated damages set out in this clause 35.9:
 - (A) have been agreed by the parties in good faith;
 - (B) are a genuine pre-estimate of the Loss and damage which the Principal is likely to suffer if Completion or Administrative Completion (as applicable) does not occur by the Date for Completion; and
 - (C) are not out of all proportion with the genuine pre-estimate of the Loss and damage which the Principal is likely to suffer if Completion or Administrative Completion (as applicable) does not occur by the Date for Completion or Date for Administrative Completion (as applicable);
 - (ii) each party wishes to avoid the difficulties of proof of damages in connection with a failure to achieve Completion by the Date for Completion or Administrative Completion by the Date for Administrative Completion;
 - (iii) the liquidated damages are reasonable and not intended as a penalty; and
 - (iv) it will not assert in any proceedings under clause 43 or in any court, arbitration or other proceedings that any of the liquidated damages provided for in this clause 35.9 are a penalty or that that clause or the obligation thereunder to pay liquidated damages is void or unenforceable (whether in whole or in part).
- (e) Liquidated damages become due upon the issue of a notice by the Superintendent setting out the amount of liquidated damages payable by the Contractor to the Principal.
- (f) The Principal may recover the amount of liquidated damages:
- (i) on demand from the Contractor; or
 - (ii) by deducting such amount from any amount certified by the Superintendent under clause 38,
- even though Completion has not occurred.

35.10 Delay costs

- (a) For every day the subject of an EOT for a Compensable Cause and for which the Contractor gives the Superintendent a claim for delay costs, delay costs calculated in accordance with this clause will be due and payable to the Contractor.
- (b) The Contractor will be entitled to such delay costs (including an amount for overheads, but excluding profit or loss of profit) as are directly and actually incurred by the Contractor by reason of the delay as assessed by the Superintendent.
- (c) The delay costs set out in Item 56 of the Contract Particulars are the maximum amount payable by the Principal under this clause 35.10 and the Contractor waives the right to make any Claim for any delay costs or delay damages which exceed this amount. Where

there are Separable Portions and delay costs are payable in respect of delays to more than one Separable Portion then the delay costs shall not be cumulative.

- (d) The parties acknowledge and agree that the delay damages payable under this clause 35.10 are the Contractor's exclusive remedy for delay due to a Compensable Cause.
- (e) The Contractor must use its best endeavours to minimise the delay costs referred to in this clause 35.10.

36. Defects liability

- (a) The Defects Liability Period will commence on the Date of Completion at 4:00 pm and will cease on the later of:
 - (i) where there are no Separable Portions, the period set out in Item 41 of the Contract Particulars after the Date of Completion of the Works; and
 - (ii) where there are Separable Portions, for each Separable Portion, the period set out in Item 41 of the Contract Particulars after the Date of Completion of the last Separable Portion.
- (b) There will be a separate Defects Liability Period of 12 months only for each of the Defects listed in a Conditional Certificate of Completion, which will commence at 4:00pm on the date those Defects are rectified (as determined by the Superintendent).
- (c) The Contractor must carry out rectification at times and in a manner causing as little inconvenience to:
 - (i) the occupants or users of the Works; and
 - (ii) the business operations of the Principal,as is reasonably possible.
- (d) As soon as possible after the Date of Completion, the Contractor must rectify all Defects existing at the Date of Completion.
- (e) During the Defects Liability Period, the Superintendent may give the Contractor a Direction to rectify a Defect which:
 - (i) must identify the Defect and a date for rectification; and
 - (ii) may state whether there will be a separate Defects Liability Period therefor (not exceeding 12 months, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).
- (f) If the rectification is not commenced and completed by the date for rectification, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred will be certified by the Superintendent as moneys due and payable to the Principal.
- (g) Neither the Principal's rights, nor the Contractor's liabilities, under the Major Works Contract or otherwise at law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:
 - (i) the rights conferred upon the Principal or the Superintendent by this clause 36 or any other provision of the Major Works Contract;
 - (ii) the exercise of any such rights, or the failure to exercise any such rights, by the Principal or the Superintendent; or
 - (iii) any Direction by the Superintendent under this clause 36.

37. Variations

37.1 Directing variations

- (a) The Contractor must not vary WUC except as directed in writing.
- (b) The Superintendent, before the Date of Completion, may direct the Contractor to vary WUC in writing (a **Variation Order**) by any one or more of the following:
 - (i) increase, decrease or omit any part of WUC;
 - (ii) change the character or quality of any part of WUC;
 - (iii) change the levels, lines, positions or dimensions of any part of WUC;
 - (iv) carry out additional work; or
 - (v) demolish or remove material or work no longer required by the Principal,(each together or separately, a **Variation**).
- (c) In addition to the right which the Superintendent has to decrease or omit any part of WUC the Principal has the right in respect of any decreased or omitted part of WUC to thereafter have the decreased or omitted part of WUC carried out by a person other than the Contractor.
- (d) If the Contractor receives any communication from the Principal or the Superintendent which the Contractor considers constitutes a Variation but the communication is not a Variation Order (as strictly required by the Major Works Contract), the Contractor must before complying with the communication and in any case within 5 Business Days of receipt of the communication:
 - (i) notify the Superintendent that it considers the communication to constitute a Variation; and
 - (ii) request that the Superintendent give a Variation Direction replacing the communication.
- (e) The Superintendent must, within 5 Business Days of receiving a notice under clause 37.1(d), notify the Contractor that it:
 - (i) agrees with the Contractor's notice and it will either:
 - (A) issue a Variation Order; or
 - (B) withdraw the communication; or
 - (ii) disagrees with the Contractor's notice, setting out its reasons and requiring the Contractor to comply with the communication.

37.2 Proposed variations

- (a) The Contractor must as soon as practicable (but not later than 5 Business Days) after receiving a Variation Order, provide written notice to the Superintendent of the Contractor's estimate of the:
 - (i) effect on the Program (including the Date for Completion); and
 - (ii) cost (including all warranties and time-related costs, if any) of the proposed Variation.
- (b) The Superintendent may direct the Contractor to give a detailed quotation for the proposed Variation supported by measurements or other evidence of cost.
- (c) Unless the Superintendent so directs, and notwithstanding any other provision of this Major Works Contract, the Contractor will not be entitled to any addition to the Contract Sum, or to any additional cost incurred by the Contractor, by reason of compliance with anything the Contractor does or is required to do in order to comply with this clause 37.2.

37.3 Variations for convenience of Contractor

If the Contractor requests the Superintendent to direct a Variation for the convenience of the Contractor, the Superintendent may do so. The Direction must be written and may be conditional. Unless the Direction provides otherwise, the Contractor will be entitled to neither extra time nor extra money arising out of or in connection with a Variation for the convenience of the Contractor.

37.4 Pricing

- (a) The Superintendent must, as soon as possible, price each Variation using the following order of precedence:
 - (i) prior agreement;
 - (ii) applicable rates or prices in the Major Works Contract for the actual cost of the Variation (excluding profit and overheads) plus the Variation Margin Allowance and the Variation Preliminaries Allowance applied to the actual cost of the Variation;
 - (iii) the Pricing Reference Documents, even though not Major Works Contract documents, to the extent that it is reasonable to use them for the actual cost of the Variation (excluding profit and overheads) plus the Variation Margin Allowance and the Variation Preliminaries Allowance applied to the actual cost of the Variation; and
 - (iv) reasonable rates or prices for the actual cost of the Variation (excluding profit and overheads) plus the Variation Margin Allowance and the Variation Preliminaries Allowance applied to the actual cost of the Variation; and
 - (v) any deductions to the Works must include a reasonable amount for profit but not overheads.
- (b) That price will be added to or deducted from the Contract Sum.

37.5 Notice of variations

- (a) If the Contractor considers that any notice or Direction given by the Superintendent (other than a Variation Order under clause 37.1) constitutes or involves a Variation, the Contractor must, within 5 Business Days after receipt of the notice or Direction and in any event, before complying with that notice or Direction, request the Superintendent to provide written confirmation to the Contractor whether or not the notice or Direction constitutes or involves a Variation.
- (b) Unless the Contractor receives written confirmation from the Superintendent under this clause before it commences to comply with a notice or Direction of the Superintendent, the Contractor will not be entitled to make a Claim in relation to that notice or Direction.

38. Payment

38.1 Payment claims

- (a) The Contractor must claim payment progressively at the times set out in Item 57 of the Contract Particulars.
- (b) An early payment claim will be deemed to have been made on the date for making that claim set out in Item 57 of the Contract Particulars.
- (c) Each payment claim must be given in the form set out in Schedule 16 (unless notified otherwise in writing by the Principal) to the Superintendent and must include:
 - (i) details of the value of WUC done to that time together with all amounts then due to the Contractor arising out of or in connection with the Major Works Contract;
 - (ii) the amounts of any adjustments to the Contract Sum arising out of or in connection with the Major Works Contract;

- (iii) the total amount previously certified pursuant to clause 38.3;
- (iv) the amount of the Contract Sum being claimed by the Contractor; and
- (v) if the payment claim includes a claim for work being carried out by a Consultant, where directed by the Superintendent, a Consultant's Statement in the form of Schedule 18.

38.2 Conditions Precedent

For the purpose of determining when the time for submitting a payment claim arises under this Major Works Contract and a 'reference date' arises under the Security of Payment Legislation, neither a time for submitting a payment claim or a 'reference date' arises unless the Contractor—

- (a) in relation to the first payment claim under the Major Works Contract has—
 - (i) provided the Principal with Security for the amount (if any) required under clause 2 of the Formal Instrument of Agreement;
 - (ii) executed the Formal Instrument of Agreement;
 - (iii) effected the insurance required by the Major Works Contract and (if previously requested by the Superintendent) provided evidence of this to the Superintendent;
 - (iv) complied with its obligations in relation to health and safety in accordance with clauses 12.3 and 12.4 (as applicable);
 - (v) complied with any other obligation stated in the Major Works Contract to be a condition precedent to submitting a payment claim;
 - (vi) provided the Superintendent with a program that has not been rejected under clause 33.3;
 - (vii) complied with clause 39.1; and
 - (viii) provided a Parent Company Guarantee in accordance with clause 2.6 of the Formal Instrument of Agreement (if required); and
- (b) in relation to all subsequent payment claims under the Major Works Contract has—
 - (i) complied with clause 39.1;
 - (ii) provided the Principal with Security for the amount (if any) required under clause 2 of the Formal Instrument of Agreement;
 - (iii) effected and maintained the insurance required by the Major Works Contract and (if previously requested by the Superintendent) provided evidence of this to the Superintendent; and
 - (iv) complied with any other obligation stated in the Major Works Contract to be a condition precedent to submitting a payment claim.

38.3 Payment schedules

- (a) The Superintendent must, within 10 Business Days after receiving a payment claim containing the information required by clause 38.1(c), issue to the Principal and the Contractor:
 - (i) a payment schedule evidencing the Superintendent's opinion of the moneys due from the Principal to the Contractor pursuant to the payment claim and reasons for any difference ('**payment schedule**'); and
 - (ii) a certificate evidencing the Superintendent's assessment of retention moneys and moneys due from the Contractor to the Principal pursuant to the Major Works Contract.
- (b) If the Contractor does not make a payment claim in accordance with clause 38.1(a), the Superintendent may issue the payment schedule with details of the calculations and will issue the certificate in clause 38.3(a)(ii).

38.4 Tax invoice

The Contractor must, within 3 Business Days of the issue of the payment schedule under clause 38.3 deliver to the Superintendent and the Principal a tax invoice. The tax invoice must:

- (a) be in the form of a tax invoice;
- (b) be in the sum of the payment schedule; and
- (c) set out:
 - (i) the Project Name (as set out in the Contract Particulars or otherwise advised by the Principal);
 - (ii) the Project Number (as set out in the Contract Particulars (if any) or otherwise advised by the Principal); and
 - (iii) if applicable, the Separable Portion to which the payment claimed by the tax invoice relates.
- (d) The Contractor acknowledges and agrees that the Principal is not required to pay (and the Contractor has no Claim arising out of or in connection with) a tax invoice which purports to be a tax invoice but which does not comply with the requirements of this clause 38.4.

A tax invoice which is void or is not valid under this Major Works Contract is not a 'claim for a progress payment' within the meaning of the Security of Payment Act.

38.5 Payment

- (a) Subject to:
 - (i) the Contractor providing a valid tax invoice in accordance with clause 38.4; and
 - (ii) any right of set off or retention which the Principal may have under or in connection with this Major Works Contract (including by way of deducting retention moneys, liquidated damages or setting off such of the payment schedule in clause 38.4(b) as the Principal elects to set off),the Principal must pay to the Contractor the balance of the payment schedule on or before the last day of the month following the month in which the Contractor provided a valid payment claim under clause 38.1.
- (b) If any setting off by the Principal under clause 38.5(a)(ii) produces a negative balance, the Contractor must pay that balance to the Principal within 10 Business Days of receiving written notice thereof.
- (c) The date on which payment becomes due by the Principal to the Contractor under the Major Works Contract (being the date referred to in section 12(1)(a) of the Security of Payment Act) is the date the Principal is obliged to make a payment under this clause 38.5.
- (d) Neither a payment schedule nor a payment of moneys will be evidence that the subject WUC has been carried out satisfactorily. Payment other than Final Payment will be payment on account only.
- (e) The Contractor acknowledges and agrees that, without limitation to clause 39:
 - (i) the portion of each payment made by the Principal to the Contractor on account of the Contract Sum which is intended to fund amounts payable to Subcontractors under their subcontracts is held by the Contractor on trust for those Subcontractors; and
 - (ii) the Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts.

38.6 Unfixed plant and materials

- (a) The Principal will not be liable to pay for unfixed plant and materials unless they are listed in Item 58 of the Contract Particulars, or otherwise provides its written consent, and the Contractor:
 - (i) has provided additional Security that complies with clause 2 of the Formal Instrument of Agreement for the full value of the unfixed plant and materials;
 - (ii) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the sole and exclusive property of the Principal;
 - (iii) has provided any additional information and documentation requested by the Principal or Superintendent in relation to the subject plant and equipment to the Superintendent; and
 - (iv) provided evidence to the Superintendent that the subject plant and materials have been registered as the property of the Principal under the PPSA.
- (b) Upon payment to the Contractor and the release of any additional Security in clause 38.6(a)(i), the subject plant and materials will be the unencumbered property of the Principal.
- (c) The Contractor is not entitled to an EOT to the Date for Completion if an item of unfixed plant and material is damaged, destroyed or otherwise becomes unavailable before it is incorporated into the Works.

38.7 Final Payment Claim and certificate

- (a) Within 20 Business Days after the expiry of the last Defects Liability Period, the Contractor must give the Superintendent a written Final Payment Claim endorsed 'Final Payment Claim' being a payment claim together with all other claims whatsoever in connection with the subject matter of the Major Works Contract.
- (b) Within 30 Business Days after the expiry of the last Defects Liability Period (and whether or not the Contractor has submitted a Final Payment Claim under clause 38.7(a)), the Superintendent must issue to both the Contractor and the Principal a Final Certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Major Works Contract.
- (c) Those moneys certified as due and payable must be paid by the Principal or the Contractor ('**Final Payment**'), as the case may be, within 5 Business Days after the debtor receives the Final Certificate.
- (d) The Contractor will not be entitled to submit a Final Payment Claim and the Superintendent will not be obliged to issue a Final Certificate under this clause 38.7 unless the Contractor has executed the Deed of Release.

38.8 Interest

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in Item 25 of the Contract Particulars. Interest shall be compounded at 6 monthly intervals.

38.9 Right of set off

- (a) The Principal may deduct from any moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to the Principal; and
 - (ii) any claim to money which the Principal may have against the Contractor whether for damages (liquidated or unliquidated) or otherwise,

whether under the Major Works Contract or otherwise at law, and if the moneys due to the Contractor are insufficient to discharge the debt or claim, the Principal may (without limiting the unconditional nature of the Security) have recourse to any Security provided by the Contractor.

- (b) The rights given to the Principal under clause 38.9 are in addition to and do not limit or affect any other rights of the Principal under the Major Works Contract or at law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or claim in question or any balance that remains owing.
- (c) Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under clause 38.9 will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause 38.9.

38.10 Security of Payment Legislation

- (a) The Contractor agrees with the Principal that:
 - (i) a payment claim submitted to the Superintendent under clause 38.3 which also purports to be (or is at law) a payment claim under the Security of Payment Legislation, is received by the Superintendent as agent for the Principal;
 - (ii) unless otherwise notified to the Contractor by the Principal in writing, the Superintendent will give payment schedules and carry out all other functions of the Principal under the Security of Payment Legislation as the agent of the Principal; and
 - (iii) to the extent permitted by and for the purposes of the Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clause 38.1(a) and clause 38.7 on which the Contractor has satisfied the requirements of clause 38.1 and 38.2.
- (b) Failure by the Superintendent to state in a payment schedule issued under the Security of Payment Act or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Principal to the Contractor will not prejudice:
 - (i) the Superintendent's ability or power to state in a subsequent payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by the Principal to the Contractor; or
 - (ii) the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Major Works Contract or otherwise at law or in equity.
- (c) The Contractor agrees that the amount stated in the payment schedule as then payable by the Principal to the Contractor under clause 38.3 is, subject to clause 39, to the extent permitted by and for the purposes of the Security of Payment Act, the amount of the "progress payment" calculated in accordance with the terms of the Major Works Contract and which the Contractor is entitled to be paid in respect of the Major Works Contract.
- (d) The Contractor irrevocably chooses the Resolution Institute, Victorian Chapter as, to the extent permitted by and for the purposes of the Security of Payment Act, the authorised nominating authority or adjudication registry.

38.11 Subcontractor suspension

If the Principal becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Legislation, the Principal may (in its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of that work, and any amount paid by the Principal shall be a debt due from the Contractor to the Principal.

38.12 GST

- (a) Where any supply occurs under or in connection with the Major Works Contract or the Works (other than any supply under this clause) for which GST is not otherwise provided, the party making the supply (Supplier) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (b) Where under the Major Works Contract the Contractor is entitled to any adjustment to the Contract Sum, and such adjustment is based on the reasonable or actual cost to the Contractor of performing any work, any input tax credits available to the Contractor, or its representative member, in relation to performing such work will be deemed to reduce the cost of such work.
- (c) Where the amount payable to the Supplier for a supply under or in connection with the Contract or the Works (other than any payment on account of the Contract Sum) is based on the actual or reasonable costs incurred by the Supplier, the amount to which the Supplier is entitled to be paid in respect of that supply will be limited to the actual or reasonable costs incurred by the Supplier less any input tax credits available in respect of such costs.
- (d) A party will not be obliged to pay any amount in respect of GST to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that GST. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
 - (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under the Major Works Contract.
- (e) In this clause terms defined in GST Legislation have the meaning given to them in GST Legislation.

39. Payment of workers, consultants and subcontractors

39.1 Workers, consultants and subcontractors

- (a) The Contractor must give to the Superintendent and the Principal in respect of each payment claim, a Statutory Declaration (supported by documentary evidence) confirming the payment of all moneys due and payable to:
 - (i) workers of the Contractor and of the Subcontractors;
 - (ii) Consultants; and
 - (iii) Subcontractors and suppliers,in respect of WUC the subject of that claim.
- (b) Documentary evidence, except where the Major Works Contract otherwise provides, must be to the Superintendent's satisfaction.

39.2 Withholding payment

- (a) Subject to the next paragraph, the Principal may withhold moneys certified due and payable in respect of the payment claim until the Contractor complies with clause 39.1.
- (b) Without limiting any other right to set off, the Principal must not withhold payment of such moneys in excess of the moneys evidenced pursuant to clause 39.1 as due and payable to workers, Consultants and subcontractors.

39.3 Direct payment

- (a) Before Final Payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of clause 39.1 directly to a worker, Consultant or subcontractor where:
 - (i) permitted by law;
 - (ii) given a court order in favour of the worker, Consultant or subcontractor; or
 - (iii) requested in writing by the Contractor.
- (b) Such payment and a payment made to a worker, Consultant or subcontractor in compliance with a Legislative Requirement will be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to clause 38.5 or 38.7, as the case may be.

39.4 Payment of subcontractor or consultant by Principal

- (a) Despite any other provision of the Major Works Contract, the Principal may in its absolute discretion, pay out of any moneys due or to become due to the Contractor, any moneys owing by the Contractor to a subcontractor or Consultant in relation to the execution of WUC and any payment under this clause 39.4 will be deemed to have been paid to the Contractor under the Major Works Contract. If an amount equal to or greater than the amount paid by the Principal on the Contractor's behalf is not or never becomes due by the Principal to the Contractor, the amount paid by the Principal will be a debt due from the Contractor to the Principal.
- (b) The Principal must not pay under this clause 39.4 any amount greater than the amount specified as payable in the declarations or documents provided to the Superintendent under clause 39.1.

40. Default or insolvency

40.1 Preservation of other rights

If a party breaches (including repudiates) the Major Works Contract, nothing in this clause prejudices the right of the other party to recover damages or exercise any other right or remedy.

40.2 Contractor's default

- (a) If the Contractor commits a substantial breach of the Major Works Contract, the Principal may, by hand, the Document Management System or by registered post, give the Contractor a written notice requiring the Contractor to rectify that breach. Substantial breaches include, but are not limited to:
 - (i) failing to:
 - (A) provide Security;
 - (B) provide evidence of insurance;
 - (C) comply with a Direction of the Superintendent pursuant to clause 31.3;
 - (D) comply with a Direction of the Superintendent following a further Direction of the Superintendent advising that failure to comply with the Direction will be regarded as a substantial breach for the purpose of clause 40.2; or
 - (E) use the materials or standards of work required by the Major Works Contract;
 - (ii) the occurrence of a Performance Issue; and
 - (iii) in respect of clause 39, knowingly providing documentary evidence containing an untrue statement.
- (b) Each substantial breach of the Major Works Contract by the Contractor will be taken to have been committed afresh on each day following the substantial breach (until the

substantial breach has ceased and the consequences of the substantial breach for the Principal have been neutralised) and the rights of the Principal in respect of that substantial breach accrue again on each such day.

40.3 Principal's notice

A notice under clause 40.2 must state:

- (a) that it is a notice under clause 40;
- (b) the alleged substantial breach; and
- (c) the date and time by which the Contractor must rectify the breach.

40.4 Principal's rights

If the Contractor fails to rectify the breach by the stated date and time or, if no date and/or time is stated, within a reasonable date and time, the Principal may by written notice to the Contractor:

- (a) take out of the Contractor's hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to clause 40.6; or
- (b) terminate the Major Works Contract.

40.5 Take out

- (a) The Principal may complete work taken out of the Contractor's hands and may:
 - (i) use materials, equipment and other things intended for WUC; and
 - (ii) without payment of compensation to the Contractor:
 - (A) take possession of, and use, such of the Construction Plant and other things on or in the vicinity of the Site as were used by the Contractor;
 - (B) contract with such of the Consultants and subcontractors; and
 - (C) take possession of, and use, such of the Design Documents,as are reasonably required by the Principal to facilitate completion of WUC taken out.
- (b) If the Principal takes possession of Construction Plant, Design Documents or other things, the Principal must maintain them and, subject to clause 40.6, on completion of the work taken out, must return such of them as are surplus.
- (c) The Superintendent must keep records of the cost of completing the work taken out.

40.6 Adjustment on completion of work taken out

- (a) When work taken out of the Contractor's hands has been completed, the Superintendent must assess the cost thereby incurred and must certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
- (b) If the Contractor is indebted to the Principal, the Principal may retain Construction Plant or other things taken under clause 40.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess must be paid to the Contractor.

40.7 Principal's default

- (a) If the Principal commits a substantial breach of the Major Works Contract, the Contractor may, by hand, the Document Management System or by registered post, give the Principal a written notice requiring the Principal to rectify that breach.
- (b) Substantial breaches mean failing to:

- (i) rectify inadequate Contractor's access to the Site if that failure continues for longer than 40 Business Days from the Contractor's notice to the Principal that adequate access has not been provided; or
- (ii) make a payment due and payable pursuant to the Major Works Contract after the Contractor has provided not less than 5 Business Days' notice to the Principal that the payment is overdue.

40.8 Contractor's notice

A notice given under clause 40.7 must state:

- (a) that it is a notice under clause 40;
- (b) the alleged substantial breach; and
- (c) the date and time by which the Principal must rectify the breach (which must not be less than 10 Business Days after the notice is received by the Principal).

40.9 Contractor's rights

- (a) If the Principal fails to rectify the breach by the stated date and time, the Contractor may, by written notice to the Principal, suspend the whole or any part of WUC.
- (b) The Contractor must remove the suspension if the Principal remedies the breach.
- (c) The Contractor may, by written notice to the Principal, terminate the Major Works Contract, if within 20 Business Days after the date of suspension under this clause the Principal fails:
 - (i) to remedy the breach; or
 - (ii) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.
- (d) Damages suffered by the Contractor by reason of the suspension must be assessed by the Superintendent, who will certify them as moneys due and payable to the Contractor.

