
FORMAL INSTRUMENT OF AGREEMENT CONSTRUCTION CONTRACT

River Park Lifestyle Village Display Unit – Unit 32

MG GROUP PROJECT MANAGEMENT PTY LTD

(Principal)

and

ALDER CONSTRUCTIONS PTY LTD

(Contractor)

Contractor's Licence No: 1066730

THIS AGREEMENT dated

2018

PARTIES **MG Group Project Management Pty Ltd ACN 668 762 776** of 2172 Gold Coast Highway, Miami, QLD, 4220

(Principal)

Alder Constructions Pty Ltd CAN 106 657 470 of 116 Siganto Drive, Helensvale, QLD, 4212

(Contractor)

RECITALS

- A. The Principal wishes to engage the Contractor to execute and complete Works in accordance with the Contract.
- B. The Contractor has inspected and carefully examined in detail the Site including all improvements on it, and accepts its condition and physical qualities and characteristics for the purposes of executing and completing the Works in accordance with this Contract.
- C. The Contractor has examined in detail the documents set out in this Contract and has satisfied itself that the Works can be constructed in accordance with this Contract.
- D. The Contractor acknowledges that the Principal has relied upon the representation and Recitals B and C in entering into this Contract.
- E. The Contractor agrees to its engagement on the terms set out in the Contract.

OPERATIVE PROVISIONS

1. Preliminary Matters

- 1.1 The Contract Sum is a Lump Sum of \$249,175.40 excluding GST.
- 1.2 Exclusion of QBCC Act provisions

Section 67K of the QBCC Act provides that a 'building contract' is subject to a condition that, before Practical Completion of the building work is reached, the total value of:

- (a) all retention amounts that have been withheld by the Principal; and
- (b) all securities held by the Principal,

must not exceed 5% of the contract price for the Contract.

- 1.3 The parties expressly agree, by initialling this document in the space below, that the Contract is not subject to the condition imposed by section 67K of the QBCC Act as outlined and explained in this clause 1.3.

.....
Principal's initials

.....
Contractor's initials

2. Warranties by Contractor

- 2.1 The Contractor warrants that it has the capacity to enter into this Contract and that it has the skill, technology, human and financial resources necessary to perform its obligations.
- 2.2 The Contractor warrants that:
- 2.2.1 it is registered with an Australian Business Number (ABN) for taxation purposes;
 - 2.2.2 the ABN shown in the Annexure Part A is correct; and
 - 2.2.3 it will advise the Principal promptly if its registration status changes.
- 2.3 The Contractor warrants as follows:
- 2.3.1 all activities of the Contractor under the Contract, including the work under the Contract, will be performed in a proper and workmanlike manner and in accordance with the Contract;
 - 2.3.2 all material supplied by it will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Contract, those materials will be new;
 - 2.3.3 all activities of the Contractor under the Contract, including the work under the Contract, will be done in accordance with, and will comply with, all legislative requirements;
 - 2.3.4 activities of the Contractor under the Contract, including the work under the Contract, will be done with due diligence and within the time stipulated in the Contract or if no time is stipulated, within a reasonable time; and
 - 2.3.5 the Works and any materials used in doing the Works will be reasonably fit for the specified purpose or result.
3. The Contractor must carry out and complete the Works in accordance with this Contract.
4. Subject to the terms of this Contract and due and proper performance of the Works by the Contractor, the Principal must pay the Contractor the Contract Sum in accordance with the Contract.
5. The parties agree and acknowledge that:
- 5.1 the General Conditions of Contract are amended as set out in Annexure Part B; and

- 5.2 a copy of the General Conditions of Contract, marked-up to identify deletions, additions and amendments made, has been made available to them prior to execution of this Formal Instrument of Agreement.
6. The documents forming the Contract are:
- 6.1 this Formal Instrument of Agreement;
 - 6.2 General Conditions of Contract AS2124-1992, as amended;
 - 6.3 Annexure Part A to the General Conditions of Contract;
 - 6.4 Annexure Parts B to S to the General Conditions of Contract (excluding Annexure Part N);
 - 6.5 the drawings, specifications, reports and other documents listed in the Annexure to this Formal Instrument of Agreement; and
 - 6.6 Annexure Part N to the General Conditions of Contract,
- together being the **Contract Documents**. To the extent that there are any inconsistencies or discrepancies between the Contract Documents, the former in the above list must have precedence over the latter.
8. The Contractor agrees that any work in connection with the construction of the Works carried out by the Contractor prior to the date of the Contract including any early works in accordance with the terms of an early contractor involvement agreement entered into by the Contractor and the Principal, is governed by the provisions of the Contract and constitutes the work under the Contract.
9. The Contract may not be modified except in writing executed by both parties. None of the terms or conditions of the Contract shall be waived, discharged (except by performance) or released either at law or in equity except with the prior written consent of the party having the benefit of such term.
10. The Contract represents the entire agreement between the parties in respect of the Works and supersedes all other agreements concerning its subject matter. The parties agree that in entering into the Contract, no representation, warranty or thing induced the execution of this Agreement other than as expressly set out in the Contract, nor shall any representation, warranty or thing be inferred, incorporated or implied into the Contract. The Contract shall have effect according to its expressed terms.

Executed by **MG Group Project Management**)
Pty Ltd of 2172 Gold Coast highway, Miami)
 QLD 4220 (ACN: **668 762 776**) in accordance)
 with section 127 of the *Corporations Act 2001*
 (Cth):

.....
 Director

.....
 Director/Secretary

.....
(Print) Full Name

.....
(Print) Full Name

Executed by **Alder Constructions Pty Ltd** of)
116 Siganto Drive, Helensvale, QLD, 4212)
(ACN 106 657 470) in accordance with section)
127 of the *Corporations Act 2001* (Cth):

.....
Director

.....
Director/Secretary

.....
(Print) Full Name

.....
(Print) Full Name

AS 2124-1992
with
AS 2125-1992
AS 2127-1992
(Incorporating Amendment No. 1)

Australian Standard™

General conditions of contract (AS 2124-1992)

together with

**General conditions of tendering and form of
tender (AS 2125-1992)**

**Form of formal instrument of agreement
(AS 2127-1992)**

Based upon or amended from
AS 2124-1992 General conditions of
contract.

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S t a n d a r d s A u s t r a l i a

This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 24 December 1992 and published on 31 December 1992.

The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry
Australian Electrical and Electronic Manufacturers Association
Australian Federation of Construction Contractors
Australian Institute of Project Management
Australian Institute of Purchasing and Supply Management
Australian Institute of Quantity Surveyors
Australian Mining Industry Council
Austroads
Construction Industry Engineering Services Group
Electricity Supply Association of Australia
Institution of Engineers Australia
Law Council of Australia
Master Builders Construction and Housing Association of Australia
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Royal Australian Institute of Architects
The Association of Consulting Engineers Australia

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AS 2124-1992
with
AS 2125-1992
AS 2127-1992
(Incorporating Amendment No. 1)

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PREFACE

These editions of AS 2124, AS 2125 and AS 2127 (bound together) were prepared by the Standards Australia Committee on General Conditions of Contract. While these are the latest editions, the 1986 editions remain as current Standards, the 1981 editions remain as available superseded Standards and the 1978 editions are withdrawn.

This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure, or part thereof affected.

In the preparation of this edition of AS 2124, recommendations contained in the report by the National Public Works Conference/National Building and Construction Council Joint Working Party publication **NO DISPUTE** (May 1990) have been taken into account.

Clauses prefixed by an asterisk are optional, and may be omitted in the Contract as necessary, without making consequential amendments; but such omission should be clearly shown on the face of the Contract by striking out these clauses or indicating clearly elsewhere that they are *not to apply*.

The attention of users of this Standard is drawn to the separate document Doc 2124N, *Notes on changes in the General Conditions of Contract 4th edition (AS 2124-1992) as compared with the 3rd edition (AS 2124-1986)* which indicates the changes of major importance which have been made in the 1992 edition.

WARNING: Users of this Australian Standard are warned that Clause 17 (damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the Works).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

WARNING

Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard
General conditions of contract

1 CONSTRUCTION OF CONTRACT

The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law of the State or Territory stated in the Annexure.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in the Annexure.

Communications between the Principal, the Principal's Representative, Independent Certifier and the Contractor must be in the English language.

Measurements of physical quantities must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*, as amended from time to time.

Where provisions in the General Conditions of Contract are expressed to be alternatives and the Contract fails to state which alternative applies, the first alternative shall apply.

2 DEFINITION AND INTERPRETATION**2.1 Definitions**

In the Contract, except where the context otherwise requires—

'**Additional Obligation Documents**' has the meaning given in Clause 3.10;

'**Approvals**' means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the commencement, carrying out, use and occupation of the Works which may be imposed on the Works by any Authority, or the Principal including any modification of them except for the following—

- (a) the Development Approval and any modifications to the Development Approval;
- (b) any application lodged by or on behalf of the Principal prior to the Execution Date; and
- (c) where the Contract otherwise expressly provides that the Principal is required to obtain any such approvals, consents, certificates, permits, endorsements, licences, conditions or requirements;

'**Associates**' means as the context indicates—

- (a) in relation to the Principal, officers, employees, agents, contractors and subcontractors of the Principal (except for the Contractor) licensee, consultant, invitee, client or customer and persons for whom the Principal is otherwise responsible or vicariously liable in relation to the Contractor excluding Other Contractors; and
- (b) in relation to the Contractor, officers, employees, agents, contractors and subcontractors (including any secondary subcontractor), licensee, consultant, invitee, client or customer of the Contractor and persons for whom the Contractor is otherwise responsible or vicariously liable in relation to the Principal excluding Other Contractors;

‘Authority’ means all Commonwealth, state, territorial and local government (including semi-government) departments, bodies, municipalities, instrumentalities and public, statutory and other authorities having jurisdiction over work under the Contract or any part of the Works and includes any private building surveyor, court or tribunal;

‘Bank Bill’ means a bill of exchange under the Bills of Exchange Act 1909 which has been accepted by any bank authorised under a law of the Commonwealth or any State to carry on banking business;

‘Bank Bill Rate’ is, for the relevant period—

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average mid rate on the Reuters Monitor System Page “BBSY” (or any page that replaces that page) at about 10:30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if no average mid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the Contractor and the Principal for Bank Bills having a tenor as described above;

‘Best Practice’ means using work practices which meet and exceed the standard of Good Design and Construction Practices such that the materials used (including the appearance, structural stability, composition, durability, suitability of those materials), technology utilised and methods and techniques adopted in carrying out the Works are of a standard acknowledged in the relevant trade to be the best practices or highest standard in the trade;

‘Bill of Quantities or Schedule of Rates’ means a document named therein as a Bill of Quantities or Schedule of Rates (as the case may be) issued to the Contractor (whether as part of the tender or otherwise) by or on behalf of the Principal, and completed by the Contractor, which may include estimated quantities of work to be carried out and the Contractor’s rates or prices;

‘Buildability’ means the ability to construct the Work in accordance with and as shown and described in the Drawings and perform all the obligations of the Contractor as set out in this Contract, including complying with all requirements of the Specifications to the standard required by this Contract, and if no standard is specifically stated, then in accordance with Best Practice;

‘Business Day’ means a day which is not—

- (a) a Saturday or Sunday;
- (b) a public holiday in the State of Queensland; or
- (c) 27, 28, 29, 30 or 31 December;

‘Business Hours’ means between the hours of 9am and 5pm on a Business Day;

‘Confidential Information’ means—

- (a) the Specification and Principal's materials to the extent that they are not standard industry documents; and
- (b) all information which is given to or obtained or learned by the Contractor, or developed by the Contractor for the purposes of the Work under the Contract, including information about the Principal's business, operations, customers, products, marketing strategies and future development plans;

‘Certificate of Practical Completion’ means the certificate referred to in Clause 42.5;

‘Certificate of Substantial Completion’ has the meaning in Clause 37;

‘Claim’ includes any claim, action, demand or proceeding including for an increase in the Contract Sum, including for any variation, latent condition or for payment of money (including damages) or for an extension of time, delay, disruption, acceleration or other time based claim or for any other cost, loss, expense or damage;

- (a) under, arising out of, or in any way in connection with, the Contract;
- (b) arising out of, or in any way in connection with, any task, thing or relationship connected with the work under the Contract or either party's conduct prior to Execution Date; or
- (c) otherwise at law or in equity, including:
 - (i) under statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment;

'Claim Precondition' means any condition or occurrence of any event that is a precondition to the date on which a payment claim (including the Final Payment Claim) may be made, including:

- (a) the Contractor has given to the Principal a Deed of Guarantee if required by Clause 5.10;
- (b) the Contractor has fully complied with its obligations to provide security under Clause 5;
- (c) the Contractor has provided satisfactory evidence of compliance with its insurance obligations in accordance with Clause 21.1;
- (d) the Contractor has submitted the Contractor's Statement in support of its payment claim in accordance with Clause 42.1; and
- (e) any other requirements set out in the Contract, that are stated to be a precondition to the date on which a payment claim may be made under the Contract, having been met;

'Construction Management Plan' means the document identified in Annexure Part N;

'Constructional Plant' means appliances and things used in the execution of the work under the Contract but not forming part of the Works;

'Construction Program' means a program in a graphic and written form acceptable to the Independent Certifier together with or incorporating a schedule showing—

- (a) the activities related to the work under the Contract;
- (b) the sequence of activities related to the work under the Contract;
- (c) for each activity, all links with and dependencies on precedent, subsequent and concurrent activities and any interrelationships between activities related to the work under the Contract and the Works;
- (d) the critical path of activities related to the work under the Contract and the Works;
- (e) completion of the Works on or before the Date for Practical Completion;
- (f) the dates by which or the times within which:
 - (i) key decisions are to be made; and
 - (ii) information is to be provided;
- (g) the dates by which the various stages or parts of the work under the Contract are to be executed or completed; and
- (h) any other information which the Contract requires be included in the Contractor's Program;

'Contamination' means—

- (a) any waste, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste, asbestos, acid sulphate soils or special waste or any constituent of any such substance or waste in any water, soil or in the air;
- (b) the presence of a solid, liquid, gas or odour or substance or property of any substance, which:

- (i) makes, or has the potential to make, the Site (or any part of it, including groundwater) unsafe, unfit or harmful for habitation or occupation by any person;
 - (ii) causes, or has the potential to cause, damage to the Site (or any part of it);
 - (iii) causes, or has the potential to present, a risk to the environment or any environmental value; or
 - (iv) does not satisfy any Legislative Requirements in relation to the environment or any criteria or standards published or adopted by any relevant Authority having powers, duties or responsibility in relation to the environment; and
- (f) without limiting subclauses (a) or (b), any 'pollution' as defined in the *Environmental Protection Act 1994* (Qld);

'Contract' means the agreement between the Principal and the Contractor evidenced by the Formal Instrument of Agreement;

'Contract Documents' means the documents which constitute the Contract as specified in Annexure Part A;

'Contract Sum' means the fixed lump sum amount, including provisional sums, specified in Annexure Part A, as adjusted in accordance with the Contract;

'Contractor' means the person bound to execute the work under the Contract and named in Annexure Part A;

'Contractor Warranty Deed' is a Deed of Warranty for the Works from the Contractor in the form of Annexure Part J or otherwise in a form approved by the Principal's Representative, acting reasonably;

'Contractor's Representative' means the person appointed by the Contractor under Clause 25;

'Contractor's Statement' means a statement in the form set out in Annexure Part D;

'corporation' has the same meaning as in the Corporations Act;

'Corporations Act' means the *Corporations Act 2001* (Cth);

'Date of Acceptance of Tender' means the date which appears on the notice in writing of acceptance of the tender;

'Date for Practical Completion' the date specified in Annexure Part A, but if an extension of time for Practical Completion is granted by the Independent Certifier or is determined in any dispute resolution process, it means the date resulting from that extension of time;

'Date of Practical Completion' means—

- (a) the date identified by the Independent Certifier in a Certificate of Practical Completion issued pursuant to Clause 42.5, to be the date upon which Practical Completion was reached; or
- (b) where another date is determined in any dispute resolution process as the date upon which Practical Completion was reached, that other date;

'Date for Substantial Completion' means the date one month after the Date of Practical Completion;

'day' means calendar day;

'Daywork' means work referred to in Clause 41;

'Deed of Guarantee and Indemnity' means the deed of guarantee and indemnity in the form set out in Annexure Part C;

‘Deed of Novation’ means the deed of novation in the form set out in Annexure Part H or other form required by the Principal;

‘Deed of Release’ means the deed of release in the form set out in Annexure Part J;

‘Defects’ means any defect, shrinkage, fault, non-conformance or omission in the work under the Contract including any aspect of the Works which is not in accordance with the Contract;

‘Defects Liability Period’ means the period or periods referred to in Clause 37;

‘Development Agreement’ means the agreement, to which the Principal, MEDQ, the Investor and others are parties;

‘Development Approval’ means the approval of development application DEV2014/562 including all conditions and any modification of such consent;

‘direction’ includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

‘Dispute Resolution Executives’ means the representatives of the parties named in Annexure Part A or their nominated replacements;

‘Drawings’ means the drawings referred to in the Contract and any modification of such drawings notified to the Contractor by the Independent Certifier and Principal’s Representative and includes such other drawings as may from time to time be supplied to the Contractor by the Independent Certifier and Principal’s Representative, or the use of which has been permitted by the Independent Certifier and Principal’s Representative, for the purposes of the Contract;

‘Entitlement’ means any Claim which may be made by the Contractor, including an entitlement to—

- (a) an extension of time;
 - (b) a declaration to the effect that time is at large;
 - (c) any adjustment to the Contract Sum; or
 - (d) recovery of any loss, damage or expense of any kind arising,
- including any claim for quantum meruit;

‘Environmental Harm’ has the meaning given to it in the *Environmental Protection Act 1994* (Qld);

‘Excepted Risks’ means—

- (a) any negligent act or negligent omission of the Principal, the Independent Certifier or the employees, consultants or agents of the Principal but excluding any act or omission of the Independent Certifier, the Principal or its agents, employees or other contractors (not being employed by the Contractor) for which the Contractor expressly takes the risk under this Contract, including all risk in the early works (including as stated in the Formal Instrument of Agreement);
- (b) war, invasion, act 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 public authority;
- (c) 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 the Contractor’s Consultants, subcontractors, employees or agents; and
- (d) use or occupation of any part of the work under the Contract by:
 - (i) the Principal or any Related Entity of the Principal; or

(ii) the employees and agents of the Principal,
but only in relation to that part at the work under the Contract that has been occupied or used
and then only as to loss and damage occasioned directly as a result of that use or occupation,
but excluding any risk causing 'eligible terrorism loss' to which the *Terrorism Insurance Act 2003*
(Cth) applies;

'Execution Date' means the date on which the Formal Instrument of Agreement is executed by the Principal;

'Existing Assets' means existing buildings, structures, plant, infrastructure, facilities, roads, accesses and services, whether owned or controlled by the Principal or others, including Separable Portions that have achieved Practical Completion and been handed back to the Principal or any other work under the Contract handed back to the Principal;

'Final Certificate' means a certificate issued by the Independent Certifier to the Principal and to the Contractor pursuant to Clause 42.6;

'Final Payment Claim' means the final payment claim referred to in Clause 42.5;

'Formal Instrument of Agreement' means the agreement between the parties to which these General Conditions of Contract are attached;

'GST' has the same meaning as in the GST Act and includes any replacement or subsequent similar tax;

'Holding Company' has the meaning given in section 9 of the Corporations Act;

'Independent Certifier' means the person named in Annexure Part A as the Independent Certifier or other person from time to time appointed in writing by the Principal to be the Independent Certifier and notified as such in writing to the Contractor by the Principal;

'Independent Certifier Representative' means a person appointed by the Independent Certifier under Clause 24;

'Indigenous Participation Plan' means the indigenous participation plan set out in Annexure Part R;

'Information Documents' means—

- (a) all information, data, test results, sample reports (including reports of geotechnical or other investigations) or documents provided to the Contractor by the Principal, the Independent Certifier or the Principal's Representative which are expressly stated to be "Information Documents" or which do not form part of the Contract; and
- (b) any other information, data or document which is referred to or incorporated by reference in the information, data or documents referred to in Clause (a) above;

'Insolvency Event' means—

- (a) the board of the relevant party passes a resolution under section 436A of the Corporations Act;
- (b) the relevant party is placed into administration under Part 5.3A of the Corporations Act;
- (c) a deed of arrangement is entered into in respect of the relevant party;
- (d) an application is made to a court for the winding up of the relevant party which is not stayed, withdrawn or otherwise disposed of within 10 Business Days of when the application is served on the party concerned;
- (e) the relevant party resolves that it be wound up voluntarily;

- (f) a winding up order is made in respect of the relevant party;
- (g) a receiver or receiver and manager is appointed to the relevant party;
- (h) a court orders that there be a meeting of creditors or members of the relevant party for any purpose related to Part 5.1 of the Corporations Act;
- (i) a mortgagee takes possession of any assets of the relevant party;
- (j) the relevant party informs the other party or any of its creditors, in writing, that it, he or she is insolvent;
- (k) the party makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the party is insolvent;
- (l) the party stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts; or
- (m) anything analogous to the events described in paragraphs (a) to (l) occurs.