40.10 Termination

- (a) If the Major Works Contract is terminated pursuant to clause 40.4(b) or 40.9, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Major Works Contract had the defaulting party repudiated the Major Works Contract and the other party elected to treat the Major Works Contract as at an end and recover damages.
- (b) If the Major Works Contract is terminated, the Contractor must ensure that before they leave the Site, the Site is adequately protected, safe and complies with all Occupational Health and Safety Requirements.

40.11 Insolvency

- (a) If:
 - (i) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Major Works Contract;
 - (ii) execution is levied against a party by a creditor;
 - (iii) a party is an individual person or a partnership including an individual person, and if that person:
 - (A) commits an act of bankruptcy;
 - (B) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (C) is made bankrupt;
 - (D) makes a proposal for a scheme of arrangement or a composition; or

- (E) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Major Works Contract; or
- (iv) in relation to a party being a corporation:
 - (A) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (B) it enters a deed of company arrangement with creditors;
 - (C) a controller or administrator is appointed;
 - (D) an application is made to a court for its winding up and not stayed within 10 Business Days;
 - (E) a winding up order is made in respect of it;
 - (F) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (G) a mortgagee of any of its property takes possession of that property,
 then, where the other party is:
 - (v) the Principal, the Principal may, without giving a notice to rectify the breach, exercise the right under clause 40.4(a); or
 - (vi) the Contractor, the Contractor may, without giving a notice to rectify the breach, exercise the right under clause 40.9.
- (b) The rights and remedies given by this clause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

41. Termination for convenience

41.1 Right to terminate

Without prejudice to any of the Principal's other rights or entitlements or powers under the Major Works Contract, the Principal may:

- (a) at any time for its sole convenience by written notice to the Contractor terminate the Major Works Contract from the date stated in the notice; and
- (b) thereafter either itself or by third parties complete the uncompleted part of WUC.

41.2 Costs

- (a) If the Principal terminates the Major Works Contract under clause 41.1, the Contractor:
 - (i) subject to clause 38.9, will be entitled to payment of the following amounts as determined by the Superintendent:
 - (A) for work carried out prior to the date of termination, the amount which would have been payable if the Major Works Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (B) the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:
 - (I) the value of the goods or materials is not included in the amount payable under clause 41.2(a)(i)(A); and
 - (II) title in the goods and materials will vest in the Principal upon payment; and

- (C) the reasonable cost of removing from the Site all labour, construction plant and other things used in connection with WUC; and
- (ii) must:
 - (A) take all steps possible to mitigate the costs referred to in clause 41.2(a)(i)(B) and 41.2(a)(i)(C); and
 - (B) promptly hand over to the Principal all copies of:
 - (I) documents provided by the Principal under clause 8.2; and
 - (II) all documents prepared by the Contractor in connection with this Major Works Contract prior to the date of termination (whether complete or not).
- (b) The amount to which the Contractor is entitled under this clause 41.2 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Major Works Contract other than for the amount payable under this clause 41.2.
- (c) After the Contractor has satisfied its obligations under this clause 41.2, the Principal must release any Security under clause 38.6 then held by the Principal.

42. Notification of claims

42.1 Notice of other claims

Except for claims for:

- (a) an EOT under clause 35.6;
- (b) payment under clauses 38.1 and 38.7 of the original Contract Sum or any part thereof;
- (c) a variation directed by the Superintendent in writing under clause 37.1; or
- (d) a direction by the Superintendent to which clause 37.5 applies,

the Contractor must give the Superintendent the notices required by clause 42.2 if it wishes to make a Claim against the Principal in respect of any Direction by the Superintendent or any other fact, matter or thing (including a breach of the Major Works Contract by the Principal) under, arising out of, or in any way in connection with, WUC or the Major Works Contract, including anything in respect of which:

- (e) the Contractor is otherwise given an express entitlement under the Major Works Contract; or
- (f) the Major Works Contract expressly provides that:
 - (i) specified costs or amounts are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Superintendent.

42.2 Prescribed notices

The notices referred to in clause 42.1 are:

- (a) a written notice within 10 Business Days after the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 10 Business Days after giving the written notice under clause 42.2(a), which must include:

- (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
- (ii) the legal basis for the Claim, whether based on a term of the Major Works Contract or otherwise, and if based on a term of the Major Works Contract, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

42.3 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 42.1 is based, or the consequences of that Direction or fact, matter or thing, are continuing, the Contractor must continue to give the information required by clause 42.2(b) every 20 Business Days after the written Claim under clause 42.2(b) was submitted or given to the Superintendent, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

42.4 Time bar

If the Contractor fails to comply with clauses 37.5, 42.1, 42.2 or 42.3:

- (a) the Principal will not be liable upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as applicable) to which clause 37.5, 42.1, 42.2 or 42.3 applies.

42.5 Other provisions unaffected

Nothing in clauses 37.5, 42.1 to 42.4 will limit the operation or effect of any other notice provision, time bar provision, condition precedent or limitation or exclusion clause in the Major Works Contract.

43. Dispute resolution

43.1 Notice of dispute

- (a) If a difference or dispute (together called a '**Dispute**') between the parties arises in connection with the subject matter of the Major Works Contract, including a Dispute concerning:
 - (i) a Superintendent's Direction;
 - (ii) a Claim; or
 - (iii) the existence, validity or termination of this Major Works Contract,
 then either party must, by hand, the Document Management System or by registered post, give the other party and the Superintendent a written notice of dispute adequately identifying and providing details of the Dispute ('**Notice of Dispute**').
- (b) Notwithstanding the existence of a Dispute, the parties must, subject to clauses 40 and clause 43.8, continue to perform the Major Works Contract.

43.2 Project team conference

- (a) Within 10 Business Days after receiving a Notice of Dispute, the parties must confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence will be privileged.

- (b) If the Dispute has not been resolved within 20 Business Days after service of the Notice of Dispute, that Dispute must be and is hereby referred to senior executive meeting.

43.3 Senior Executive meeting

- (a) Within 10 Business Days of the referral under clause 43.2(b), a senior executive representative of each party (who is not directly involved in the management of the Project) must confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence will be privileged.
- (b) If the Dispute has not been resolved within 30 Business Days after referral under clause 43.2(b), that Dispute must be and is hereby referred to mediation in accordance with clause 43.4.

43.4 Mediation

- (a) If a Dispute is unable to be resolved in accordance with clause 43.3, the parties agree to endeavour in good faith to settle the Dispute by mediation.
- (b) The mediator shall be a mediator agreed on by the parties or if the parties are unable to agree on a mediator within 5 Business Days of referral of the Dispute to mediation, a mediator nominated by the Principal.
- (c) The mediation shall be convened within 20 Business Days of the appointment of the mediator.
- (d) The role of any mediator is to assist in negotiating a resolution of the Dispute. Any information or documents disclosed by a party under this clause 43.4 shall, unless and until that information or those documents come into the possession of that party through legitimate means other than the mediation:
 - (i) be kept confidential; and
 - (ii) not be used except to attempt to resolve the Dispute.
- (e) Each party shall bear its own costs of complying with this clause 43.4 and the parties shall bear equally the costs of any mediator engaged.
- (f) After the expiration of the later of 20 Business Days from the appointment of the mediator and 30 Business Days of referral under clause 43.3 (or other period as agreed between the parties), a party that has complied with this clause may terminate the mediation process by giving notice to the other party.
- (g) If the Dispute has not been resolved at the mediation contemplated by this clause 43.4 within 60 Business Days of receipt of the Notice of Dispute under clause 43.1 or the mediation process is terminated in accordance with this clause 43.4(f), then either party may refer the Dispute to expert determination (if applicable) or arbitration (if applicable).
- (h) Neither party may commence any expert determination, arbitration or litigation in relation to any Dispute arising out of the Major Works Contract until it has attempted to settle the Dispute by mediation pursuant to this clause 43.4 and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

43.5 Expert Determination

This clause 43.5 applies if specified in Item 26 of the Contract Particulars.

- (a) If the Dispute is not resolved pursuant to clause 43.4, the Dispute must be submitted to expert determination.
- (b) The expert determination under this clause 43.5 is to be conducted by the independent industry expert identified by the Principal, or if the expert appointed under this clause 43.5(b) is:

- (i) unavailable;
- (ii) declines to act;
- (iii) does not respond within 10 Business Days to a request by one or more of the parties for advice as to whether he or she is able to conduct the determination;
- (iv) does not enter into the agreement in accordance with paragraph (c) within 10 Business Days after his or her appointment under this clause; or
- (v) does not make a determination within the time required by paragraph (g),
by a person nominated by the Resolution Institute.
- (c) The parties must enter into an agreement with the appointed expert on the terms set out in the Schedule 20, or such other terms as the parties and the expert may agree.
- (d) An expert determination conducted under this clause 43.5 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (e) The expert will:
 - (i) proceed in any manner he or she thinks fit;
 - (ii) conduct any investigation which he or she considers necessary to resolve the Dispute;
 - (iii) examine such documents, and interview such persons, as he or she may require; and
 - (iv) make such directions for the conduct of the determination as he or she considers necessary.
- (f) The expert must:
 - (i) disclose to the parties any:
 - (A) interest he or she has in the outcome of the determination;
 - (B) conflict of interest;
 - (C) conflict of duty;
 - (D) personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
 - (E) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (g) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 43.5 within 20 Business Days from the acceptance by the expert of his or her appointment.
- (h) The determination of the expert:
 - (i) must be in writing;
 - (ii) will be substituted for the relevant direction of the Superintendent unless a party gives notice of appeal to the other party within 15 Business Days after receiving such determination in which case, subject to clauses 43.2, 43.3 and 43.4, any such appeal will be by way of a hearing de novo; and
 - (iii) will be final and binding, unless a party gives notice of appeal to the other party within 15 Business Days after receiving such determination.
- (i) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

- (j) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.

43.6 Arbitration

This clause 43.6 applies if specified in Item 26 of the Contract Particulars.

- (a) Subject to clauses 43.2, 43.3 and 43.4, a Dispute must be submitted to arbitration in accordance with, and subject to, the Resolution Institute Rules for the Conduct of Commercial Arbitration. The seat of arbitration will be Melbourne, Australia. The language of the arbitration will be English. The number of arbitrators will be one (1). The law governing this arbitration agreement is the law of Victoria.
- (b) The parties agree to the following general principles relating to the procedure of the arbitration:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted under this clause will not mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
 - (iii) that in conducting the arbitration, the arbitral tribunal must have particular regard to the matters set out above; and
 - (iv) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.
- (c) In conducting the arbitration, the arbitral tribunal must have particular regard to the matters set out in this clause 43.6.
- (d) The parties agree that the arbitration will be conducted as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (e) All evidence in chief will be in writing, unless otherwise ordered by the arbitrator.
- (f) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of that hearing:
 - (i) the duration of the oral hearings will be fixed by the arbitral tribunal; and
 - (ii) the oral hearing will be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties.
- (g) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (h) Any award will be final and binding upon the parties.

43.7 Proportional Liability

Notwithstanding anything else, to the extent permissible by law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration pursuant to this clause 43.

43.8 Summary relief

Nothing herein will prejudice the right of a party to institute proceedings to enforce payment due under the Major Works Contract or to seek injunctive or urgent declaratory relief.

43.9 Bundling of disputes

The parties must, to the extent that it is practical and reasonable to do so, attempt to resolve all disputes which are or may be coexistent, at the same time and as part of the same proceedings.

44. Social Procurement Framework

44.1 Application of Clause

This clause 44 only applies if so indicated at Item 28 of the Contract Particulars.

The Social Procurement Framework must take one of three forms:

Alternative 1: Social Procurement Framework without the Building Equality Policy

Alternative 2: Social Procurement Framework plus Building Equality Policy

Alternative 3: Building Equality Policy only

The form of the Social Procurement Framework that applies to this Major Works Contract is the alternative indicated at Item 28 of the Contract Particulars

44A. Alternative 1 – Social Procurement Framework (without Building Equality Policy)

Clause 44A Alternative 1 applies if indicated in Item 28 of the Contract Particulars.

44A.1 Definitions

In this clause 44A, the following terms have the following meanings:

Kinaway means Kinaway Chamber of Commerce Victoria Limited (ACN 600 066 199).

Map for Impact means the online map produced by the Victorian Social Enterprise Mapping Project (accessible at <https://mapforimpact.com.au/>), as amended from time to time.

Social Benefit Supplier means a business that operates and has business premises in Victoria and meets one or more of the following criteria:

- (a) it is a Victorian Social Enterprise;
- (b) it provides 'supported employment services' as defined in section 7 of the *Disability Services Act 1986* (Cth), and operates and has a business premises in Victoria; or
- (c) it is a Victorian Aboriginal business and is verified by Supply Nation or Kinaway.

Social or Sustainable Outcome means an outcome listed in Tables 1 and 2 of the Social Procurement Framework.

Social Procurement Commitment means a commitment to deliver a Social or Sustainable Outcome through an individual procurement activity, as identified in the Social Procurement Commitment Schedule.

Social Procurement Commitment Schedule means the plan set out in Schedule 22 (and includes the Social Procurement Commitments).

Social Procurement Framework means Victoria's Social Procurement Framework, as amended from time to time (accessible at <https://www.buyingfor.vic.gov.au/victorias-social-procurement-framework>).

Social Procurement Performance Report means a report submitted by a Contractor to the Superintendent, which details the Contractor's performance against the Social Procurement Commitments made in the Contractor's Social Procurement Commitment Schedule.

Social Traders means Social Traders Limited (ACN 132 665 804).

Supply Nation means Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (ACN 134 720 362).

Victorian Aboriginal business means a business that is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned, undertakes commercial activity and operates and has business premises in Victoria.

Victorian Social Enterprise means an organisation that is certified by Social Traders, and operates and has a business premises in Victoria; or is listed on the Map for Impact.

44A.2 Social Procurement Commitment Schedule

- (a) The Contractor must, in performing its obligations under this Major Works Contract, comply with the Social Procurement Commitment Schedule (including the Social Procurement Commitments).
- (b) The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments) applies during the term of the Major Works Contract, any extensions to the term and until all of its reporting obligations as set out in clause 44A.3 are fulfilled.
- (c) The Contractor agrees that the Social Procurement Commitments will bind the Contractor in relation to:
 - (i) the Major Works Contract as a whole (or to all of the works specified in the Major Works Contract), including any change of scope during the term of the Major Works Contract; and
 - (ii) all work conducted off site provided that the work has been specified as part of the Major Works Contract.
- (d) The Contractor's failure to undertake all reasonable measures to achieve compliance with clauses 44A.2 to 44A.4 may be determined by the Principal to constitute a material breach of this Major Works Contract.
- (e) The Contractor must ensure that any sub-contracts entered into by the Contractor, or by sub-contractors of any tier, in relation to WUC , contain clauses requiring sub-contractors of any tier to:
 - (i) comply with the Social Procurement Commitments to the extent that it applies to work performed under the sub-contract;
 - (ii) provide all necessary information to the Contractor so that the Contractor can fulfil its reporting obligations under clause 44A.3; and
 - (iii) permit the Principal to exercise its verification and inspection rights under clause 44A.4.

44A.3 Reports

- (a) The Contractor must submit written Social Procurement Performance Reports to the Superintendent outlining its performance against the Social Procurement Commitment Schedule at the frequency set out in Item 29 of the Contract Particulars.
- (b) The Social Procurement Performance Report submitted in accordance with clause 44A.3(a) must:
 - (i) be in a form satisfactory to Principal (acting reasonably); and
 - (ii) include all supporting information reasonably required by the Principal to verify the contents of the Social Procurement Performance Report.
- (c) Social Procurement Performance Reports must include:
 - (i) details specifying the Contractor's performance in complying with the Social Procurement Commitment Schedule; and
 - (ii) any reasons for deviations from the Social Procurement Commitment Schedule.

- (d) In addition to the Social Procurement Performance Reports, the Contractor must submit:
 - (i) a final Social Procurement Performance Report within two months of the date of Completion or the date the Major Works Contract is completed, whichever is earlier; and
 - (ii) a statutory declaration made by the Contractor declaring that the contents of the final Social Procurement Performance Report are true and correct, which must be submitted together with the final Social Procurement Performance Report.
- (e) Where maintenance or ongoing service components form part of the WUC, the final Social Procurement Performance Report must be submitted at the time at which the primary substance of the WUC has been practically completed (excluding any ongoing maintenance or service work).

44A.4 Verification of Contractor's compliance with Social Procurement Compliance Plan

- (a) The Contractor agrees that the Principal will have the right to inspect the Contractor's records in order to verify compliance with the Social Procurement Commitment Schedule.
- (b) The Contractor must:
 - (i) permit the Principal, or its duly authorised representative, from time to time during ordinary business hours and upon reasonable notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Contractor for the purposes of this Major Works Contract at the Contractor's premises, or provide copies of those records to the Superintendent at the Principal's request;
 - (ii) permit the Principal, or its duly authorised representative, from time to time to undertake a review of the Contractor's performance in accordance with the Social Procurement Commitment Schedule; and
 - (iii) ensure that its employees, agents and sub-contractors give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection as described in (i) and (ii) above.
- (c) The Contractor acknowledges and agrees that the Principal and the Principal's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Social Procurement Commitment Schedule.
- (d) The obligations set out in this clause 44A.4 are in addition to and do not derogate from any other obligation under this Major Works Contract.

44A.5 Use of information

The Contractor acknowledges and agrees that the statistical information contained in the Social Procurement Commitment Schedule and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule as reported will be:

- (a) provided by the Principal to the Department of Treasury and Finance; and
- (b) considered in the assessment or review of the Contractor's eligibility to tender for future Victorian Government Contracts.

44A. Alternative 2 – Social Procurement Framework with Building Equality Policy

Clause 44A Alternative 2 applies if indicated in Item 28 of the Contract Particulars.

44A.1 Definitions

In this clause 44A, the following terms have the following meanings:

Apprentice means a person whom an employer has undertaken to train under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Apprentices primarily working onsite and undertaking an apprenticeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.

Building Equality Policy means the Victorian Government's Building Equality Policy which came into effect on 1 January 2022, accessible at www.vic.gov.au/building-equality-policy, as amended from time to time.

Building Equality Policy Actions means the three actions that the Contractor is required to deliver under the Building Equality Policy:

Action 1 – meet project specific gender equality targets

Action 2 – engage women as apprentices, trainees and cadets to perform building and construction work

Action 3 – implement Gender Equality Action Plans.

Building Equality Policy Commitment means a commitment made by the Contractor, as set out in the Social Procurement Commitment Schedule (as varied by any alternative appropriate obligations which are agreed in accordance with clause 44A.4), to deliver the Building Equality Policy Actions.

Cadet means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Building Equality Policy applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification. Cadetships are different to professional traineeships (an employee who is not in an entry level role and is undertaking professional development training), which cannot count towards the Building Equality Policy. Hours spent offsite for training and education are counted towards the 4 percent requirement. Cadets count towards Building Equality Policy Action 1 Management /Supervisory and Specialist Labour (staff) targets and Action 2 apprentices, trainees and cadets.

Deemed Hours Formula has the same meaning as Deemed Hours Formula in the Local Jobs First Policy Agency Guidelines as amended from time to time and accessible at www.localjobsfirst.vic.gov.au/.

Gender Equality Action Plan or **GEAP** means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.

Kinaway means Kinaway Chamber of Commerce Victoria Limited (ACN 600 066 199).

Management / supervisory and specialist labour (staff) means people that spend 80 per cent of their time dedicated to a specific project engaged by the Contractor or a subcontractor to perform work under the Contract onsite. Hours spent offsite that directly relate towards project delivery are counted towards the 35% requirement.

Map for Impact means the online map produced by the Victorian Social Enterprise Mapping Project (accessible at <https://mapforimpact.com.au/>), as amended from time to time.

Non-trade Construction Award covered labour means Trainees and ancillary workers engaged by the Contractor or a subcontractor to perform the work under the Contract onsite.

Organisation Wide Gender Equality Action Plan means the plan attached at Annexure A to the Social Procurement Commitment Schedule.

Project Specific Gender Equality Action Plan means Plan attached at Annexure B to the Social Procurement Commitment Schedule.

Social Benefit Supplier means a business that meets one or more of the following criteria:

- (a) it is a Victorian Social Enterprise;
- (b) it is a Victorian Aboriginal business and is verified by Supply Nation or Kinaway; and
- (c) it provides 'supported employment services' as defined in section 7 of the Disability Services Act 1986 (Cth) and operates and has a business premises in Victoria.

Social Procurement Commitment means an obligation required to be performed by the Contractor, as set out in the Social Procurement Commitment Schedule, in relation to delivering a Social Procurement Framework Outcome.

Social Procurement Commitment Schedule means the agreed Social Procurement Commitment Proposal set out at Schedule 22 which includes the agreed Social Procurement Commitments, the agreed Building Equality Policy Commitments and the Gender Equality Action Plans.

Social Procurement Framework means Victoria's Social Procurement Framework, as amended from time to time (accessible at <https://www.buyingfor.vic.gov.au/victorias-social-procurement-framework>).

Social Procurement Performance Report means a report submitted by the Contractor to the Superintendent which details the Contractor's performance against the Social Procurement Commitments and the Building Equality Policy Commitments made in the Social Procurement Commitment Schedule.

Social Traders means Social Traders Limited (ACN 132 665 804).

Supply Nation means Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (ACN 134 720 362).

Trade covered labour means building / construction qualified trades and Apprentices engaged by the Contractor or a subcontractor to perform work under the Contract onsite.

Trainee means a person (other than an Apprentice) employed under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Trainees primarily working onsite and undertaking a traineeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.

Training Contract means a training contract lodged with the Victorian Registration and Qualification Authority (VRQA) or a person nominated by the VRQA in accordance with the Education and Training Reform Act 2006.

Victorian Aboriginal business means a business that:

- (a) is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned;
- (b) undertakes commercial activity; and
- (c) operates and has business premises in Victoria.

Victorian Social Enterprise means an organisation that is:

- (a) certified by Social Traders, and operates and has a business premises in Victoria; or
- (b) listed on the Map for Impact.

VMC means the information management platform that collects data to support government and industry with the Social Procurement Framework and Local Jobs First policy, administered by the ICN and formerly the Victorian Management Centre.

44A.2 Social Procurement Commitment Schedule

- (a) The Contractor must, in performing its obligations under this Major Works Contract:
 - (i) comply with the Social Procurement Commitment Schedule; and
 - (ii) perform all Social Procurement Commitments and the Building Equality Policy Commitments by the due date for performance as set out in the Social Procurement Commitment Schedule or directed by the Superintendent.
- (b) The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments and the Building Equality Policy Commitments) applies during the term of this Major Works Contract and any extensions to the term and until all reporting obligations under clause 44A.3 are fulfilled.
- (c) The Contractor's failure to comply with its obligations in:

- (i) clause 44A.2(a) in relation to its Social Procurement Commitments may be determined by the Principal to constitute a breach of this Major Works Contract; and
- (ii) clause 44A.2(a) in relation to its Building Equality Policy Commitments, subject to clause 44A.4(d) may be determined by the Principal to constitute a breach of this Major Works Contract.

44A.3 Reporting

- (a) The Contractor must prepare and maintain records demonstrating its:
 - (iii) compliance with the Social Procurement Commitment Schedule; and
 - (iv) performance against the Social Procurement Commitments and the Building Equality Policy Commitments.
- (b) The Contractor must, during the term of this Major Works Contract, submit Social Procurement Performance Reports to the Superintendent at the intervals stated at Item 29 of the Contract Particulars.
- (c) The Superintendent may direct the Contractor to meet to discuss the contents of the Social Procurement Performance Report and other issues concerning the progress towards the Social Procurement Commitments and the Building Equality Policy Commitments including any identified reporting deficiencies and timeframes for rectification.
- (d) The Social Procurement Performance Report provided in accordance with clause 44A.3(b) must:
 - (i) be submitted (where possible) by the Contractor using the VMC – or as otherwise agreed by the Superintendent;
 - (ii) be in a form satisfactory to the Principal (acting reasonably); and
 - (iii) include all supporting information reasonably required by the Superintendent to verify the contents of the Social Procurement Performance Report.
- (e) In addition to the Social Procurement Performance Reports, within two months after the Date of Completion or the expiry or termination of this Major Works Contract, whichever is earlier, the Contractor must provide the Superintendent with:
 - (i) a final Social Procurement Performance Report; and
 - (ii) a statutory declaration in the form set out in Schedule 22 to confirm that the information contained in the final Social Procurement Performance Report is true and accurate. The Contractor must ensure the Social Procurement Framework Statutory Declaration is made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (f) At the request of the Superintendent, the Contractor must provide further information about, or explanation of, any:
 - (i) non-compliance with the Social Procurement Commitment Schedule; and
 - (ii) failure to perform the Social Procurement Commitments or the Building Equality Policy Commitments by the due date for performance.
- (g) The reporting obligations set out in clause 44A.3 are in addition to, and do not derogate from, any other obligations set out in this Major Works Contract.

44A.4 Responses to Non-Compliance

- (a) The Contractor must notify the Superintendent in writing as soon as practicable, but no later than 20 Business Days after becoming aware of any actual or anticipated difficulties

that may impact on its ability to meet any of the Building Equality Policy Commitments set out in the Social Procurement Commitment Schedule.

- (b) The notice under clause 44A.4(a) must include:
 - (i) details of the Building Equality Policy Commitments that cannot be met by the Contractor and reasons for non-compliance;
 - (ii) evidence demonstrating the steps taken by the Contractor to meet the Building Equality Policy Commitments; and
 - (iii) all supporting information reasonably required by the Superintendent to assess the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply with the Building Equality Policy Commitments.
- (c) At the request of the Superintendent, the Contractor must meet the Superintendent and the Principal in good faith to discuss the contents of the notice under clause 44A.4(a) and agree on alternative appropriate obligations, to achieve suitable levels of compliance with the Building Equality Policy Commitments.
- (d) If the parties agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments:
 - (i) the Superintendent will issue the Contractor with written confirmation of the agreed alternative obligations, including the relevant evidentiary and reporting requirements; and
 - (ii) the Building Equality Policy Commitments are deemed to be varied by such alternative appropriate obligations.
- (e) If the parties are unable to agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments, the Contractor's failure to comply with the Building Equality Policy Commitments may be determined by the Principal to constitute a breach of this Major Works Contract.
- (f) The Principal will take a graduated approach to responding to the Contractor's non-compliance with the Building Equality Policy Commitments and will consider the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply. Potential consequences of non-compliance with the Building Equality Policy Commitments may include, but are not limited to:
 - (iii) the responsible Minister of the Crown or the Secretary of the relevant government agency issuing the Contractor with a formal warning; and
 - (iv) the Contractor being placed on a register maintained by the State for increased compliance oversight and monitoring across the portfolio of projects the Contractor is currently undertaking for the Principal or other government agencies.
- (g) Nothing in this clause limits any rights of the Principal under this Major Works Contract.

44A.5 Verifying Compliance

- (a) The Contractor acknowledges and agrees that the Principal will have the right to inspect the Contractor's records to verify its compliance with the Social Procurement Commitment Schedule.
- (b) The Contractor must:
 - (i) permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of clause 44A.5;

- (ii) permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time to undertake a review of the Contractor's performance against the Social Procurement Commitments or the Building Equality Policy Commitments; and
- (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, to undertake such inspection, verification or review.
- (c) The Contractor acknowledges and agrees that the Principal, or a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Contractor's performance against the Social Procurement Commitments or the Building Equality Policy Commitments.
- (d) The obligations set out in clause 44A.5 are in addition to, and do not derogate from, any other obligations as set out in this Major Works Contract.

44A.6 Use of Information

- (a) The Contractor acknowledges and agrees that statistical information contained in the Social Procurement Performance Reports and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule:
 - (i) Will be used by the State to prepare registers of:
 - (A) high performing contractors who demonstrate exemplary levels of compliance; and
 - (B) contractors who have not complied with the Social Procurement Commitment Schedule;
 - (ii) will be provided to any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, for combined reporting purposes for each financial year on the compliance and performance of the Social Procurement Framework and the Building Equality Policy during that year;
 - (iii) may be considered in the assessment and review of the Contractor's eligibility to tender for future Victorian Government contract; and
 - (iv) may be disclosed in the circumstances authorised or permitted under the terms of this Major Works Contract or as otherwise required by Law.
- (b) The Contractor acknowledges and agrees that the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time, may use any information provided by the Contractor to assess and review the impact of the Social Procurement Framework and Building Equality Policy on the building and construction industry.

44A.7 Subcontracting

- (a) The Contractor must ensure that any subcontracts it enters into in relation to this Major Works Contract contain clauses requiring its subcontractors to:
 - (i) comply with the Social Procurement Commitments and Building Equality Policy Commitments to the extent that it applies to work performed under the subcontract;
 - (ii) provide any necessary information that allows the Contractor to comply with its obligations under clauses 44A.1 to 44A.7; and
 - (iii) permit the Principal to exercise its verification and inspection rights under clause 44A.5.

- (b) The obligations set out in clause 44A.7 are in addition to, and do not derogate from, any other obligations as set out in this Major Works Contract.
- (c) The Contractor's failure to comply with its obligations in:
 - (i) clause 44A.7(a) in relation to subcontracts and Social Procurement Commitments may be determined by the Principal to constitute a breach of this Major Works Contract; and
 - (ii) clause 44A.7(a) in relation to subcontracts and Building Equality Policy Commitments may be determined by the Principal to constitute a breach of this Major Works Contract.

44A. Alternative 3 – Building Equality Policy only

Clause 44A Alternative 3 applies if indicated in Item 28 of the Contract Particulars.

44A.1 Definitions

In this Clause 44A, the following terms have the following meanings:

Apprentice means a person whom an employer has undertaken to train under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Apprentices primarily working onsite and undertaking an apprenticeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.

Building Equality Policy Commitment means the Victorian Government's Building Equality Policy which came into effect on 1 January 2022, accessible at www.vic.gov.au/building-equality-policy, as amended from time to time.

Building Equality Policy Actions means the three actions that the Contractor is required to deliver under the Building Equality Policy:

Action 1 – meet project specific gender equality targets

Action 2 – engage women as apprentices, trainees and cadets to perform building and construction work

Action 3 – implement Gender Equality Action Plans.

Building Equality Policy Commitment means a commitment made by the Contractor, as set out in the Social Procurement Commitment Schedule, (as varied by any alternative appropriate obligations which are agreed in accordance with clause 44A.4) to deliver the Building Equality Policy Actions.

Cadet means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Building Equality Policy applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification. Cadetships are different to professional traineeships (an employee who is not in an entry level role and is undertaking professional development training), which cannot count towards the Building Equality Policy. Hours spent offsite for training and education are counted towards the 4 percent requirement. Cadets count towards Building Equality Policy Action 1 Management /Supervisory and Specialist Labour (staff) targets and Action 2 apprentices, trainees and cadets.

Deemed Hours Formula has the same meaning as Deemed Hours Formula in the Local Jobs First Policy Agency Guidelines as amended from time to time and accessible at www.localjobsfirst.vic.gov.au/.

Gender Equality Action Plan or GEAP means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.

Management / supervisory and specialist labour (staff) means people that spend 80 per cent of their time dedicated to a specific project engaged by the Contractor or a subcontractor to

perform work under the Contract onsite. Hours spent offsite that directly relate towards project delivery are counted towards the 35% requirement.

Non-trade Construction Award covered labour means Trainees and ancillary workers engaged by the Contractor or a subcontractor to perform the work under the Contract onsite.

Organisation Wide Gender Equality Action Plan means the plan attached at Annexure A to the Social Procurement Commitment Schedule.

Project Specific Gender Equality Action Plan means Plan attached at Annexure B to the Social Procurement Commitment Schedule.

Social Procurement Commitment means an obligation required to be performed by the Contractor, as set out in the Social Procurement Commitment Schedule, in relation to delivering a Building Equality Policy Commitment.

Social Procurement Commitment Schedule means the agreed Social Procurement Commitment Proposal set out at Schedule 22 which includes the agreed Building Equality Policy Commitments and the Gender Equality Action Plans.

Social Procurement Framework means Victoria's Social Procurement Framework, as amended from time to time (accessible at <https://www.buyingfor.vic.gov.au/victorias-social-procurement-framework>).

Social Procurement Performance Report means a report submitted by the Contractor to the Principal, which details the Contractor's performance against the Building Equality Policy Commitments made in the Social Procurement Commitment Schedule.

Trade covered labour means building / construction qualified trades and Apprentices engaged by the Contractor or a subcontractor to perform work under the Contract onsite.

Trainee means a person (other than an Apprentice) employed under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Trainees primarily working onsite and undertaking a traineeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.

Training Contract means a training contract lodged with the Victorian Registration and Qualification Authority (VRQA) or a person nominated by the VRQA in accordance with the Education and Training Reform Act 2006.

VMC means the information management platform that collects data to support government and industry with the Social Procurement Framework and Local Jobs First policy, administered by the ICN and formerly the Victorian Management Centre.

44A.2 Social Procurement Commitment Schedule

- (a) The Contractor must, in performing its obligations under this Major Works Contract:
 - (i) comply with the Social Procurement Commitment Schedule; and
 - (ii) perform all Building Equality Policy Commitments by the due date for performance as set out in the Social Procurement Commitment Schedule or directed by the Superintendent.
- (b) The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Building Equality Policy Commitments) applies during the term of this Major Works Contract and any extensions to the term and until all reporting obligations under clause 44A.3 are fulfilled.
- (c) Subject to clause 44A.5(d), the Contractor's failure to comply with its obligations in clause 44A.2(a) in relation to its Building Equality Policy Commitments may be determined by the Principal to constitute a breach of this Major Works Contract.

44A.3 Reporting

- (a) The Contractor must prepare and maintain records demonstrating its:
 - (i) compliance with the Social Procurement Commitment Schedule; and

- (ii) performance against the Building Equality Policy Commitments.
- (b) The Contractor must, during the term of this Major Works Contract, submit Social Procurement Performance Reports to the Superintendent at the intervals stated at Item 29 of the Contract Particulars.
- (c) The Superintendent may direct the Contractor to meet to discuss the contents of the Social Procurement Performance Report and other issues concerning the progress towards the Building Equality Policy Commitments including any identified reporting deficiencies and timeframes for rectification.
- (d) The Social Procurement Performance Report provided in accordance with clause 44A.3(b) must:
 - (i) be submitted (where possible) by the Contractor using the VMC – or as otherwise agreed by the Superintendent;
 - (ii) be in a form satisfactory to the Principal (acting reasonably); and
 - (iii) include all supporting information reasonably required by the Superintendent to verify the contents of the Social Procurement Performance Report.
- (e) In addition to the Social Procurement Performance Reports, within two months after the Date of Practical Completion or the expiry or termination of this Major Works Contract, whichever is earlier, the Contractor must provide the Superintendent with:
 - (i) a final Social Procurement Performance Report; and
 - (ii) a statutory declaration in the form set out in Schedule 22 to confirm that the information contained in the final Social Procurement Performance Report is true and accurate. The Contractor must ensure the Social Procurement Framework Statutory Declaration is made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (f) At the request of the Superintendent, the Contractor must provide further information about, or explanation of, any:
 - (i) non-compliance with the Social Procurement Commitment Schedule; and
 - (ii) failure to perform the Building Equality Policy Commitments by the due date for performance.
- (g) The reporting obligations set out in clause 44A.3 are in addition to, and do not derogate from, any other obligations set out in this Major Works Contract.

44A.4 Response to Non-Compliance

- (a) The Contractor must notify the Superintendent in writing as soon as practicable, but no later than 20 Business Days after becoming aware of any actual or anticipated difficulties that may impact on its ability to meet any of the Building Equality Policy Commitments set out in the Social Procurement Commitment Schedule.
- (b) The notice under clause 44A.4(a) must include:
 - (i) details of the Building Equality Policy Commitments that cannot be met by the Contractor and reasons for non-compliance;
 - (ii) evidence demonstrating the steps taken by the Contractor to meet the Building Equality Policy Commitments; and
 - (iii) all supporting information reasonably required by the Superintendent to assess the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply with the Building Equality Policy Commitments.

- (c) At the request of the Superintendent, the Contractor must meet the Superintendent and the Principal in good faith to discuss the contents of the notice under clause 44A.4(a) and agree on alternative appropriate obligations, to achieve suitable levels of compliance with the Building Equality Policy Commitments.
- (d) If the parties agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments:
 - (i) the Superintendent will issue the Contractor with written confirmation of the agreed alternative obligations, including the relevant evidentiary and reporting requirements; and
 - (ii) the Building Equality Policy Commitments are deemed to be varied by such alternative appropriate obligations.
- (e) If the parties are unable to agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments, the Contractor's failure to comply with the Building Equality Policy Commitments may be determined by the Principal to constitute a breach of this Major Works Contract.
- (f) The Principal will take a graduated approach to responding to the Contractor's non-compliance with the Building Equality Policy Commitments and will consider the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply. Potential consequences of non-compliance with the Building Equality Policy Commitments may include, but are not limited to:
 - (i) the responsible Minister of the Crown or the Secretary of the relevant government agency issuing the Contractor with a formal warning; and
 - (ii) the Contractor being placed on a register maintained by the State for increased compliance oversight and monitoring across the portfolio of projects the Contractor is currently undertaking for the Principal or other government agencies.
- (g) Nothing in this clause limits any rights of the Principal under this Major Works Contract.

44A.5 Verifying Compliance

- (a) The Contractor acknowledges and agrees that the Principal will have the right to inspect the Contractor's records to verify its compliance with the Social Procurement Commitment Schedule.
- (b) The Contractor must:
 - (i) permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of clause 44A.5;
 - (ii) permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy from time to time to undertake a review of the Contractor's performance against the Building Equality Policy Commitments; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, to undertake such inspection, verification or review.
- (c) The Contractor acknowledges and agrees that the Principal, or a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Contractor's performance against the Building Equality Policy Commitments.

- (d) The obligations set out in clause 44A.5 are in addition to, and do not derogate from, any other obligations as set out in this Major Works Contract.

44A.6 Use of Information

- (a) The Contractor acknowledges and agrees that statistical information contained in the Social Procurement Performance Reports and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule:
 - (i) will be used by the State to prepare registers of:
 - (A) high performing contractors who demonstrate exemplary levels of compliance; and
 - (B) contractors who have not complied with the Social Procurement Commitment Schedule;
 - (ii) will be provided to any departments and agencies responsible for the Building Equality Policy, for combined reporting purposes for each financial year on the compliance and performance of the Building Equality Policy during that year;
 - (iii) may be considered in the assessment and review of the Contractor's eligibility to tender for future Victorian Government contract; and
 - (iv) may be disclosed in the circumstances authorised or permitted under the terms of this Major Works Contract or as otherwise required by Law.
- (b) The Contractor acknowledges and agrees that the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy from time to time, may use any information provided by the Contractor to assess and review the impact of Building Equality Policy on the building and construction industry.

44A.7. Subcontracting

- (a) The Contractor must ensure that any subcontracts it enters into in relation to this Major Works Contract contain clauses requiring its subcontractors to:
 - (i) comply with the Building Equality Policy Commitments to the extent that it applies to work performed under the subcontract; and
 - (ii) provide any necessary information that allows the Contractor to comply with its obligations under clauses 44A.1 to 44A.7.
- (b) The obligations set out in clause 44A.7 are in addition to, and do not derogate from, any other obligations as set out in this Major Works Contract.
- (c) The Contractor's failure to comply with its obligations, subject to clause 44A.7(c), in clause 44A.7(a) in relation to subcontracts and Building Equality Policy Commitments may be determined by the Principal to constitute a breach of this Major Works Contract.
- (d) The Contractor's failure to comply with its obligations in clause 44A.7(a) in relation to subcontracts and Building Equality Policy Commitments at any time prior to 1 January 2024 will not constitute a breach of this Major Works Contract.

45. Local Jobs First Policy

45.1 Application of Clause

This clause 45 only applies if so indicated in Item 30 of the Contract Particulars.

45.2 Definitions

In this clause 45, the following terms have the following meanings:

Acknowledgement Letter has the meaning given in the Local Jobs First Policy.

Apprentice means a person whom the Contractor has undertaken to train under a Training Contract and where for the purposes of the Major Projects Skills Guarantee:

- (a) the Training Contract:
 - (i) is registered with the VRQA; and
 - (ii) combines structured training with paid employment in an entry-level role related to a Local Jobs First applicable project; and
- (b) the structured training:
 - (i) relates directly to the person's role on the Local Jobs First applicable project; and
 - (ii) is consistent with the Training Contract,

but excludes Cadets and Trainees.

Cadets means a person who is concurrently:

- (a) enrolled in and undertaking tertiary education provided by:
 - (i) a vocational education and training provider registered with the Australian Skills Quality Agency; or
 - (ii) a higher education provider registered with the Tertiary Education Quality and Standards Agency; and
- (b) employed by the Contractor in an entry-level role and performing work:
 - (i) in respect of a Local Jobs First applicable project and receiving learning opportunities in the course of that engagement; and
 - (ii) that is directly related to the tertiary education referred to in paragraph (a),

but excludes Apprentices and Trainees.

Department has the meaning given in section 3(1) the *Local Jobs First Act 2003*.

Industry Capability Network means Industry Capability Network (Victoria) Limited of Level 23, 370 Little Lonsdale Street, Melbourne VIC, 3000 (ACN 007 058 120) (ABN 20 007 058 120).

LIDP means the Local Industry Development Plan:

- (a) submitted by the Contractor with its tender for the Major Works Contract, together with an Acknowledgement Letter issued by the Industry Capability Network (Victoria) in respect of that Local Industry Development Plan; and
- (b) which is set out in Attachment 1 of Schedule 21.

LIDP Commitments means the obligations and undertakings of the Contractor as set out in the LIDP.

LIDP Monitoring Table means the table of milestones and LIDP Commitments included at Attachment 2 of Schedule 21.

Local Content has the meaning given in section 3(1) of the *Local Jobs First Act 2003*.

Local Jobs First Commissioner means the person appointed under section 12 of the *Local Jobs First Act 2003*.

Local Jobs First Policy means the policy of the Victorian Government made under section 4 of the *Local Jobs First Act 2003*.

Local Industry Development Plan has the meaning given in section 7D of the *Local Jobs First Act 2003* (Vic).

Major Projects Skills Guarantee has the meaning given in the *Local Jobs First Act 2003* (Vic).

Responsible Minister means the Minister with responsibility for administering the *Local Jobs First Act 2003* (Vic).

Trainee means a person whom the Contractor has undertaken to train under a Training Contract where, for the purposes of the Major Projects Skills Guarantee:

- (a) the Training Contract:
 - (i) is registered with VRQA; and
 - (ii) combines training with paid employment in an entry level role related to a Local Jobs First applicable project; and
- (b) the training:
 - (i) relates directly to the person's role on the Local Jobs First applicable project; and
 - (ii) is consistent with the Training Contract,but excludes Cadets and Apprentices.

Training Contract has the meaning given in the *Education and Training Reform Act 2006*.

Victorian Management Centre or **VMC** means the automated information management system administered by Industry Capability Network (Victoria).

VRQA means the Victorian Registration and Qualification Authority.

45.3 Local Jobs First Policy

- (a) The Contractor must, in performing its obligations under the Major Works Contract:
 - (i) comply with the LIDP,
 - (ii) perform all obligations required to be performed under the LIDP by the due date for performance; and
 - (iii) comply with the Local Jobs First Policy.
- (b) The Contractor acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Major Works Contract, any extensions to the term and until all of its Reporting obligations as set out in clause 45.5 are fulfilled.
- (c) The Contractor's failure to comply with this clause 45.3 will constitute a substantial breach of this Major Works Contract for the purposes of clause 40.2.

45.4 Revised LIDP

- (a) If at any time a variation to this Major Works Contract is proposed which involves or effects a change in the nature of any LIDP Commitments, the Contractor must prepare a revised LIDP in collaboration with and be certified by Industry Capability Network (Victoria) (**Revised LIDP**).
- (b) When requested by the Superintendent, the Contractor must provide the Revised LIDP to the Principal.
- (c) The Revised LIDP must be agreed by the parties before any variation to the Major Works Contract can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP in Attachment 1 of Schedule 21 and forms part of the Major Works Contract.

45.5 Reporting

- (a) The Contractor must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.
- (b) The Contractor must use the Victorian Management Centre for Local Jobs First monitoring and reporting.
- (c) If indicated at Item 29A of the Contract Particulars, the Contractor must provide a six monthly report demonstrating its progress towards implementing the LIDP through reporting on the Victorian Management Centre.

- (d) Prior to or at the Date of Completion and at such other reporting dates for the purposes of this clause 45.5 as indicated in Item 31 of the Contract Particulars, the Contractor must provide to the Superintendent:
 - (i) the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
 - (ii) a statutory declaration in the form set out in as part of the online LIDP (**LJF Statutory Declaration**) to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The LJF Statutory Declaration must be made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Superintendent, the Contractor must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
- (f) The reporting obligations in this clause 45.5 are in addition to and do not derogate from any other reporting obligations as set out in the Major Works Contract.

45.6 Verification of Contractor's compliance with LIDP

- (a) The Contractor agrees that each of the Superintendent, the Principal and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
- (b) The Contractor must:
 - (i) permit the Superintendent, the Principal, an accountant or auditor on behalf of the Principal or the Department, or any other person authorised by the Principal or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Contractor for the purposes of the Major Works Contract;
 - (ii) permit the Superintendent, the Principal, or the Department from time to time to undertake a review of the Contractor's performance in accordance with the LIDP; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to the Superintendent, the Principal or the Department to undertake such audit or inspection.
- (c) The Contractor acknowledges and agrees that the Superintendent, Principal, the Department, the Principal's and Department's duly authorised representative and Industry Capability Network are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor compliance with the LIDP.
- (d) The obligations set out in this clause 45.6 are in addition to and do not derogate from any other obligation under the Major Works Contract.

45.7 Use of Local Jobs First Policy information

The Contractor acknowledges and agrees that:

- (a) Industry Capability Network will assess the Contractor's performance against the LIDP;
- (b) the statistical information contained in the LIDP and the measures of the Contractor's compliance with the LIDP as reported in the LIDP Monitoring Table:
 - (i) will be included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Principal's compliance with the Local Jobs First policy in the financial year to which the report of operations relates;
 - (ii) will be provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the LIDP during that year; and

- (iii) may be disclosed in the circumstances authorised or permitted under the terms of this Major Works Contract or as otherwise required by law.

45.8 Subcontracting

- (a) The Contractor must ensure that any subcontracts entered into by the Contractor in relation to the Works contain clauses requiring subcontractors:
 - (i) to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract,
 - (ii) to provide necessary information that allows the Contractor to comply with its reporting obligations under clause 45.5, and
 - (iii) to permit the Superintendent, the Principal and the Department to exercise their inspection and verification rights under clause 45.6.
- (b) The subcontracting obligations set out in this clause 45.8 are in addition to and do not derogate from any other obligations under this Major Works Contract.
- (c) The Contractor's failure to comply with this clause 45.8 will constitute a substantial breach of this Major Works Contract for the purposes of clause 40.2.

45.9 Local Jobs First Commissioner

- (a) The Contractor acknowledges that:
 - (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with section 24 of the *Local Jobs First Act 2003*;
 - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with section 26 of the *Local Jobs First Act 2003*;
 - (iii) its failure to comply with the compliance notice referred to in this clause 45.9 may result in the issue of an adverse publicity notice by the Responsible Minister under section 29 of the *Local Jobs First Act 2003*; and
 - (iv) the Local Jobs First Commissioner may:
 - (A) monitor and report on compliance with the Local Jobs First Policy and LIDP; and
 - (B) request the Principal to conduct an audit in relation to the Contractor's compliance with the Local Jobs First Policy and the LIDP.
- (b) The Contractor acknowledges that the Commissioner may recommend that the Principal take enforcement proceedings against the Contractor if the Contractor has failed to comply with the Local Jobs First Policy or the LIDP by:
 - (i) applying to a court to obtain an injunction; or
 - (ii) taking action available under this Major Works Contract.

46. Supplier Code of Conduct

- (a) The Contractor must:
 - (i) comply with and ensure that its officers, employees and subcontractors comply with the Supplier Code of Conduct in connection with the work under the Contract;
 - (ii) periodically monitor and assess its and its officers', employees', and subcontractors' compliance with the Supplier Code of Conduct; and
 - (iii) on request from the Principal, promptly provide information regarding the policies, frameworks, or systems it has established to monitor and assess compliance with the Supplier Code of Conduct, as well as its compliance with this clause 46(a).

- (b) The Contractor must notify the Principal within 5 Business Days of becoming aware of any breach of clause 46(a)(i).
- (c) Where the Principal identifies a possible breach of clause 46(a)(i), it may issue the Contractor a notice, and the Contractor must, within 10 Business Days of receiving the notice, either:
 - (i) where the Contractor considers a breach has not occurred: advise the Principal that there has not been a breach and provide information supporting that determination; or
 - (ii) where the Contractor considers that a breach has occurred: issue a Notice under clause 46(b) and otherwise comply with its obligations under clause 46(a) and any remediation measures as agreed between the Principal and the Contractor; and
 - (iii) Notwithstanding clause 46(c)(i), the Principal may notify the Contractor in writing that it considers that the Contractor has breached clause 46(a), in which case the Contractor must comply with its obligations under clause 46 and any remediation measures as agreed between the Principal and the Contractor.
- (d) A failure by the Contractor to comply with its obligations under any part of this clause will be a breach of the Contract.
- (e) The Contractor agrees that the State may take into account the Contractor's compliance with the Supplier Code of Conduct in any future approach to market or procurement process.
- (f) The expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Contractor, whether under the Contract or at Law.