‘Intellectual Property Rights’ includes both in Australia and throughout the world and for the duration of the rights—

- (a) any patents, utility models, copyrights, eligible layout rights, designs and other like rights;
- (b) any invention, discovery, trade secret and computer software; and
- (c) any business, scientific, technical and product information, including proprietary information, relating to development of new products,
- (d) whether registered, registrable or unregistered but excludes non-assignable moral rights and similar non-assignable personal rights;

‘Investor’ means MG Group Project Management Pty Ltd or its assignees, from time to time notified by the Principal to the Contractor;

‘Key Personnel’ means the personnel of the Contractor named in Annexure Part A;

‘Latent Conditions’ means any of the conditions referred to in Clause 12;

‘Legislative Requirements’ includes—

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state or territory or other jurisdiction in which the work under the Contract or any part thereof of the work under the Contract is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of any organisations having jurisdiction in connection with the carrying out of the work under the Contract or any part of the work under the Contract;
- (c) any notice, direction, order or other requirements issued or imposed by any organisations having jurisdiction in connection with the carrying out of the work under the Contract, including Authority; and
- (d) fees and charges payable in connection with the above;

‘Local Industry Participation Plan’ means the ‘local industry participation plan’ set out in Annexure Part R;

‘MEDQ’ means a corporation sole constituted by the Minister for Economic Development Queensland;

‘month’ means calendar month;

'Neighbours' means—

- (a) the owners of properties adjacent, adjoining and in the vicinity of the Site; and
- (b) the occupiers of properties adjacent, adjoining and in the vicinity of the Site;

'Non Principal Contractor Site' means those parts of the Site (if any):

- (a) described in Annexure Part A to be a 'non principal contractor site' (if any);
- (b) directed by the Principal's Representative to be a 'non principal contractor site' at any time before or after they are made available to the Contractor under the Contract; or
- (c) which have previously been handed over to the Principal following Practical Completion of the Works within or upon those parts of the Site;

'Other Requirements' means the documents identified in Annexure Part P;

'Owner' means any person who has entered into a Sales Contract with the Principal;

'person' includes a firm or body corporate or unincorporated or an individual;

'Practical Completion' is that stage in the execution of the work under the Contract when—

- (a) the Works are complete except for minor Defects—
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
 - (ii) which the Independent Certifier determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the Works; and
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed;
- (c) all Approvals have been obtained and copies provided to the Independent Certifier and the Principal;
- (d) documents and other information required under the Contract which, in the Independent Certifier's opinion, are essential for the use, operation and maintenance of the Works have been supplied. Without limitation, the documents must include an occupation certificate issued by the certifying authority or Authority permitting occupation of the whole of the Works. The information must indicate in proper operating sequence the operation and function of all plant and equipment under both automatic and manual control, and must be supported by all necessary plant and system lay-out drawings, key diagrams of the services and controls and circuits and wiring diagrams where applicable. The information must be supplied by the Contractor in triplicate form in bindings approved by the Independent Certifier;
- (e) all equipment, plant, services and installations perform as required by the terms of the Contract to the satisfaction of the Independent Certifier both under normal operating conditions and under simulated emergency operating conditions;
- (f) the Contractor has provided the Independent Certifier with all warranties and guarantees required to be provided by the Contractor in accordance with the terms of this Contract;
- (g) all rubbish, Contractor's plant and surplus material has been removed from the Site and from the Works;
- (h) all sanitary fixtures have been washed and thoroughly cleansed;
- (i) all floor finishes have been washed, cleaned and polished;

- (j) all glass inside the building, including but not limited to windows, skylights have been cleaned to a shine finish;
- (k) all light and power points have been checked to ensure their efficient operation;
- (l) the Contractor has provided the Independent Certifier with all documents in its possession issued by or evidencing the approval of Authorities in connection with the Works;
- (m) the Contractor has provided the Independent Certifier with all fire rating certificates for the various materials used in the Works;
- (n) the entire structure has been cleaned throughout, including interior and exterior surfaces exposed to view, Vacuum carpeted and soft surfaces. Remove waste and surplus materials;
- (o) three sets of 'as built' and 'as installed' drawings as approved by the Independent Certifier acting reasonably which reflect the changes made to any electrical or plumbing systems in graphic form have been provided to the Independent Certifier. One set of the approved drawings is to be provided in CADD format, one in .DWG format and one set of paper prints; and
- (p) any other requirements set out in the Contract, that are stated to be a condition precedent to or a requirement of Practical Completion, have been met;

‘Practical Completion Statutory Declaration’ means a statutory declaration in the form of Annexure Part M;

‘Principal’ means the Principal stated in Annexure Part A;

‘Principal Contractor Site’ means those parts of the Site:

- (a) not comprising any Non Principal Contractor Site; and/or
- (b) described in Annexure Part A to be a ‘principal contractor site’ (if any);

‘Principal’s Financier’ means UMG Group Project Management Pty Ltd or such other lender nominated by the Principal to fund the Works, in part or in whole;

‘Principal’s Representative’ means a person appointed by the Principal under Clause 25.2;

‘Project Control Group’ has the meaning described in Clause 23A;

‘Project Records’ includes all subcontract agreements, trade breakdowns, claims for payment and supplier invoices and correspondence, claims and any documents passing between the Contractor and any subcontractor or supplier;

‘Project Report’ means a report in the form acceptable to the Principal’s Representative showing details of—

- (a) the status of all applications for or compliance with conditions of approvals for which the Contractor is responsible;
- (b) construction status, incorporating:
 - (i) a brief description of construction activities in progress;
 - (ii) expected and actual Dates of Practical Completion; and
 - (iii) potential and actual delays to Practical Completion;
- (c) program status:
 - (i) providing details of the progress made since the previous Project Report;
 - (ii) identifying lost time and extensions of time;

- (iii) incorporating a short-form of the Construction Program highlighting current progress against programmed progress; and
 - (iv) a revised Construction Program showing how lost time will be recovered;
- (d) financial status:
 - (i) in descriptive terms and incorporating both a chart and a graph of anticipated against actual cash flow;
 - (ii) including a schedule detailing any Variations and other adjustments to the Contract Sum;
 - (iii) showing the overall financial position of the work under the Contract; and
 - (iv) showing how cost overruns will be recovered by the Contractor;
- (e) objectives for the next month;
- (f) a copy of the schedule of any requests for information;
- (g) a copy of the current drawing register;
- (h) a copy of all certifications and status reports provided by the Consultants;
- (i) any other information reasonably requested by the Independent Certifier or Principal's Representative to facilitate the supervision of the work under the Contract;
- (j) any outstanding issues; and
- (k) a photographic record of the work under the Contract;

'provisional sum' means any provision sum specified in Annexure A;

'Public Liability Policy' means a policy of insurance taken out pursuant to Clause 18;

'QBCC Act' means the *Queensland Building and Construction Commission Act 1991* (Qld) and any of its regulations;

'Quantity Surveyor' means the quantity surveyor engaged by the Principal's Financier or the Principal for the Principal's Financier's benefit;

'Related Body Corporate' has the meaning given in section 9 of the Corporations Act;

'Related Entity' has the meaning given in section 9 of the Corporations Act;

'Safe Work Method Statements' means a written statement by the Contractor setting out how a part of the work under the Contract will be undertaken by the Contractor and is in accordance with the requirements of Clause 15.2, any Legislative Requirements and the Queensland Government's guidelines for preparing 'safe work method statements';

'Schedule of Prices' means Annexure Part D which, for any item of work to be carried out:

- (a) shows the price payable by the Principal to the Contractor for the execution of that item or work; and
- (b) excludes any margin for the Contractor's profit and overheads;

'Security' means—

- (a) an approved unconditional undertaking (the form in Annexure Part E is approved) or an approved performance undertaking given by an approved financial institution or insurance company in a form approved by the Principal; or
- (b) another form approved by the Principal;

'Selected Supplier' means a supplier to which Clause 9.4 applies;

‘Separable Portion’ means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Independent Certifier has determined pursuant to Clause 35.3 shall be a Separable Portion;

‘Site’ means the land identified on the Site Plan to be made available to the Contractor by the Principal for the purpose of the Contract;

‘Site Conditions’ means—

- (a) water, silt, sludge, garbage and the effects of any dewatering;
- (b) any geotechnical (including surface, subsurface, soil and underground) conditions and characteristics of the Site and its surroundings;
- (c) Contamination on, at, near, migrating onto or from, affecting or relevant to, the Site and below the surface of the Site;
- (d) physical conditions, characteristics, obstructions and circumstances on, at, near, affecting or relevant to the Site and its surroundings and/or below the surface of the Site (including artificial things, atmospheric, subsurface access and conditions and traffic conditions);
- (e) topography of the Site, surface and sub-surface conditions and geology, including rock or other materials encountered at or on the Site;
- (f) climatic and weather conditions and effects thereof including, rain, surface water, run-off and drainage, water seepage, wind, windblown dust and sand;
- (g) all Services existing above, or below the surface of the Site and the location of all the facilities which such Services are connected to;
- (h) any dilapidation, infestation, defect or mechanical breakdown which may affect the site;
- (i) the non-existence of Services;
- (j) all other physical conditions and characteristics of the Site above, on or below the surface of the Site, and other circumstances, which may affect the performance by the Contractor of its obligations under the Contract,

whether or not such conditions, characteristics and circumstances—

- (k) were apparent before or at the Execution Date
- (l) were within the knowledge of the Principal or any of its Associates prior to the Execution Date; or
- (m) were identified or anticipated by the Contractor at or prior to the Execution Date, or would or should reasonably have been anticipated or suspected by a competent contractor having carried out all prudent inspections, tests and assessments;

‘Site Plan’ means the plan set out in Annexure Part S;

‘Site Specific Documents’ means—

- (a) Construction Management Plan;
- (b) Other Requirements; and
- (c) Special Conditions;

‘Site Interested Party’ means a person named in Annexure Part A;

‘SOPA’ means:

- (a) the *Building and Construction Industry Payments Act 2004* (Qld) and any of its regulations; and

- (b) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any of its regulations,

to the extent they apply to this Contract;

‘Special Conditions’ means the conditions identified in Annexure Part G;

‘Specification’ means the specification referred to in the Contract and any modification of such specification thereafter directed or the use of which has been permitted by the Principal’s Representative pursuant to powers contained in the Contract;

‘Subcontractor Warranty Deeds’ means Deeds of Warranty from those subcontractors and suppliers who provide the work and materials identified in Annexure Part A in the form of Annexure Part G or otherwise in a form acceptable to the Principal’s Representative and for the period specified in Annexure Part A;

‘Substantial Completion’ is that stage in the execution of the work under the Contract when—

- (a) a Certificate of Practical Completion has been issued;
- (b) all Defects that were identified at Practical Completion have been rectified by the Contractor;
- (c) all incomplete works identified at Practical Completion have been completed; and
- (d) any Defects that have been identified subsequent to Practical Completion have been rectified;

‘survey mark’ has the meaning given in Clause 28;

‘Temporary Works’ means works used in the execution of the work under the Contract but not forming part of the Works;

‘test’ in Clause 31, includes examine and measure;

‘Variation’ has the meaning given in Clause 40.1;

‘Work Health and Safety Law’ means any Legislative Requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons acting in the exercise of statutory powers relating to health and safety, including the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld);

‘Work Health and Safety Requirements’ means:

- (a) any Work Health and Safety Law; and
- (b) the requirements of:
 - (i) Safe Work Method Statements;
 - (ii) set out in Annexure Part A (if any);
 - (iii) any Additional Obligation Documents;
 - (iv) the Construction Management Plan (including work methodology statements and the like);
- (c) any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of carrying out the work under the Contract or to be installed as part of the work under the Contract;
- (d) industry standards, codes, practices and guidelines; or
- (e) any other provisions of the Contract,

relating to health and safety;

‘work under the Contract’ means the work which the Contractor is or may be required to execute under the Contract and includes Variations, remedial work, demolition work, project management functions, Constructional Plant and Temporary Works and Site clearance and clean up;

‘Workplace Relations Management Plan or WRMP’ means the workplace relations management plan prepared by the Contractor and forming part of the Principal’s Project Requirement;

‘Works’ means the whole of the work to be executed in accordance with the Contract, including Variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

2.2 Interpretation

In the Contract unless the context otherwise requires or permits—

- (a) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- (b) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- (c) references to months and years means calendar months and years;
- (d) the use of headings are only for convenience and do not affect interpretation and any headings, underlinings or marginal notes are only included for ease of reference;
- (e) if any part of the Contract is void or unenforceable or would be so unless severed, then the rest of the document will continue to have full force and effect;
- (f) if the day on which any act, matter or thing is to be done under or pursuant to the Contract is not a Business Day, that act, matter or thing may be done on the next Business Day;
- (g) references to a person includes any other entity recognised by law;
- (h) words denoting the singular number include the plural and vice versa;
- (i) words denoting one gender include every gender;
- (j) references to clauses, subclauses, paragraphs, annexures and schedules are references to clauses, subclauses, paragraphs, annexures and schedules in the Contract; and
- (k) the words "including", "includes" and "include" shall be read as if each of them is followed by the words "without limitation".

In this Contract:

- (a) unless expressly stated otherwise in the Contract, the rights and remedies under any indemnity or otherwise provided under the Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy;
- (b) in connection with each indemnity:
 - (i) each indemnity is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract;
 - (ii) it is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity under the Contract; and
 - (iii) a party must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in the Contract; and
- (c) any amount which the Contractor is expressly liable to pay or reimburse to the Principal under the Contract shall be a debt due and payable to the Principal in the time expressly provided or otherwise on demand.

3 NATURE OF CONTRACT

3.1 Performance and Payment

The Contractor shall execute and complete the work under the Contract.

The Principal shall pay the Contractor for work for which the Principal accepted a lump sum, the lump sum as adjusted by any additions or deductions made pursuant to the Contract.

3.1A Performance specifications

Where the Specification include performance specifications—

- (a) the Contractor must ensure that the performance specifications are satisfied when making any selection of any materials, goods, plant or equipment for inclusion into the Works; and
- (b) the Contractor must ensure that—
 - (i) its obligations under this Clause are carried out in accordance with the standard expected of a contractor competent in constructing works of the kind the subject of the performance specification;
 - (ii) the works and materials the subject of the performance specification are fit for purpose; and
 - (iii) otherwise in accordance with Best Practice.

3.2 Not used

3.3 Not used

3.4 Schedule of Prices

Prices in a Schedule of Prices are only to be used for the valuation of Variations in accordance with Clause 40.5.

3.5 Rise and fall

The Contractor acknowledges and agrees that—

- (a) the Contract and the Contract Sum are not subject to any cost adjustment for rise and fall for any reason including:
 - (ii) any Site allowances or industrial agreements;
 - (iii) fluctuations in exchange rates; or
 - (iv) changes in the cost of labour and materials; and
- (b) the Contractor has no Entitlement and the Principal is not obliged to pay the Contractor any reimbursement for payments which the Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or otherwise which is in existence at the Execution Date or which comes into existence after the Execution Date.

The Contract Sum and any rates to be applied in calculating the Contract Sum (together with any additions or deductions expressly provided for by the Contract):

- (c) includes all costs, expenses, fees and charges incurred by the Contractor in performing all its obligations under the Contract;
- (d) includes payment for any items or work which are reasonably inferred or are reasonably necessary for the proper completion of the Works;
- (e) includes the Contractor's profit, attendance, preliminaries, site allowances, supervision, on-site- and off-site overheads in connection with the performance of all of its obligations under the Contract.

3.6 Site Interested Party

- (a) The Contractor acknowledges the Site Interested Parties have or may acquire an interest in the Site or part of the Site.
- (b) The Contractor agrees that it shall:
 - (i) indemnify the Site Interested Parties in the same terms of all indemnities given by the Contractor to the Principal under the Contract (including, without limitation, the indemnity in Clause 15);
 - (ii) ensure that if policies of insurance are required to be effected by the Contractor under Clauses 20 and 20A, those insurances are also effected in the name of each entity comprising the Site Interested Parties, as a separate insured party; and
 - (iii) ensure that all warranties to be provided by the Contractor under Clause 9.5 or 9.6, also name the Site Interested Parties as an additional party benefiting from the warranties.
- (c) The Contractor agrees that, for the purposes of section 55 of the *Property Law Act 1974* (Qld), each Site Interested Party:
 - (i) is a 'beneficiary'; and
 - (ii) may accept the benefit of this subclause 3.6 at any time by notice in writing to the Contractor.

3.7 General construction obligations

The Contractor must perform the work under the Contract—

- (a) in accordance with the Contract and the Drawings;
- (b) so as to achieve Practical Completion by each of the Dates for Practical Completion; and
- (c) using Best Practice and Good Design and Construction Practices.

3.8 Commencement of terms of Contract

The terms of the Contract apply to the work under the Contract executed by the Contractor whether prior to, on or after the Execution Date.

3.9 Best Practice

If the Principal, Principal's Representative or the Independent Certifier considers the Specification or Contract Documents fail to identify the standard or quality or finish of workmanship or materials of the Works (except to the extent that it would be inconsistent with another requirement of the Contract), the parties must refer to Best Practice to identify or determine the standard or quality or finish of that element which the Contractor must provide in the Works.

3.10 Requirements of Additional Obligation Documents

- (a) The Contractor:
 - (i) acknowledges that it has had the opportunity to satisfy itself as to and has read and fully understands;
 - (ii) shall satisfy the requirements of; and
 - (iii) without limiting subclause 3.10(b), shall comply with all obligations of the Principal under, the agreements, licences, approvals or other documents referred to in Annexure Part A or otherwise expressed to be additional obligation documents (insofar as they are relevant to the carrying out of work under the Contract or the Works) ('**Additional Obligation Documents**').
- (b) The Contractor shall not, by any act or omission, place the Principal in breach of the Additional Obligation Documents.

- (c) The Contractor acknowledges that the Additional Obligation Documents set out minimum obligations of the Contractor only, and shall not limit the generality of or affect in any way the Contractor's obligations to comply with the Contract or any Legislative Requirements, and the Contractor shall not be relieved of any obligations, warranty or liability arising under or in connection with the Contract or to be taken to have complied with the Contract, notwithstanding the obligation of the Contractor to comply or the Contractor actually complying with the requirements of the Additional Obligation Documents in accordance with the Contract.
- (d) The Contractor must provide the Principal with all reasonable assistance in preparing and providing to the Principal all information that the Principal is required (or reasonably proposes) to provide to the Investor or MEDQ in connection with the Works.
- (e) Each of the Additional Obligation Documents may require the Principal to obtain, or be granted, any approval, consent or permission before the Principal is entitled to or allowed to do any act or perform any work, or have the benefit of any entitlement or claim. For the purposes of the Contract, the Contractor is subject to a corresponding approval, consent or permission and it will be reasonable for the Principal to withhold or grant with conditions consistent with any withholding or grant under the relevant Additional Obligation Documents.
- (f) Without limiting subclause 3.10(a), 3.10(b) and 3.10(c), the Contractor acknowledges that a number of obligations in the Additional Obligation Documents will result in restrictions or limitations being placed on the ability of the Contractor to carry out the work under the Contract.
- (g) The Contractor shall have no Entitlement arising from the matters or requirements disclosed in, or which could have been anticipated from, information in the Additional Obligation Documents.

4 BILL OF QUANTITIES OR SCHEDULE OF RATES

4.1 Purpose of the Bill of Quantities or Schedule of Rates

A Bill of Quantities or Schedule of Rates shall not form part of the Contract, but may be used by the Independent Certifier for the purposes of assessing payment to the Contractor, including for purposes of clause 40.5 and 42.1.

4.2 Not used

4.3 Not used

4.4 Not used

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract.

5.2 Provision of Security

The Contractor must, as a precondition to the date on which a payment claim may be made, provide Security in the amount stated in the Annexure and in accordance with this Clause.

5.3 Form of Security

The party having the benefit of the Security shall have discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of Security offered. The form of unconditional undertaking in the form of Annexure Part E is approved.

If the Security is not transferable by delivery, it shall be accompanied by an executed transfer or such other documentation as is necessary to effect a transfer of the Security. The costs (including all stamp

duty or other taxes) of and incidental to the transfer and retransfer, shall be borne by the party providing the Security.

5.4 Time for Lodgement of Security

Security must be provided prior to the commencement of the work under the Contract.

5.5 Conversion of Security

The Principal may have recourse to Security in respect of an amount due to the Principal by the Contractor, where—

- (a) the Principal has become entitled to exercise a right under the Contract in respect of the Security;
- (b) the Contractor is in default or breach of the Contract;
- (c) the Principal has a bona fide Claim against the Contractor;
- (d) the Contractor has repudiated or given notice of an intention to repudiate the Contract; or
- (e) the Contractor is otherwise indebted to the Principal and the Principal remains unpaid after 5 Business Days has elapsed since the Principal issued an invoice to the Contractor seeking payment of the debt.

The Contractor shall not take any steps to injunct or otherwise restrain:

- (f) any issuer of any unconditional undertaking provided under this Contract from paying the Principal pursuant to the unconditional undertaking;
- (g) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this Contract or receiving payment under any such unconditional undertaking; or
- (h) the Principal using the money received under any unconditional undertaking provided under this subclause 5.5.

The Contractor indemnifies the Principal from all claims, costs, expenses, losses and damages (including legal costs on a full indemnity basis) which the Principal may suffer or incur in connection with defending or responding to any steps taken by the Contractor to injunct or otherwise restrain, or purport to do so, in breach of this subclause 5.5.

5.6 Not used

5.7 Not used

5.8 Release of Security

Subject to the terms of the Contract, the Principal shall release the balance of Security when required by Clause 42.8.

If the Contractor has provided additional Security for any item of unfixed plant and materials pursuant to Clause 42.4, the Principal shall release that additional Security within 14 days of the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished.

5.9 Not used

5.10 Deed of Guarantee

If the Contractor is or includes a corporation that is a Related Body Corporate or Subsidiary of another corporation, the Contractor or any corporation included in the Contractor must provide to the Principal the Deed of Guarantee for the performance of the obligations and the discharge of the liabilities of the Contractor under the Contract.

Provision of the Deed of Guarantee by the Contractor or any corporation included in the Contractor in accordance with this Clause 5.10 is a precondition to the date on which a payment claim may be made and is a condition precedent to the Contractor's entitlement to any payment.

5.11 Unsatisfied Claims

If, at any time when the Principal is required to release the Security to the Contractor, the Principal acting in good faith considers it has any unpaid moneys due or unsatisfied claims against the Contractor, and such claim was notified to the Contractor under Clause 47.1 more than 5 Business Days prior to the due date for release of the Security, the Principal will only be obliged to release the Security to the extent that the Security exceeds the aggregate of—

- (a) the amount the Principal is otherwise still entitled to retain under the Contract; and
- (b) the amount of the Principal's unpaid moneys due and unsatisfied claims,

but the Principal must release the excess amount of Security held under this Clause 5 (if any), within 10 Business Days of the unpaid moneys due and unsatisfied claim being paid or satisfied.

6 EVIDENCE OF CONTRACT

The Principal and the Contractor acknowledge and agree that the documents which constitute the Contract between them are identified in the Formal Instrument of Agreement.

6.1 Not used

6.2 Not used

7 SERVICE OF NOTICES

7.1 General

A notice, demand, certification, process or other communication relating to the Contract must be in writing in English and may be given by an agent of the sender.

7.2 How to give a communication

Unless a particular means is specified in a clause of the Contract, a communication may be given by being—

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the party's current fax number for notices;
- (e) sent via Aconex to the address identified in Annexure Part A; or
- (f) sent by email to the party's current email address for notices.

In addition to any notice given by fax, email or Aconex, to be a valid notice under the Contract issued by the Contractor, a notice pursuant to Clauses 44 or 47 or under SOPA, it must also be:

- (g) personally delivered; or
- (h) sent by express post (with the fastest available delivery time commonly available from Australia Post) from within Australia,

addressed to the other party, and the notice is not taken to have been validly given until the form in Clauses 7.2(g) or 7.2(h) is given or made, or is otherwise taken to have been given or made in accordance with this Clause 7.

All notices (and other documents) to be provided by the Principal under the Contract may be provided by the Principal's Representative or Independent Certifier (as the case may be) (without affecting the Principal's right to do so).

The Contractor shall provide to the Principal's Representative and Independent Certifier a copy of any notice (and other documents) given to the Principal under the Contract, which copy shall be provided to the Principal's Representative and Independent Certifier at the same time as the notice is given to the Principal.

7.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially set out in Annexure Part A.
- (b) Each party may change its particulars for delivery of notices by notice to each other party.

7.4 Communications by post

Subject to Clause 7.6, a communication is given if posted—

- (a) within Australia to an Australian address, 3 Business Days after posting; or
- (b) in any other case, 10 Business Days after posting.

7.5 Communications by fax, email and Aconex

Subject to Clause 7.6, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

Subject to Clause 7.6, a communication sent by email or Aconex is given at the time shown on the sender's copy of the email unless the sender receives a notification to the effect that delivery of the email has been unsuccessful.

7.6 After hours communications

If a communication is given—

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is not a Business Day,

it is taken as having been given at 9.00 am on the next Business Day.

8 CONTRACT DOCUMENTS

8.1 Discrepancies

If either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out the work under the Contract, that party shall give the Principal's Representative written notice of it. The Principal's Representative, thereupon otherwise becoming aware, shall direct the Contractor as to the interpretation and construction to be followed.

The Contractor is liable for and accepts the risk of Buildability.

The Contractor must bring to the notice of the Principal's Representative, by notice in writing, any Buildability issue, errors, ambiguities, inadequacies, omissions, discrepancies, inconsistency, lack of completeness and lack of coordination or integration or other faults existing, or seeming to exist, in a Contract Document or any document prepared for the purpose of carrying out the work under the Contract as soon as the Contractor becomes aware of it, and the Contractor must seek appropriate instructions.

The Principal's Representative shall, as soon as reasonably possible after receipt of the notice from the Contractor, issue necessary instructions to the Contractor in writing.

If the Principal's Representative should discover any Buildability issue, errors, ambiguities, inadequacies, omissions, discrepancies, inconsistency, lack of completeness and lack of coordination or integration or other faults existing, or seeming to exist, in a Contract document or any document prepared for the purpose of carrying out the work under the Contract then the Principal's Representative shall issue any necessary instructions to the Contractor in writing as soon as reasonably possible.

The Principal's Representative may resolve any Buildability issue, errors, ambiguities, inadequacies, omissions, discrepancies, inconsistency, lack of completeness and lack of coordination or integration or other faults existing, or seeming to exist, in the Contract Documents. Such resolution may involve explaining, refining, clarifying, correcting, improving, revising, amending, expanding upon, finalising and completing the design of the Works and may be done in such a way as to favour the Principal.

The Contractor must comply with the Principal's Representative instructions and shall have no Entitlement as a result of or in connection with complying with such instructions.

8.2 Dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

8.3 Supply of Documents by Principal

The Principal must supply to the Contractor the number of copies stated in Annexure Part A of the Drawings, Specification, and other documents required by the Contract to be supplied to the Contractor by the Principal.

Documents supplied to the Contractor by the Principal remain the property of the Principal and be returned by the Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

8.4 Supply of Documents by Contractor

- (a) If the Contract requires the Contractor to supply documents, the Contractor must supply the number of copies stated in the Annexure Part A.
- (b) If the Contractor submits documents to the Principal's Representative and Independent Certifier, then—
 - (i) the Principal's Representative and Independent Certifier shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Contract (as the case may be);
 - (ii) notwithstanding the provisions of Clauses 23 and 25.2, the Principal's Representative's or Independent Certifier's approval (as the case may be) shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract;
 - (iii) if the Contract provides that the Contractor must obtain the Principal's Representative's or Independent Certifier's direction whether documents are suitable or are not suitable then within the time stated in the Annexure (or if no time is stated then within 14 days) after receipt of the documents, the Principal's Representative or Independent Certifier shall notify the Contractor that the documents are suitable or are not suitable (as the case may be);
 - (iv) if the Principal's Representative or Independent Certifier notifies the Contractor that the documents are not suitable, the Principal's Representative or Independent Certifier shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Principal's Representative's or Independent Certifier's direction under this Clause (as the case may be); and
 - (v) the Principal's Representative or Independent Certifier shall not reject documents which are in accordance with the requirements of the Contract.
- (c) Copies of documents supplied by the Contractor shall be the property of the Principal but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works.
- (d) The Principal, Principal's Representative and Independent Certifier are not required to provide the Contractor with any information, direction or answer to any question raised by the Contractor

unless expressly required by this Contract. The Contractor acknowledges that, other than as expressly provided elsewhere in this Contract, it is the Contractor's responsibility to make all enquiries, obtain all information and make all judgments that are relevant to and necessary for the carrying out of the work under the Contract and in accordance with this Contract.

- (e) Unless the Contract expressly provides otherwise, the Contractor must not delay the progress of the Works or part of the Works or alter the order in which the Works will be carried out by reason of the Contractor awaiting information from the Principal, Principal's Representative or Independent Certifier.

8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of Drawings, Specification and other written information supplied by the Principal, the Principal's Representative, Independent Certifier and the Contractor must be kept by the Contractor at the Site or other location approved in writing by the Principal and must be available at all times for reference by the Principal, the Principal's Representative, Independent Certifier and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work must be kept by the Contractor at the place of manufacture or assembly and must be available for reference by the Principal, the Principal's Representative, Independent Certifier and any person nominated in writing by either of them.

8.6 Confidential Information

The Contractor must not, and must ensure that its subcontractors, employees and agents do not, use or disclose to any person or make public the Confidential Information, for any purposes other than performance of the work under the Contract except—

- (a) if the disclosure is to a subcontractor for the purposes of the Contract, and the Contractor has obtained an undertaking of non-disclosure in favour of the Principal on the same terms as this Clause 8.6;
- (b) if the information is in the public domain (other than as a result of a breach of the Contract by the Contractor);
- (c) if necessary for the performance of the Works;
- (d) as required by law;
- (e) if disclosure is made for the purpose of obtaining legal advice; or
- (f) if disclosure is authorised in writing by the Principal.

The Contractor must take or cause to be taken reasonable precautions as necessary to maintain secrecy and confidentiality and prevent disclosure, including if required by the Principal by obtaining confidentiality agreements in a form satisfactory to the Principal with its subcontractors, employees and agents. This Clause 8.6 shall survive termination of the Contract.

8.7 Media Releases

The Contractor must not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Principal, which approval must not be unreasonably withheld. The Contractor must refer to the Principal any enquiries concerning the project from any media.

8.8 Marketing activities of the Principal

The Contractor—

- (a) consents to the use of its name, corporate logo and associated images being used by the Principal in any information, publication, document or article for publication concerning the Project in any media; and

- (b) must give the Principal a copy of its name, corporate logo and associated images in any form reasonably required by the Principal within 2 Business Days of receiving a written request by the Principal.

8.9 As built drawings and operating manuals for the Works

Without limiting its other obligations under the Contract, as a condition precedent to release any of the Security provided in accordance with Clause 5, the Contractor must supply to the Principal complete copies of the as-built drawings and manuals for the Works, as follows—

- (a) 3 hard copies of manuals labelled and indexed;
- (b) 3 full size hard copies of all as-built drawings; and
- (c) digital copies of all as-built drawings on a CD ROM in Building Link format.

9 ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

The Contractor must not without the Principal's prior written consent and except on reasonable terms determined in writing by the Principal, novate the Contract or assign any payment or any right or benefit or interest under the Contract.

The Principal may assign or novate all or any of its rights, title or interest in, or arising out of, this Contract without the Contractor's consent.

Without limiting the preceding paragraph, the Principal may assign or novate this Contract or any of its rights, title, interest or benefits under this Contract as contemplated by any Additional Obligation Documents or the Development Agreement.

The Contractor must execute all documents and do all things necessary as required by the Principal or the Investor or the MEDQ to effect any novation or assignment of this Contract or any of its rights, title, interest or benefits under this Contract from the Principal to the Investor or the MEDQ (as the case may be) in accordance with the Side Deeds.

9.2 Subcontracting

The Contractor may subcontract part of the Works, but not the whole of the Works.

The Contractor must not without the written approval of the Principal's Representative, which approval may not be unreasonably withheld—

- (a) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder; or
- (b) subcontract or allow a subcontractor to subcontract any work described in Annexure Part A.

With a request for approval, the Contractor must give the Principal's Representative particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.

The Contractor must give the Principal's Representative other information which the Principal's Representative reasonably requests, including the proposed subcontract documents without prices.

Within 10 Business Days of a request by the Contractor for approval, the Principal's Representative, shall advise the Contractor of approval or rejection of the Contractor's request for approval to the subcontractor.

Approval may be conditional upon the subcontract including—

- (a) provision that the subcontractor must not assign or subcontract without the consent in writing of the Contractor;
- (b) provisions reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal

- (c) provision that if the Contract is terminated and on the subcontractor being paid the sum certified by the Independent Certifier as owing to the subcontractor, the Contractor and the subcontractor must, after the Principal has done so, promptly execute a deed of novation in a form approved by the Principal's Representative; and
- (d) a requirement that the subcontractor executes a Subcontractor's Warranty Deed in favour of the Principal.

9.3 Contractor's Responsibility

The Contractor irrevocably appoints the Principal's Representative and Independent Certifier as the Contractor's attorney with authority to execute any deed of novation necessary to give effect to the novation referred to in Clause 9.2 and to bind the Contractor accordingly.

Neither approval to subcontract nor subcontracting of part of the work under the Contract relieves the Contractor from any liability or obligation under the Contract and does not create or impose any obligation or liability on the Principal. The Contractor is vicariously liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor. The Contractor must not, and has no authority to, incur any liability on behalf of the Principal or enter into any agreements or commitments in the name of or on behalf of the Principal and must take no steps to bind or commit the Principal.

9.4 Selected Suppliers

- (a) The Contractor acknowledges that included in the work under the Contract and the Contract Sum is the provision of materials and goods for inclusion or installation in the Works, including prime cost items and other items of fittings, fixtures and equipment.
- (b) If so directed by the Principal's Representative, acting reasonably the Contractor must engage as its supplier, the supplier or particular source nominated by the Principal.
- (c) Any direction from the Principal's Representative under Clause 9.4(b) must include the identity of the nominated supplier, the address and location of the nominated supplier, the terms of the acquisition of the items and the precise description and quantity at those items.
- (d) If the purchase price and cost of supply for any of the items so directed by the Principal's Representative to be acquired differs from that price identified and allocated in this Contract, the Contractor must have no Entitlement for an adjustment to the Contractor Sum. The Contractor acknowledges that it assumes the risk of price increases and decreases of nominated suppliers and in the event of a price increase, it may seek the approval of the Principal's Representative to source such items from an alternative supplier (such materials being of equal or better quality than the ones from the nominated supplier). The Principal's Representative shall consider any such requests reasonably.

9.5 Subcontractor warranties

Within 20 Business Days following the Date of Practical Completion, the Contractor must—

- (a) deliver to the Principal Subcontractor Warranty Deeds from the subcontractors and suppliers who provide the work and materials identified in Annexure Part A. The warranty periods specified in the Subcontractor Warranty Deeds must be for the periods identified for that subcontractor or supplier in Annexure Part A; and
- (b) deliver to the Principal subcontractor warranties from any other subcontractor or supplier for any part of the Works in warranty terms in the form of Annexure Part G and periods approved by the Principal's Representative subject to approval being given to such terms and periods as are reasonably and commercially obtainable.

If prior to entering into a subcontract or supply agreement, a subcontractor or supplier identified in Annexure Part A informs the Contractor that it will not provide the Deed in the form approved by the Principal's Representative, the Contractor must submit to the Principal's Representative for approval

(which approval must not be unreasonably withheld) the form of warranty that the subcontractor or supplier is willing to provide in lieu of the Subcontractor Warranty Deed.

The Contractor must use its best endeavours to ensure that each such warranty is capable of assignment to any successor in title of the Principal and must ensure that each such warranty is on normal commercial terms in accordance with industry standards and is of the type typically obtained by a principal in the position of the Principal for projects of the size and value commensurate with the Project.

Where any subcontractor or supplier has provided warranties or guarantees in relation to any work, plant, equipment or material incorporated into the Works (other than work and materials identified in Annexure Part A in relation to which the preceding paragraph applies) which have not expired within 10 Business Days after the expiration of the Defects Liability Period then—

- (c) so far as they are capable of assignment, the Contractor must, within 10 Business Days of the expiration of the Defects Liability Period, assign to the Principal the benefit of such warranties and guarantees; and
- (d) so far as they are not capable of assignment, the Contractor by this Clause 9.5 irrevocably appoints the Principal its attorney for the purposes of enforcing the benefit of those warranties and guarantees and must provide the Principal with copies of those warranties and guarantees prior to the Date of Practical Completion or within 5 Business Days of an earlier request from the Principal.

9.6 Contractor Warranty Deed

Before the Date of Practical Completion, the Contractor must give the Principal's Representative 2 originals and 2 copies of the Contractor Warranty Deed.

10 SELECTED SUBCONTRACTORS

10.1 Definitions

If the Contract provides that certain work or the supply of certain items shall be subcontracted to a Selected Subcontractor, the work or the supply of the items is 'Selected Subcontract Work' as the case may be, and:

'Selected Subcontractor' means—

- (a) a subcontractor to whom the Contractor is directed by the Principal's Representative to subcontract Selected Subcontract Work; or
- (b) a subcontractor named in the Contract (including as set out in Annexure Part A) with whom the Principal has entered into a prior contract for Selected Subcontract Work, and in which prior contract the subcontractor has consented to the novation of, or the entering into a contract similar to, the prior contract by the Principal to the Contractor pursuant to a Deed of Novation.

'Selected Subcontract Work' is the work to be performed by a Selected Subcontractor.

10.2 Selected Subcontractors

If the Contract includes Selected Subcontract Work, the Contractor must subcontract the Selected Subcontract Work to the relevant Selected Subcontractor.

The Principal may novate to the Contractor a prior contract made between the Principal and a Selected Subcontractor in respect of Selected Subcontract Work. The Contractor shall when directed by the Principal, execute a Deed of Novation, without being entitled to any compensation, of that prior contract, in accordance with clause 10.5.

The Contractor shall not be entitled to raise any objection to the Selected Subcontractor, and the Contractor warrants it has reviewed its obligations under this Contract, and fully allowed for the novation (or entering into a contract similar to the prior contract), appointment and management of the Selected Subcontractor in the Contract Sum.