47. Modern Slavery

The Contractor acknowledges and agrees that the Contractor must:

- (a) comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Contractor;
- (b) in any event, facilitate the Principal complying with any of the Modern Slavery Legislation applicable to the Principal, by reporting in a timely manner and providing all information concerning its supply chain and that of its subconsultants and suppliers which the Principal may acting reasonably require, such reporting and other information being provided no later than 60 days after expiry of the period to which the reporting relates to, or earlier where required in order for the Principal to meet its obligations under the applicable Modern Slavery Legislation; and
- (c) ensure that such reporting and other information is accurate, complete and in such form as the Principal in its discretion requires

48. Minimum Rates of Pay for Tip Truck Owner Drivers

48.1 Definitions

In this clause 48, the following terms have the following meanings:

Excavation Work means work that involves the removal of soil or rock from a site to form an open face, hole or cavity.

Freight Broker means a broker or agent in the business of procuring or arranging the engagement of independent contractors by hirers, including a person who provides an online platform that facilitates the engagement of contractors by hirers.

Published Rates means the Rates and Cost Schedules for Tip Truck Owner Drivers developed by the Transport Industry Council.

Relevant Published Rate means those of the Published Rates applicable to the type of tip truck to be provided by the Tip Truck Owner Driver.

Tip Truck Owner Driver means an independent contractor who drives a tip truck in connection with excavation work in the building and construction industry.

48.2 Minimum Rates

- (a) If any aspect of the delivery of the Works or carrying out the WUC involves the use of a Tip Truck Owner Driver then the remaining provisions of this clause apply;
- (b) whether the Contractor engages a Tip Truck Owner Driver directly or indirectly through a subcontractor, secondary subcontractor or Freight Broker, the Contractor must ensure that the Tip Truck Owner Driver is paid according to the following:
 - (i) if the Tip Truck Owner Driver is to be paid at an hourly rate then that must be at least at the Relevant Published Rate plus any Freight Broker fees due and payable and road tolls reasonably incurred;
 - (ii) if the Tip Truck Owner Driver is to be paid on a per load rate then the per load rate must be arrived at based on a reasonable estimate of the time likely to be required to complete the specific job, multiplied by the Relevant Published Rate adjusted for any agreed incentive component, plus any Freight Broker fees due and payable and road tolls reasonably incurred;
 - (iii) for the purposes of calculating a per load rate, a reasonable estimate of the time likely to be required must:
 - (A) take into account all of the relevant circumstances of the specific job, including but not limited to the volume or weight of the load to be moved, distance to be travelled for transfer, local traffic conditions, time of day, expected waiting times, special site conditions and other special circumstances; and
 - (B) be based on what a competent and experienced person in the position of the person engaging the Tip Truck Owner Driver would consider to be a reasonable estimate;
 - (iv) if a per load rate includes an incentive component in addition to the minimum rate, the incentive component may be reduced in proportion to any shortfall in the load moved, as agreed between the Tip Truck Owner Driver and the party engaging them;
 - (v) where Item 32 of the Contract Particulars states that an adjustment applies to account for project specific requirements, then payments to the Tip Truck Owner Driver must be increased by the rate listed; and
 - (vi) If the Tip Truck Owner Driver is underpaid, the Contractor must either pay the amount of the underpayment or otherwise ensure that it is paid by the relevant subcontractor or secondary subcontractor or Freight Broker.

49. Contractor Performance and Shared Reporting Regime

49.1 Application of Clause

This clause 49 only applies if so indicated in Item 33 of the Contract Particulars

49.2 Definitions

In this clause 49, the following terms have the following meanings:

Agency means a department or public body, in each case as defined in the *Project Development and Construction Management Act 1994* (Vic); and

Department means the department supporting the Minister responsible for part 4 of the *Project Development and Construction management Act 1994* (Vic).

49.3 Reporting

- (a) The Contractor acknowledges that the Principal, as an Agency, is required to submit reports in the form of the Contractor Performance Report to the Department:
 - (i) where the expected term of the Major Works Contract is 12 months or longer, every six months from the date the Contractor first takes possession of the Site until the Date of Completion;
 - (ii) within 30 days of the Date for Completion;
 - (iii) within 30 days of the expiration of the Defects Liability Period; and
 - (iv) at any time when the Principal determines that a significant issue affecting the Contractor's performance of the WUC.
- (b) If a Contractor Performance Report required under clause 49.3(a)(i) is due to fall within two months of the Contractor Performance Report required under clause 49.3(a)(ii), the Principal is only required to submit the Contractor Performance Report required under clause 49.3(a)(ii).
- (c) The Contractor must promptly provide all assistance and co-operation requested by the Principal to allow the Principal to comply with its obligations under clause 49.3(a).
- (d) The Principal must submit all Contractor Performance Reports to the Contractor for comment no later than 20] Business Days before the date for submitting the relevant Contractor Performance Report to the Department under clause 49.3(a).
- (e) The Contractor may, within 5 Business Days of receiving a Contractor Performance Report from the Principal:
 - (i) respond to the Principal's assessment of the Contractor's performance set out in the Contractor Performance Report by giving written notice to the Principal; or
 - (ii) make no comment on the Contractor Performance Report, in which case the Principal may proceed with submitting the Contractor Performance Report to the Department.
- (f) If the Contractor provides a written notice to the Principal in accordance with clause 49.3(e), the Principal may, at its sole discretion, amend the Contractor Performance Report in response to the Contractor's comments and must submit the Contractor Performance Report to the Department.
- (g) The Contractor acknowledges and agrees that the Contractor's performance as reported in the Contractor Performance Report will be considered in the assessment or review of the Contractor's eligibility to tender for future Victorian Government Contracts.

49A Fair Jobs Code Regime

49A.1 Application of Clause

This clause 49A only applies if so indicated in Item 34A of the Contract Particulars.

The Fair Jobs Code Regime must take one of two forms:

Alternative 1

Alternative 2

The form of the Fair Jobs Code Regime that applies to this Major Works Contract is the alternative indicated at Item 34A of the Contract Particulars.

49B. Alternative 1 - Fair Jobs Code Regime

Clause 49B Alternative 1 applies if indicated at Item 34A of the Contract Particulars.

49B.1 Definitions

In this Clause 49B:

Adverse Ruling means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Contractor has breached an applicable employment, industrial relations or workplace health and safety law.

DJPR means the Department of Jobs Precincts and Regions (and its successor Government department) as the Department responsible for the FJC.

Enforceable Undertaking means a promise or agreement made by the Contractor with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

FJC Guidelines means Fair Jobs Code Guidelines, available at www.buyingfor.vic.gov.au/fair-jobs-code-and-guides.

FJC means the Fair Jobs Code issued by the State of Victoria available at www.buyingfor.vic.gov.au/fair-jobs-code.

FJC Unit means the Fair Jobs Code Unit, an administrative group within DJPR with responsibilities in relation to the FJC.

Notice means a notice given, delivered or served in accordance with this Major Works Contract.

Pre-Assessment Certificate means a certificate issued to the Contractor by the FJC Unit prior to entering into this Major Works Contract, or which is renewed during the term of this Major Works Contract.

49B.2 Fair Jobs Code

- (a) The Contractor warrants that at the time of entering this Major Works Contract it holds a valid Pre-Assessment Certificate.
- (b) In performing its obligations under this Major Works Contract the Contractor acknowledges and agrees that it shall:
 - (i) continue to hold a valid Pre-Assessment Certificate; and
 - (ii) comply with the FJC.
- (c) If at any time during the term of this Major Works Contract the Contractor's Pre-Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Schedule which will enable the Principal to exercise its rights under clause 49B.6.
- (d) The Contractor acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Major Works Contract and any extensions to the term.

49B.3 Verification of Contractor's compliance with the Fair Jobs Code

- (a) The Contractor must, on request by the Principal, provide a copy of the Pre Assessment Certificate or any related correspondence with the FJC Unit.
- (b) If, during the term of this Major Works Contract, the Contractor's Pre-Assessment Certificate expires the Contractor must provide Notice to the Principal of the expiry within 10 Business Days.
- (c) If the Contractor fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Principal of the expiration, the expiration will constitute a breach of this clause 49B which will enable the Principal to exercise its rights under clause 49B.6.

49B.4 Ongoing duty of disclosure and cooperation

- (a) If during the Term, the Contractor is the subject of an Adverse Ruling or Enforceable Undertaking, it must provide Notice to the Principal and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
- (b) During the Term the Contractor must:
 - (i) cooperate with all reasonable requests from the Principal seeking evidence of the Contractor's compliance with the FJC;
 - (ii) permit the Superintendent, an accountant or auditor on behalf of the Principal, DJPR or any other person authorised by the Principal or DJPR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Contractor relating to compliance with the FJC under this Major Works Contract; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal or DJPR to undertake such audit or inspection.
- (c) The Principal will bear all costs for any audit in accordance with clause 49B.4(b)(ii).
- (d) The Contractor acknowledges and agrees that the Principal, DJPR, or their duly authorised representatives (including the FJC Unit), are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the FJC.
- (e) The obligations set out in this clause 49B.4 are in addition to and do not derogate from any other obligation under this Major Works Contract.
- (f) A failure to comply with this clause 49B.4 will enable the Principal to exercise its rights under clause 49B.6.

49B.5 Use of information

The Contractor acknowledges and agrees that:

- (a) FJC Unit will assess the Contractor's compliance with the FJC.
- (b) Information regarding the Contractor's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
 - (i) will be reported by the Principal to the FJC Unit in compliance with the Principal's obligations under the FJC; and
 - (ii) may be disclosed in the circumstances authorised or permitted under the terms of this Major Works Contract or as otherwise required by Law.
- (c) Nothing in this provision removes the obligation for the Contractor to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 49B.4 above.

49B.6 Consequences of breach

- (a) Any breach of the provisions of this Clause 49B will enable the Principal, in its absolute discretion, to do any or all of the following:
 - (i) suspend the Major Works Contract until such time as the breach has been remedied to the satisfaction of the Principal and within a timeframe acceptable to the Principal;
 - (ii) by written notice immediately terminate the Major Works Contract; or
 - (iii) exercise any rights that it has under this Major Works Contract.

49B. Alternative 2 - Fair Jobs Code Regime

Clause 49B Alternative 2 applies if indicated at Item 34A of the Contract Particulars.

49B.1 Definitions

In this Clause 49B:

Adverse Ruling means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Contractor has breached an applicable employment, industrial relations or workplace health and safety law.

DJPR means the Department of Jobs Precincts and Regions (and its successor Government department) as the Department responsible for the FJC.

Enforceable Undertaking means a promise or agreement made by the Contractor with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

FJC Guidelines means Fair Jobs Code Guidelines, available at www.buyingfor.vic.gov.au/fair-jobs-code-and-guides.

FJC Plan Addendum means the Contractor's Fair Jobs Code Plan Addendum, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

FJC means the Fair Jobs Code issued by the State of Victoria available at <https://www.buyingfor.vic.gov.au/fair-jobs-code>.

FJC Unit means the Fair Jobs Code Unit, an administrative group within DJPR with responsibilities in relation to the FJC.

Pre-Assessment Certificate means a certificate issued to the Contractor by the FJC Unit prior to entering into this Major Works Contract, or which is renewed during the term of this Major Works Contract.

Significant Subcontractor means an entity engaged, or to be engaged, under a subcontract directly with a Contractor, where the value of that subcontract is \$10 million or more (exclusive of GST).

49B.2 Fair Jobs Code

- (a) The Contractor warrants that at the time of entering this Major Works Contract it holds a valid Pre-Assessment Certificate.
- (b) In performing its obligations under this Major Works Contract the Contractor acknowledges and agrees that it must:
 - (i) continue to hold a valid Pre-Assessment Certificate;
 - (ii) comply with its FJC Plan Addendum;
 - (iii) perform all obligations required to be performed under the FJC Plan Addendum by the due date; and
 - (iv) comply with the FJC.
- (c) If at any time during the term of this Major Works Contract the Contractor's Pre Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Clause 49B which will enable the Principal to exercise its rights under clause 49B.8.
- (d) The Contractor acknowledges and agrees that the obligations for holding and maintaining a valid Pre-Assessment Certificate apply during the term of this Major Works Contract and any extensions to the term and until all of its reporting obligations as set out in clause 49B.4 are fulfilled.

49B.3 Verification of Contractor's compliance with the Fair Jobs Code

- (a) The Contractor must, on request by the Principal, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.

- (b) If, during the Term, the Contractor's Pre-Assessment Certificate expires the Contractor must provide Notice to the Agency of the expiry within 10 Business Days.
- (c) If the Contractor fails to promptly take steps to renew an expired Pre-Assessment Certificate as soon as practicable after notifying the Principal of the expiration, the expiration will constitute a breach of this clause 49B which will enable the Principal to exercise its rights under clause 49B.8.

49B.4 Reporting

- (a) The Contractor must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan Addendum.
- (b) The Contractor must provide reports which demonstrate the Contractor's progress towards implementing the FJC Plan Addendum at a time or times to be determined by the Principal but not less than once per year.
- (c) Prior to or at Completion, the Contractor must provide to the Superintendent and the Principal:
 - (i) a final report identifying FJC Plan Addendum commitments and actual achievements; and
 - (ii) a statutory declaration to confirm that the information contained in the final FJC Plan Addendum report is true and accurate. The statutory declaration must be made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (d) At the request of the Superintendent or the Principal, the Contractor must provide further information or explanation of any differences between expected and achieved FJC Plan Addendum outcomes.
- (e) The reporting obligations in this Clause 49B are in addition to and do not derogate from any other reporting obligations as set out in this Major Works Contract.

49B.5 Ongoing duty of disclosure and cooperation and audits

- (a) If during the Term, the Contractor is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Principal and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
- (b) During the Term the Contractor must:
 - (i) cooperate with all reasonable requests from the Principal seeking evidence of the Contractor's compliance with the FJC and the FJC Plan Addendum;
 - (ii) permit the Superintendent, an accountant or auditor on behalf of the Principal, DJPR or any other person authorised by the Principal or DJPR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Contractor relating to compliance with the FJC and FJC Plan Addendum under this Major Works Contract; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal or DJPR to undertake such audit or inspection.
- (c) The Principal will bear all costs associated with undertaking any audit in accordance with clause 49B.5(b).
- (d) The Contractor acknowledges and agrees that the Principal, DJPR, the Principal's and DJPR's duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the FJC.
- (e) The obligations set out in this clause 49B.5 are in addition to and do not derogate from any other obligation under this Major Works Contract.

- (f) A failure to comply with this clause 49B.5 will enable the Principal to exercise its rights under clause 49B.8.

49B.6 Significant Subcontracting

- (a) The Contractor warrants that any Significant Subcontractors engaged or proposed to be engaged to perform work under this Major Works Contract hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.
- (b) The Contractor must ensure that any subcontracts entered into by the Contractor with Significant Subcontractors in relation to work under this Major Works Contract contain clauses requiring Significant Subcontractors to:
 - (i) comply with the FJC;
 - (ii) hold a valid Pre-Assessment Certificate;
 - (iii) notify the Contractor if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;
 - (iv) comply with the ongoing duty of disclosure and cooperation set out in clause 49B.5, as if references to the Contractor were references to the Significant Subcontractor;
 - (v) comply with the FJC Plan Addendum, to the extent that it applies to work performed under the subcontract;
 - (vi) provide necessary information that allows the Contractor to comply with its reporting obligations under clause 49B.4; and
 - (vii) permit the Principal and DJPR to exercise their inspection and audit rights under clause 49B.5.
- (c) The subcontracting obligations set out in this clause 49B.6 are in addition to and do not derogate from any other obligations under this Major Works Contract.
- (d) The Contractor's failure to comply with this clause 49B.6 will enable the Principal to exercise its rights under clause 49B.8.

49B.7 Use of information

The Contractor acknowledges and agrees that:

- (a) FJC Unit will assess the Contractor's compliance with the FJC and may monitor Plan implementation.
- (b) Information regarding the Contractor's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
 - (i) will be reported by the Principal to the FJC Unit in compliance with the Principal's obligations under the FJC; and
 - (ii) may be disclosed in the circumstances authorised or permitted under the terms of this Major Works Contract or as otherwise required by Law.
- (c) Nothing in this provision removes the obligation for the Contractor to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 49B.5.

49B.8 Consequences of breach

- (a) Any breach of the provisions of this clause 49B will enable the Principal, in its absolute discretion, to do any or all of the following:
 - (i) suspend the Major Works Contract until such time as the breach has been remedied to the satisfaction of the Principal and within a timeframe acceptable to the Principal;
 - (ii) by written notice immediately terminate the Major Works Contract; or

- (iii) exercise any rights that it has under this Major Works Contract.

50. Waiver of conditions

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Major Works Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Major Works Contract.
- (b) A waiver or consent given by a party under this Major Works Contract is only effective and binding on the other party if it is given or confirmed in writing.
- (c) No waiver of a breach of a term of this Major Works Contract operates as a waiver of another breach of that term or of a breach of any other term of this Major Works Contract.

51. General Matters

51.1 Governing law

This Major Works Contract is governed by and is to be construed in accordance with the laws in force in Victoria, Australia.

51.2 Jurisdiction

- (a) The parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.
- (b) The Contractor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 51.2(a).

51.3 Joint and several liability

If the Contractor comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

- (a) the obligations and liabilities of the Contractor under this Major Works Contract bind those persons jointly and severally;
- (b) those persons must notify the Principal of their leader who must have authority to bind the Contractor and each of those persons; and
- (c) the Contractor must not alter its composition or legal status without the prior written consent of the Principal.

51.4 Amendments

This Major Works Contract may only be varied by a written document signed by or on behalf of each party.

51.5 Legal costs

Each party will bear its own legal costs of and incidental to the preparation, negotiation and signing of the Major Works Contract.

51.6 Rights cumulative

Subject to any express provision in the Major Works Contract to the contrary, the rights of a party under this Major Works Contract are cumulative and are in addition to any other rights of that party.

51.7 Independent Contractor

The Contractor is an independent contractor with respect to the Works and neither the Contractor nor any subcontractors, nor any agents or employees of any of them, must represent themselves to be the employees, agents or representatives of the Principal.

51.8 Stamp duty

The Contractor is liable for and will pay any stamp duty (including, without limitation, any fines, interests or penalties) payable on the Major Works Contract.

51.9 Approvals and consent

Subject to any express provision in the Major Works Contract to the contrary, the Principal:

- (a) may give or withhold any consent or approval required under this Major Works Contract in its sole discretion; and
- (b) is not obliged to give their reasons for doing so.

51.10 Counterparts

The Major Works Contract may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

51.11 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Major Works Contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

51.12 Language

Except where expressly stated otherwise, the language for communications for the purposes of this Major Works Contract is English.

51.13 Units of measurement

Measurements of physical quantities must be in metric units and in accordance with the International System of Units (SI units).

51.14 Indemnities

- (a) Each indemnity given under this Major Works Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination, rescission or expiration of this Major Works Contract.
- (b) It is not necessary for a party to incur an expense before enforcing a right of indemnity conferred by this Major Works Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Major Works Contract.

51.15 Severability

If any provision of this Major Works Contract is or becomes illegal, invalid, unenforceable or void in any relevant jurisdiction, the legality, validity, enforceability and validity of the remainder of the Major Works Contract will not be affected (unless incapable of being operable in the absence of such provision) and this Major Works Contract will be read as if the part had been deleted in that jurisdiction only.

51.16 Survival

The provisions of the clauses 8.4, 10, 11.3, 12.2, 15, 38.9 and 41.2 shall continue to have effect and will survive the expiration or termination of this Major Works Contract.

52. Documents and Systems

52.1 As built drawings

- (a) The Contractor must prepare and maintain the As Built Documents.
- (b) The Contractor must provide the Principal, and any nominee of the Principal, with a complete set of the As Built Documents as a condition precedent to achieving Administrative Completion.

52.2 Document Management System

- (a) The Principal maintains the Document Management System and pays certain software licence costs associated with the Document Management System.
- (b) Prior to commencing the WUC, the Contractor must register to use the Document Management System. The Contractor is responsible for payment of all costs and charges necessary to facilitate full use of the Document Management System by the Contractor and its subcontractors other than the software licence costs paid for by the Principal referred to above (including, without limitation, the cost of providing all required computer terminals, internet connections, printers, modems and other required equipment, connections, installation, software, and the costs resulting from any upgrades or changes to the Document Management System).
- (c) Prior to commencing the WUC, the Contractor must ensure that all personnel (including personnel of its subcontractors) who may be required to use the Document Management System in relation to the performance of the WUC have been suitably trained to use the Document Management System.
- (d) Unless otherwise directed by or on behalf of the Principal in writing, the Contractor must use the Document Management System for the issue and receipt of all documents associated with or relevant to or arising from the Major Works Contract or the performance of the WUC.
- (e) The Contractor acknowledges and agrees that:
 - (i) the Document Management System is provided for the convenience of the Principal;
 - (ii) transmission of a document through the Document Management System does not constitute valid delivery or notification pursuant to the Major Works Contract unless expressly so provided in the Major Works Contract;
 - (iii) the Principal may elect not to use the Document Management System at any time, and may permit any third party to not use the Document Management System;
 - (iv) the Principal may upgrade or modify the Document Management System at any time;
 - (v) the Principal may replace the Document Management System with an alternative document management system at any time; and
 - (vi) the Document Management System may be unavailable for use from time to time, and that the Contractor will not have any Claim as a consequence of any of the matters contemplated by this clause occurring.
- (f) If the Document Management System is unavailable for any reason, the Contractor must at its cost use alternative methods to transmit documents (including, without limitation, email, courier or registered post as appropriate) until such time as the Document Management System is available again. If the Document Management System becomes available after a period of unavailability, the Contractor must unless otherwise directed by the Principal in writing, immediately re-transmit by the Document Management System any documents transmitted by alternative methods during the period of unavailability.

52.3 Pricing Reference Documents

- (a) No Pricing Reference Document will:
 - (i) be taken to form part of the Major Works Contract;
 - (ii) be taken to define the extent of the WUC; or
 - (iii) give rise to any basis for a Claim by the Contractor.
- (b) A Pricing Reference Document may be used by the Principal or the Superintendent under the Major Works Contract for the purposes of:
 - (i) any valuation to be made by the Principal or the Superintendent under the Major Works Contract; or
 - (ii) otherwise making determinations pursuant to the Major Works Contract, to the extent the Principal, in its discretion, decides to do so.

52.4 Evidence of financial standing

The Contractor must promptly, as and when requested by the Principal from time to time, provide the Principal with:

- (a) a copy of the Contractor's or the guarantor's (as applicable) audited financial statements or other evidence of:
 - (i) the Contractor's financial standing which demonstrates its financial capacity to meet all of its obligations in accordance with the Major Works Contract; or
 - (ii) the guarantor's financial standing which demonstrates its financial capacity to perform its obligations under the Parent Company Guarantee; or
- (b) reasonable evidence that financial arrangements have been made and are being maintained which will enable the Contractor to meet all of its obligations in accordance with the Major Works Contract. If the Contractor or any of its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) intends to make any material change to these financial arrangements, the Contractor must give notice to the Principal with detailed particulars.

53. Preservation of, Audit of and Access to the Contractor's Records

- (a) The Contractor must:
 - (i) maintain accounts and records in relation to the Works and the performance, by the Contractor, of the WUC; and
 - (ii) procure that the Contractor's subcontractors and agents maintain such accounts and records.
- (b) The accounts and records must be comprehensive, accurate, up to date and kept for a period of 10 years after the Contractor has completed the WUC in accordance with the Major Works Contract.
- (c) The Principal or Superintendent may:
 - (i) review, audit or otherwise monitor; or
 - (ii) engage a third party to review, audit or otherwise monitor,the Contractors and subcontractors accounts and records kept under clause 53(a), and the Contractor must co-operate with the Principal, Superintendent and any third party in relation to any such review, audit or monitoring.