The Contractor acknowledges and agrees that it will be fully responsible for all work executed by Selected Subcontractors, including without limitation any work undertaken prior to this Contract, and that—

- (a) the Principal shall have no liability to a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor except as expressly set out in the Deed of Novation or this Contract; and
- (b) the Principal shall not be liable to the Contractor for any Claim due to an act, default or omission or breach of contract by a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor.

10.3 Direct Payment of Selected Subcontractor

In respect of Selected Subcontract Work performed by a Selected Subcontractor, the Principal shall make payment directly to the Selected Subcontractor for work as set out in the Deed of Novation, and the Contractor irrevocably and unequivocally authorises the Principal to make such payments directly to the Selected Subcontractor.

The parties agree, that with respect to any payment by the Principal to a Selected Subcontractor—

- (a) such payment shall be deemed to be made on behalf of the Contractor and credited towards payment of amounts payable to the Contractor under this Contract; and
- (b) if the Contractor requests the Principal in writing not to make a payment to the Selected Subcontractor, the Principal may consider such request in its absolute discretion, but under no circumstances, including bankruptcy or winding up of the Contractor, shall payment be made to the Contractor while the Selected Subcontractor remains appointed.

The Principal as stakeholder shall hold retention moneys and security provided by a Selected Subcontractor, including despite any novation under clause 10.5, until such time as the Contractor under this agreement provides any replacement retention or security in favour of the Principal. If the Principal holds any such security or retention after entering into the Deed of Novation, then subject to the Principal's rights, the Principal remains entitled to use or apply the retention moneys or security in accordance with the subcontract for the Selected Subcontract Work (as if the Principal remained a party to the Subcontract).

10.4 Termination of Selected Subcontract

The Contractor shall not terminate a subcontract for Selected Subcontract Work, without the prior written consent of the Principal. As early as possible the Contractor shall notify the Principal's Representative of the Contractor's intention to terminate any subcontract for Selected Subcontract Work, including its reasons and prior to taking any steps to terminate a subcontract for Selected Subcontract Work. If a Selected Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall notify the Principal's Representative of that fact.

10.5 Novation

When directed by the Principal, the Contractor, without being entitled to compensation, must promptly execute a Deed of Novation (with details approved by the Principal's Representative) between the Principal, the Contractor and the subcontractor or the Selected Subcontractor stated in Annexure Part A (as the case may be) for the particular part of the Selected Subcontract Work (as the case may be).

11 PROVISIONAL SUMS

A provisional sum included in the Contract is not itself payable by the Principal but where pursuant to a direction of the Principal's Representative the work or item to which the provisional sum relates is carried out or supplied by the Contractor, the work or item shall be priced by the Independent Certifier (acting reasonably) and the difference shall be added to or deducted from the Contract Sum.

The pricing by the Independent Certifier will be exclusive of any amount for overheads and profit unless the amount included in the Contract Sum on account of a provisional sum is exceeded, in which event

the difference between the actual cost and the amount included in the Contract Sum on account of a provisional sum ('Difference') will include an amount for profit and overheads calculated the Independent Certifier applying the percentage stated Annexure Part A to the Difference.

12 SITE CONDITIONS

- (a) The Contractor represents and warrants that it has had access to the Site and has carried out its own inspections of the Site and conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of the Site and the Site Conditions and all risks and contingencies associated with the site and the Site Conditions.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Contract Sum and the Construction Program allow for; and
 - (ii) it has assumed the risk of,
 - (iii) all Site Conditions that may be encountered in performing the work under the Contract.
- (c) The Contractor:
 - (i) accepts sole responsibility for and assumes the risk of all increased costs, losses and expenses and delays arising out of the site and its surroundings and all Site Conditions encountered in the execution of the Works; and
 - (ii) will have no Entitlement arising out of or in connection with any Site Conditions encountered.
- (d) The Principal:
 - (i) does not warrant, guarantee or make any representation about the accuracy or adequacy of any information, data or documents made available to the Contractor before the date of the Contract, including any information from investigations carried out by the Principal or a third party as to the conditions on, in under or in the vicinity of the site including the Information Documents;
 - (ii) to the extent permitted by law, will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, that information data and documents, including Information Documents;
 - (iii) does not:
 - (A) assume any responsibility or duty of care in respect of; or
 - (B) warrant, guarantee or make any representation as to, the Information Documents (including its correctness, suitability, appropriateness, accuracy, completeness or adequacy for the purposes of the Contract); and
 - (iv) shall not be liable to the Contractor for any Claim arising from or in connection with the Information Documents, the provision of the Information Documents or the non-provision of any other information by the Principal.
- (e) Except as expressly provided by the Contract, the Contractor shall:
 - (i) not rely upon (or allow any other person to rely upon) the Information Documents for or in connection with the carrying out of work under the Contract until it has satisfied itself as to the correctness, suitability, appropriateness, accuracy, completeness and adequacy of the Information Documents;
 - (ii) have no Entitlement arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Information Documents;
 - (iii) indemnify the Principal against any claims or liability arising from or in connection with the Contractor failing to satisfy itself in accordance with this Clause 12(e); and

- (iv) by its own independent enquiries satisfied itself as to, and take into account any matter or thing disclosed by, any Information Documents relevant to the carrying out of work under the Contract.

12.2 Not used

12.3 Not used

12.4 Not used

12.5 Not used

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Principal warrants that unless otherwise provided in the Contract—

- (a) design;
- (b) materials;
- (c) documents; and
- (d) methods of working,

specified in the Contract or provided or directed by the Principal or the Principal's Representative will not infringe any Intellectual Property Rights.

The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe any Intellectual Property Rights.

As long as the documents and information, on any medium (including data), provided by or on behalf of the Contractor in connection with this Contract (**Documents**) are used for the purpose of—

- (e) the design, construction, operation, repair, maintenance, upgrading or improvement of the project of which the Works form part, whether located at the Site or otherwise; or
- (f) the commercial activities of the Principal, the Investor or any Related Entity of either,

the Contractor grants to the Principal, the Investor and any Related Entity of either (or will grant on the sooner of the creation of or being entitled to use any) an irrevocable non-exclusive perpetual royalty-free licence to make any use of (and allow others to use) the Documents and Intellectual Property Rights including, but not limited to—

- (g) arranging completion of the Works on the termination or novation of the Contract;
- (h) the right to use (and allow others to use) the Documents and Intellectual Property Rights for the commercial activities of the Principal, the Investor or any Related Entity of either; and
- (i) the right to sublicense to any Related Entity of the Principal, the Investor or any other third party.

If, in the course of execution of the work under the Contract, the Contractor develops, discovers or first reduces to practice a concept, a product or process which is capable of being patented, then—

- (j) that concept, product or process is and remains the property of the Contractor; and
- (k) as long as the concept, product or process is used for the purpose of the design, construction, operation, repair, maintenance, upgrading or improvement of the project of which the Works form part including, but not limited to, arranging completion of the Works on the termination or novation of the Contract, or is used for the purpose of the commercial activities of the Principal, the Investor or any Related Entity or nominee of the either the Principal or the Investor, the Contractor grants to the Principal, the Investor and any Related Entity or nominee of the Principal or the Investor, an irrevocable non-exclusive perpetual royalty-free licence to make any use of (and allow others to use) the concept, product or process.

Without limiting the above, the Contractor acknowledges that the Principal, the Investor and any Related Entity or nominee of the Principal or the Investor may use (and allow others to use) the whole or any part of any idea, design, the information or documents, Intellectual Property Rights, concept, product or process and may add to or vary it.

The Contractor indemnifies the Principal, the Investor and any Related Entity or nominee of the Principal or the Investor against all claims by any party arising out of or in connection with—

- (l) the use of information and documents provided by the Contractor, Intellectual Property Rights or any moral rights, concept, product or process; and
- (m) the Contractor's unlawful use or breach of copyright, patent, registered design, trade mark or name or other Intellectual Property Right or moral rights.

Copies of Documents supplied by the Contractor are the property of the Principal.

If, during the work under the Contract, the Contractor includes or makes use of any work or other subject matter in which copyright subsists, the Contractor must procure from every officer and employee of the Contractor, any subcontractor of the Contractor involved in the creation of the work under the Contract, a written consent signed by that person consenting to the Principal, the Investor and any Related Entity or nominee of the Principal or the Investor—

- (n) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting or publishing that work or subject matter anywhere in the world in any form (including the making of any distortions, additions or alterations to that work or subject matter or any adaptation to that work or subject matter, or to any part of that work or subject matter or of any such adaptation as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published); and
- (o) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting or publishing that work or subject matter or any adaptation to that work or subject matter (or any part of that work or subject matter or of any adaptation) anywhere in the world without making any identification of that person.

In procuring such consent, the Contractor must not (and must not encourage or permit anyone to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular.

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

Subject to Clause 14.5 the Contractor must comply with all Legislative Requirements and any requirements of an Authority except where the Contract expressly provides that it is to be satisfied by the Principal.

If a Legislative Requirement is at variance with a provision of the Contract or the Specification, as soon as the Contractor discovers the variance, the Contractor must promptly notify the Principal's Representative and Independent Certifier in writing specifying the difference.

If a Legislative Requirement is inconsistent with a provision of the Contract or the Specification, the Legislative Requirement will prevail over the inconsistent provision of the Contract or the Specification.

14.2 Changes in Legislative Requirements

If a Legislative Requirement—

- (a) necessitates a change to the Works;
- (b) comes into effect after the Execution Date; and
- (c) could not reasonably have been anticipated at that prior date

then—

- (d) to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, and the Contractor has given notice in accordance with this Clause 14.2, the difference shall be valued under Clause 40.5; and
- (e) subject to Clause 35.5, the Contractor may be entitled to an extension of time to the Date for Practical Completion.

Within 14 days of the Contractor becoming aware of a change to a Legislative Requirement applicable to the Works as provided by this Clause 14.2, the Contractor shall, as a condition precedent to any Entitlement, give the Principal's Representative and the Principal a written notice in relation to any claim for a change in a Legislative Requirement stating:

- (f) the relevant Legislative Requirement as at the Execution Date;
- (g) the relevant change to the Legislative Requirement;
- (h) any additional cost necessitated by the change in the Legislative Requirement; and
- (i) the steps taken by the Contractor to mitigate the amount of additional work and additional cost caused by the change in the Legislative Requirement.

14.3 Not used

14.4 Documents Evidencing Approvals of Authorities

The Contractor must give the Principal copies of documents issued to the Contractor by any Authority for the work under the Contract.

14.5 Permits

The Principal must obtain the Development Approval and any other consents, licences, permits or authorities specified in Annexure Part A (if any). The Contractor must obtain and is responsible for all costs and fees associated with all other Approvals required for or in connection with the execution of the work under the Contract and must accept an assignment or transfer of any Approvals from the Principal or another contractor as may be directed by the Principal's Representative from time to time.

The Contractor must have no Entitlement for any fees or other costs it incurs associated with obtaining Approvals or renewing or maintaining such Approvals for as long as is necessary for the completion of the Work, or until the Final Certificate is issued.

If the Contractor is required to apply for modifications to the Development Approval, the Contractor must obtain the Principal's Representative's and Independent Certifier's written approval prior to submitting the application to the relevant Authority.

14.6 Assistance of the Parties

Each party must provide all reasonable assistance to the other party to obtain all the consents, licences, permits or authorities necessary for the Works or the work under the Contract, including with respect to the Contract providing reasonable assistance for, any consents, licences, permits or authorities that must be obtained by the Principal under Clause 14.5.

If the Contractor requires the Principal to endorse, approve or sign any document to assist with meeting the requirements of any Authority, the Contractor must give to the Principal's Representative and Independent Certifier a notice—

- (a) addressed to the Principal,
- (b) describing the purpose for which such endorsement, approval or signature, is required;
- (c) attaching all relevant documents to be considered and/or signed by the Principal;

setting out the date that the Authority requires the document to be provided or lodged, which date must be more than 5 Business Days after the notice is provided to the Principal.

14.7 Occupation certificate

The Contractor is responsible for taking all steps and doing all things necessary, (except those things for which the Principal expressly assumes responsibility under the Contract) to obtain the occupation certificate from the relevant Authority. The Contractor must obtain the occupation certificate for the entire Works as a precondition to achieving Practical Completion.

14.8 Taxes, duties and charges

Subject to the other provisions of the Contract, the Contractor shall:

- (a) pay, and reimburse the Principal for the payment of, all sales tax, customs duties, stamp duties, goods and services tax and other duties, charges, taxes or imposts payable in connection with the carrying out of work under the Contract (including the provision of all the work under the Contract); and
- (b) provide all security required under any Legislative Requirement as security for the payment of any duties, charges, taxes or imposts.

14.9 ABN Withholding

- (a) Where the Principal may become obliged under any Legislative Requirement to withhold any amount on account of tax or other imposts from any amount payable to the Contractor under or in connection with the Contract unless certain conditions are satisfied (including, without limitation, the provision by the Contractor of an Australian Business Number (‘ABN’)), the Principal may withhold the amount required to be withheld under the Legislative Requirement until the Principal is satisfied in its reasonable opinion that all the relevant conditions have been satisfied.
- (b) If the Principal for any reason becomes liable to pay an amount referred to in Clause 14.9(a):
 - (i) the amount paid by the Principal to any Authority shall be taken to have been paid by the Principal to the Contractor on account of and in satisfaction of amounts payable under the Contract; and
 - (ii) if the amount paid by the Principal exceeds any amounts payable by the Principal to the Contractor under the Contract, the amount of the excess shall be a debt due from the Contractor to the Principal.

14.10 Portable Long Service Leave Levy and other levies

The Contractor shall pay all levies and fees required by any Legislative Requirement to be paid by a 'principal' under a contract for construction or building work (including portable long service leave levy, training levy and workplace health and safety fee). The Principal shall not be required to reimburse the Contractor for such levies or fees irrespective of any other provision under the Contract. The Contractor warrants it has allowed for all such levies and fees in the Contract Sum and shall indemnify the Principal against any Claim in connection with such levies and fees (including any non-payment of those levies and fees).

15 PROTECTION OF PEOPLE AND PROPERTY

15.1 Generally

Insofar as compliance with the requirements of the Contract permits, the Contractor must—

- (a) provide all things and take all measures necessary to protect people and property and, in particular, take full responsibility for the adequacy, stability and safety of all:
 - (i) Temporary Works, including for all those Temporary Works identified in Annexure Part A, which must also be signed off by a qualified engineer;
 - (ii) Constructional Plant;
 - (iii) operations on Site; and

- (iv) methods of construction and transportation;
- (b) establish, maintain and comply with emergency safety and security procedures applicable to the Works including those identified in the Construction Management Plan and Other Requirements and as notified to the Contractor by the Principal's Representative from time to time;
- (c) avoid unnecessary interference with the passage of people and vehicles;
- (d) prevent nuisance and unreasonable noise and disturbance including meeting all of the requirements identified in the Construction Management Plan and Other Requirements.

Without limiting the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, temporary services, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Contractor or its Associates damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor must promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under Clause 15 the Principal may after provision of reasonable written notice to the Contractor, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal will be a debt due from the Contractor to the Principal.

15.2 Workplace Health and Safety

- (a) The Contractor shall ensure that all work under the Contract is carried out in accordance with Work Health and Safety Requirements.
- (b) The Contractor shall at all times:
 - (i) discharge its duties under Work Health and Safety Law; and
 - (ii) ensure its Associates discharge their respective duties under Work Health and Safety Law, in connection with the work under the Contract.
- (c) The parties agree:
 - (i) subject to Clause 15.2(c)(iii), the Principal appoints the Contractor as the 'principal contractor' (as defined by Work Health and Safety Law) in respect of the construction project;
 - (ii) the Contractor accepts appointment under subclause 15.2(c)(i);
 - (iii) the construction project in respect of which the Contractor is appointed 'principal contractor' under subclause 15.2(c)(i) includes:
 - (A) all the work under the Contract (other than the work under the Contract carried out upon the Non Principal Contractor Site); and
 - (B) all works (whether or not the work under the Contract) carried out, or to be carried out, upon the Principal Contractor Site (including works carried out by Other Contractors); and
 - (iv) the Principal authorises the Contractor to:
 - (A) assume management and control of the Principal Contractor Site; and
 - (B) carry out and discharge the duties given to the 'principal contractor' under Chapter 6 of the *Work Health and Safety Regulation 2011* (Qld),

for the period during which the Contractor is the 'person in control' of the Principal Contractor Site (as referred to in subclause 15.2(c)(i)), unless and to the extent that such authorisation is withdrawn by the Principal in writing prior to the end of that period (and only for the period of time such authorisation is withdrawn).

- (d) Unless otherwise directed by the Principal's Representative, the Contractor agrees:
- (i) no 'construction work; (as defined by Work Health and Safety Law) is permitted to take place upon an area of Non Principal Contractor Site; and
 - (ii) the Contractor is permitted to use the Non Principal Contractor Site for access and egress from and to the Principal Contractor Site and the Contractor must comply with all rules, policies, requirements, guidelines or other documents provided by or on behalf of the Principal in connection with the Non Principal Contractor Site.
- (e) The Contractor shall ensure that the Contractor and the Contractor's Associates:
- (i) subject to subclause 15.2(c), comply with the directions of the Principal, the Principal's Representative (or any other person nominated by the Principal as having the authority to give directions ('**Principal's nominee**')) in connection with health and safety;
 - (ii) consult fully with the Principal, the Principal's Representative and the Principal's nominee in respect of:
 - (A) any matter relevant to health and safety; and
 - (B) without limiting subparagraph (A), how the work under the Contract can be undertaken in a way which prevents or minimises all risks to health and safety of all persons, including identifying potential hazards associated with the work under the Contract;
 - (iii) comply strictly with the Work Health and Safety Requirements;
 - (iv) throughout the period of the Contract, maintain all qualifications, competencies and licences:
 - (A) held at the commencement of the work under the Contract; or
 - (B) required by work health and safety requirements;
 - (v) consult fully with the Principal, the Principal's Representative and the Principal's nominee in respect of, and demonstrate to the Principal or the Principal's nominee, compliance by the Contractor and the Contractor's Associates with the requirements of this Clause 15.2 and Work Health and Safety Requirements;
 - (vi) maintain adequate records of all health and safety matters (including in accordance with Work Health and Safety Requirements);
 - (vii) audit the Contractor's health and safety records and compliance with Work Health and Safety Requirements regularly and whenever requested by the Principal or the Principal's Representative and provide to the Principal and the Principal's Representative a copy of the findings of that audit; and
 - (viii) satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of the Principal.
- (f) The Principal or the Principal's Representative may at any time conduct its own audit of the Contractor's health and safety records and compliance with Work Health and Safety Requirements (including any safety management systems of the Contractor) and the Contractor shall:
- (i) co-operate fully with the Principal or the Principal's Representative in connection with that audit (including by providing all necessary access, relevant documents or other information); and
 - (ii) immediately address, and ensure the Contractor's Associates address, any issues identified by the Principal or the Principal's Representative from its audit and notified to the Contractor.

- (g) The Contractor shall immediately notify the Principal and the Principal's Representative of:
 - (i) any breach (or potential breach) by the Contractor or any Contractor's Associates of any Work Health and Safety Requirements;
 - (ii) any notice or direction received by the Contractor or any Contractor's Associates under or in connection with Work Health and Safety Law (including by providing a copy of the notice or direction to the Principal and the Principal's Representative); and
 - (iii) all safety incidents or accidents to any person.
- (h) Despite any other provision of the Contract, the Principal or the Principal's Representative rights under the Contract relating to health and safety (including, without limitation, the rights under this Clause 15.2 to give directions to the Contractor, carry out an audit of the Contractor's records or practices, provide, approve or review any plan or other document to be implemented or relied upon by the Contractor (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under the Contract):
 - (i) are for the benefit of the Principal and the Principal's Representative;
 - (ii) may be exercised by the Principal or the Principal's Representative in its absolute discretion (without the Principal or the Principal Representative being under any obligation to do so); and
 - (iii) do not prejudice or otherwise affect the Contractor's full responsibility for ensuring strict compliance with all of the Contractor's obligations under the Contract and under Work Health and Safety Requirements.
- (i) The Contractor shall provide to the Principal, and also to any person who the Contractor is aware has been or will be engaged by the Principal to undertake any activities relating to the work under the Contract, all information relevant to the work under the Contract:
 - (i) required to be disclosed by the Contractor in the discharge of its duties under Work Health and Safety Law; or
 - (ii) received (or which should have been received) by the Contractor or any subcontractor from any other person required to disclose the information to the Contractor or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.
- (j) The Contractor shall, to the maximum extent permitted by law, indemnify and keep indemnified the Principal and the Principal's Representative and their officers, employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including, without limitation, in tort or under any law), arising from or in connection with:
 - (i) any breach by the Contractor of its obligations under this Clause 15.2; and
 - (ii) any injury, accident or safety related incident on or adjacent to the Site arising out of or as a consequence of carrying out the work under the Contract,

but the indemnity shall not apply to the extent that the injury, accident or safety related incident on or adjacent to the site arises due to the negligent act or omission of the Principal or the Principal's employees and agents.
- (k) The Contractor is for the purposes of the Work Health and Safety Law the 'person in control' of the Site and all things on the Site:
 - (i) from the Execution Date until the Date of Practical Completion; and
 - (ii) during the time of, and for so long as that part of the Site is affected by, the carrying out of the work under the Contract during the Defects Liability Period.

15.3 Conditions Precedent & WH&S Management Plan

- (a) The Contractor must, as a condition precedent to access to the Site:
 - (i) if the work under the Contract includes construction work on a structure and design has been prepared for the structure, obtain a written report from the designer of the structure identifying any hazards relating to the design of the structure and promptly provide the Principal's Representative with a copy of the report;
 - (ii) provide the Principal's Representative with:
 - (A) a WH&S Management Plan (which must as a minimum meet the requirements set out in schedule 1 of Annexure Part L); or
 - (B) if there is a WH&S Management Plan in existence—
 - (1) review the existing WH&S Management Plan;
 - (2) identify any inadequacies or work health and safety risks not addressed in the WH&S Management Plan;
 - (3) update and amend the WH&S Management Plan to address any inadequacies or work health and safety risks not addressed by the Principal; and
 - (4) verify in writing to the Principal's Representative that the updated WH&S Management Plan (which must as a minimum meet the requirements set out in schedule 1 of Annexure Part L) provided by the Contractor to the Principal addresses all identified hazards and risks and potential work health and safety hazards and risks relating to the work under the Contract; and
 - (iii) provide certification to the Principal in the form of Annexure Part L confirming the matters referred to in section A of Annexure Part L.
- (b) The Contractor must not commence to carry out the work under the Contract on the Site until it has received written acknowledgment from the Principal's Representative of the Contractor's compliance with Clause 15.3(a).
- (c) The WH&S Management Plan must comply with the content requirements specified in the Work Health and Safety Law.
- (d) The Contractor must comply with the WH&S Management Plan which the Principal's Representative acknowledges in accordance with Clause 15.3(b).

15.4 Environmental Protection

The Contractor:

- (a) shall take all action necessary to protect and preserve the environment (including flora and fauna) from harm or damage arising from or in connection with the carrying out of the work under the Contract (including Environmental Harm);
- (b) shall not, in carrying out the work under the Contract, cause any Contamination;
- (c) shall comply with all:
 - (i) Legislative Requirements relating to:
 - (A) Contamination (including the reporting, notifying, disposal, remediation or otherwise dealing with Contamination or its effects); and
 - (B) the protection or preservation of the environment (including flora and fauna); and
 - (ii) environmental management plans provided by or on behalf of the Principal to the Contractor or provided by the Contractor and approved by the Principal;

- (d) shall obtain all Approvals required and pay, and reimburse the Principal for the payment of, all fees, fines or other amounts payable under all environmental protection or preservation Legislative Requirements (including in connection with any applicable Approvals);
- (e) shall, to the maximum extent permitted by law, indemnify and keep indemnified the Principal and its employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including, without limitation, in tort or under any law), arising from or in connection with actual or threatened environmental damages, destruction or harm (including Environmental Harm) or Contamination (including in respect of making good environmental damage or in defending claims) arising from or contributed to by:
 - (i) acts or omissions of the Contractor, its employees, its subcontractors or their employees (whether wilful, negligent or otherwise);
 - (ii) breach by the Contractor of its obligations under this Clause 15.4; or
 - (iii) the carrying out of the work under the Contract,
 but the indemnity shall not apply to the extent that the actual or threatened environmental damages, destruction or harm (including Environmental Harm) or Contamination (including in respect of making good environmental damage or in defending claims) arises due to the negligent act or omission of the Principal or the Principal's employees and agents;
- (f) shall promptly rectify (at the Contractor's own cost) any environmental damage and provide a report (as to the environmental damage and its rectification) to the Principal whenever requested and otherwise within 5 Business Days of the completion of the rectification of damages detailing the rectification carried out and any other matters requested; and
- (g) shall ensure that the Contractor's Management Plan addresses how the Contractor shall comply with the Contract (including all Legislative Requirements) in connection with the environment.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Contract

From and including the earlier of the date of commencement of work under the Contract and the date on which the Contractor is given possession of the Site to 4 p.m. on the Date of Practical Completion of the Works, the Contractor shall be liable for the care of the work under the Contract.

Without limiting the Contractor's obligations, the Contractor is liable for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract, things brought on the Site by subcontractors for that purpose, things in the course of transportation to or delivery to the Site, the Works, the Temporary Works and Constructional Plant and the Contractor must provide the storage and protection necessary to preserve those items and things and the Works, the Temporary Works and Constructional Plant.

After 4 p.m. on the Date of Practical Completion the Contractor remains liable for the care of outstanding work and items to be removed from the Site by the Contractor and will be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clauses 30.6, 31.1, and 37.

16.2 Reinstatement

If loss or damage occurs to the work under the Contract while the Contractor is liable for its care (other than loss or damage caused by any of the Excepted Risks), the Contractor must, at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

In the event of loss or damage caused by any of the Excepted Risks (whether or not in combination with other risks) the Contractor must to the extent directed by the Principal's Representative rectify the loss

or damage and such rectification shall be deemed to be a Variation under Clause 40.1. If loss or damage is caused by a combination of Excepted Risks and other risks, the Independent Certifier in pricing the Variation shall assess the proportional responsibility of the parties.

16.3 Damage to Third Party Property

The Contractor acknowledges that it assumes the risk of damage to the Site surrounds including the footpaths, entry and egress points to the Site and any temporary works erected by others. The Contractor must, take all necessary steps to ensure that any bonds held by third parties with respect to third party's property which have been provided by the Principal are replaced with bonds in the name of the Contractor prior to commencement of its work on the Site.

16.4 Care of the Work in the Absence of the Contractor

In the event of an emergency situation the Principal's Representative, to prevent loss of or damage to the Works or any part of the Works or to any property or to prevent injury to any person, shall immediately notify the Contractor's Representative of the situation, directing such action as is necessary to remedy and/or mitigate the extent or impact of the emergency situation.

If the Principal's Representative is unable to contact the Contractor's Representative, or if the Contractor's Representative does not carry out such action as is necessary to remedy and/or mitigate the extent or impact of the emergency situation, the Principal's Representative may take such action as it considers reasonably necessary to prevent loss of or damage to the Works or any part of the Works or to any property or to prevent personal injury to any person. If the Principal's Representative determines that the action is in respect of a matter for which the Contractor is, under this Contract responsible, and is of a kind that the Contractor would have been liable to take at its own expense, the reasonable cost incurred by the Principal in taking such action shall be a debt due and payable by the Contractor to the Principal.

17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

17.1 Indemnity by Contractor

So far as this Clause 17 applies to property, it applies to property except the work under the Contract.

The Contractor must indemnify and must keep indemnified the Principal or its Associates (and each of them) against any action, claim, demand, cost or expense arising out of or in connection with—

- (a) any breach or failure to observe any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor;
- (b) loss of, destruction or damage to any real or personal property of any person arising out of or in the course of or caused by the execution of or in any way in connection with the work under the Contract or any activity for which the Contractor is liable and which is directly or indirectly associated with the Works (including remedying any Defect in the Works); and
- (c) Claims by any person against any of those indemnified concerning:
 - (i) personal injury (which expression includes illness) or death of any person arising out of or in the course of, or caused by, or in any way in connection with the execution of the work under the Contract or any activity for which the Contractor is liable and which is directly or indirectly associated with the Works (including remedying any Defect in the Works), whether arising under statute or common law; or
 - (ii) any non-compliance by the Contractor or its Associates with, or infringement of, any Legislative Requirements applicable to the work under the Contract or in connection with the loss, termination or suspension of any Approvals due to any act or omission by the Contractor or its Associates,

but the Contractor's liability to indemnify and keep indemnified the Principal is reduced proportionally to the extent that the act or omission of the Principal, the Principal's Representative or the employees or

agents of the Principal, or other person not under the direct control of the Contractor contributed to the loss, damage, death or injury.

Clause 17.1 does not apply to—

- (a) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (b) exclude any other right of the Principal to be indemnified by the Contractor;
- (c) things for the care of which the Contractor is liable under Clause 16.1;
- (d) damage which is the unavoidable result of the construction of the Works in accordance with the Contract; and
- (e) claims in respect of the right of the Principal to construct the work under the Contract on the Site.

17.2 Further Indemnity

In addition to the Contractors' obligation to indemnify the Principal under Clause 17.1, the Contractor unconditionally and irrevocably indemnifies the Principal against any loss the Principal may suffer because—

- (a) the liability to perform or observe the Contract including any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor is unenforceable in whole or in part as a result of a lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Contractor does not observe or perform or comply with, in full or in part, the Contract including any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor;
- (c) any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor are rescinded or terminated by the Contractor for any reason except where the Contractor has obtained the consent of the Principal in writing, which will not be unreasonably withheld; or
- (d) the Contractor disregards an order for specific performance of any of the obligations, agreements and conditions to be observed and performed under the Contract by the Contractor.

However, the Contractor's liability to indemnify and keep indemnified the Principal is reduced proportionally to the extent that an act or omission of the Principal, the Principal's Representative or the employees or agents of the Principal contributed to the loss.

18 PRINCIPAL'S INSURANCE OBLIGATIONS

Before the Contractor commences work under the Contract, the Principal must effect and maintain the following insurance policies which will cover the Principal, the Principal's Representative, the Principal's Financier, the Contractor, all Consultants and all subcontractors carrying out the work under the Contract:

- (a) a comprehensive works insurance policy for an amount not less than the Contract Sum against loss and damage to the work under the Contract until all work under the Contract has been completed;
- (b) a project specific public and products liability policy for the amount stated in Annexure Part A which covers liabilities to third parties until the end of the last defects liability period under the Contract,

and must provide the Contractor with reasonable evidence of the terms of the policies and that the policies are current as required by the Contractor (acting reasonably) from time to time.

The Principal's insurance policies are subject to the exclusions, conditions and excesses noted on the policies and the Contractor:

- (c) must satisfy itself of the nature and extent of the Principal's insurance;
- (d) may take out insurance at its own cost to:
 - (i) insure any risks not insured by the Principal's insurance; or
 - (ii) cover any such exclusions, conditions or excesses in that insurance,

which the Contractor wants to insure against or cover; and must, where it:

- (e) causes or contributes to the loss or damage to which a claim under the Principal's insurances relates; or
- (f) is required to indemnify the Principal under Clause 15,

bear the cost of any excesses and deductibles in the Principal's insurance, and provide the Principal with all reasonable assistance it may require in relation to any claim which relates to work under the Contract.

The Contractor acknowledges and agrees that it understands the excess payable for the policies of insurance referred to in Clause 18 is \$50,000 per occurrence.

19 NOT USED

20 INSURANCE OF EMPLOYEES

As a condition precedent to Site access and to a precondition to the date on which a payment claim (including the Final Payment Claim) may be made in respect of the work under the Contract, the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legislative Requirement to be employed by the Contractor including liability by statute and at common law. The insurance cover must be maintained until all work including remedial work is completed.

Where permitted by law the insurance policy or policies must be extended to indemnify the Principal for the Principal's statutory liability and common law to persons employed by the Contractor.

The Contractor must ensure that all subcontractors are similarly insured.

20A MOTOR VEHICLE INSURANCE

The Contractor must have in place at all times during the work under the Contract motor vehicle compulsory third party insurance and motor vehicle third party property damage insurance or similar cover (however described)—

- (a) covering all motor vehicles owned, leased or hired by the Contractor and used by anyone in connection with the performance of the work under the Contract or the Contractor's other obligations under the work under the Contract;
- (b) covering the Contractor's legal liability for personal injury to, illness or death of, any person arising out of the use by the Contractor of any registered motor vehicle in connection with the performance of its obligations under the work under the Contract in accordance with all relevant Legislative Requirements; and
- (c) covering the Contractor's legal liability for damage to any real or personal property including the property of the Principal arising out of the use by the Contractor of any registered motor vehicle in connection with the performance of its obligations under the work under the Contract.

21 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

21.1 Proof of Insurance

The Contractor must, as a condition precedent to access to the Site and a precondition to the date on which a payment claim (including the Final Payment Claim) may be made in respect of work under the

Contract and whenever requested in writing by the Principal, but in any circumstance, no less frequent than every 6 months after the Execution Date, the Contractor must produce—

- (a) evidence to the satisfaction and approval of the Principal of the insurance effected and maintained; and
- (b) a letter from the Contractor's insurance broker stating that the insurance policies required by the Contract will not lapse or be cancelled without the insurance broker providing to the Principal at least 30 days written notice.

The effecting of insurance does not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

Any insurance policy to be effected and maintained under the Contract must be in a form acceptable to the Principal with an insurer approved by the Principal and authorised to carry on business under the *Insurance Act 1973* (Cth).

21.2 Failure to Produce Proof of Insurance

If a party ('**Defaulting Party**') fails to provide evidence satisfactory to the other ('**Notifying Party**') that a policy it is required to effect under this Contract is current or fails to obtain insurance in accordance with its relevant obligation under Clause 18, 20 or 20A, the Notifying Party may, without prejudice to any other rights it may have, take out the relevant insurance and the cost will be a debt due from the Defaulting Party to the Notifying Party.

Without limiting the Principal's rights under Clause 44.2, provision of proof of insurance effected and maintained in accordance with Clause 21.2 is a precondition to the date on which a payment claim (including the Final Payment Claim) may be made by the Contractor under the Contract. The rights given by this Clause 21.2 are in addition to any other right.

21.3 Notices from or to the Insurer

The party effecting insurance under Clause 18, 20 or 20A shall ensure that each policy of insurance contains provisions acceptable to the other party that will—

- (a) require the insurer, whenever the insurer gives the Principal, the Contractor or a subcontractor a notice of cancellation or other notice concerning the policy at the same time to inform the other party in writing that the notice has been given;
- (b) provide that a notice of claim given to the insurer by the Principal, the Principal's Representative, the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Principal's Representative, the Contractor and the subcontractor; and
- (c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal and the Contractor and prior to the insurer giving any notice of cancellation.

The party effecting the insurance under Clause 20 or 20A shall ensure that each policy of insurance contains provisions acceptable to the other party that will provide that a notice of claim given to the insurer by the Principal, the Principal's Representative, the Contractor, or a subcontractor will be accepted by the insurer as a notice of claim given by the Principal, the Principal's Representative, the Contractor and the subcontractor. The party effecting the insurance must—

- (a) whenever the insurer gives the Principal, the Principal's Representative, Contractor, or a subcontractor a notice of cancellation or other notice concerning the policy then that party must at the same time inform the Principal's Representative in writing that the notice has been given; and
- (b) whenever it fails to renew the policy or to pay a premium, give written notice of the failure to the other party before the insurer gives any notice of cancellation.

21.4 Notices of Potential Claims

Each party must, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clauses 18 or 20 and shall keep that party informed of subsequent developments concerning the claim. The Contractor must ensure that subcontractors in respect of their operations similarly inform the Principal.

21.5 Settlement of Claims

On settlement of a claim under the Principal's contract works insurance policy required by Clause 18–

- (a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, money received must, if requested by either party, be paid into a bank agreed on by the parties in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage, the Independent Certifier must certify against the joint account for the cost of reinstatement; and
- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor is entitled immediately to receive from money received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on Site whether or not incorporated into the Works).

21.6 Cross liability

Where permitted by law any insurance required to be effected by the Contractor in joint names in accordance with the Contract must include a cross-liability clause which states that–

- (a) the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising 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); and
- (b) failure by any insured to comply with the terms of the policy does not prejudice the insurance in relation to any other insured.

21.7 Excesses

The policies of insurance referred to in Clause 21 which the Contractor is required to effect and maintain under the Contract must not have excesses greater than the excesses specified in Annexure Part A for each policy.

21.8 Payment of excesses

The Contractor must pay any excess payable under the policies of insurance referred to in Clause 21.

22 CLERK OF WORKS AND INSPECTORS

The Principal's Representative shall forthwith notify the Contractor in writing of the name of any Clerk of Works or inspector appointed by the Principal or the Principal's Representative.

23 INDEPENDENT CERTIFIER

- (a) The Principal must ensure that there is an Independent Certifier appointed at all times. The Contractor acknowledges that the Independent Certifier will:
 - (i) act honestly and arrive at a reasonable measure of value of work, quantities or time under Clauses 3.9, 11, 30.5, 33.2, 35.3, 35.4, 35.5, 35.5A, 36 and 40.5; and
 - (ii) other than as expressly stated in Clause 23(a)(i), otherwise exercise all its functions under or in connection with the Contract as agent of the Principal..

- (b) For avoidance of doubt, the parties agree that the Independent Certifier is the agent of the Principal for the purposes of:
 - (i) accepting service of payment claims served by the Contractor under the SOPA;
 - (ii) assessing payment claims served by the Contractor under the SOPA; and
 - (iii) providing the Contractor with a payment schedule under the SOPA.

23A PROJECT CONTROL GROUP

23A.1 Establishment of Project Control Group

The Principal's Representative must ensure that a project control group is established at the commencement of work under the Contract ('**Project Control Group**').

The function of the Project Control Group is to review the progress of the work under the Contract.

23A.2 Co-ordinate Project Control Group

During the execution by the Contractor of the work under the Contract, the Principal's Representative shall co-ordinate monthly Project Control Group meetings and in doing so the Principal's Representative shall—

- (a) convene them;
- (b) notify attendees;
- (c) prepare agendas; and
- (d) prepare and distribute minutes.

23A.3 Project Control Group attendees

The Project Control Group meetings must (unless they have reasonable excuse) be attended by—

- (a) the Principal's Representative who shall chair the meeting;
- (b) the Contractor's Representative;
- (c) nominees of the Principal's Representative;
- (d) nominees of the Principal (which may include the Independent Certifier if required by the Principal); and
- (e) nominees of the Contractor but only if a request is made in writing to the Principal's Representative and approved by the Principal's Representative prior to the meeting.

23A.4 Project Control Group agenda

The Project Control Group shall be a forum for discussion of—

- (a) design solutions presented by the Contractor;
- (b) review of the needs of the Principal;
- (c) the performance and progress by the Contractor of the Works;
- (d) any issues arising out of the Contract;
- (e) identifying problems and outstanding issues and allocating responsibility and tasks to resolve those issues; and
- (f) any other items required by the Principal's Representative.

23A.5 Meeting Delegates

The Contractor must ensure that meetings convened under this Clause 23A are attended by its representatives who have the knowledge and authority to respond to queries raised by the Principal and the Principal's Representative and to propose solutions to those queries.

If requested by the Principal's Representative, a senior management representative of the Managing Director of the Contractor must attend any Project Control Group meeting and provide information and assistance reasonably required by a member of the Construction Control Group to assist fulfilment of the function of the Project Control Group.