54. Personal property securities

54.1 Security interests under the PPSA

If the Principal determines that any clause of the Major Works Contract, or a transaction contemplated by the Major Works Contract or concerning the WUC (including the provision of equipment by the Principal (**Principal Equipment**)) constitutes or is likely to give rise to a Security Interest for which the Principal is the security holder then:

- (a) the Principal may at the Contractor's expense register a financing statement on the personal property securities register (**PPSR**) maintained under the PPSA;
- (b) the Contractor consents to the Principal registering a financing statement on the PPSR;
- (c) the Contractor must promptly provide all assistance and co-operation requested by the Principal to:
 - (i) register and maintain the registration of its Security Interest on the PPSR within any applicable time limits relevant to the effectiveness of the Security Interest;
 - (ii) ensure that the Principal's Security Interest is enforceable against third parties, perfected (within the meaning of the term 'perfect' under the PPSA) or otherwise effective;
 - (iii) ensure that the Security Interest has the appropriate priority required by the Principal (including where applicable as a 'purchase money security interest' under the PPSA);
 - (iv) ensure that any Security Interest granted temporary perfection under the PPSA is perfected by registration or other appropriate means before that temporary perfection expires; and
 - (v) enable the Principal to register financing statements or financing change statements under the PPSA concerning the Security Interest;
- (d) the Contractor waives the right to receive any notice under the PPSA, including notice of a verification statement for the registration of that Security Interest and notices under sections 95, 118, 121(4), 130, 135 and 157 of the PPSA;
- (e) the Contractor must not:
 - (i) register or permit to be registered any other Security Interest for the personal property that comprises the collateral for that Security Interest (including Principal Equipment) other than one that has been consented to or granted by the Principal; and
 - (ii) cause or allow any of the Contractor's personal property (as defined in the PPSA) to become an accession (as defined in the PPSA) to the Principal's personal property (including any Principal Equipment) or cause or allow the Principal's personal property (including any Principal Equipment) to become an accession to the Contractor's personal property without the earlier consent of the Principal;
- (f) the Contractor must immediately notify the Principal if any other person claims or tries to enforce a security interest in the Principal's personal property (including any Principal Equipment); and
- (g) the Contractor does not have a Security Interest in any of the Principal's personal property (including any Principal Equipment) other than as expressly granted by the Principal.

54.2 Enforcement of Principal's Security Interest

Where the Principal holds a Security Interest under clause 54.1 then:

- (a) the Security Interest also extends to any proceeds (as defined in the PPSA) arising from or related to the Principal Equipment or other collateral;

- (b) the Contractor must promptly provide all assistance and co-operation that the Principal determines is reasonably required to allow the Principal to exercise its lawful rights concerning the Security Interest, any equipment provided by the Principal, other collateral subject to the Security Interest or the Major Works Contract; and
- (c) if Chapter 4 would otherwise apply to the enforcement of that Security Interest, sections 95 (to the extent that it requires the Principal to notify the Contractor), 96, 118, 121(4), 125, 127, 129(2), 129(3), 130, 132, 134(2), 132(4), 135, 136(3), 136(4), 136(5), 137, 142 and 143 of the PPSA will not apply and the Contractor will not have rights under them.

54.3 No agreement to subordinate or delay

Nothing in the Major Works Contract (or anything else unless expressly consented to by the Principal) will be taken to be or inferred as an agreement by the Principal to:

- (a) subordinate the Principal's interest in the Principal's personal property (including any Principal Equipment) to any other interest or encumbrance affecting it at any time; or
- (b) delay the time when a Security Interest created or contemplated under the Contract is to attach (within the meaning of attachment under the PPSA) to the Principal Equipment or any other personal property of the Principal.

Schedule 3 – Additional Terms – Project Delivery Model

1. Design and Construct Terms

Set out below are additional obligations and amendments required to the Common Terms where Item 3 of the Contract Particulars identifies that the Project Delivery Model is a Design and Construct.

1.1 Additional definitions

In this schedule:

Design Management Plan has the meaning given in paragraph 1.9(c)(ii).

Draft Design Management Plan has the meaning given in paragraph 1.9(a).

1.2 Completion of Design

The Contractor must manage, procure or carry out the progressive development and completion of the Design Documents in accordance with the Design Management Plan and the Program.

1.3 Requirements for Design Documents

The Design Documents must:

- (a) comply with the Major Works Contract (including the Project Requirements);
- (b) be Fit for Purpose;
- (c) take account of stakeholder consultation and input;
- (d) take account of the outcome of any value engineering exercises, workshops and consultations required under the Design Management Plan;
- (e) be fit for the purpose of construction of the Works in accordance with the Major Works Contract;
- (f) provide for the construction of the Works which, if constructed in accordance with the Design Documents, would be so far as is reasonably practicable safe and without risk to health, including the health of workers involved in carrying out such works and the general public;
- (g) comply with:
 - (i) all approvals and Legislative Requirements;
 - (ii) Good Industry Practice; and
 - (iii) any requirements or comments from the Principal or Superintendent as notified to the Contractor by the Superintendent;
- (h) without limiting the obligation to comply with Legislative Requirements in relation to safety in design, be prepared:
 - (i) prevent hazards or risks arising out of the design at the construction, occupation, use and demolition stages of the structure being designed; and
 - (ii) identify risks and use risk assessment methods in the design process to eliminate or minimize the risks of injury throughout the life of the structure being designed; and
- (i) take account of the Contractor's input on construction methodology, staging (where relevant), 'constructability' and programming.

1.4 Submission of Design Documents

The Contractor must:

- (a) prepare and submit the Design Documents to the Superintendent:
 - (i) in accordance with the Design Management Plan and the Program; and
 - (ii) so as not to delay the progress of the Works;
- (b) if requested by the Superintendent, make available the appropriate design or construction personnel to explain the Design Documents, construction methodology, staging and constructability issues, and provide information on such matters in a form as the Superintendent may reasonably request;
- (c) notify the Superintendent of or where the Superintendent requests comment on any potential change in the Design Documents or the Works which may be of benefit to the Principal.

1.5 Review of Design Documents

- (a) The Superintendent may, within 15 Business Days of receiving any Design Documents:
 - (i) reject the Design Documents because it does not comply with the requirements of paragraph 1.3 by giving written notice to the Contractor;
 - (ii) accept the Design Documents by giving written notice to the Contractor; or
 - (iii) make no comment on the Design Documents, in which case the Contractor may proceed with the WUC.
- (b) If the Superintendent does not accept the Design Documents:
 - (i) the Superintendent must either:
 - (A) provide reasons for rejecting the Design Documents;
 - (B) require modifications; or
 - (C) request further information,
 because the Design Documents do not comply with the requirements of paragraph 1.3; and
 - (ii) the Contractor must provide such further information or modifications as soon as possible and resubmit the Design Documents to the Superintendent in accordance with paragraph 1.4.

1.6 Contractor Responsible

- (a) Neither the Principal nor the Superintendent are bound to review or comment upon any Design Document for any ambiguity or discrepancy or non-compliance with the requirements of the Major Works Contract.
- (b) No receipt, review, endorsement, comment, consultation, acceptance or deemed acceptance of any Design Document by the Superintendent or the Principal will:
 - (i) relieve the Contractor from or alter or affect the Contractor's obligations or liabilities whether under the Major Works Contract or otherwise at law;
 - (ii) relieve the Contractor of its responsibility to resolve any ambiguity or discrepancy in any Design Document or non-compliance with the requirements of the Major Works Contract; or
 - (iii) be considered as an acknowledgment by the Principal or the Superintendent that the Design Document complies with the requirements of the Major Works Contract.

1.7 No Changes without Approval

The Contractor must not make or cause or permit to be made, any amendments or modifications to any Design Document that the Superintendent has previously accepted or made no comment

on under paragraphs 1.5(a)(ii) or 1.5(a)(iii) respectively without the prior written approval of the Superintendent.

1.8 Approval of Relevant Authorities

- (a) The Contractor must submit all Design Documents to any relevant authority which may be required to approve any part of the WUC.
- (b) Where a Relevant Authority approves Design Documents submitted to it with conditions attaching to such approval, the Contractor must provide a copy of such conditions to the Superintendent and advise the Superintendent whether such approvals or conditions will have a material effect on the Works or a change to WUC.
- (c) The Contractor must amend the Design Documents so that the WUC conforms to all requirements of any Relevant Authority.
- (d) Subject to clause 11 of the Common Terms, the Contractor will not be entitled to make any Claim for an increase in the Contract Sum arising out of or in connection with any amendment to the Design Documents required under paragraph 1.8(c), and the work executed as a consequence of that amendment.

1.9 Design Management Plan

- (a) If Item 45A states that a Design Management Plan is required, the Contractor must submit a proposed design management plan to the Superintendent which complies with paragraph 1.9(b) (**Draft Design Management Plan**) no later than the date stated in Item 45A.
- (b) The Draft Design Management Plan must:
 - (i) identify in detail all design elements required for the carrying out and completion of the WUC;
 - (ii) identify timeframes for each step in the design process;
 - (iii) allow for stakeholder consultation and input as contemplated in the Project Requirements;
 - (iv) allow for the Contractor to provide construction methodology input;
 - (v) allow for the progressive submission of Design Documents to the Superintendent in accordance with the Program and paragraph 1;
 - (vi) without limiting the general nature of paragraph 1.9(b)(v), make appropriate allowances for the review and resubmission process contemplated by paragraphs 1.4 and 1.5;
 - (vii) make appropriate allowances for the circumstances or risks which could be encountered in carrying out the design that a prudent, competent and experienced contractor would anticipate and provide for in its Design Management Plan for the WUC; and
 - (viii) otherwise be in a form approved by the Superintendent.
- (c) The Superintendent may, within 15 Business Days of receiving a Draft Design Management Plan:
 - (i) reject the Draft Design Management Plan by giving written notice to the Contractor; or
 - (ii) accept or make no comment on the Draft Design Management Plan in which case the Draft Design Management Plan will be deemed to be the '**Design Management Plan**'.
- (d) If the Superintendent rejects a Draft Design Management Plan in accordance with paragraph 1.9(c)(i):
 - (i) the Superintendent must give written reasons for the rejection; and

- (ii) the Contractor must promptly and not later than 10 Business Days of being notified of such rejection, make any appropriate amendments to the Draft Design Management Plan and resubmit it in accordance with paragraph 1.9(a).

1.10 Clause 1.1

Clause 1.1 of the Common Terms is amended to insert new definitions as follows:

Contractor's Design Obligations means all tasks necessary to design and specify the Works required by the Major Works Contract, including preparation of the Design Documents and, if the documents stated in Item 47 of the Contract Particulars includes an Initial Design, developing the Initial Design.

1.11 Clause 2.2

(a) Clause 2.2(c) of the Common Terms is amended as follows:

- (c) **(carrying out WUC)** the Contractor is fully responsible for executing and completing the WUC in accordance with the Major Works Contract including the methodology for performing its obligations (including those for which permission to use has been given or is deemed to have been given by the Superintendent under clause 8.3(d));

(b) Insert new clause 2.2(ca) of the Common Terms as follows:

- (ca) **(the Works)** the Contractor must carry out and complete WUC in accordance with the Design Documents so that the Works, when completed, are Fit for Purpose;

(c) Insert new sub-clauses (i) and (j) as follows:

- (h) **(Contract Sum)** it has satisfied itself that the Contract Sum covers the cost of complying with all of its obligations under the Major Works Contract ~~:-~~;
- (i) **(information)** the Contractor has examined any Initial Design included in the Project Requirements and that such Initial Design is Fit for Purpose; and
- (j) **(design obligations)** the Contractor must carry out and complete the Contractor's Design Obligations to accord with the Project Requirements and the Design Documents it prepares will be Fit for Purpose and, if clause 9.4 applies, accept the novation and retain the Principal's consultants for any work the subject of a prior contract with the Principal.

1.12 Clause 2.4

Clause 2.4 of the Common Terms is amended as follows:

The Contractor acknowledges and agrees that:

- (a) the warranties in clause 2.2, the Contractor's Design Obligations and the Contractor's warranties, obligations and liabilities under the Major Works Contract and at law remain unaffected; and
- (b) the Contractor will bear and continue to bear full liability and responsibility in accordance with the Major Works Contract for the performance of WUC,

notwithstanding any one or more of the following:

- (c) that design work (including the Initial Design) has been carried out by or on behalf of the Principal and included in the Project Requirements;
- (d) that the Contractor has entered into a novation of any prior contract between the Principal and a Principal's consultant under clause 9.4 and thereafter has retained that consultant in connection with WUC;
- (e) any receipt or review of, or comment or Direction on, any documents prepared by the Contractor (including Design Documents) by the Superintendent; or
- (f) any Variation.

1.13 Clause 8.1

Clause 8.1 of the Common Terms is amended to insert a new sub-clause (d) as follows:

(c) ...

(d) The Contractor will bear the cost of compliance with a Direction under this clause to the extent that any inconsistency, ambiguity or discrepancy in the Design Documents or between the Design Documents and the Project Requirements necessitates the Direction.

1.14 Clause 8.3

Clause 8.3 of the Common Terms is amended to insert a new sub-clause (d) and (e) as follows:

(c) ...

(d) As part of the Program it is to prepare under clause 33, the Contractor must submit to the Superintendent for approval a documentation program which makes allowance for the Design Documents to be submitted to the Superintendent in a manner and at a rate which will give the Superintendent a reasonable opportunity to review the Design Documents.

(e) A Direction by the Superintendent to vary anything in the Design Documents shall be a Variation to WUC only to the extent that the Design Documents, before such Variation, complied, or would have complied, with the Project Requirements.

1.15 Clause 38.2

Clause 38.2(a) of the Common Terms is amended to insert a new sub-clause (ix) as follows:

(viii) ...

(ix) when directed by the Principal in accordance with clause 9.4, executed a deed of novation; and

1.16 Clause 40.2

Clause 40.2 of the Common Terms is amended to insert a new sub-clause (a)(i)(F) as follows:

(a) *If the Contractor commits a substantial breach of the Major Works Contract, the Principal may, by hand, the Document Management System or by registered post, give the Contractor a written notice requiring the Contractor to rectify that breach. Substantial breaches include, but are not limited to:*

(i) *failing to:*

(A) *provide Security;*

(B) *provide evidence of insurance;*

(C) *comply with a Direction of the Superintendent pursuant to clause 31.3;*

(D) *comply with a Direction of the Superintendent following a further Direction of the Superintendent advising that failure to comply with the Direction will be regarded as a substantial breach for the purpose of clause 40.2; ~~or~~*

(E) *use the materials or standards of work required by the Major Works Contract; or*

(F) perform properly the Contractor's Design Obligations;

...

1.17 Clause 40.10

Clause 40.10 of the Common Terms is amended to insert a new sub-clause (c) as follows:

(a) ...

(b) ...

- (c) *If the Principal has terminated the Major Works Contract, the Principal may also, without payment of compensation, take possession of the Design Documents.*

2. Renewal Works Terms

Set out below are additional applicable terms to the Major Works Contract and amendments required to the Common Terms where Item 3 of the Contract Particulars identifies that the Project Delivery Model is a Renewal Works model.

2.1 Additional definitions

In this schedule:

Design Management Plan has the meaning given in paragraph 2.9(c)(ii).

Draft Design Management Plan has the meaning given in paragraph 2.9(a).

Estimated First Year Value means the amount set out in Item 35C of the Contract Particulars.

Further Term means the further term set out in Item 35B of the Contract Particulars.

Initial Term means the initial term set out in Item 35A of the Contract Particulars.

Renewal Works Order means a work order in the form of Annexure A to the Contract Particulars including all completed annexures included in the Renewal Works Order.

Renewal Works Order Contract means a contract formed between the Principal and the Contractor in respect of a scope of works and entered into by the execution of a Renewal Works Order by the parties.

Term means the Initial Term and the Further Term in accordance with paragraph 2.20 of this Schedule.

2.2 Completion of Design

The Contractor must manage, procure or carry out the progressive development and completion of the Design Documents in accordance with the Design Management Plan and the Program.

2.3 Requirements for Design Documents

The Design Documents must:

- (a) comply with the Major Works Contract (including the Project Requirements);
- (b) be Fit for Purpose;
- (c) take account of stakeholder consultation and input;
- (d) take account of the outcome of any value engineering exercises, workshops and consultations required under the Design Management Plan;
- (e) be fit for the purpose of construction of the Works in accordance with the Major Works Contract;
- (f) provide for the construction of the Works which, if constructed in accordance with the Design Documents, would be so far as is reasonably practicable safe and without risk to health, including the health of workers involved in carrying out such works and the general public;
- (g) comply with:
 - (i) all approvals and Legislative Requirements;
 - (ii) Good Industry Practice; and
 - (iii) any requirements or comments from the Principal or Superintendent as notified to the Contractor by the Superintendent;
- (h) without limiting the obligation to comply with Legislative Requirements in relation to safety in design, be prepared:
 - (i) prevent hazards or risks arising out of the design at the construction, occupation, use and demolition stages of the structure being designed; and

- (ii) identify risks and use risk assessment methods in the design process to eliminate or minimize the risks of injury throughout the life of the structure being designed; and
- (i) take account of the Contractor's input on construction methodology, staging (where relevant), 'constructability' and programming.

2.4 Submission of Design Documents

The Contractor must:

- (a) prepare and submit the Design Documents to the Superintendent:
 - (i) in accordance with the Design Management Plan and the Program; and
 - (ii) so as not to delay the progress of the Works;
- (b) if requested by the Superintendent, make available the appropriate design or construction personnel to explain the Design Documents, construction methodology, staging and constructability issues, and provide information on such matters in a form as the Superintendent may reasonably request;
- (c) notify the Superintendent of or where the Superintendent requests comment on any potential change in the Design Documents or the Works which may be of benefit to the Principal.

2.5 Review of Design Documents

- (a) The Superintendent may, within 15 Business Days of receiving any Design Documents:
 - (i) reject the Design Documents because it does not comply with the requirements of paragraph 2.3 by giving written notice to the Contractor;
 - (ii) accept the Design Documents by giving written notice to the Contractor; or
 - (iii) make no comment on the Design Documents, in which case the Contractor may proceed with the WUC.
- (b) If the Superintendent does not accept the Design Documents:
 - (i) the Superintendent must either:
 - (A) provide reasons for rejecting the Design Documents;
 - (B) require modifications; or
 - (C) request further information,
 because the Design Documents do not comply with the requirements of paragraph 2.3; and
 - (ii) the Contractor must provide such further information or modifications as soon as possible and resubmit the Design Documents to the Superintendent in accordance with paragraph 2.4.

2.6 Contractor Responsible

- (a) Neither the Principal nor the Superintendent are bound to review or comment upon any Design Document for any ambiguity or discrepancy or non-compliance with the requirements of the Major Works Contract.
- (b) No receipt, review, endorsement, comment, consultation, acceptance or deemed acceptance of any Design Document by the Superintendent or the Principal will:
 - (i) relieve the Contractor from or alter or affect the Contractor's obligations or liabilities whether under the Major Works Contract or otherwise at law;
 - (ii) relieve the Contractor of its responsibility to resolve any ambiguity or discrepancy in any Design Document or non-compliance with the requirements of the Major Works Contract; or

- (iii) be considered as an acknowledgment by the Principal or the Superintendent that the Design Document complies with the requirements of the Major Works Contract.

2.7 No Changes without Approval

The Contractor must not make or cause or permit to be made, any amendments or modifications to any Design Document that the Superintendent has previously accepted or made no comment on under paragraphs 2.5(a)(ii) or 2.5(a)(iii) respectively without the prior written approval of the Superintendent.

2.8 Approval of Relevant Authorities

- (a) The Contractor must submit all Design Documents to any relevant authority which may be required to approve any part of the WUC.
- (b) Where a Relevant Authority approves Design Documents submitted to it with conditions attaching to such approval, the Contractor must provide a copy of such conditions to the Superintendent and advise the Superintendent whether such approvals or conditions will have a material effect on the Works or a change to WUC.
- (c) The Contractor must amend the Design Documents so that the WUC conforms to all requirements of any Relevant Authority.
- (d) Subject to clause 11 of the Common Terms, the Contractor will not be entitled to make any Claim for an increase in the Contract Sum arising out of or in connection with any amendment to the Design Documents required under paragraph 1.8(c), and the work executed as a consequence of that amendment.

2.9 Design Management Plan

- (a) If Item 45A states that a Design Management Plan is required, the Contractor must submit a proposed design management plan to the Superintendent which complies with paragraph 2.9(b) (**Draft Design Management Plan**) no later than the date stated in Item 45A.
- (b) The Draft Design Management Plan must:
 - (i) identify in detail all design elements required for the carrying out and completion of the WUC;
 - (ii) identify timeframes for each step in the design process;
 - (iii) allow for stakeholder consultation and input as contemplated in the Project Requirements;
 - (iv) allow for the Contractor to provide construction methodology input;
 - (v) allow for the progressive submission of Design Documents to the Superintendent in accordance with the Program and paragraph 2;
 - (vi) without limiting the general nature of paragraph 2.9(b)(v), make appropriate allowances for the review and resubmission process contemplated by paragraphs 2.4 and 2.5;
 - (vii) make appropriate allowances for the circumstances or risks which could be encountered in carrying out the design that a prudent, competent and experienced contractor would anticipate and provide for in its Design Management Plan for the WUC; and
 - (viii) otherwise be in a form approved by the Superintendent.
- (c) The Superintendent may, within 15 Business Days of receiving a Draft Design Management Plan:
 - (i) reject the Draft Design Management Plan by giving written notice to the Contractor; or

- (ii) accept or make no comment on the Draft Design Management Plan in which case the Draft Design Management Plan will be deemed to be the '**Design Management Plan**'.
- (d) If the Superintendent rejects a Draft Design Management Plan in accordance with paragraph 2.9(c)(i):
 - (i) the Superintendent must give written reasons for the rejection; and
 - (ii) the Contractor must promptly and not later than 10 Business Days of being notified of such rejection, make any appropriate amendments to the Draft Design Management Plan and resubmit it in accordance with paragraph 2.9(a).

2.10 Clause 1.1

Clause 1.1 of the Common Terms is amended to insert new definitions as follows:

Contractor's Design Obligations means all tasks necessary to design and specify the Works required by the Major Works Contract, including preparation of the Design Documents and, if the documents stated in Item 47 of the Contract Particulars includes an Initial Design, developing the Initial Design.

2.11 Clause 2.2

- (a) Clause 2.2(c) of the Common Terms is amended as follows:
 - (c) **(carrying out WUC)** the Contractor is fully responsible for executing and completing the WUC in accordance with the Major Works Contract including the methodology for performing its obligations (including those for which permission to use has been given or is deemed to have been given by the Superintendent under clause 8.3(d));
- (b) Insert new clause 2.2(ca) of the Common Terms as follows:
 - (ca) **(the Works)** the Contractor must carry out and complete WUC in accordance with the Design Documents so that the Works, when completed, are Fit for Purpose;
- (c) Insert new sub-clauses (i) and (j) as follows:
 - (h) **(Contract Sum)** it has satisfied itself that the Contract Sum covers the cost of complying with all of its obligations under the Major Works Contract ~~:-~~;
 - (i) **(information)** the Contractor has examined any Initial Design included in the Project Requirements and that such Initial Design is Fit for Purpose; and
 - (j) **(design obligations)** the Contractor must carry out and complete the Contractor's Design Obligations to accord with the Project Requirements and the Design Documents it prepares will be Fit for Purpose and, if clause 9.4 applies, accept the novation and retain the Principal's consultants for any work the subject of a prior contract with the Principal.

2.12 Clause 2.4

Clause 2.4 of the Common Terms is amended as follows:

The Contractor acknowledges and agrees that:

- (a) the warranties in clause 2.2, the Contractor's Design Obligations and the Contractor's warranties, obligations and liabilities under the Major Works Contract and at law remain unaffected; and
 - (b) the Contractor will bear and continue to bear full liability and responsibility in accordance with the Major Works Contract for the performance of WUC,
- notwithstanding any one or more of the following:*
- (c) that design work (including the Initial Design) has been carried out by or on behalf of the Principal and included in the Project Requirements;

- (d) that the Contractor has entered into a novation of any prior contract between the Principal and a Principal's consultant under clause 9.4 and thereafter has retained that consultant in connection with WUC;
- (e) any receipt or review of, or comment or Direction on, any documents prepared by the Contractor (including Design Documents) by the Superintendent; or
- (f) any Variation.

2.13 Clause 8.1

Clause 8.1 of the Common Terms is amended to insert a new sub-clause (d) as follows:

- (c) ...
- (d) The Contractor will bear the cost of compliance with a Direction under this clause to the extent that any inconsistency, ambiguity or discrepancy in the Design Documents or between the Design Documents and the Project Requirements necessitates the Direction.

2.14 Clause 8.3

Clause 8.3 of the Common Terms is amended to insert a new sub-clause (d) and (e) as follows:

- (c) ...
- (d) As part of the Program it is to prepare under clause 33, the Contractor must submit to the Superintendent for approval a documentation program which makes allowance for the Design Documents to be submitted to the Superintendent in a manner and at a rate which will give the Superintendent a reasonable opportunity to review the Design Documents.
- (e) A Direction by the Superintendent to vary anything in the Design Documents shall be a Variation to WUC only to the extent that the Design Documents, before such Variation, complied, or would have complied, with the Project Requirements.