23A.6 Minutes of Project Control Group Meetings

The Principal's Representative shall keep detailed and accurate minutes of meeting and distribute those minutes to the attendees of the meeting within 4 Business Days of the meeting.

The parties acknowledge that the minutes of meeting prepared under this Clause 23A.6 or matters stated or discussed at any Project Control Group meeting will not constitute instructions or directions to the Contractor for the purposes of the Contract.

23A.7 Costs of Project Control Group

The parties must each meet all costs of their respective personnel and involvement in the Project Control Group

24 INDEPENDENT CERTIFIER'S REPRESENTATIVE

The Independent Certifier may from time to time appoint individuals to exercise any functions of the Independent Certifier under the Contract but not more than one Independent Certifier's Representative may be delegated the same function at the same time. The appointment of a Independent Certifier's Representative does not prevent the Independent Certifier from exercising any function.

The Independent Certifier must immediately notify the Contractor in writing of—

- (a) the appointment and the name of any Independent Certifier's Representative and the functions delegated to the Independent Certifier's Representative;
- (b) the termination of the appointment of a Independent Certifier's Representative.

25 CONTRACTOR'S REPRESENTATIVE, PRINCIPAL'S REPRESENTATIVE AND KEY PERSONNEL

25.1 Contractor's Representative

The Contractor must personally superintend the execution of the work under the Contract or, at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Principal's Representative or Independent Certifier (as the case may be), at other places at which activities relating to the execution of the work under the Contract are taking place.

The Contractor must immediately notify the Principal's Representative or Independent Certifier (as the case may be) in writing of the name of the representative and of any subsequent changes ('Contractor's Representative'). A Principal's Representative direction shall—

- (a) if it relates to the execution of work on the Site and is given to such representative on the Site; or
- (b) if it relates to the execution of work at any other place and is given to such representative at the other place,

is deemed to have been given to the Contractor.

The Contractor may from time to time appoint an individual to exercise any functions of the Contractor under the Contract. The appointment of the Contractor's Representative does not prevent the Contractor from exercising any function. The Contractor must immediately notify the Principal in writing of—

- (a) the appointment and the name of any Contractor's Representative; and
- (b) the termination of the appointment of a Contractor's Representative.

The Contractor's Representative may supervise the Works on behalf of the Contractor and represent the Contractor for all purposes of the Contract unless the Contractor advises the Principal in writing that some other person is to be the Contractor's Representative. Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

The Contractor must make suitable arrangements so that the Contractor's Representative it has nominated as responsible for organising the execution of the Works can be contacted by telephone during the period when the work under the Contract is being carried out on the Site and during the Defects Liability Period.

The Principal's Representative may, at its absolute discretion object to the appointment of a Contractor's Representative, or at any time during the work under the Contract request that a Contractor's Representative be removed from that role. Upon written confirmation of an objection or request for removal, the Contractor must immediately appoint the Managing Director of the Contractor as the Contractor's Representative until a new Contractor's Representative is appointed by the Contractor and approved in writing by the Principal's Representative.

25.2 Principal's Representative

- (a) The Principal may from time to time appoint an individual to exercise any functions of the Principal under the Contract. The Contractor acknowledges that the Principal's Representative will carry out all its function under or in connection with the Contract as agent of the Principal and will not, in any respect act as independent certifier, assessor or valuer.
- (b) The appointment of the Principal's Representative does not prevent the Principal from exercising any function.
- (c) The Principal must immediately notify the Contractor in writing of—
 - (i) the appointment and the name of any Principal's Representative; and
 - (ii) the termination of the appointment of a Principal's Representative.
- (d) If under a provision of the Contract enabling the Principal's Representative to give directions, the Principal's Representative gives a direction, the Contractor must comply with the direction.
- (e) Except where the Contract otherwise provides, a direction may be given orally but the Principal's Representative must as soon as practicable confirm it in writing.
- (f) If the Contractor in writing, requests the Principal's Representative to confirm an oral direction, the Contractor is not bound to comply with the direction until the Principal's Representative confirms it in writing.
- (g) If the Contractor considers that any direction of the Principal's Representative is given in error or involves a Variation, the Contractor must, before complying with the direction and, in any event, within 5 Business Days after the direction, give written notification expressly identifying the error or the asserted Variation to the Principal's Representative and Independent Certifier. If the Contractor fails to comply with this notification requirement, the Contractor must have no Entitlement in respect of the direction.
- (h) If the Contractor fails to comply with a direction given by the Principal's Representative in the manner or within the time stated in the direction (or if no time is stated, a reasonable time) then the Principal may engage others to execute the work (or any part thereof) the subject of the direction on the Contractor's behalf and the cost of so doing will be a debt due from the Contractor to the Principal.

25.3 Key Personnel

The Principal's Representative may at any time, at its discretion direct the replacement of key personnel, whether or not the Principal's Representative requires such key personnel to be removed from Site in accordance with Clause 25.4. Such direction must be in writing.

25.4 Replacement of Key Personnel

Key personnel may only be replaced in the following circumstances—

- (a) upon the ceasing of employment with the Contractor;
- (b) in the case of subcontractors, upon a breakdown of the relationship with the Contractor; or
- (c) at the direction of the Principal's Representative pursuant to Clause 25.3.

In the event that the Contractor proposes to replace key personnel or is directed to replace key personnel, it must immediately provide the Principal's Representative with a written notice of replacement of key personnel in accordance with Clause 25.3.

26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

26.1 Removal of Site

The Principal's Representative may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Principal's Representative directs, any person employed in connection with the work under the Contract who, in the absolute discretion of the Principal's Representative, is guilty of misconduct or is incompetent or negligent. The person must not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Principal's Representative.

If that person is a member of "key personnel", as soon as practicable after such direction, the Contractor must provide a notice of replacement of key personnel.

26.2 Notice of Replacement of Key Personnel

A notice of replacement of key personnel must be in writing and provide details of the reason for the replacement and the qualifications and experience of the proposed replacement personnel.

The proposed replacement of key personnel must be with a person of equal or greater qualification and experience than the key personnel being replaced. The Principal's Representative may object to the replacement of any of the key personnel, by providing written notice of that objection. Upon receipt of that notice the Contractor agrees not to appoint the proposed replacement but to seek and appoint an alternate replacement and issue a further notice of replacement, whereupon the provisions at this Clause 26 shall apply.

26.3 Industrial relations

This Clause 26.3 does not limit the Contractor's obligations under Clause 68.

The Contractor is liable for industrial relations with all persons for whom it is responsible and must—

- (a) implement and maintain a best practice industrial relations program;
- (b) comply with:
 - (i) any Commonwealth or state awards; and
 - (ii) any site agreement,

that cover the Contractor and its subcontractors in carrying out the work under the Contract.

The Contractor and its subcontractors must cooperate with the Other Contractors and their subcontractors and employees on the Site in order to maintain a best practice industrial relations environment.

Subject to Clause 35.5 the Contractor is not entitled to make any claim whether for payment, adjustment of the Contract Sum, extension of time or otherwise in respect of industrial relations. Any cost and time consequences of industrial relations will be deemed to be included in the Contract Sum and the Date for Practical Completion.

For the avoidance of doubt nothing in this Clause 26 affects any entitlement the Contractor may otherwise have to an extension of time under Clause 35.5 for a cause of delay described in Clause 35.5.

27 SITE

27.1 Access to the Site

Subject to Clause 27.9, the Principal must on or before the expiry of the time stated in Annexure Part A, give the Contractor access to the Site or sufficient of the Site to enable the Contractor to commence work in accordance with the Contract. If the Principal has not given the Contractor access to the whole Site, the Principal must (subject to Clause 27.9) from time to time give the Contractor access to any further parts of the Site necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract. The Principal must notify the Contractor in writing of the date on which the Site or any part of it will be available.

Despite the provisions of Clause 27.1, if the Contractor is in breach of Clause 21.1, the Principal may refuse to give the Contractor access to the Site or any part of the Site until the Contractor has complied with the requirements of Clause 21.1.

Access to the Site confers on the Contractor a right to only the use and control necessary to enable the Contractor to execute the work under the Contract and discharge its obligations under the WH&S Legislation.

27.2 Access for the Principal and Others

The Contractor acknowledges that the Principal and the Principal's employees and agents including the Principal's Financier, the Quantity Surveyor or their representatives may at any time have access to any part of the Site for any purpose after the receipt by the Contractor of reasonable advance written notice.

The Principal must ensure that it and its employees and agents comply with the Contractor's site, safety and security requirements.

The Contractor must permit the execution of work on the Site by persons engaged by the Principal and co-operate with them and co-ordinate the Contractor's work with their work.

If requested by the Contractor, the Principal must give to the Contractor the names of the persons so engaged.

The Contractor must at all reasonable times give the Principal, the Principal's Representative, Independent Certifier, the Clerk of Works and inspectors appointed under Clause 22, and other persons authorised in writing by the Principal including but not limited to the Principal's Financier, or the Quantity Surveyor or their nominee or by the Principal's Representative or Independent Certifier access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored including access to all and any Project Records.

The Principal must use reasonable endeavours to ensure that the Contractor is not impeded in the execution of the Contractor's work by the Principal's Representative and Independent Certifier while exercising the right of access given by Clause 27.2A or by any persons exercising the right of access given to those persons by this Clause 27.2.

27.2A Access for the Principal's Representative and Independent Certifier

The Principal's Representative and Independent Certifier must be given:

- (a) access to the Site and the work under the Contract; and
- (b) after reasonable notice to the Contractor, access to any place other than the Site where work under the Contract is being carried out or materials are being prepared or stored,

for the purposes of discharging the functions of the Principal's Representative and Independent Certifier under the Contract.

27.3 Delivery of Materials to and Work on Site Before Possession

Until possession of the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor must not deliver materials to or perform work on the Site or part of the Site, as applicable, without the Principal's Representative written approval.

27.4 Use of Site by Contractor

Unless the Contract provides otherwise or the Principal's Representative gives prior written approval, the Contractor must not use the Site or allow it to be used for—

- (a) camping;
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Contract.

27.5 Finding of 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, shall as between the parties, be and remain the property of the Principal. Immediately on the discovery of these things the Contractor must take precautions to prevent their loss or removal or damage and must notify the Principal's Representative of the discovery.

If compliance with obligations under Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering the difference is to be valued under Clause 40.5.

27.6 Work on or to Adjoining Properties

Subject to this Clause 27.6, where the nature of the Works requires that the Contractor execute protection work under, on or to or in the airspace above a site or property which adjoins the Site or is so situated in relation to the Site as to be exposed to a significant risk of damage from the Works, then the Contractor must—

- (a) without limiting Clause 27.7, at its own cost, except to the extent that the Principal has already done so as at the Execution Date, obtain the appropriate permission, which may be subject to conditions as to working space, periods of time, hours of work or otherwise; and
- (b) comply with all conditions attaching to the appropriate permission including the Adjoining Land Licence and, in any event, make good at its own cost and with the least possible delay or, at the option of the adjoining owner, meet the cost of making good, any damage to adjoining properties arising out of or in any way in connection with its operations.

The Contractor acknowledges that to carry out the Works, it may require access to an adjoining property to install rock or soil anchors, or other form of support, of a temporary or permanent nature, under the surface of that adjoining property. The Contractor is solely responsible for obtaining approval for such access and work method and shall not have any Entitlement as a consequence of the need to obtain such approval.

27.7 Access to Adjoining Properties

Except to the extent that the Principal has already done so as at the Execution Date, the Contractor must make arrangements for any access to or over or under or on or for use of any adjoining site or property (including any air space rights required in connection with the works under the Contract) which it may require for any purpose. The Contractor accepts liability for and indemnifies and must keep indemnified the Principal against any consequences arising from or in any way in connection with any failure of the Contractor to make those arrangements including any loss, expense or damage suffered or incurred by the Principal, directly or indirectly, as a result of any use of any adjoining site or property or of any failure on the part of the Contractor to make those arrangements for access.

27.8 Contractor's responsibility for any nuisance

Without limiting any other obligation under the Contract, the Contractor must perform the work under the Contract so as to avoid any disturbance, nuisance and inconvenience to others, including Neighbours.

The Contractor is liable for and must comply with the reasonable requirements of all Neighbours and Authorities in avoiding any disturbance, nuisance and inconvenience to others in performing the work under the Contract.

27.9 Other Contractors

- (a) The Contractor acknowledges and agrees that its access to the Site will not be exclusive and that other contractors ('**Other Contractors**') engaged by the Principal may perform work on the Site concurrently with the work under the Contract.
- (b) The Principal shall be entitled to arrange for Other Contractors to carry out works, provide services or supply other items on or near the site or the Works on behalf of the Principal concurrently with the execution of the work under the Contract by the Contractor. The Principal's Representative shall notify the Contractor in writing of the identity of any Other Contractors.
- (c) The Contractor shall carry out work under the Contract and complete the Works notwithstanding the presence of Other Contractors on or near the Site.
- (d) The Contractor must:
 - (i) cooperate with the Other Contractors to ensure the coordination of the work of the Other Contractors with the execution of the work under the Contract including timeframes, programs and schedules for completion of the work under the Contract;
 - (ii) take such actions as are necessary to facilitate the work of the Other Contractors, including providing Other Contractors with access to all essential services and amenities and any place where work is being carried out or materials are being prepared or stored;
 - (iii) take such actions as are necessary to not delay or disrupt any Other Contractor; and
 - (iv) use Best Practice in dealing with the Other Contractors, and in the coordination of the work under the Contract with the work of the Other Contractors.
- (e) The Contractor shall allow access to and through the Site to any and all Other Contractors. Such access shall be granted at such times and in such manner so as to permit, in the reasonable opinion of the Principal's Representative, the orderly and timely performance of the work of the Other Contractors and the Works, without limiting Clause 31.8.
- (f) The Contractor shall be responsible for the rectification of:
 - (i) any damage to the Works caused by an act or omission of any Other Contractors, to the extent the Contractor has failed to comply with this Clause 27.9 in connection with that act or omission; and
 - (ii) any damage (howsoever caused) to the work of Other Contractors caused or contributed to by the Contractor or any of its Associates.
- (g) The Contractor acknowledges and agrees that it has allowed in the Contract Sum for all delays, disruptions and costs it may incur arising out of or in connection with the work to be performed by Other Contractors or otherwise to comply with its obligations pursuant to this Clause 27.9 and that it has no Entitlement, including in respect of any such delay, disruption or cost.

27.10 Site Specific Obligations

The Contractor—

- (a) acknowledges that the Principal has entered into the Site Specific Documents and is bound to comply with the requirements of the Site Specific Documents; and
- (b) shall to the extent that it applies to the work under the Contract:
 - (i) comply with, satisfy and carry out and fulfil the conditions and requirements that the Principal has under those Site Specific Documents;
 - (ii) assist the Principal in any way that the Principal requires to enable the Principal to discharge its obligations under the Site Specific Documents; and
 - (iii) not do anything that will put the Principal in breach of its obligations under the Site Specific Documents,
- (c) indemnifies the Principal against any Claim arising out of or in connection with a breach by the Contractor of its obligations under this Clause 27.10.

28 SETTING OUT THE WORKS – NOT USED

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the 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 under the Contract.

29.2 Removal of Materials and Constructional Plant

From time to time the Principal's Representative may, by written notice to the Contractor direct the Contractor not to remove Constructional Plant or materials from the Site. After receipt of a direction, the Contractor must not remove the materials or the Constructional Plant without the prior written approval of the Principal's Representative, which approval may not be unreasonably withheld.

29.3 Manufacture and Supply of Materials

The Principal's Representative may direct the Contractor to supply to the Principal before commencement of the work under the Contract particulars of—

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under or used in connection with the Contract.

30 MATERIALS AND WORK

30.1 Quality of Materials and Work

The Contractor must in performance of the work under the Contract –

- (a) use the materials and standards of workmanship required by the Contract; and
- (b) in the absence of any requirement to the contrary, the Contractor must use:
 - (i) suitable new materials which are in good condition, are of high quality and suitable for the purpose for which they are intended;

- (ii) all proper care, skill and diligence; and
- (iii) proper and tradesmanlike workmanship.

The work under the Contract shall meet the requirements of all Authorities, applicable Australian Standards and the Building Code of Australia.

30.1A Quality of Construction

- (a) Without limiting Clause 30.1, all work done under this Contract must comply with:
 - (i) the Building Code of Australia; and
 - (ii) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (iii) the conditions of any relevant Development Approval.
- (b) Despite Clause 30.1A(a), this Contract may limit the liability of the Contractor for a failure to comply with Clause 30.1A(a) if the failure relates solely to:
 - (i) a design or specification prepared by or on behalf of the Principal (but not by or on behalf of the Contractor); or
 - (ii) a design or specification required by the Principal, if the Contractor has advised the Principal in writing that the design or specification contravenes Clause 30.1A(a).

30.2 Quality Assurance

Before commencing the work under the Contract the Contractor must-

- (a) plan, establish and maintain a quality system which conforms to the requirements of ISO 9001:2000; and
- (b) provide the Principal's Representative with access to the quality system of each of the Contractor, subcontractors and suppliers to enable monitoring and quality auditing.

Any such quality system may be used only as an aid to achieving compliance with the Contract and to document compliance. The system does not relieve the Contractor of the responsibility to comply with the Contract.

30.3 Defective Materials or Work

If the Principal's Representative discovers material or work provided by the Contractor which is not in accordance with the Contract, the Principal's Representative must as soon as practicable notify the Contractor. The Principal's Representative may direct the Contractor to-

- (a) remove the material from the Site;
- (b) demolish the work;
- (c) reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

The Principal's Representative may direct the times within which the Contractor must commence and complete the removal, demolition, reconstruction, replacement or correction.

If the Contractor fails to comply with a direction issued by the Principal's Representative under this Clause 30.3 within the time specified by the Principal's Representative in the direction and provided the Principal's Representative has given the Contractor written notice that after the expiry of 5 Business Days after the date on which the Contractor receives the notice the Principal intends to have the work of removal, demolition, reconstruction, replacement or correction carried out by other persons, the Principal may have that work carried out by other persons and that cost incurred by the Principal is a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Materials or Work

Instead of a direction under Clause 30.9, the Principal's Representative may direct a Variation under Clause 40. The Variation shall be valued under Clause 40.5 and—

- (a) if the Variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the Variation results in the Contractor incurring more or less cost that would reasonably have been incurred had the Contractor been given a direction under Clause 30.3, regard shall also be had to the difference.

30.5 Acceptance of Defective Material or Work

Instead of a direction under Clauses 30.3 or 30.4, the Principal's Representative may direct the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in the value to the Principal of the Works and any other loss suffered by the Principal shall be valued by the Independent Certifier under Clause 40.5.

30.6 Generally

Even if the Principal's Representative has not given a direction under Clause 30.3, the Contractor must promptly remove, demolish, reconstruct, replace or correct material or work that is not in accordance with the Contract.

A progress payment, or a test or a failure by the Principal's Representative, Independent Certifier or anyone else to disapprove any material or work does not prejudice the power of the Principal's Representative to later give a direction under Clauses 30.3 or 30.4 or a notice under Clause 30.5.

The Contractor is not entitled to rely on any inspections or tests carried out by the Principal.

Nothing in Clause 30 prejudices any other right which the Principal may have against the Contractor arising out of or in any way connected with the failure of the Contractor to provide material or work in accordance with the Contract.

31 EXAMINATION AND TESTING

31.1 Principal's Representative May Order Tests

At any time prior to the issue of the Final Certificate the Principal's Representative may direct that any material or work under the Contract be tested. The Contractor must provide any assistance and samples and make accessible any parts of the work under the Contract as required by the Principal's Representative. On completion of the tests, the Contractor must promptly make good the work tested so that it fully complies with the Contract.

31.2 Covering Up of Work

The Principal's Representative may direct that any part of the work under the Contract must not be covered up or made inaccessible without the Principal's Representative prior approval.

31.3 Who Conducts Tests

Tests are to be conducted as provided in the Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

31.4 Notice of Tests

Before conducting a test under the Contract the party conducting the test, being the Principal's Representative or the Contractor, must give reasonable written notice to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

31.5 Procedure if Tests Delayed

Without prejudice to any other right of the Principal's Representative or delays in conducting a test, the other may conduct the test, after giving reasonable written notice of intention to do so.

31.6 Results of Tests

Each party must promptly make results of tests available to the other party and to the Principal's Representative.

31.7 Costs of Testing

Costs of and incidental to testing are to be valued under Clause 40.5. Those costs must be borne by the Principal or paid by the Principal to the Contractor unless—

- (a) the Contract provides that the Contractor will bear the costs or the test is one which the Contractor was required to conduct other than a test directed under Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Principal's Representative prior approval where such was required;
- (d) the test results from a failure of the Contractor to comply with a requirement of the Contract.

Where those costs are not to be borne by the Principal they are to be borne by the Contractor or paid by the Contractor to the Principal.

31.8 Access for Testing

- (a) If—before the issue of the Final Certificate, the Principal or the Principal's Representative asserts that material or work is not in accordance with the Contract; and
- (b) the Contractor requests permission to test the material or work,

the Principal may not unreasonably refuse the Contractor access to test the material or work.

31.9 Generally

The obligations of the Contractor in relation to the quality and suitability of the Works or any part of the Works or otherwise in respect of the Works are not in any way diminished by carrying out any tests under this Clause 31. The Contractor is entitled to an extension of time to the Date for Practical Completion due to any delay in the progress of the Works resulting from complying with the requirements of this Clause 31, if and only if the test reveals that the work the subject of the test complied with the terms of the Contract, but otherwise has no Entitlement resulting from complying with this Clause 31.

32 WORKING HOURS

The working hours and working days for work on the Site must comply with all Legislative Requirements and all requirements of any Authorities. The Contractor must notify the Principal's Representative of its intended working hours and working days for work on the Site before the commencement of work on Site and may not be varied without the prior approval of the Principal's Representative except when, in the interests of safety of the work under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Contract. In those cases the Contractor must notify the Principal's Representative in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Principal for work during times approved under the previous paragraph are to be borne by the Principal.

33 PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

Nothing in this Clause 33 reduces the Contractor's obligation to bring the Works to Practical Completion by the Date for Practical Completion.

The Contractor must proceed with the work under the Contract with due expedition and without delay.

The Contractor must not suspend the progress of the whole or any part of the work under the Contract except where the suspension is under Clause 44.9 or is directed or approved by the Principal's Representative under Clause 34.

The Contractor must give the Principal's Representative reasonable advance notice of when the Contractor requires any other information, materials, documents or instructions from the Principal's Representative or the Principal.

The Principal and the Principal's Representative are not obliged to furnish any other information, materials, documents or instructions earlier than the Principal or the Principal's Representative, as applicable, should reasonably have anticipated at the Execution Date.

The Principal's Representative may direct in what order and at what time the various stages or parts of the work under the Contract are to be performed. If the Contractor can reasonably comply with the direction the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons.

Except where otherwise stated in the Contract, if compliance with the direction causes the Contractor to incur more or less cost than otherwise would have been incurred if the Contractor had not been given the direction the difference is to be valued under Clause 40.5.

33.2 Construction Program

A Construction Program shall not affect rights or obligations in Clause 33.1.

The Contractor must, within 10 Business Days of execution of the Contract, or, if work is to be commenced prior to execution of the Contract, no later than 5 Business Days prior to commencement of the works, submit to the Independent Certifier a proposed Construction Program for the work under the Contract.

The proposed Construction Program must be based upon information current at the time of submission prepared in the form of a computer generated critical path network logic chart and in the form of a bar chart indicating the following—

- (a) sequence and duration of activities constituting the critical path and the interrelationship between activities including design, document procurement, construction commissioning and finalisation activities and including float for activities not on the critical path; and
- (b) sufficient detail of administrative, design and trade activity to fully describe the Contractor's planning of the Works and the method of achieving Practical Completion by the Date for Practical Completion and must contain as a minimum the following activities and details:
 - (i) Site accessibility restrictions applicable;
 - (ii) appointment of key subcontractors;
 - (iii) finalisation of project inspection and test plan;
 - (iv) procurement for key elements of the Works;
 - (v) inspection and testing for key elements of the Works;
 - (vi) off-Site fabrication for key elements of the Works;
 - (vii) provision and approval of samples for key elements of the Works;

- (viii) milestone and key dates for items including the approval of Authorities and completion of the on Site display unit;
- (ix) on-Site trade activities;
- (x) commissioning of the Works including key dates for testing by Authorities, acceptance testing and commissioning of items of equipment, systems and co-ordination of separate fit out contractors;
- (xi) provision of manuals, survey records, certificates, warranties, quality records and other items as are required by the Contract to be provided prior to the Date for Practical Completion; and
- (xii) delay allowance (together with detailed explanation of delay allowance shown separately).

The chart(s) must be accompanied by a calendar specific to the Works and showing all working days as well as weekends, public and statutory holidays, rostered days off (which are generally recognised by the building industry in Queensland) and the Christmas and Easter closedown.

The critical path network chart must be coloured to indicate critical and non-critical activities and the critical path.

The Independent Certifier, acting reasonably may review the proposed Construction Program to assess conformity with the presentation and technical requirements specified above and either—

- (c) approve the proposed Construction Program; or
- (d) request the Contractor in writing to amend proposed Construction Program.

If the proposed Construction Program is approved by the Independent Certifier, within 5 Business Days of the approval by the Independent Certifier, the Contractor must submit to the Independent Certifier 3 hard copies of the Construction Program headed "Approved Program" (**Approved Program**) indicating the date of the Construction Program and a fully editable electronic copy on CD-ROM in Microsoft Project format. The hard copies must be in colour. The electronic copies must contain all data input to and generated by the project planning software used to create the Construction Programs and no information or features may be hidden or inaccessible or otherwise unreadable or unusable.

The Contractor must use Microsoft Project as the project programming software to generate the Construction Programs, revisions, updates and extracts must be in accordance with the requirements of this Clause 33.2. If the Independent Certifier approves the use of project programming software which is the Contractor's in-house or proprietary product or which is not otherwise readily commercially available off the shelf to the Independent Certifier, the Contractor must provide, install and commission where directed by the Independent Certifier, at no charge, a suitable new computer loaded with a fully functional unrestricted current version of the project programming software and provide a licence to use the software for whatever period is required for the purposes of this Clause 33.2. The computer and software must be installed and commissioned no later than 10 Business Days before the first proposed Construction Program is issued by the Contractor and will remain in possession of the Independent Certifier until 20 Business Days after the Final Certificate is issued. This computer and software must be for the exclusive and unrestricted use of the Independent Certifier.

If the proposed Construction Program is not approved by the Independent Certifier, the Contractor must incorporate the Independent Certifier's requested amendments to the proposed program. Within 5 Business Days after the Independent Certifier's response under Clause 33.2(b)(ii), the Contractor must resubmit the proposed Construction Program to the Independent Certifier.

If the Independent Certifier does not approve the amended Construction Program, the Independent Certifier may direct the Contractor to appoint an independent programming expert to prepare a Construction Program that meets the Independent Certifier's requirements. The Contractor must immediately appoint an independent programmer and procure a Construction Program that meets the Independent Certifier's requirements as soon as reasonably practicable. The costs incurred by the Contractor in connection with such a direction are to be borne by the Contractor and the Contractor must

have no Entitlement in connection with the procurement of a Construction Program from an independent expert pursuant to this Clause 33.2.

The Approved Program will be used by the Contractor, the Principal's Representative and Independent Certifier to—

- (e) convey information to the Principal's Representative and Independent Certifier about the construction and commissioning of the Works;
- (f) measure and report on the progress of the Works towards meeting the Date for Practical Completion; and
- (g) assess delays and extensions of time.

The Contractor must revise the Approved Program and issue 3 hard copies to the Independent Certifier —

- (h) within 5 Business Days after an extension of time is granted under the Contract; and
- (i) as soon as reasonably practicable, but in no case more than 15 Business Days, after the Contractor fails to comply with an Approved Program.

Revised Construction Programs submitted to the Independent Certifier must—

- (j) show all changes from the original Approved Program and include a detailed schedule and activity list indicating the revisions to each activity and the critical path; and
- (k) be clearly and individually identified by sequential numbering and date of issue.

The Contractor has no Entitlement as a consequence of any receipt of, review of and comment upon or approval of the proposed Construction Program or any revision or update of the Approved Program by the Independent Certifier.

The Contractor must not depart, without reasonable cause, from an Approved Program.

The furnishing of a Construction Program or of a further Construction Program must not relieve the Contractor of any obligations under the Contract including the obligation not to depart, without reasonable cause, from an earlier Construction Program.

33.3 Reporting

With every claim for payment delivered by the Contractor under Clause 42.1, the Contractor must give the Principal's Representative a Project Report.

Without limiting the Principal's rights under Clause 44.2, provision of the Project Report by the Contractor in accordance with this Clause 33.3 is a condition precedent to the Contractor's entitlement to payment under the Contract.

34 SUSPENSION OF THE WORKS

34.1 Suspension by the Principal's Representative

If the Principal's Representative considers that the suspension of the whole or part of the work under the Contract is necessary—

- (a) because of an act or omission of—
 - (i) the Principal, the Principal's Representative or an employee, consultant, other contractor or agent of the Principal; or
 - (ii) the Contractor, a subcontractor or an employee or agent of any of them;
- (b) for the protection or safety of any person or property;
- (c) to comply with an order of a court; or
- (d) for the convenience of the Principal,

the Principal's Representative must direct the Contractor to suspend the progress of the whole or part of the work under the Contract for the time as the Principal's Representative thinks fit.

34.2 Suspension by Contractor

If the Contractor wishes to suspend the whole or part of the work under the Contract otherwise than under Clause 44.9 (except for a suspension authorised by SOPA), the Contractor must obtain the prior written approval of the Principal's Representative. The Principal's Representative may approve of the suspension and may impose conditions of approval.

34.3 Recommencement of Work

- (a) As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Principal's Representative shall direct the Contractor to recommence work as soon as reasonably practicable on the whole or on the relevant part of the work under the Contract.
- (b) If work is suspended under Clauses 34.2 or 44.9, the Contractor must recommence work as soon as reasonably practical after receipt of a direction from the Principal's Representative under clause 34.3(a).

34.4 Cost of Suspension

Any cost incurred by the Contractor because of a suspension under Clause 34.1 or Clause 34.2 must be borne by the Contractor except if the suspension is due -

- (a) an act or omission of the Principal, the Principal's Representative or an employee, consultant or agent of the Principal or for the convenience of the Principal;
- (b) the legitimate operation of the SOPA; and
- (c) the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference is to be valued under Clause 40.5.

34.5 Effect of Suspension

Suspension does not affect the Date for Practical Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

35.1 Commencement

The Contractor must promptly commence the work under the Contract.

35.2 Time for Practical Completion

The Contractor must execute the work under the Contract to Practical Completion by the Date for Practical Completion.

On the Date of Practical Completion the Contractor must give possession of the Site and the Works to the Principal.

35.3 Separable Portions

The interpretation of—

- (a) Date for Practical Completion;
- (b) Date of Practical Completion; and
- (c) Practical Completion,

and Clauses 16, 35, 38 and 40.1 shall apply separately to each Separable Portion and references in those Clauses to the Works and to work under the Contract mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion.

If the Contract does not make provision for the amount of Security, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable will be the proportion of the Security, liquidated damages or bonus applicable to the whole of the work under the Contract that the value of the Separable Portion bears to the Contract Sum.

Separable Portions may be directed by the Independent Certifier, who shall clearly identify the matters in paragraphs (a), (b) and (c) above, along with the portion of the Works for each Separable Portion and any other matter capable of being completed for the relevant Separable Portion, as set out in the 'Separable Portions' section of Annexure Part A.

Despite any other provision of the Contract:

- (d) the Defects Liability Period for any Separable Portion reaching Practical Completion earlier than the last Separable Portion to reach Practical Completion shall extend beyond the Defects Liability Period stated in Annexure Part A and expire on the date of expiry of the Defects Liability Period applying to the last Separable Portion to reach Practical Completion;
- (e) the Contractor's entitlement to a reduction in Security held by the Principal upon the issue of the Certificate of Practical Completion shall apply only upon the issue of the Certificate of Practical Completion applying to the last Separable Portion to reach Practical Completion;
- (f) the Principal may in accordance with the Contract have recourse to Security provided in respect of any Separable Portion whether or not the Principal's entitlement to have recourse to Security arises in relation to that particular Separable Portion or any other Separable Portion; and
- (g) Clause 16 and subclause 40.1 shall only apply in respect of the whole of the Works and not apply to an individual Separable Portion.

35.4 Use of partly completed Works

If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree on the creation of Separable Portions, the Independent Certifier may determine that the respective parts will be Separable Portions.

In using a Separable Portion that has reached Practical Completion, the Principal must not hinder the Contractor in the performance of the work under the Contract.

35.5 Claim

- (a) As soon as the Contractor reasonably considers that anything, including an act or omission of the Principal, the Principal's Representative, Independent Certifier or the Principal's employees, consultants, or agents, may delay the work under the Contract, the Contractor must promptly (but no later than 5 Business Days after becoming aware) notify the Principal's Representative and Independent Certifier in writing with details of the possible delay and the cause ('**Notice of Delay**').
- (b) The Contractor must be entitled to such an extension of time to the Date for Practical Completion ('**EOT**') if and only if:
 - (i) the Contractor is or will be delayed in reaching Practical Completion by a delay which is on the critical path and where the delay occurs prior to the Date for Practical Completion and prevents the Contractor from achieving Practical Completion until a date which is after the Date for Practical Completion by a cause described in Clause 35.5(c);
 - (ii) the Contractor has given a Notice of Delay in accordance with Clause 35.5(a) and the Contractor gives the Principal's Representative and Independent Certifier within 10 Business Days after the first occurrence of the delay, a written claim for an extension of the delay setting out in detail:
 - (A) the facts of the delay;
 - (B) the extent and effect of the delay to the work under the Contract; or

- (C) if the Contractor does not know the extent and effect of the delay, its reasonably considered forecast of the extent and effect of the delay;
- (D) the number of days EOT claimed in relation to the Date for Practical Completion or, if the Contractor does not know the number of days EOT to be claimed, its reasonably considered forecast of the number of days EOT claimed;
- (E) the date on which the cause of the delay first arose and the date the cause of the delay ceased, if the cause of delay has ceased; and
- (F) steps taken by the Contractor to minimise the consequences of the delay and prevent the occurrence of the delay,

and if the effect of the delay is continuing 10 Business Days after the claim for an EOT under Clause 35.5(b) is given, the Contractor must, every 10 Business Days thereafter and until the delay has ceased, provide a further updated written report setting out in detail the matters set out in Clauses 35.5(b)(ii), (C) and (F).

- (c) The causes are:
 - (i) any of the following:
 - (A) not used;
 - (B) a State or a State or Federal wide industrial dispute not limited to the Site or sites where the Contractor is working;
 - (C) not used; and
 - (ii) any of the following other causes whether occurring before, on or after the Date for Practical Completion—
 - (A) delay or disruption caused by:
 - (1) the Principal;(2) the Independent Certifier;
 - (3) an employee, consultant, agent or other contractor of the Principal or Independent Certifier;
 - (B) a breach of the Contract by the Principal;
 - (C) not used;
 - (D) a Variation directed under Clause 40, except where such Variation is at the request or caused by an act or omission of the Contractor;
 - (E) a change in a Legislative Requirement meeting the requirements of Clause 14;
 - (F) a direction by an Authority but not where the direction arose from the failure of the Contractor or its Associates to comply with a Legislative Requirement;
- (d) Where more than one event causes delays to overlap and the cause of at least one of those events, but not all of them, is not a cause of delay listed in Clause 35.5(c)(i) or 35.5(c)(ii), then to the extent that the delays overlap, the Contractor must not be entitled to an EOT for Practical Completion.
- (e) In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to:
 - (i) whether the Contractor can reach Practical Completion by the Date for Practical Completion without an EOT; or
 - (ii) whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost,

but shall have regard to what prevention and mitigation of delay has not been effected the Contractor.

35.5A Extension of Time

- (a) If the Contractor is entitled to an EOT for Practical Completion, the Independent Certifier shall, within 25 Business Days of receipt of the Contractor's claim for an EOT, determine the length of the EOT which the Contractor is entitled to and notify the Contractor in writing.
- (b) Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Independent Certifier may at any time and from time to time before issuing the Final Certificate and, without being obliged to do so for the benefit of the Contractor or otherwise, extend the Date for Practical Completion.
- (c) The Contractor accepts the risk of and liability for bringing the work under the Contract to Practical Completion by the Date for Practical Completion notwithstanding the encountering of any delay or disruption in the execution of the work under the Contract except to the extent provided in this Clause 35.5A.
- (d) The Contractor acknowledges and agrees that the Contract is a code in respect of the Contractor's entitlements to claim an EOT and delay damages and that it will have no Entitlement to an EOT or to make any other Claim or to claim any relief from the Principal's entitlements to liquidated damages arising out of or in connection with any delay if it has not strictly complied with the obligations in Clauses 35.5(a) and 35.5(b).
- (e) If the Contractor submits a claim for an EOT, the Principal's Representative may instruct the Contractor to accelerate the work under the Contract by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Practical Completion by the Date for Practical Completion.
- (f) If the Principal's Representative gives the Contractor an instruction to accelerate the work under the Contract under Clause 35.5A(e) and it only applies to part of the delay, the Contractor's entitlement to any EOT which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.
- (g) If the Principal's Representative gives an instruction to the Contractor under Clause 35.5A(e):
 - (i) the Contractor must accelerate the work under the Contract to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Practical Completion by the Date for Practical Completion;
 - (ii) if the Contractor would, but for the instruction, have been entitled to an EOT to the Date for Practical Completion for the cause of delay, the Contractor will be entitled to be paid the extra costs reasonably incurred by it and directly attributable to accelerating the work under the Contract (as assessed by the Independent Certifier in accordance with the Contract); and
 - (iii) the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way in connection with, the cause of delay and the instruction other than for the amount which is payable by the Principal under Clause 35.5A(g)(ii).
- (h) The Principal's rights to liquidated damages for a failure by the Contractor to achieve Practical Completion by the Date for Practical Completion are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under Clause 35.5A(e).

35.5B Time bar

If the Contractor fails to comply with any of the time limits set out in Clause 35.5—

- (a) the Principal is not liable on any claim by the Contractor; and
- (b) the Contractor is absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant period of delay.

35.6 Liquidated Damages for delay in reaching Practical Completion

- (a) If the work under the Contract does not reach Practical Completion by the Date for Practical Completion, the Contractor must be indebted to the Principal for liquidated damages at the rate stated in Annexure Part A for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of the Contract or the Principal otherwise taking the work under the Contract out of the hands of the Contractor.
- (b) The amount stipulated as liquidated damages in Annexure Part A is an agreed genuine pre-estimate of the Principal's loss and damage in the event that Practical Completion occurs after the Date for Practical Completion.
- (c) If Clause 35.6(a) is found for any reason to be void, invalid, or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion, the Principal will be entitled to recover damages from the Contractor for such failure under general law.