2.15 Clause 38.2

Clause 38.2(a) of the Common Terms is amended to insert a new sub-clause (ix) as follows:

- (viii) ...
- (ix) when directed by the Principal in accordance with clause 9.4, executed a deed of novation; and

2.16 Clause 40.2

Clause 40.2 of the Common Terms is amended to insert a new sub-clause (a)(i)(F) as follows:

- (a) *If the Contractor commits a substantial breach of the Major Works Contract, the Principal may, by hand, the Document Management System or by registered post, give the Contractor a written notice requiring the Contractor to rectify that breach. Substantial breaches include, but are not limited to:*
 - (i) *failing to:*
 - (A) *provide Security;*
 - (B) *provide evidence of insurance;*
 - (C) *comply with a Direction of the Superintendent pursuant to clause 31.3;*
 - (D) *comply with a Direction of the Superintendent following a further Direction of the Superintendent advising that failure to comply with the Direction will be regarded as a substantial breach for the purpose of clause 40.2; ~~or~~*
 - (E) *use the materials or standards of work required by the Major Works Contract; or*
 - (F) perform properly the Contractor's Design Obligations;

...

2.17 Clause 41.10

Clause 40.10 of the Common Terms is amended to insert a new sub-clause (c) as follows:

- (a) ...
- (b) ...
- (c) *If the Principal has terminated the Major Works Contract, the Principal may also, without payment of compensation, take possession of the Design Documents.*

2.18 Amendments to the Common Terms

In the Common Terms:

- (d) any reference to an Item in the Contract Particulars means the relevant Item in an executed Renewal Works Order; and
- (e) the definition of 'Date of Contract' in clause 1.1 of the Common Terms is deleted and replaced as follows:

***Date of Contract** means the date that the Principal signed the relevant Renewal Works Order.*

- (f) if clause 49B Alternative 1 applies, insert new clause 49B.7 as follows:

49B.7 Renewal Works Order Contracts

If the Contractor is in breach of clauses 49B.2, 49B.3 or 49B.4:

(a) all Renewal Works Order Contracts entered into prior to the breach will continue unless and until terminated by the Principal; and

(b) no further Renewal Works Order Contracts may be entered into until such time as the breach is remedied.

- (g) if clause 49B Alternative 2 applies, insert new clause 49B.9 as follows:

49B.9 Renewal Works Order Contracts

If the Contractor is in breach of clauses 49.B2, 49B3, 49B.4, 49B.5 or 49B.6:

(a) all Renewal Works Order Contracts entered into prior to the breach will continue unless and until terminated by the Principal; and

(b) no further Renewal Works Order Contracts may be entered into until such time as the breach is remedied.

2.19 Formation of Renewal Works Order Contract

- (a) The performance of the Works will be initiated by the agreement of Renewal Works Orders and no Works shall be performed in the absence of an executed Renewal Works Order Contract.
- (b) The Contractor:
 - (i) agrees that the pricing to be included in the Renewal Works Order shall be as set out in Schedule 6; and
 - (ii) shall provide any additional information when requested to allow the Principal to prepare a Renewal Works Order.
- (c) The Principal shall prepare each draft Renewal Works Order and provide the draft Renewal Works Order to the Contractor for review and the Contractor will complete the Renewal Works Order which shall contain pricing that shall be valid for a period of 90 days and will not change or amend terms and conditions and other particulars agreed in this Major Works Contract and return the executed Renewal Works Order to the Principal for review and execution by the Principal at the Principal's discretion. If the pricing in the Renewal Works Order is not acceptable to the Principal, the Contract Sum shall be determined in accordance with the Schedule of Rates.

- (d) Upon execution of a Renewal Works Order by the Contractor and the Principal, a separate Renewal Works Order Contract will be formed on the Common Terms as amended by this Schedule 3.
- (e) The terms of the Major Works Contract apply to each Renewal Works Order Contract, except to the extent agreed by the parties and expressly stated in the Renewal Works Contract Particulars for that Renewal Works Order Contract.

2.20 Term of Major Works Contract

- (a) Renewal Works Order Contracts may be agreed at any time during the Term in accordance with the process set out in the Major Works Contract.
- (b) Upon the expiration of the period of the Initial Term, the Term will be automatically extended by the Further Term unless:
 - (i) this Major Works Contract has been terminated in accordance with paragraph 2.20 of this Schedule 3 or by agreement between the parties; or
 - (ii) the Principal notifies the Contractor in writing prior to the expiration of the then current term that the Term will not be extended.
- (c) The expiry of the term of this Major Works Contract will not cause the termination of any Renewal Works Order Contract entered into prior to the expiration.
- (d) If a Renewal Works Order Contract is terminated, the Principal may terminate any or all other Renewal Works Order Contracts and the Major Works Contract.

2.21 Exclusivity

- (a) The Major Works Contract does not create an exclusive agreement between the parties in relation to the Works to be procured by the Principal.
- (b) The Principal may contract with any other person for the provision of services similar in nature to the Works.
- (c) The Principal has no obligation to enter into any Renewal Works Order Contract with the Contractor at any time.

2.22 Payment and additional Security

- (a) In the case of each Renewal Works Order Contract:
 - (i) the Contract Sum will be calculated in accordance with the Renewal Works Order; and
 - (ii) the Principal must pay the Contract Sum to the Contractor at the times set out in the applicable Renewal Works Order Contract.
- (b) In addition to the Security required by clause 2 of the Formal Instrument of Agreement, if the total Contract Sum of a Renewal Works Order Contract exceeds the Estimated First Year Value, then within 10 Business Days of written notice from the Principal, the Contractor must provide Security to the Principal:
 - (i) in the form required by clause 2 of the Formal Instrument of Agreement;
 - (ii) for an amount equal to the difference between the relevant Contract Sum of the Renewal Works Order Contract and the Estimated First Year Value

3. Equipment Supply (with optional install) Terms

Set out below are additional applicable terms to the Major Works Contract and amendments required to the Common Terms where Item 3 of the Contract Particulars identifies that the Project Delivery Model is an Equipment Supply (with optional install).

3.1 Definitions

In the Major Works Contract:

Equipment means the items so described in Item 32A of the Contract Particulars and more fully in the Project Requirements.

3.2 Amendments to clause 1.1

- (a) In clause 1.1 of the Common Terms, sub-clause (a) of the definition of 'Completion' is deleted:

Completion is that stage in the carrying out and completion of WUC when:

~~(a) — the Works are complete except for minor Defects:~~

~~(i) — which do not prevent the Works from being reasonably capable of being Fit for Purpose;~~

~~(ii) — which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and~~

~~(iii) — the rectification of which will not prejudice the convenient use of the Works;~~

~~(ba)~~ those Tests which are required by the Major Works Contract to be carried out and passed before the Works reach Completion have been carried out and passed;

...

- (b) **[Guidance note: insert the below if design, installation and testing will be carried out by the Contractor as part of the Equipment Supply procurement]**

[In clause 1.1 of the Common Terms, the definition of 'WUC (from 'work under the Contract')' is amended as follows:

WUC (from 'work under the Contract') means the work (including the design, supply, delivery, installation and Testing of the Equipment) which the Contractor is or may be required to carry out and complete under the Major Works Contract and includes Variations, remedial work, the provision of Construction Plant and Temporary Works].

[Guidance note: insert the below if design, installation and testing will not be carried out by the Contractor as part of the Equipment Supply procurement]

[In clause 1.1 of the Common Terms, the definition of 'WUC (from 'work under the Contract')' is amended as follows:

WUC (from 'work under the Contract') means the work (including the supply and delivery of the Equipment) which the Contractor is or may be required to carry out and complete under the Major Works Contract and includes Variations, remedial work, the provision of Construction Plant and Temporary Works.]

- (c) **[Guidance note: insert the below if design, installation and testing will be carried out by the Contractor as part of the Equipment Supply procurement]**

[In clause 1.1 of the Common Terms, the definition of 'the Works' is amended as follows:

the Works means the whole of the work (including the design, supply, delivery, installation and Testing of the Equipment) to be carried out and completed in accordance with the Major Works Contract, including Variations provided for by the Major Works Contract, which by the Major Works Contract is to be handed over to the Principal.]

[Guidance note: insert the below if design, installation and testing will not be carried out by the Contractor as part of the Equipment Supply procurement]

[In clause 1.1 of the Common Terms, the definition of 'the Works' is amended as follows:

the Works means the whole of the work (including the supply and delivery of the Equipment) to be carried out and completed in accordance with the Major Works Contract, including Variations provided for by the Major Works Contract, which by the Major Works Contract is to be handed over to the Principal.]

3.3 Amendments to clause 2.1

[Guidance note: insert the below if design, installation and testing will be carried out by the Contractor as part of the Equipment Supply procurement. If not, delete the text and replace with '[Not Used]']

[Insert a new sub-clause (c) and (d) to clause 2.1 of the Common Terms as follows:

(c) The Contractor must design the Equipment to meet the Project Requirements, supply, deliver and install the Equipment and undertake Testing of the Equipment in accordance with the Major Works Contract.

(d) For the avoidance of doubt, the cost of installing and Testing the Equipment is included in the Contract Sum and the Contractor is not entitled to any additional payment for the installation and Commissioning of the Equipment (except where expressly stated otherwise in this Major Works Contract).]

3.4 Deletions from the Common Terms

If the install option is not selected in the Contract Particulars, the following clauses are removed from the Common Terms and do not apply to the Major Works Contract:

- (a) clause 3 (Provisional Sum Work);
- (b) clause 4 (Separable portions);
- (c) clause 9.4 (Novation of Principal engaged consultants or subcontractors);
- (d) clause 16.1 (Insurance of the Works);
- (e) clause 27 (Latent conditions);
- (f) clause 28 (Setting out the Works);
- (g) clause 30 (Materials, Samples and Reference Work); and
- (h) clause 38.6 (Unfixed plant and materials).

3.5 Packing and transport

The Contractor must:

- (a) ensure that the Equipment are appropriately packed and transported to the Site to prevent damage or shrinkage while in transit or storage; and
- (b) provide and fit all lifting and handling devices required for lifting and handling the Equipment when in transit.

3.6 Product liability insurance

If specified in Item 21 of the Contract Particulars the Contractor must effect and maintain insurance against liability to third parties for Loss or damage caused by or through or in connection with the supply, repair, alteration or treatment of the Works for an amount and for the period specified in the Contract Particulars. This insurance may take the form of a separate policy or an extension to the policy under clause 17 of the Common Terms.

3.7 Insurance of Equipment

The Contractor must insure the Equipment:

- (a) against all loss or damage arising from any insurable cause;
- (b) for a limit of not less than their full replacement cost; and
- (c) for the period from the Date of Contract until the Date of Completion, including when in transit to the Site.

4. Material Supply Terms

Set out below are additional applicable terms to the Major Works Contract and amendments required to the Common Terms where Item 3 of the Contract Particulars identifies that the Project Delivery Model is a Material Supply.

4.1 Definitions

In the Major Works Contract:

Materials means the items so described in Item 34A of the Contract Particulars and more fully in the Project Requirements.

4.2 Amendments to clause 1.1

- (a) **[Guidance note: insert the below if design will be carried out by the Contractor as part of the Material Supply procurement]**

In clause 1.1 of the Common Terms, the definition of 'WUC (from 'work under the Contract')' is amended as follows:

WUC (from 'work under the Contract') means the work (including the design, supply, and delivery of the Materials) which the Contractor is or may be required to carry out and complete under the Major Works Contract and includes Variations, remedial work, the provision of Construction Plant and Temporary Works.

[Guidance note: insert the below if design will not be carried out by the Contractor as part of the Material Supply procurement]

In clause 1.1 of the Common Terms, the definition of 'WUC (from 'work under the Contract')' is amended as follows:

WUC (from 'work under the Contract') means the work (including the supply, and delivery of the Materials) which the Contractor is or may be required to carry out and complete under the Major Works Contract and includes Variations, remedial work, the provision of Construction Plant and Temporary Works.

- (b) **[Guidance note: insert the below if design will be carried out by the Contractor as part of the Material Supply procurement]**

[In clause 1.1 of the Common Terms, the definition of 'the Works' is amended as follows:

the Works means the whole of the work (including the design, supply, and delivery of the Materials) to be carried out and completed in accordance with the Major Works Contract, including Variations provided for by the Major Works Contract, which by the Major Works Contract is to be handed over to the Principal.]

[Guidance note: insert the below if design will not be carried out by the Contractor as part of the Material Supply procurement]

[In clause 1.1 of the Common Terms, the definition of 'the Works' is amended as follows:

the Works means the whole of the work (including the supply, and delivery of the Materials) to be carried out and completed in accordance with the Major Works Contract, including Variations provided for by the Major Works Contract, which by the Major Works Contract is to be handed over to the Principal.]

4.3 Amendments to clause 2.1

[Guidance note: insert the below if design will be carried out by the Contractor as part of the Material Supply procurement. If not, delete the text and replace with '[Not Used]']

[Insert a new sub-clause (c) to clause 2.1 of the Common Terms as follows:

- (c) The Contractor must design the Materials to meet the Project Requirements, and supply and deliver the Materials in accordance with the Major Works Contract.

4.4 Deletions from the Common Terms

The following clauses are removed from the Common Terms and do not apply to the Major Works Contract:

- (a) clause 3 (Provisional Sum Work);
- (b) clause 4 (Separable portions);
- (c) clause 9.4 (Novation of Principal engaged consultants or subcontractors);
- (d) clause 27 (Latent conditions);
- (e) clause 16.1 (Insurance of the Works);
- (f) clause 28 (Setting out the Works);
- (g) clause 30 (Materials, Samples and Reference Work); and
- (h) clause 38.6 (Unfixed plant and materials).

4.5 Packing and transport

The Contractor must:

- (a) ensure that the Materials are appropriately packed and transported to the Site to prevent damage or shrinkage while in transit or storage; and
- (b) provide and fit all lifting and handling devices required for lifting and handling the Materials when in transit.

4.6 Product liability insurance

If specified in Item 21 of the Contract Particulars the Contractor must effect and maintain insurance against liability to third parties for Loss or damage caused by or through or in connection with the supply, repair, alteration or treatment of the Works for an amount and for the period specified in the Contract Particulars. This insurance may take the form of a separate policy or an extension to the policy under clause 17 of the Common Terms.

4.7 Insurance of Materials

The Contractor must insure the Materials:

- (a) against all loss or damage arising from any insurable cause;
- (b) for a limit of not less than their full replacement cost; and
- (c) for the period from the Date of Contract until the Date of Completion, including when in transit to the Site.

Schedule 4 – Special Conditions

These Special Conditions only apply to the Major Works Contract if specified in Item 4 of the Contract Particulars.

Schedule 5 – Project Requirements

[Insert]

Schedule 6 – Pricing Schedule

[Guidance note: If the Project Delivery Model is a Renewal Works Order the pricing schedule will be annexed to each Renewal Works Order and the following note should be included in this Schedule. 'Refer to the separate pricing schedule annexed to the relevant Renewal Works Order'.]

Contract Sum

[Insert] excluding GST.

Contract Sum Breakdown (if relevant)

[Guidance note: if a Contract Sum Breakdown is relevant, insert the words in yellow highlighting below. Otherwise, delete this text, the yellow highlighted text and the heading above]

[Refer to Schedule 7 (Pricing Reference Documents)]

Margin and Preliminaries

0	•	
1		
2		

#	Item	Amount
1	Margin	\$ [insert]
2	Provisional Sum Margin	[insert] %
3	Variation Margin Allowance	[insert] % being the percentage to be applied in pricing a Variation under clause 37.4 of Schedule 2
4	Variation Preliminaries Allowance	[insert] % being the percentage to be applied in pricing a Variation under clause 37.4 of Schedule 2

[Guidance note: the below example is based on 5% Variation Margin Allowance and 5% Variation Preliminaries Allowance]

Worked example: Where the amount assessed in accordance with clause 37.4(a)(ii), (iii) or (iv) (excluding the Variation Margin Allowance or Variation Preliminaries Allowance) is \$100,000 for a Variation then, where relevant, the Variation Margin Allowance at, say, 5% for the Variation shall be calculated at \$5,000 and the Variation Preliminaries Allowance, of say 5%, for the Variation shall be calculated at \$5,000.

Schedule of Rates

Item	Description	Quantity	Unit	Rate	Amount
1	[insert Description of Item]	[insert Quantity]	[insert Unit e.g. 'Item', 'm²', 'm³', 'Lm' etc]	[insert Rate per Unit]	\$(insert Amount = Quantity x Rate)

2					
3					
4					
5					

Provisional Sums

Item	Description	Quantity	Unit	Rate	Amount
1	[insert Description of Item]	[insert Quantity]	[insert Unit e.g. 'Item', 'm ² ', 'm ³ ', 'Lm' etc]	[insert Rate per Unit]	[\$[insert Amount = Quantity x Rate]
2					\$
3					\$
4					\$
5					\$
6					\$
7					\$
8					\$
				TOTAL	\$

Schedule 7 – Pricing Reference Documents

[Insert]

Schedule 8 – Principal Supplied Materials

Schedule 9 – Approved Form of Unconditional Undertaking

At the request of ('the Contractor') and in consideration of ('the Principal') accepting this undertaking in respect of the Major Works Contract for ('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of (\$)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the financial institution be notified in writing, purporting to be signed by for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of (\$) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder will immediately cease.

Dated at.....this.....day of.....20

Schedule 10 – Parent Company Guarantee

Deed made at on, 20.....

Parties: ("Principal")

The person named in Item 1 of the Schedule ("**Contractor**")

The person named in Item 2 of the Schedule ("**Guarantor**")

Recitals

- A. The Principal has engaged the Contractor under the contract described in Item 3 of the Schedule ("**Major Works Contract**") to carry out certain activities ("**WUC**").
- B. Under clause 2.6 of the Formal Instrument of Agreement to the Major Works Contract, the Contractor is required to provide this Deed to the Principal.

This Deed provides

1. GUARANTEE

- (a) The Guarantor unconditionally and irrevocably guarantees to the Principal that the Contractor will perform and observe all of the Contractor's obligations under the Major Works Contract and will discharge all of its liabilities under the Major Works Contract.
- (b) In the event of default by the Contractor (as determined by the Principal), the Guarantor covenants with the Principal to perform and observe all of the Contractor's obligations under the Major Works Contract and to discharge all of the Contractor's liabilities under the Major Works Contract or to cause those obligations to be performed and observed or liabilities to be discharged.

2. SUBSTITUTION

- (a) The Principal may at any time give a written notice to the Guarantor requiring it undertake, carry out and complete the execution of the WUC insofar as the Contractor has failed to do so and the WUC remain to be completed.
- (b) Without limiting paragraph (a), if the Major Works Contract has been:
 - (i) terminated by the Principal under clause 40.4 of the Major Works Contract; or
 - (ii) terminated by disclaimer or rescinded or discharged by Court order,then the Principal may give a notice to the Guarantor under paragraph (a) in which event the Guarantor will be:
 - (iii) where the Major Works Contract is terminated by the Principal under clause 40.4 of the Major Works Contract, substituted for the Contractor as the party to the Major Works Contract; or
 - (iv) if the Major Works Contract has been disclaimed, rescinded or otherwise discharged, deemed to have entered a new contract with the Principal on the same terms and conditions as the Major Works Contract,

to the intent that the Guarantor will be subject to the obligations and liabilities and entitled to the rights of the Contractor (including liability in respect of any breach of the provisions of the Major Works Contract whether occurring before or after the substitution) in all respects as if:

- (v) the Guarantor had been named as the party to the Major Works Contract instead of the Contractor; and
- (vi) if the Major Works Contract has been disclaimed, rescinded or discharged, it had not been so disclaimed, rescinded or discharged.

3. INDEMNITY

The Guarantor, as a separate, additional and primary liability, unconditionally and irrevocably will indemnify the Principal and keep it indemnified from and against all losses, damages, costs and expenses of any kind which may be suffered or incurred by the Principal by reason or in consequence of:

- (a) default by the Contractor (as determined by the Principal) in performing or observing its obligations or discharging its liabilities under the Major Works Contract;
- (b) the Principal attempting to enforce any of the Contractor's obligations under the Major Works Contract; or
- (c) the Principal attempting to enforce or preserve any of its rights under this Deed.

4. ABSOLUTE LIABILITY

The liability of the Guarantor under this Deed will be absolute and will not be subject to the execution of this Deed or any other instrument or document by any person other than the Guarantor, and will not be subject to the performance of any condition precedent or subsequent.

5. NO REDUCTION OR RELEASE

- (a) The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the Guarantor from that liability.
- (b) Without limitation, that liability will not be affected by:
 - (i) the granting by the Principal to the Contractor of time, waiver, indulgence or concession or the making of any composition or compromise with the Contractor;
 - (ii) the Principal forbearing to enforce or neglecting to exercise any right against the Contractor;
 - (iii) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
 - (iv) any variation of any of the obligations and liabilities under the Major Works Contract, made either with or without the knowledge of the Guarantor;
 - (v) the release of any of the obligations and liabilities under the Major Works Contract; or
 - (vi) any failure by the Principal to disclose to the Guarantor any fact, circumstance or event relating to the Contractor at any time prior to or during the currency of this Deed.

6. PAYMENTS WITHOUT DEDUCTION

All payments by the Guarantor under this Deed are to be free of any set-off or counterclaim and without deduction or withholding.

7. INSOLVENCY OF CONTRACTOR

The Guarantor will not prove in the insolvency of the Contractor for any amount owing by the Contractor other than upon the basis that it irrevocably directs the payment of the proceeds of any such proof to the

Principal to the full extent of the amount then required to satisfy the obligations and liabilities under the Major Works Contract.

8. CLAIM ON THE GUARANTOR

The Principal will not be required to make any claim or demand upon the Contractor or to enforce any right, power or remedy against the Contractor in respect of its obligations and liabilities under the Major Works Contract before making any claim or demand on the Guarantor under this Deed.

9. SEVERABILITY

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of the illegality, voidness or unenforceability without invalidating the remaining provisions of this Deed.

10. SETTLEMENT CONDITIONAL

- (a) Any settlement between the Guarantor and the Principal will be conditional upon any security or payment given or made to the Principal by the Contractor, the Guarantor or any other person in relation to the obligations and liabilities under the Major Works Contract not being avoided, repaid or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force.
- (b) In the event of any avoidance, repayment or reduction, the Principal may recover the value or amount of the security or payment avoided, repaid or reduced from the Guarantor subsequently, as if the settlement or discharge had not occurred.

11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties to the Principal

The Guarantor represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by it does not breach any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) no litigation, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, would or could have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) all information the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor is not the trustee of any trust.

11.2 Corporate representations and warranties

The Guarantor that is a corporation further represents and warrants to the Principal that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of this Deed does not violate its constitution or any law apply to it; and
- (c) it has taken all corporate and other action required to enter into this Deed and to authorise the execution and delivery of this Deed and the satisfaction of its obligations under this Deed.

12. APPLICABLE MAJOR WORKS CONTRACT PROVISIONS

The clauses of the Major Works Contract referred in Item 4 of the Schedule apply to this Deed as if they are provisions of this Deed, except that references to the "Contractor" must be read as references to the Guarantor.

Schedule

Item 1	Contractor:	[INSERT NAME AND ABN OF CONTRACTOR]
Item 2	Guarantor	[INSERT NAME AND ABN OF GUARANTOR]
Item 3 (Recital A)	Contract:	Major Works Contract dated [insert]
Item 4		Clauses 1.2(h) (<i>Interpretation</i>), 7 (<i>Service of notices</i>), 8.5 (<i>Non-reliance</i>), 9.1 (<i>Assignment</i>), 43 (<i>Dispute resolution</i>) and 51 (<i>General Matters</i>)

Executed as a Deed.

Signed sealed and delivered for and on behalf of [] by its authorised officer:

Signature of authorised officer

Name of authorised officer in full

Position of authorised officer

Dated:

[INSERT APPROPRIATE SIGNING BLOCKS FOR CONTRACTOR AND GUARANTOR]

Schedule 11 – Deed of Novation (From Outgoing Contractor to Incoming Contractor)

Deed made at on, 20...

Parties (the Principal)

[INSERT NAME, ABN AND ADDRESS OF CONTRACTOR] (the Outgoing Contractor)

[INSERT NAME, ABN AND ADDRESS OF SUBCONTRACTOR/CONSULTANT] (the Subcontractor)

[INSERT NAME, ABN AND ADDRESS OF INCOMING CONTRACTOR] (the Incoming Contractor)

Recitals

- A. The Principal engaged the Outgoing Contractor under the contract described in Item 1 of the Schedule (**Works Contract**) to effect certain works.
- B. The Outgoing Contractor and the Subcontractor have entered into the contract described in Item 3 of the Schedule (**Subcontract**) to [effect certain works / perform certain services], brief particulars of which are set out in Item 4 of the Schedule (**Subcontracted Scope**), which work formed part of the Outgoing Contractor's obligations under the Works Contract.
- C. The Works Contract has been terminated by the Principal. The Principal has engaged the Incoming Contractor under the contract described at item 5 of the Schedule (**New Works Contract**) to effect certain works.
- D. The Works Contract, New Works Contract and the Subcontract require the Outgoing Contractor, Incoming Contractor and the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Outgoing Contractor to the Incoming Contractor.

This Deed provides

1. Interpretation

1.1 Definitions

In this Deed, terms defined in the Works Contract and not otherwise defined in this Deed have the same meanings, unless the context otherwise requires.

1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

- (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (g) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed Prevails

To the extent of any inconsistency between this Deed, the Works Contract, the New Works Contract or the Subcontract, this Deed prevails unless the parties expressly agree otherwise.

2. Novation

In accordance with clause 9.2(c) of the Works Contract, clause # of the New Works Contract and clause # of the Subcontract:

- (a) the Outgoing Contactor and the Subcontractor mutually agree:
 - (i) to terminate the Subcontract and (subject to subparagraph (ii)) to release each other from all obligations and liabilities under the Subcontract; and
 - (ii) that the amount set out in Item 6 of the Schedule is payable by the Outgoing Contactor to the Subcontractor in full and final settlement of all claims under the Subcontract prior to the termination under subparagraph (i); and
- (b) the Incoming Contractor and the Subcontractor will be deemed to have entered into a new contract on the same terms and conditions as the Subcontract, subject to the following:
 - (i) the Incoming Contractor will be named in the new contract in lieu of the Outgoing Contactor;
 - (ii) the rights, obligations and liabilities of the Incoming Contractor and the Subcontractor will be as if the Incoming Contractor had executed the Subcontract in lieu of the Outgoing Contactor;
 - (iii) the amount set out in Item 7 of the Schedule is the balance payable by the Incoming Contractor to the Subcontractor for the Subcontracted Scope under the new contract; and
 - (iv) the Subcontractor will indemnify the Incoming Contractor against all claims, costs, expenses, losses or damages suffered or incurred by the Incoming Contractor arising out of or incidental to any failure by the Subcontractor to perform its obligations under the Subcontract with the Outgoing Contactor prior to its termination.

3. Assignment

Except as expressly contemplated by this Deed, neither the Incoming Contractor nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed or the Subcontract.

4. Further assurances

The Outgoing Contractor and the Subcontractor undertake upon request by the Principal to execute all documents and do all things necessary to vest in the Incoming Contractor the Subcontract or otherwise to give effect to the terms of this Deed.

5. Governing law and jurisdiction

This Deed will be governed by and construed in accordance with the law applicable to the Works Contract.

6. Notices

6.1 Address for Service

Any notice to be given or served under or arising out of a provision of this Deed must:

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post or sent by fax or the Document Management System, as the case may be, to the relevant address, fax number or the Document Management System address:
 - (i) stated in Item 8 of the Schedule; or
 - (ii) last notified in writing to the party giving or serving the notice, for the party to whom or upon which the notice is to be given or served; and
 - (iii) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice.

6.2 Deemed Receipt

A notice (and other documents) will be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the Works Contract or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission on the Document Management System;
 - (iii) confirmation of correct transmission of fax; or
 - (iv) 3 Business Days after posting.

7. Counterparts

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

8. Waivers, remedies cumulative

8.1 No waiver

No failure to exercise and no delay in exercising, on the part of the Principal, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

8.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

9. Attorneys

Each of the attorneys (if any) executing this Deed states that they have no notice of revocation of their power of attorney.

Schedule

Item 1 (Recital A)	Works Contract:	[#] Contract for [INSERT] dated [INSERT]
Item 2 (Recital A)	Works:	[INSERT BRIEF DESCRIPTION]
Item 3 (Recital B)	Subcontract:	[#] Contract for [INSERT] dated [INSERT]
Item 4 (Recital B)	Subcontracted Scope:	[INSERT BRIEF DESCRIPTION]
Item 5 (Recital C)	New Works Contract:	[#] Contract for [INSERT] dated [INSERT]
Item 6 (Clause 2(a)(ii))	Amount payable:	[INSERT AMOUNT]
Item 7 (Clause 2(b)(iii))	Balance payable:	[INSERT AMOUNT]
Item 8 (Clause 6.1(b)(i))	Notices:	[INSERT ADDRESS, FAX NUMBER, ACONEX ADDRESS FOR EACH PARTY]

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals or by their duly appointed attorney.

Executed by [] by its authorised representative under Instrument of Delegation current at the time of signing, who declares that they have received no revocation of that delegation:

Signature of authorised representative

Name of authorised representative in full

Position of authorised representative

Date

SIGNED SEALED and DELIVERED by the **Outgoing Contractor** by its attorney named opposite duly appointed pursuant to the Works Contract in the presence of:

Signature of Witness

Signature of Attorney

#name# (Superintendent Representative under the Works Contract)

Name (please print)

Name (please print)

THE COMMON SEAL of the **Subcontractor** was affixed to this document in the presence of:

Secretary / Director

Director

Name (please print)

Name (please print)

THE COMMON SEAL of the **Incoming Contractor** was affixed to this document in the presence of:

Secretary / Director

Director

Name (please print)

Name (please print)

Schedule 12 – Deed of Novation (From the Principal to the Contractor)

Deed made at on, 20...

Parties (the Principal)

[INSERT NAME, ABN AND ADDRESS OF CONTRACTOR] (the Contractor)

[INSERT NAME, ABN AND ADDRESS OF SUBCONTRACTOR/CONSULTANT] (the Subcontractor)

Recitals

- A. The Principal has engaged the Contractor under the contract described in Item 1 of the Schedule (**Major Works Contract**) to effect certain works, brief particulars of which are set out in Item 2 of the Schedule (**Works**).
- B. The Principal and the Subcontractor have entered into the contract described in Item 3 of the Schedule (**Subcontract**) to [effect certain works / perform certain services], brief particulars of which are set out in Item 4 of the Schedule (**Subcontracted Scope**), which work forms part of the Contractor's obligations under the Major Works Contract.
- C. The Major Works Contract and the Subcontract require the Contractor and the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Principal to the Contractor.
- D. The parties agree to perform their respective obligations under this Deed of Novation, give the relevant releases, warranties and indemnities provided for in this Deed of Novation and to otherwise comply with this Deed of Novation.

1 Definitions and interpretation

1.1 Definitions

In this Deed of Novation, unless otherwise defined or the context otherwise requires, the following terms have the meanings indicated:

Business Day means any day except a Saturday, Sunday or day on which banks are not open for business in the city in which the Project is located.

Claim means any claim in respect of any Loss which the Subcontractor has, or but for this Deed of Novation, may have had against the Principal where that claim is in any way connected with, or arises out of, the Project however that claim arises, including claims under or for breach of contract, in tort, under statute or otherwise at law or in equity.

Commencement Date means the date of the Subcontract.

Consultant's Statement means the statement entitled as such at the end of this Deed of Novation being Annexure A to this Deed of Novation.

Deed of Novation means this document.

Design and Construct Warranties means the warranties which the Contractor makes to the Principal under the Major Works Contract in relation to the design and construction of the Works.

Effective Date means the date of this Deed of Novation.

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right

Loss means any claim, costs, damage, liability, loss or expense whether direct, indirect, present or future, fixed or unascertained, actual or contingent, consequential or financial.

Major Works Contract means the contract between the Contractor and the Principal in relation to the Project as set out in Item 1 of the Schedule.

Notified Claim means a Claim notified by the Subcontractor to both the Contractor and the Principal within 3 Business Days after the date of any Novation Notice (including any claim for an outstanding amount payable by the Principal to the Subcontractor for Services performed prior to the date of the Novation Notice).

Novation Date means:

- (a) in the context of a novation under clause 5.1 of this Deed of Novation, the Effective Date; and
- (b) in the context of a novation under either of clause 5.2 or 5.4 of this Deed of Novation, the date nominated as such by the Principal in a Novation Notice or otherwise as determined in accordance with the relevant clause.

Novation Notice means a notice served under clause 5.2 or 5.4 of this Deed of Novation as may be relevant through which the Subcontract is novated from the Principal to the Contractor or from the Principal or Contractor (as applicable) to any third party.

Post Novation Fee means the fee described as such in Item 6 of the Schedule to this Deed of Novation.

Preserved Clauses means:

- (a) clauses in the Major Works Contract, to the extent that the clauses operate for the benefit of the Principal, in relation to confidentiality, intellectual property and releases; and
- (b) clause 23 or any clause relating to copyright and other Intellectual Property Rights in the Subcontract, to the extent that the clause operates for the benefit of the Principal.

Project means the project set out in Item 7 of the Schedule.

Relevant Novation Date means the Novation Date in respect of any particular novation under this Deed of Novation.

Services has the meaning given to it in the Subcontract.

Subcontract means the contract between the Subcontractor and the Principal in relation to the Project as set out in Item 3 of the Schedule, as amended from time to time and a copy of which may be included at Annexure B to this Deed of Novation.

1.2 Interpretation

In this Deed of Novation, unless the context otherwise requires:

- (a) unless otherwise defined in this Deed of Novation, terms defined in the Major Works Contract have the same meaning as they do in the Major Works Contract;
 - (b) subject to paragraph (a), unless otherwise defined in this Deed of Novation, terms defined in the Subcontract have the same meaning as they do in the Subcontract;
 - (c) the singular includes the plural and vice versa;
 - (d) a reference to any gender includes all other genders;
 - (e) headings and the table of contents are intended for ease of reference only and are not to be taken to affect the interpretation or construction of this Deed of Novation;
 - (f) a reference to any obligation includes a liability and a duty and a reference to performance includes observance;
 - (g) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Deed of Novation;
 - (h) a reference to any deed or document is to that deed or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
 - (i) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, state or government or other legal entity and vice versa.
-

2 Subcontract

- (a) The Principal and the Subcontractor confirm that the Subcontract has been duly executed by the Principal and the Subcontractor and is effective.
 - (b) The Subcontractor agrees that, as at the Effective Date, the only amount that will become payable under the Subcontract after the Effective Date is the amount described as the Post Novation Fee and that there is no outstanding amount payable by the Principal to the Subcontractor for Services performed prior to the Effective Date.
-

3 No Variation of Subcontract or Deed of Novation

3.1 Constraint on variation

The Contractor and the Subcontractor will not, without first obtaining the permission of the Principal, vary or waive any provision of this Deed of Novation or the Subcontract where that variation or waiver has a prejudicial impact on the ability of the Subcontractor to comply with this Deed of Novation or the Subcontract (as they were prior to the variation or waiver). The Principal must not withhold permission unreasonably.

3.2 Attempted variation

If, in breach of this Deed of Novation, the Contractor or the Subcontractor vary or waive a relevant provision of this Deed of Novation or the Subcontract without first obtaining the permission of the Principal, the purported variation or waiver shall be of no effect and this Deed of Novation and the Subcontract shall continue to take effect as if the purported variation or waiver had not occurred.

4 Termination of Subcontract

4.1 Constraint on termination or rescission

The Contractor or the Subcontractor must not terminate the Subcontract or this Deed of Novation, either at common law or pursuant to the terms of the relevant documents, other than with the consent of the Principal or in accordance with this Deed of Novation.

4.2 Attempted termination or rescission

If the Contractor or the Subcontractor attempts or purports to terminate the Subcontract or this Deed of Novation other than with the consent of the Principal or in accordance with this Deed of Novation or if the Contractor or the Subcontractor asserts that the Subcontract or this Deed of Novation have been brought to an end and this Deed of Novation has not been complied with, the Subcontract and this Deed of Novation are not terminated or brought to an end and remain on foot.

4.3 Notice of breach

- (a) If either of the Subcontractor or the Contractor considers that the other is in breach of the Subcontract or this Deed of Novation and the aggrieved party desires to terminate the Subcontract and this Deed of Novation the aggrieved party must notify the Principal in writing of that desire and particulars of the relevant breach.
- (b) If the breach relates to the payment of money due from the Contractor to the Subcontractor, the Principal may elect to cure the breach. If the Principal elects to cure the breach then:
 - (i) the Principal will pay to the Subcontractor the money due; and
 - (ii) the amount paid by the Principal to the Subcontractor is due and payable by the Contractor to the Principal.
- (c) If the Principal:
 - (i) advises the Subcontractor and the Contractor, within 10 Business Days of receipt of the notice and particulars from the aggrieved party, that the Principal elects to cure the breach; and
 - (ii) pays to the Subcontractor, within 30 Business Days of receipt of evidence of the money due and the calculation of that money,

the Subcontractor may not terminate the Subcontract or this Deed of Novation.

4.4 Obligation to continue

Subject to clause 4 of this Deed of Novation, each of the Subcontractor and the Contractor must, notwithstanding any breach of the Subcontract or this Deed of Novation and any provision in the Subcontract or this Deed of Novation, continue to diligently fulfil their obligations, discharge the burdens and assume the liabilities under the Subcontract and this Deed of Novation until the Subcontract has been discharged or brought to an end in accordance with this Deed of Novation.

5 Novation

5.1 Initial novation

As from the Effective Date, the Subcontract is novated from the Principal to the Contractor.

5.2 Subsequent novation

If:

- (a) the Major Works Contract is terminated or rescinded or comes to an end prematurely;
- (b) the employment of the Contractor under the Major Works Contract is terminated; or
- (c) the work being executed under the Major Works Contract is taken out of the hands of the Contractor,

the Principal may give the Subcontractor a Novation Notice in accordance with this Deed of Novation.

The Principal may, in the Novation Notice, nominate a date as the Novation Date. If the Principal does not nominate such a date, the Novation Date will be the date 5 Business Days after the date of the notice.

5.3 Novate

In giving a Novation Notice the Principal may nominate a third party to which the Subcontract will be novated in place of the Contractor. If the Principal does so nominate a third party the Subcontract shall, by operation of the Novation Notice and as from the Novation Date, be novated from the Contractor to the third party. If the Principal does not so nominate a third party the Subcontract shall, by operation of the Novation Notice and as from the Novation Date, be novated from the Contractor to the Principal.

5.4 Further novation

If, in giving a Novation Notice, the Principal does not nominate a third party to which the Subcontract will be novated in place of the Contractor, the Principal may, at any subsequent time, give a further Novation Notice in which the Principal does nominate a third party to which the Subcontract will then be novated in place of the Principal or Contractor (as applicable).

The Principal may, in the further Novation Notice, nominate a date as the Novation Date. If the Principal does not nominate such a date the Novation Date will be the date 5 Business Days after the date of the notice.

If the Principal does give the further Novation Notice the Subcontract shall, by operation of the Novation Notice and as from the Novation Date, be novated from the Principal or Contractor (as applicable) to the third party.

6 Consequence of novation and release

6.1 Novation

With effect on and from the Relevant Novation Date:

- (a) the Contractor shall:
 - (i) punctually perform the obligations, discharge the burdens and assume the liabilities (with the exception of any Notified Claims) of the Principal under this Deed of Novation;
 - (ii) punctually perform the obligations, discharge the burdens and assume the liabilities (with the exception of any Notified Claims) of the Principal under the Subcontract (insofar as those obligations had not fallen to be performed or the burdens and liabilities had not arisen prior to the Novation Date) as if:
 - (A) the provisions of the Subcontract were incorporated into this Deed of Novation; and
 - (B) the Contractor was named, in the Subcontract, as the Principal;
- (b) the Subcontractor must fulfil the obligations, discharge the burdens and assume the liabilities under the Subcontract and this Deed of Novation notwithstanding any Claim it may have outstanding against the Principal;
- (c) the Subcontract shall take effect as an agreement between the Contractor and the Subcontractor as if the Contractor had been named as the Principal at the Commencement Date instead of the Principal;

- (d) except where the context otherwise requires, a reference in the Subcontract to the Principal must be read as a reference to the Contractor; and
- (e) notices to the Contractor must be provided to the details for the Contractor specified on the front page of this Deed of Novation.

6.2 Releases

As from the Relevant Novation Date:

- (a) the Subcontractor and the Contractor release the Principal from any Claim other than a Notified Claim, or any Loss arising out of or in connection with:
 - (i) the Subcontract or the Services occurring before on or after the Relevant Novation Date;
 - (ii) any failure of the Principal to fulfil any burden, obligation or liability which it owed to the Subcontractor; and
 - (iii) any act, default or omission of the Principal irrespective of the date of that act, default or omission;
- (b) the Subcontractor releases the Contractor from any Claim or any Loss arising out of or in connection with:
 - (i) the Subcontract or the Services occurring before the Relevant Novation Date;
 - (ii) any failure of the Principal to fulfil any burden, obligation or liability which it owed to the Subcontractor; and
 - (iii) any act, default or omission of the Principal irrespective of the date of that act, default or omission; and
- (c) the Principal releases the Subcontractor from all of the Subcontractor's burdens, liabilities, duties and obligations to the Principal under or in connection with the Subcontract or the Services occurring before, on or after the Relevant Novation Date.
- (d) The Principal and the Subcontractor mutually agree that the amount set out in Item 5 of the Schedule is payable within 30 days after this Deed of Novation is executed by all parties by the Principal to the Subcontractor in full and final payment of all Claims (other than a Notified Claim) and payment claims under the Subcontract prior to the Relevant Novation Date.

The Subcontractor and the Contractor give the releases in this clause 6.2 regardless of whether they are now, or in the future may become, aware of the facts and circumstances relevant to any liability, obligation, Claim, or Loss.

6.3 Acknowledgment

Each party acknowledges that nothing in this Deed of Novation or any of the transactions contemplated by this Deed of Novation constitutes a breach of any term of the Subcontract or the Major Works Contract.

7 Subcontractor's obligations, warranties and indemnities

7.1 Reporting obligations - Design and Construct Warranties

- (a) The Subcontractor is aware of the Design and Construct Warranties.

- (b) The Subcontractor must advise the Principal, in writing, of any breaches of the Design and Construct Warranties of which the Subcontractor is, or upon reasonable inspection or review, should have been aware. This advice must be provided:
 - (i) once each month;
 - (ii) within 5 Business Days of being requested by the Principal to do so; and
 - (iii) within 2 Business Days of becoming aware of a breach of the Design and Construct Warranties.
- (c) In providing the advice under this clause, the Subcontractor must:
 - (iv) identify the nature of the breach;
 - (v) provide particulars of the breach;
 - (vi) describe the impact of the breach on the Project and the Principal; and
 - (vii) describe the steps recommended by the Subcontractor as being necessary to:
 - (A) cure the breach; or
 - (B) if the breach cannot be cured or it is impracticable to cure the breach, ensure that the Project and the Principal do not suffer any prejudice as a result of the breach.

7.2 Warranties and acknowledgements

- (a) The Subcontractor warrants to:
 - (i) the Contractor, on and from the Effective Date and each Novation Date;
 - (ii) the Principal, on and from the Relevant Novation Date;
 that:
 - (A) the Subcontractor will fully comply with all of its obligations, discharge the burdens and assume the liabilities under the Subcontract and this Deed of Novation and carry out the work in a good and workmanlike manner;
 - (B) in performing the Subcontract and undertaking the Services prior to the Novation Date, the Subcontractor has fully complied with all of its obligations, discharged the burdens and borne the liabilities under the Subcontract and this Deed of Novation and performed the Services in a professional manner; and
 - (C) in performing the Subcontract and undertaking the Services as from the Novation Date, the Subcontractor will fully comply with all of its obligations, discharge the burdens and assume the liabilities under the Subcontract and this Deed of Novation and perform the Services in a professional manner.
- (b) The Subcontractor warrants to the Principal and the Contractor as applicable that:
 - (i) all of the information which the Subcontractor provides to the Contractor or the Principal will be true and correct and will not be misleading by reason of the absence of any other related information;

- (ii) all of the information which the Subcontractor has provided to the Principal prior to the Novation Date was true and correct and was not misleading by reason of the absence of any other related information; and
 - (iii) with the exception of any Notified Claims, it does not have any Claim against the Principal arising out of or in connection with:
 - (A) the Subcontract or the Services occurring before on or after the Relevant Novation Date;
 - (B) any failure of the Principal to fulfil any burden, obligation or liability which it owed to the Subcontractor; and
 - (C) any act, default or omission of the Principal irrespective of the date of that act, default or omission.
- (c) The Contractor warrants to the Principal that:
 - (i) it has reviewed, examined and carefully checked the Services performed by the Subcontractor, including all Services and documentation prepared by the Subcontractor prior to the Relevant Novation Date; and
 - (ii) the Services and documentation are suitable appropriate and adequate to enable the Contractor to perform its obligations under the Major Works Contract.
- (d) The Contractor acknowledges and agrees that nothing in this Deed of Novation will derogate from its obligations under the Major Works Contract, including the warranties and indemnities it gives under the Major Works Contract.

8 Reporting Obligations

8.1 Reporting obligations - General

The Principal may request the Subcontractor to provide a report, to the Principal, as to:

- (a) the status of the performance of the Services;
- (b) the status of the performance of the works to be undertaken under the Major Works Contract (insofar as the performance of the Services and compliance with this Deed of Novation would permit the Subcontractor to have such knowledge);
- (c) any Claim which the Subcontractor has or may have (having regard to events which have occurred as at the date of the request) in respect of performance of the Services;
- (d) the amount paid to the Subcontractor in respect of the performance of the Services; and
- (e) the estimated additional amount to be paid to the Subcontractor in respect of the performance of the Services.

The Subcontractor must comply with any such request within the time nominated by the Principal (which time must be reasonable) or, in the absence of any such nomination, a reasonable time. The Principal may nominate the time in the original request or subsequent to that request.

8.2 Authority to report

The Contractor authorises the Subcontractor to provide the reports contemplated by clauses 7.1 and 8.1 of this Deed of Novation. The Contractor shall not make any claim against the Subcontractor in connection with the Subcontractor discharging the reporting obligation arising under clause 7.1 or 8.1 of this Deed of Novation and the Contractor is not entitled to recover any expense, cost, charge, damages, liability, loss or issue any proceeding, cause of action, action, demand or suit against the Subcontractor.

8.3 No duty from Subcontractor to Principal

The Principal acknowledges that the obligations of the Subcontractor to provide reports or other information directly to the Principal pursuant to this Deed of Novation:

- (a) do not derogate from the Contractor's obligations to the Principal under the Major Works Contract; and
- (b) do not establish any relationship between the Principal and the Subcontractor pursuant to which:
 - (i) the Subcontractor owes the Principal any duty of care; or
 - (ii) the Subcontractor assumes any obligation or liability for the performance by the Contractor of its obligations under the Major Works Contract.

9 Consultant's Statement

Under the Major Works Contract the Contractor is obliged to procure from the Subcontractor a duly executed Consultant's Statement at the times specified in the Major Works Contract.

The Subcontractor agrees that:

- (a) it will provide to the Contractor a duly executed Consultant's Statement when requested to do so by the Contractor; and
- (b) it will provide, to the Principal, a copy of each duly executed Consultant's Statement at the time of provision to the Contractor.

10 Notices

10.1 How served

A notice required or permitted to be given by one party to another under this Deed of Novation must be in writing, addressed to the other party and:

- (a) if the Major Works Contract or the Subcontract (as may be relevant) sets out requirements in relation to the service of notices, be served as provided for in Major Works Contract or the Subcontract (as may be relevant); or
- (b) if the Major Works Contract or the Subcontract (as may be relevant) does not set out requirements in relation to the service of notices, be served as follows:
 - (i) delivered by hand to the relevant party's address set out in Item 8 of the Schedule;
 - (ii) sent by registered mail to the relevant party's address set out in Item 8 of the Schedule; or
 - (iii) sent using the Document Management System to the relevant party.

10.2 When served

A notice given to a party in accordance with clause 10.1 is treated as having been given and received:

- (a) if hand delivered to a party's address, on the day of delivery if delivered before 4.00 pm on a Business Day, and otherwise on the next Business Day;
- (b) if sent by prepaid mail, 3 days after the date of posting;

- (c) if sent using the Document Management System, when uploaded to the Document Management System (unless it is after 4.00pm or not a Business Day, in which case 9.00am on the next Business Day); or
- (d) if actually received, and one of the preceding paragraphs do not apply, upon receipt.

10.3 Address for service

For the purpose of this clause 10, the address of a party is (with the first applicable address being the address) the address set out in the Subcontract, the Major Works Contract, this Deed of Novation, the address which that party notifies to the other party or the usual place of business of the party.

10.4 Other modes of service

The provisions of this clause are in addition to any other mode of service permitted by law.

11 General matters

11.1 Operation of Deed of Novation

This Deed of Novation comes into effect on the Effective Date.

11.2 Governing law

This Deed of Novation is governed by the laws applying in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and Courts entitled to hear appeals from those Courts.

11.3 Waiver and amendment

A failure of a party at any time to require full or part performance of any obligations, discharge a burden or assume a liabilities under this Deed of Novation will not affect in any way the rights of that party to require that performance subsequently.

11.4 Cumulative rights

Without prejudice to the full effect of any release provided for in this Deed of Novation, the rights of the parties pursuant to the Deed of Novation are in addition to and do not derogate from any other rights which the parties may have.

11.5 Further assurances

Each party to this Deed of Novation must do or cause to be done anything necessary or desirable to give effect to this Deed of Novation, and will refrain from doing anything which might prevent full effect being given to this Deed of Novation.

11.6 Counterparts

This Deed of Novation may be executed in any number of counterparts. All counterparts taken together will be deemed to constitute the one document.

11.7 Preservation of certain rights

Notwithstanding the provisions of this Deed of Novation, the Preserved Clauses shall continue to have effect as if this Deed of Novation had not been entered into.

11.8 Severability

The parties agree that a construction of this Deed of Novation which results in all provisions being enforceable is to be preferred to a construction which does not so result.

If, despite the application of the preceding paragraph, a provision of this Deed of Novation is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed,

and the remainder of this Deed of Novation continues to have full force and effect.

The preceding paragraph does not apply where its application alters the basic nature of this Deed of Novation or is contrary to public policy.

EXECUTED as a Deed.

Signed for and on behalf
of the **Principal** by its
duly authorised
representative(s)

Signature of Authorised
Representative

Signature of Authorised
Representative

Name of Authorised Representative

Name of Authorised Representative

Executed by the
Contractor 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

Name of Director / Company Secretary
(delete whichever is not applicable)

Executed by the
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

Name of Director / Company Secretary
(delete whichever is not applicable)

Schedule

Item 1 (Recital A)	Major Works Contract:	<i>[#] [INSERT DELIVERY METHOD] Contract for [INSERT] dated [INSERT]</i>
Item 2 (Recital A)	Works:	<i>[INSERT BRIEF DESCRIPTION]</i>
Item 3 (Recital B)	Subcontract:	<i>[#] Contract for [INSERT] dated [INSERT]</i>
Item 4 (Recital B)	Subcontracted Scope:	<i>[INSERT BRIEF DESCRIPTION]</i>
Item 5	Amount payable by the Principal to the Subcontractor in full and final settlement of all claims under the Subcontract:	<i>[INSERT AMOUNT]</i>
Item 6 (Clause 1.1)	Post Novation Fee:	<i>[INSERT AMOUNT]</i>
Item 7 (Clause 1.1)	Project	<i>[INSERT PROJECT]</i>
Item 8 (Clause 10.1(b))	Notices:	<i>[INSERT ADDRESS, FAX NUMBER, ACONEX ADDRESS FOR EACH PARTY]</i>

Annexure A Consultant's Statement

TO: ("Principal")

RE: [insert] ("Project") pursuant to the Consultancy Services Agreement dated [] between the Principal and us ("Agreement")

Building Work to: [insert date]

We confirm that in our professional opinion the works executed applicable to the Services under and as defined in the Agreement in respect of the Project, as inspected by us from time to time up to the date of this statement, for which we have provided the design documentation to the above date, comply, to the best of our knowledge, after due inquiry, except as noted below, with the requirements of the design intent under the Agreement, subject to any variations or other changes directed or authorised under the Agreement.

Capitalised terms not defined in this statement have the meaning given in the Agreement.

In particular we have reviewed the following:

- the progress of the additional design documentation and its compliance with the Brief and the progress of design documentation against the design Program and make the following comments:

 [## insert list of defects/departures]
- the quality of the work under the building contract undertaken to date and make the following comments in relation to its compliance with the design intent:

 [## insert list of defects/departures]
- the conformity of the work under the building contract undertaken to date with the Brief and any additional drawings and specifications produced to date, and make the following comments in relation to its compliance with the design intent:

 [## insert list of defects/departures]
- [## insert list any other matter, fact circumstance or thing which should reasonably be brought to the attention of the Principal].

Further, in our professional opinion the Services under the Agreement are in compliance with the quality plan of the Consultant agreed under the Agreement.

.....
Signed for and on behalf of [## insert name of Consultant]:

.....

.....
(## name of Consultant)

...../...../.....
(Date of this Statement)

[Insert details]

Schedule 13 – Warranties Schedule

Note: Third party collateral warranties may also be requested in the Project Requirements.

Item	Aspect of the Work	Term of Warranty	Is a collateral warranty required? Y or N
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

Schedule 14 – Subcontractor Warranty Deed

Project Name: [insert project name]

Project Number: [insert project number]

This **DEED POLL** is made on _____ day of _____ 20__

By [insert name] (ACN [insert ACN]) of [insert address]

("Subcontractor")

BACKGROUND

- A. The Principal and the Contractor have entered into the Head Contract to construct the [insert description of the project].
- B. The Contractor and the Subcontractor have entered into the Subcontract to carry out the Subcontract Works.
- C. The Subcontract provides that the Subcontractor must enter into this Subcontractor Warranty Deed.

IT IS AGREED

1. Defined terms & Interpretation

- (a) In this Deed Poll, unless the context requires otherwise:

Contractor	means [insert name] (ACN [insert ACN]) of [insert address];
Head Contract	means the contract for the construction of the [insert description of the project] entered into between the Principal and the Contractor dated [insert date of Head Contract];
Principal	means [insert name] (ACN [insert ACN]) of [insert address];
Subcontract	means the subcontract between the Contractor and the Subcontractor for the performance of the Subcontract Works;
Subcontract Works	means the work to be carried out by the Subcontractor in relation to, and which forms part of, the Works.
Term	means [insert] years.

- (b) The interpretation provisions of clause 1 of the Head Contract apply as if they were part of this Deed Poll.
- (c) A word or phrase defined in the Head Contract, other than one defined in clause 1 of this Deed Poll, has the same meaning in this Deed Poll.

2. Collateral Warranty

The Subcontractor covenants, warrants and agrees, for the benefit of the Principal and for the Term, that:

- (a) in carrying out the Subcontract Works, the Subcontractor has fully complied with all of its obligations under the Subcontract with the care and skill properly to be expected from experienced and competent professionals with the requisite qualifications;
- (b) the Subcontract Work will, when completed (and by no later than the date of Completion of the Works under the Head Contract), be free from defects and deficiencies and will satisfy all of the requirements of the Subcontract;
- (c) any defects, omissions, faults or other instances of non-compliance with the Subcontract, which are notified in writing by the Principal to the Subcontractor during the defects liability period set out in the Subcontract, must be rectified by the Subcontractor, at no cost to the Principal, within the time stipulated by the Principal or, if no time is stipulated, then promptly; and
- (d) nothing in this Deed Poll is intended to render, or has the effect of rendering, the Principal in any way liable to the Subcontractor.

3. General

- (a) This Deed Poll is governed by and must be construed according to the laws of Victoria and the Subcontractor irrevocably submits to the non-exclusive jurisdiction of the courts of that State.
- (b) The Principal may assign, or transfer any of its rights or obligations under this Deed Poll without the prior consent of the Subcontractor. The Subcontractor must not assign or transfer any of its rights or obligations under this Deed Poll without the prior consent of the Principal.

EXECUTED as a **Deed Poll** by:

--	--	--

[INSERT APPROPRIATE SIGNING BLOCK FOR SUBCONTRACTOR]

Schedule 15– Initial Program and Milestones

Item	Milestones	Date
1	[To be inserted]	[Insert]
2	[To be inserted]	[Insert]
3	[To be inserted]	[Insert]
4	Date for Completion	[Insert]
5	[To be inserted]	[Insert]

Schedule 16 – Payment Claim

To: **Superintendent**

Superintendent's email address: **[INSERT]**

This is a payment claim under clause 37.1 of the Major Works Contract.

Project Name: **[INSERT]**

Project Number: **[INSERT]**

Name (including ABN) of Contractor: **[INSERT]**

Contractor's email address: **[INSERT]**

Contractor's Representative phone number: **[INSERT]**

Payment claim number (if any): **[INSERT]**

Payment claim period: **[INSERT]**

Payment claim date: **[INSERT]**

Total Claim Amount (if any) (including GST): **[\$[INSERT]]**

General description of the WUC to which the payment claim relates:

[INSERT]

1. This payment claim is for the following amounts (if any) claimed for the period described above on account of:

(a) the Contract Sum	[\$[INSERT]]
(b) all other amounts then payable by the Principal to the Contractor under the Contract	[\$[INSERT]]
(c) GST	[\$[INSERT]]
Total Claim Amount (including GST)	[\$[INSERT]]
Total Amount Previously Certified	[\$[INSERT]]

2. The following are adjustments to the Contract Sum (if any) arising out of or in connection with the Contract:

[INSERT]

3. The following are adjustments to the Contract Sum (if any) arising out of or in connection with the Contract:

[INSERT]

The WUC to which this payment claim relates, together with all other details, calculations, supporting documentation and other information in respect of the Total Claim Amount (including details of any GST) is/are set out in the Particulars to this payment claim.

Signature:		Date:	<i>[INSERT]</i>
Full name:	<i>[INSERT]</i>	Title:	Contractor's Representative

PARTICULARS

Project Name: *[INSERT]*

Project Number: *[INSERT]*

Payment claim number: *[INSERT]*

The WUC to which this payment claim relates, together with all other details, calculations, supporting documentation and other information in respect of the amounts claimed (including details of any GST) is/are set out below or attached as follows:

CONTRACT SUM

[INSERT]

ALL OTHER AMOUNTS THEN PAYABLE BY THE PRINCIPAL TO THE CONTRACTOR UNDER THE CONTRACT

[INSERT]

[NOTE: THE VALUE OF ANY ITEMS OF UNFIXED MATERIALS AND GOODS AND THE DETAILS OF THOSE ITEMS MUST BE SEPARATELY IDENTIFIED]

Schedule 17 – Statutory Declaration

Project Name: [insert project name]

Project Number: [insert project number]

To: [insert name] (ACN [insert ACN]) of [insert address] ("Principal")
and

[insert name] (ACN [insert ACN]) of [insert address] ("Superintendent")

From: [insert name] (ACN [insert ACN]) of [insert address] ("Contractor")

In the matter of: the contract for the construction of the [insert description of the project] entered into between the Principal and the Contractor dated [insert date of Contract] ("Contract")

Period covered by this payment claim: from: _____ to: _____ ("Payment Period")

I, [insert name] of [insert address], [insert occupation], do solemnly and sincerely declare as follows:

1. I am an employee duly authorised to make this statutory declaration on behalf of the Contractor;
2. all employees who are, or have been, engaged by the Contractor in connection with the Contract have been paid their full remuneration for work done during the Payment Period including any superannuation or redundancy payments (if applicable) and in accordance with any applicable award or industrial agreement;
3. subject to clause 4(d), all consultants, suppliers and subcontractors who are, or have been, engaged by the Contractor in connection with the Contract have been paid in full all amounts that have become payable to them under the terms of their agreement with the Contractor during the Payment Period;
4. as at the end of the Payment Period:
 - (a) the total amount payable by the Contractor to all subcontractors in respect of work under the Contract is: \$ _____
 - (b) the amount paid by the Contractor to all subcontractors in respect of work under the Contract is: \$ _____
 - (c) the amount claimed by all subcontractors in respect of work under the Contract which is disputed by the Contractor as being due and payable is: \$ _____
 - (d) the amount referred to in paragraph 4(c) of this statutory declaration is disputed as, at the date of this statutory declaration, on the following grounds:

[insert grounds for dispute]

And I acknowledge that this declaration is true and correct, and I make it in the belief that a person making a false declaration is liable to the penalties for perjury.

Declared at this day of 20 Before me:	Signed
An Australian lawyer within the meaning of the <i>Legal Profession Act 2004</i> (Victoria)	Name of Declarant

Name and contact address or telephone number of
witness

And I declare that the contents of this declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Declared at:			
this:		day of:	20
Signature of person making this declaration: [to be signed in front of an authorised statutory declaration witness]			
I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration: [Signature of authorised witness]			
Full name, personal or professional address and qualification as an authorised statutory declaration witness in legible writing, typing or stamp. A person authorised under section 30(2) of the <i>Oaths and Affirmations Act 2018</i> to witness the signing of a statutory declaration.			

Schedule 18 – Consultant's Statement

TO: (“Principal”)

RE: [insert] (“Project”) pursuant to the Consultancy Services Agreement dated [] between the Principal and us (“Agreement”)

Building Work to: [insert date]

We confirm that in our professional opinion the works executed applicable to the Services under and as defined in the Agreement in respect of the Project, as inspected by us from time to time up to the date of this statement, for which we have provided the design documentation to the above date, comply, to the best of our knowledge, after due inquiry, except as noted below, with the requirements of the design intent under the Agreement, subject to any variations or other changes directed or authorised under the Agreement.

Capitalised terms not defined in this statement have the meaning given in the Agreement.

In particular we have reviewed the following:

- the progress of the additional design documentation and its compliance with the Brief and the progress of design documentation against the design Program and make the following comments:

[## insert list of defects/departures]
- the quality of the work under the building contract undertaken to date and make the following comments in relation to its compliance with the design intent:

[## insert list of defects/departures]
- the conformity of the work under the building contract undertaken to date with the Brief and any additional drawings and specifications produced to date, and make the following comments in relation to its compliance with the design intent:

[## insert list of defects/departures]
- [## insert list any other matter, fact circumstance or thing which should reasonably be brought to the attention of the Principal].

Further, in our professional opinion the Services under the Agreement are in compliance with the quality plan of the Consultant agreed under the Agreement.

.....
Signed for and on behalf of [## insert name of Consultant]:

.....
(## name of Consultant)

...../...../.....
(Date of this Statement)

[Insert details]

Schedule 19 – Deed of Release

Project Name: [insert project name]

Project Number: [insert project number]

This **DEED POLL** is made on _____ day of _____ 20__

By [insert name] (ACN [insert ACN]) of [insert address]

("Contractor")

BACKGROUND

- A. The Principal has engaged the Contractor under the contract described in Item 2 of the Schedule ("**Major Works Contract**") to carry out certain activities.
- B. The Major Works Contract requires that the Contractor must provide this Deed of Release as a condition precedent to Administrative Completion and submitting the Final Payment Claim.

IT IS AGREED

1. Defined terms

A word or phrase defined in the Contract has the same meaning in this Deed Poll.

The interpretation provisions of clause 1 of the Major Works Contract apply as if they were part of this Deed Poll.

2. Release

The Contractor covenants, warrants and agrees that:

- (a) upon the provision of:
 - (i) the Certificate of Completion; or
 - (ii) the Conditional Certificate of Completion; and
- (b) upon the release of the remainder of Security held by the Principal,

other than the Claims set out in Exhibit 1 to this Deed Poll (Excluded Claims) the Contractor releases, unconditionally waives and forever discharges the Principal and the Superintendent from all Claims, whether known or unknown, which the Contractor has now, may have at any time in the future, or could or might have had against the Principal arising out of, or in any way connected with, the Contract or the Works.

3. Indemnity

The Contractor agrees that, other than in relation to the Excluded Claims, it will indemnify and hold harmless the Principal and the Superintendent (and their officers, servants and agents) against all Claims, whether known or unknown, which the Contractor has now, may have at any time in the future, or could or might have had against the Principal arising out of, or in any way connected with, the Contract or the Major Works.

4. Acknowledgement

The Contractor acknowledges and agrees that:

- (a) the provision of this Deed Poll and the issue of a certificate of Completion or Conditional Certificate of Completion and the return of Security will not in any way constitute

acceptance of defective or improper materials or workmanship under the Major Works Contract;

- (a) this Deed Poll may be pleaded as a full and complete defence by the Principal to any Claim (other than an Excluded Claim) commenced by or on behalf of the Contractor in connection with any of the matters referred to in this Deed Poll; and
- (b) this Deed Poll does not release the Contractor from any of its obligations under the Major Works Contract nor does it restrict any of the rights of the Principal.

EXECUTED as a **Deed Poll** by:

[INSERT APPROPRIATE SIGNING BLOCK FOR CONTRACTOR]

Exhibit 1 - Excluded Claims

#	Clause Ref	Description	Basis of the Claim	Amount
1.				[\$insert]
2.				[\$insert]

Schedule

Item 1	Principal:	[INSERT NAME AND ABN OF PRINCIPAL]
Item 2	Major Works Contract:	[Design and Construct/Construct Only/Renewal Works/Equipment Supply/Material Supply] dated [insert]

Schedule 20 – Expert Determination Agreement

Agreement made at _____ on _____

Parties [INSERT NAME, ABN AND ADDRESS OF PRINCIPAL] ("Principal")

The person named in Item 1 of the Schedule ("Contractor")

The person named in Item 2 of the Schedule ("Expert")

Recitals

- A. The Principal and the Contractor have entered into the Contract described in Item 3 of the Schedule ("**Contract**").
- B. The Expert has been appointed by the Principal and the Contractor to determine disputes or differences by the procedure described in clause 43.5 of the Contract.

Operative

1. Interpretation

Words and phrases used in this Agreement, unless the contrary intention appears or they are otherwise defined in this Agreement, have the meaning attributed to those words and phrases in the Contract.

2. Decide on Disputes

The Expert must:

- (a) determine disputes or differences referred to him or her in accordance with the procedures set out in the Contract; and
- (b) in discharging his or her obligations under this Agreement, abide and be bound by the provisions of the Contract.

3. Confirmation that can Act

The Expert must, within 10 *Business Days* after receiving a request by one or both parties for advice as to whether he or she is able to conduct the determination, advise the Superintendent and both parties whether he or she is available to conduct the determination.

4. Meeting

If the Expert advises that he or she can conduct the determination, the Expert must meet with the parties to determine a procedure to resolve the dispute or difference.

5. The Expert Released

The Expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud and the parties release and indemnify the Expert from and against any claims arising out of or in any way connected with the expert determination process, except in the case of fraud.

6. Expert's Powers

The Expert must in discharging his or her obligations under this Agreement:

- (a) act as an expert and not as an arbitrator;

- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

Notwithstanding anything else, to the extent permissible by law, this Agreement expressly provides that the Expert does not have the power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this express provision, have applied to any dispute referred to expert determination pursuant to this Agreement.

7. Meet with Parties

The Expert may, if he or she so desires, require as a part of the procedure to be determined under clause 4 to further meet with parties to discuss the dispute or difference and at and in connection with any such meeting:

- (a) neither party may be accompanied by their legal representative; and
- (b) the parties agree to be bound by such procedural directions as may be given by the Expert both in preparation for and during the course of the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

8. Decision Binding

Subject to clause 43.5(h)(iii) of the Contract, the Expert's determination is final and binding.

9. Remuneration

In consideration of the Expert performing his or her obligations under this Agreement, the Contractor and the Principal will each pay the Expert one-half of the Expert's Costs set out in Item 4 of the Schedule or such other amount as is agreed between all parties to this Agreement.

10. Confidentiality

The Expert must not at any time, whether before or after the expiration or sooner determination of this Agreement, without the consent of the Principal and the Contractor divulge or suffer or permit his or her servants, consultants or agents to divulge to any person:

- (a) any details concerning the subject matter of any dispute or difference referred to the Expert under this Agreement;
- (b) any of the contents of the Contract or this Agreement or any other agreements collateral or supplemental thereto or any of the commercial bases thereof or any information relating to the negotiations concerning the same; or
- (c) any information which may have come to the Expert's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Principal and the Contractor as contemplated by the Contract.

11. Nature of Expert's Role

- (a) The Expert:
 - (i) is to be independent from the Principal and the Contractor;
 - (ii) warrants that it has disclosed to the parties all matters (if applicable) set out in clause 43.5(f) of the Contract;

- (iii) without limiting subparagraph (ii), warrants that he or she has no conflict of interest in acting under this Agreement; and
 - (iv) must not communicate with one party to the determination without the knowledge of the other.
- (b) Nothing in this Agreement will be deemed to make the Expert an agent, employee or partner of the Contractor or the Principal.
- (c) The Expert must assume full responsibility and liability for the payment of all taxes due on moneys received by him or her under this Agreement.
- (d) The Contractor and the Principal must not make any deductions for taxes, insurance or other benefits from any moneys paid to the Expert under this Agreement.

12. Termination

- (e) This Agreement may be terminated by either the Principal or the Contractor by giving the other parties 10 *Business Days*' written notice in any of the following events:
 - (i) the Expert being declared of unsound mind or mentally ill;
 - (ii) the Expert being declared bankrupt;
 - (iii) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Contractor or the Principal or the Contractor's Activities;
 - (iv) the Expert failing to observe and fulfil any of the substantive terms of this Agreement; or
 - (v) the Expert being prevented by prolonged illness or incapacity from performing his or her obligations under this Agreement.
- (f) This Agreement may be terminated by the Expert giving the Principal and the Contractor 60 days' written notice of his or her intention to terminate.

13. Notices

Any notice to be given to the Expert under or arising out of a provision of this Agreement must:

- (a) be in writing;
- (b) be delivered by hand or sent by prepaid post to the relevant address:
 - (i) stated in Item 5 of the Schedule; or
 - (ii) last notified in writing to the party giving or serving the notice, by the Expert; and
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice.

14. Governing Law

This Agreement is to be construed for all purposes in accordance with the laws applying to the Contract.

Schedule

Item 1:	Contractor	
Item 2:	Expert	
Item 3:	Details of Contract (Recital A)	
Item 4:	Expert's Costs (Clause 9)	
Item 5:	Expert's Address (Clause 13)	

EXECUTED as an agreement

Executed by [***INSERT NAME and ABN OF PRINCIPAL***] by its authorised officer in the presence of:

Signature of authorised officer

Name of authorised officer in full

Signature of witness

Name of witness in full

[INSERT APPROPRIATE SIGNING BLOCKS FOR CONTRACTOR AND EXPERT]

Schedule 21– Local Jobs First

Local Jobs First Policy Schedules

1. The Local Industry Development Plan is at **Attachment 1** to this Schedule 21.
2. The Local Industry Development Plan Monitoring Table is at **Attachment 2** to this Schedule 21.

Attachment 1 to Schedule 21 – Local Industry Development Plan

[Insert the LIDP as Attachment 1 here]

Attachment 2 to Schedule 21 – LIDP Monitoring Table

[Insert the Monitoring Table from the LIDP]

Schedule 22 – Social Procurement

Social Procurement Commitment Schedule

[Insert the version of the Social Procurement Commitment Schedule relevant to the Alternative selected at Item 28 of the Contract Particulars.]

Clause 44A – Alternative 1 – Social Procurement Framework (without Building Equality Policy)

[Insert Social Procurement Commitment Schedule]

Clause 44A – Alternative 2 – Social Procurement Framework with Building Equality Policy

[Insert Social Procurement Commitment Schedule, including Building Equality Policy Commitments]

[Insert Attachment A to Social Procurement Commitment Schedule – Organisation Wide Gender Equality Actions Plan]

[Insert Attachment B to Social Procurement Commitment Schedule – Project Specific Gender Equality Actions Plan]

Clause 44A – Alternative 3 – Building Equality Policy only

[Insert Social Procurement Commitment Schedule, including Building Equality Policy Commitments]

[Insert Attachment A to Social Procurement Commitment Schedule – Organisation Wide Gender Equality Actions Plan]

[Insert Attachment B to Social Procurement Commitment Schedule – Project Specific Gender Equality Actions Plan]

Social Procurement Framework Statutory Declaration

Statutory Declaration

Insert the name, address and occupation (or alternatively, unemployed or retired or child) of person making the statutory declaration.

I,
make the following statutory declaration under the **Oaths and Affirmations Act 2018**:

Set out matter declared to in numbered paragraphs. Add numbers as necessary.

1. I am a Director of *[insert name of Recipient]* (**Contractor**).
2. The contents of the report provided by the Contractor to the Principal (in accordance with clause 44A.3(e) of Schedule 2 to the Contract) are true and correct.
3. *[insert other matters]*

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Signature of person making the declaration

Place (City, town or suburb)

Declared at

***in the state of Victoria**

Date

on

Signature of authorised statutory declaration witness

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

Date

on

Name, capacity in which authorised person has authority to witness statutory declaration, and address (writing, typing or stamp)

A person authorised under section 30(2) of the **Oaths and Affirmations Act 2018** to witness the signing of a statutory declaration.

The Statutory Declaration Witness and the person making this statutory declaration must sign or initial this page

Declarant: Witness:

Certificate Identifying Exhibit

This certificate is used to identify a document as an exhibit to the statutory declaration.

Title of document:

Date of document (dd/mm/yyyy):

The attached document is an exhibit to the statutory declaration and is now produced and shown to the witness identified above in their capacity as a qualified statutory declaration witness.

Name of person making the statutory
declaration:

*Signature of person making
declaration*

☐

Date (dd/mm/yyyy)

on

Name of witness:

Address

of

*Signature of statutory declaration
witness*

☐

Date (dd/mm/yyyy)

on

Qualification as a statutory
declaration witness:

(writing, typing or stamp)

**The Statutory Declaration Witness and the person making
this statutory declaration must sign or initial this page**

Declarant: Witness:

Schedule 23 – Contractor Performance Reporting

[Insert Supplier Performance Shared Reporting Template]

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