35.7 Not Used

35.8 Use or occupation of the works

Despite any other provision of the Contract, the Contractor agrees:

- (a) subject to paragraph (b), the Principal may (in its absolute discretion) use or occupy any part of the Works at any time by giving at least 48 hours prior written notice to the Contractor; and
- (b) in circumstances where the Principal exercises any of its rights under Clauses 16, 27.2, 37, 39, 40 or 44.6, including use or occupation of any part of the Works in connection with the exercise of any such rights, the Principal is only required to provide the Contractor with any written notice of such use or occupation as may be required by those clauses.
- (c) The Contractor agrees:
 - (i) any use or occupation of any part of the Works by the Principal in accordance with paragraph (a); or
 - (ii) the exercise of the Principal's rights under Clauses 16, 27.2, 37, 39, 40 or 44.6, including use or occupation of any part of the Works in connection with the exercise of such rights, shall not:
 - (iii) constitute Practical Completion of the Works, or any Separable Portion, having been achieved;
 - (iv) constitute approval of any work or other matter;
 - (v) prejudice any claim or right of the Principal under or in connection with the Contract; or
 - (vi) prejudice the rights of the Contractor under Clauses 16, 35.5 or 36 of the Contract (if any).

36 DELAY OR DISRUPTION COSTS

The Contractor must only have an entitlement to delay costs where the Independent Certifier has granted an EOT pursuant to Clause 35.5(b), but otherwise shall have no Entitlement with respect to delay (including for damages, disruption or prolongation costs), except an entitlement to an extension of time to the Date for Practical Completion if such extension of time is granted by the Independent Certifier.

The Contractor will be entitled to submit a claim for the delay costs actually incurred by the Contractor as a direct result of the delay on that day by reason of the delay the subject of the extension of time granted, as assessed by the Independent Certifier, subject to the limitation that the total amount of compensation payable under this Clause 36 for any one day (regardless of the number of Separable Portions being worked on during that particular day) will not exceed the amount stated in Annexure Part A.

Any price and/or valuation for a Variation is deemed to include the associated costs relating to delay or disruption.

The Contractor agrees that the compensation provided for in this Clause 36 and in Clause 34.4 is the only amount which it may recover from the Principal for any exclusion, suspension, delay or disruption, including any delay or disruption arising from a breach of the Contract by the Principal.

37 DEFECTS LIABILITY

Length of Defects Liability Period

The Defects Liability Period commences at 4:00 pm on the Date of Practical Completion and continues for the period specified in Annexure Part A.

Substantial Completion

As soon as possible, and in any case not later than 2 months after the Date of Practical Completion, the Contractor must rectify any Defects in the work under the Contract existing at the Date of Practical Completion so as to achieve Substantial Completion by the Date for Substantial Completion.

The Contractor must give the Independent Certifier at least 10 Business Days' notice of the date upon which the Contractor anticipates that Substantial Completion will be reached. When the Contractor considers that Substantial Completion has been reached, the Contractor must in writing request the Independent Certifier to issue a Certificate of Substantial Completion. Within 10 Business Days of receipt of the request, the Independent Certifier must give to the Contractor and the Principal a Certificate of Substantial Completion certifying the Date of Substantial Completion or give the Contractor in writing the reasons for not issuing the Certificate.

Defects Liability Period generally

At any time during the Defects Liability Period, the Independent Certifier may direct the Contractor to promptly rectify any Defect in the work under the Contract existing at the date of Practical Completion or which becomes apparent before the expiry of the Defects Liability Period. The direction must identify the Defect and state a date by which the Contractor must complete the rectification work and may state a date by which the rectification work must commence. The direction may provide that in respect of the rectification work there will be a separate Defects Liability Period of a stated duration not exceeding the period specified in Annexure Part A. The separate Defects Liability Period commences on the date the rectification work is completed. This Clause 37 applies in respect of the rectification work and the separate Defects Liability Period for that rectification work.

The Contractor acknowledges that—

- (a) during the Defects Liability Period, occupiers of the Works may be in occupation; and
- (b) to minimise the inconvenience to occupiers, the Independent Certifier may direct the Contractor to carry out rectification work at times convenient to these occupiers, including, without limitation, outside business hours or on Saturdays, Sundays or public holidays.

The Contractor must notify the Independent Certifier in writing when the rectification work has been completed. Within 7 days of receiving written notice from the Contractor that the rectification work has been completed, the Contractor and the Independent Certifier must inspect that work to determine whether that part of the Works conforms to the Contract. If the work conforms to the Contract, including but not limited to the Specification, the Drawings and Best Practice, the Independent Certifier shall provide a "sign off" of the Defect and if it is necessary for any consultant to provide its certification, the Independent Certifier may withhold a "sign off" until the Independent Certifier is informed by the consultant that the consultant has been paid its costs of providing such certification by the Contractor.

Any Defect which the Independent Certifier directs the Contractor to rectify must be entered into a defects liability register maintained by the Contractor in a form approved by the Independent Certifier. The Contractor must update the defects liability register within 2 Business Days of a request from the Independent Certifier.

If the rectification work is not commenced or completed by the stated dates, the Independent Certifier may have the rectification work carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect and the reasonable cost of the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

If it is necessary for the Contractor to carry out rectification work the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works as is reasonably possible.

If requested by the Independent Certifier, the Contractor must ensure that the Contractor's Representative attends inspections of the Works during the Defects Liability Period at not less than 48 hours notice.

38 CLEANING UP

The Contractor must keep the Site and the work clean and tidy. The Contractor must regularly remove rubbish and surplus material.

On or before the Date of Practical Completion the Contractor must remove Temporary Works and Constructional Plant.

The Independent Certifier may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.

Despite the provisions of Clause 44, if the Contractor fails to comply with any obligation imposed on the Contractor by Clause 38, the Independent Certifier may, after the Independent Certifier has given reasonable written notice to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to any other right.

The Contractor's obligations under this Clause 38 are continuing obligations and apply to each Separable Portion. The Independent Certifier may require the Contractor to clean, re-clean or clean again any area of the Site including part of a Separable Portion even after Practical Completion of that Separate Portion, if the activities, actions or work of the contractor in the rectification of defects or in the performance of work on other aspects of the Site give rise to the need for the additional cleaning in the Separable Portion, in the reasonable opinion of the Independent Certifier.

39 URGENT PROTECTION

If urgent action is necessary, to protect the work under the Contract, other property or people and the Contractor fails to take the action, in addition to other remedies of the Principal, the Independent Certifier may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the reasonable cost incurred by the Principal in the circumstances will be a debt due from the Contractor to the Principal.

If time permits, the Independent Certifier must give the Contractor prior written notice of the Principal's intention to take action under this Clause 39.

40 VARIATIONS

40.1 Variations to the Work under the Contract

The Contractor must not vary the work under the Contract unless it receives an express direction in writing from the Principal's Representative titled 'Variation Direction' (**'Variation Direction'**).

- (a) The Principal's Representative may direct the Contractor to vary the work under the Contract (**'Variation'**) any one or more of the following:
 - (i) increase, decrease, substitute or omit any part of the work under the Contract;

- (ii) change the character or quality of any material or work or of anything described in the Specification or the Drawings;
 - (iii) change the levels, lines, positions or dimensions of anything described in the Specification, the Drawings or any part of the work under the Contract;
 - (iv) execute additional work;
 - (v) demolish or remove material or work no longer required by the Principal, including to give effect to, or comply with, any Additional Obligation Documents.
- (b) The Contractor must not vary the Works except as directed by the Principal's Representative in a Variation Direction.
- (c) If the Contractor considers that it has been required to carry out a Variation, but the Principal's Representative has not given a written direction for a Variation in a Variation Direction identifying the work as constituting a Variation, the Contractor must give written notice to the Principal's Representative of:
 - (i) its opinion; and
 - (ii) the effect which the Contractor anticipates that the Variation will have on:
 - (A) the Contractor's Program;
 - (B) the Contract Sum; and
 - (C) the Date for Practical Completion.
- (d) If the Contractor does not give the notice referred to in this Clause 40.1 within 5 Business Days of receipt of the direction or before commencing work on the Variation, the Contractor is not entitled to have the value of the Variation determined under Clause 40.5 or to make any claim whether for payment, adjustment of the Contract Sum, EOT or otherwise in respect of the Variation and any cost and time consequences of the Variation will be deemed to be included in the Contract Sum and the Date for Practical Completion. Whether or not the Contractor gives the notice referred to in this Clause 40.1, it must carry out the work required by the Principal's Representative without prejudice to its entitlement to compensation if the work is a Variation and provided that the notice has been given.
- (e) The Contractor is bound only to execute a Variation which is within the general scope of the Contract. If the Contractor considers that compliance with a Variation Order is beyond the general scope of the Contract, it must notify the Principal's Representative of this fact in writing before commencement of the work the subject of the Variation. If the Contractor fails to notify the Principal's Representative that it considers the Variation Order to be outside the general scope of the Contractor prior to commencement of such work the Contractor agrees that that the work is to be valued under Clause 40.5 as if the work was a Variation within the general scope of the Contract.
- (f) No Variation will invalidate the Contract.

40.2 Proposed variations

Without limiting its rights to direct a Variation pursuant to Clause 40.1, the Principal's Representative may give the Contractor written notice of a proposed Variation titled "Variation Proposal" (**'Variation Proposal'**). Within 5 Business Days of receipt of a Variation Proposal from the Principal's Representative, the Contractor must provide written notice to the Principal's Representative of whether the proposed Variation can be effected. If the Variation can be effected, the notice must include—

- (a) a detailed scope of the proposed Variation (including any drawings or technical details);
- (b) a detailed breakdown of the price for which the Contractor would carry out the proposed Variation (including any delay or disruption costs which may be incurred by the Contractor as a consequence of the proposed Variation);

- (c) the effect (if any) of the proposed Variation on the Date for Practical Completion; and
- (d) the expiry period for acceptance of the Variation Proposal which must be not less than 5 Business Days (or, for urgent work, such shorter time as the Principal's Representative may, in writing, allow) from the date of receipt by the Principal's Representative of the Variation Proposal.

Upon receipt of the Contractor's response to the Variation Proposal provided under this Clause 40.2, the Principal's Representative may in its sole discretion, do any one of the following—

- (a) direct the Contractor to provide further information;
- (b) accept the Variation Proposal and give the Contractor a direction to carry out the Variation on the terms contained in the Variation Proposal in which case a valuation under Clause 40.5 shall not be made and the addition or deduction to the Contract Sum shall be the amount contained in the Variation Proposal;
- (c) negotiate different terms with the Contractor upon which the Variation shall be carried out;
- (d) give the Contractor a direction to carry out the Variation but on the terms contained in the Contract with a valuation to be made under Clause 40.5; or
- (e) reject the Variation Proposal, in which case the Principal may retain another person to carry out the Variation contemplated by the Variation Proposal.

The Principal shall reimburse the Contractor for the reasonable costs of complying with the requirements of this Clause 40.2.

40.3 Pricing the Variation

Unless the Principal's Representative and the Contractor agree on the price for a Variation, the Variation directed or approved by the Principal's Representative under Clause 40.1 is to be valued under Clause 40.5 except to the extent that a Variation is necessary due to the Contractor's default, in which case the cost of executing and performing the Variation will be borne by the Contractor.

The Principal's Representative may direct the Contractor to provide a detailed quotation for the work of a Variation supported by measurements or other evidence of cost.

40.4 Variations for the Convenience of the Contractor

If the Contractor requests the Independent Certifier to approve a Variation for the convenience of the Contractor, the Independent Certifier may do so in writing. The approval may be conditional.

Unless the Independent Certifier directs otherwise in the notice approving the Variation, the Contractor is not be entitled to—

- (a) an EOT for Practical Completion; or
- (b) extra payment,

in respect of the Variation or anything arising out of or in any way in connection with the Variation which would not have arisen if the Variation had not been approved.

The Independent Certifier is not obliged to approve a Variation for the convenience of the Contractor.

40.5 Valuation

Where the Contract provides that a valuation is to be made under this Clause 40.5, the Principal must pay or allow the Contractor or the Contractor must pay or allow the Principal, as applicable, an amount ascertained by the Independent Certifier acting reasonably as follows—

- (a) by prior agreement;
- (b) to the extent Clause 40.5(a) does not apply, the rates or prices set out in the Schedule of Prices plus the margin for profit and overheads specified in Annexure Part A;
- (c) to the extent that neither Clause 40.5(a) nor (b) applies, reasonable rates or prices must be used plus the margin for profit and overheads specified in Annexure Part A;

- (d) to the extent that neither Clause 40.5(a), (b) nor (c) applies, as Daywork valued in accordance with Clause 41;
- (e) in determining the deduction to be made for work which is taken out of the Contract, such deduction shall include the cost of the work deducted and no amount for profit and overheads; and
- (f) the valuation of a provisional sum item shall be:
 - (i) if such sum is included in the Contractor's tender, the sum specified in that tender; or
 - (ii) if agreed between the parties, such sum as is agreed and evidenced in writing.

When under Clause 40.3 the Independent Certifier directs the Contractor to support a variation with measurements and other evidence of cost, the cost of preparing the measurements or other evidence of cost must be borne by the Contractor.

40.6 Rates and prices

Subject to the provisions of this Contract, rates or prices specified in the Contract for the purposes of Clause 40 are deemed to be the full cost inclusive of all consumables, construction facilities, Constructional Plant, Temporary Works, professional and technical services, royalties, taxes (excluding GST), transport costs, equipment costs, labour and material costs and other services, charges and other costs necessary to perform the work under the Contract, but excluding the Contractor's profit and overheads.

41 DAYWORK

The Principal's Representative may direct that Variations under Clause 40.1 must be carried out as Daywork.

If the Principal's Representative directs that Variations must be carried out as Daywork, each day the Contractor must—

- (a) record particulars of all resources used by the Contractor for the execution of the Daywork; and
- (b) give the Independent Certifier the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Daywork.

The Principal's Representative may direct the manner in which matters are to be recorded.

Where the Contract does not include a rate or rates for Daywork, in determining the value of Daywork regard will be had to—

- (c) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the reasonable satisfaction of the Principal's Representative or at such other rates as may be approved by the Principal's Representative;
- (d) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(c);
- (e) the amount of hire charges in respect of Constructional Plant approved by the Principal's Representative for use on the work in accordance with hiring rates and conditions as agreed between the Principal's Representative and the Contractor or, in the absence of agreement, in accordance with such rates and conditions reasonably determined by the Principal's Representative;
- (f) the amounts paid for services, subcontract works and professional fees;
- (g) the actual cost to the Contractor at the Site of all materials supplied and required for the work; and
- (h) the charge stated in Annexure Part A or, if no charge is stated, a charge agreed between the Principal's Representative and the Contractor to cover overheads, administrative costs, Site

supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Principal's Representative.

Amounts payable for Daywork are not subject to adjustment for rise and fall in costs.

42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

If required by Annexure Part A, the Contractor must deliver to the Independent Certifier a draft payment claim for the work completed up until the date of submission of the draft payment claim, no later than 5 Business Days prior to each date for submission of a payment claim under this Clause 42.1 and Item 36(a) of Annexure Part A. Draft payment claims are to contain the same documents and other information required under the Contract (other than any document or other information required by Clauses 42.1(h) to (k) inclusive). It is agreed that—

- (a) the times for submitting a draft payment claim are not reference dates as provided in this Clause 42.1 and Item 36(a) of Annexure Part A;
- (b) draft payment claims are not payment claims under the SOPA or claims for payment, or a request for payment, under this Contract; and
- (c) the Independent Certifier and the Contractor will meet and attempt to agree the amount of the draft payment claim so that the amount claimed for payment in the payment claim made by the Contractor pursuant to this Clause 42.1 reflects that agreement.

At the times for payment claims specified in Annexure Part A and on issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor must deliver to the Independent Certifier claims for payment supported by evidence of the amount due to the Contractor and any information and documents as the Independent Certifier reasonably require. Claims for payment must -

- (d) include the value of work carried out by the Contractor in the performance of the Contract to the draft payment claim (if applicable) and may include any other amount otherwise due to the Contractor arising out of or in any way in connection with the Contract;
- (e) include the total amount previously certified under this Clause 42.1;
- (f) include the amount of the Contract Sum being claimed by the Contractor;
- (g) include an itemised schedule of Variations;
- (h) include a Project Report;
- (i) include a Contractor's Statement in the form of Annexure Part D;
- (j) include a Certificate from a registered surveyor certifying that all levels position and set out all Works is in accordance with the Contract Documents; and
- (k) a statement from each of the subcontractors that they have been paid all moneys due and payable to them prior to the submission of this claim, if specifically requested to provide such statement, by the Independent Certifier.

The Contractor must, as a precondition to the date on which a payment claim may be made, submit, one business day prior to the submission of the relevant payment claim, the Contractor's Statement in the form set out in Annexure Part D relating to that payment claim.

If the time for any payment claim under the preceding paragraph falls due on a day which is not a Business Day, the Contractor must submit the claim on the next Business Day.

If the Contractor submits a payment claim before the time for lodgement of that payment claim, the early lodgement does not require the Independent Certifier to issue the payment certificate in respect of that payment claim earlier than would have been the case if the Contractor had submitted the payment claim in accordance with the Contract.

Within 10 Business Days after receipt of a claim for payment, the Independent Certifier shall issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the Independent Certifier's reasonable opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal. The Independent Certifier must set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference. The Independent Certifier must also state, as applicable, in any payment certificate issued under Clause 42 allowances made for –

- (l) the value of work carried out by the Contractor in the performance of the Contract to the date of the claim;
- (m) amounts otherwise due from:
 - (i) the Principal to the Contractor; and
 - (ii) the Contractor to the Principal;
- (n) amounts deducted for omitted work;
- (o) amounts deducted for Defects or non-conforming work;
- (p) amounts deducted under Clause 42.8; and
- (q) amounts paid previously under the Contract, and

arising out of or in any way in connection with the Contract resulting in the balance due to the Contractor or the Principal, as applicable.

Subject to the provisions of the Contract, the Principal must pay to the Contractor or the Contractor must pay to the Principal, as applicable, an amount shown in that Certificate as due to the Contractor or to the Principal, as applicable within 15 Business Days of the date of receipt of the payment claim (including a Final Payment Claim).

If the Contractor fails to make a claim for payment under this Clause 42, the Independent Certifier may nevertheless issue a payment certificate, and, subject to the terms of the Contract, the Principal must pay to the Contractor (or, if applicable, the Contractor must pay to the Principal) the amount shown in the certificate, within 15 Business Days after the date a payment claim meeting the requirements for an payment claim under the Contract is validly made.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but is a payment on account only, except as provided by Clause 42.8.

At any time and from time to time, the Independent Certifier may by a further certificate correct any error which has been discovered in any previous certificate, other than a Final Certificate.

42.2 Correction of Payment Certificates

At any time and from time to time, the Independent Certifier may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Practical Completion or Final Certificate.

42.3 Solvency

The Contractor agrees that:

- (a) at any time, the Independent Certifier or Principal Representative may request the Contractor to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the Independent Certifier or Principal Representative) from a current director of the Contractor confirming that the Contractor is solvent and not subject to any Insolvency Event; and
- (b) the Contractor must provide such completed and signed statutory declaration within 3 Business Days of such a request.

42.4 Unfixed Plant and Materials

The Principal may pay for any item of unfixed plant and materials specified in Annexure Part A (notwithstanding the item not having been incorporated into the Works) if the Contractor—

- (a) provides the amount of additional Security specified in Annexure Part A separately approved by the Principal under Clause 5.3; and
- (b) establishes to the reasonable satisfaction of the Principal's Representative that the Contractor has paid the amount claimed for that item, and if the full value of the item is claimed, that the item is properly stored, labelled the sole and exclusive property of the Principal and is adequately protected.

The Contractor must issue any additional Security as required by the Deed of Novation to the Principal, and it shall thereafter be held by the Principal in accordance with the terms of this Contract, including this clauses 5 and 42.4.

Before payment to the Contractor of the amount which includes the value of any item of unfixed plant and materials, the Contractor must insure against the risk of loss of that item.

The Contractor is not entitled to an extension of time for Practical Completion if an item of unfixed plant and material is damaged, destroyed or lost before its incorporation into the Works unless such damage, destruction or loss was caused by an Excepted Risk.

On payment to the Contractor of the amount which includes the value of the item, and on the release of any Security, the item will be the property of the Principal free of any lien or charge.

Notwithstanding any other provision of this Contract the Principal shall not be required to release any Security provided for any item of unfixed plant or materials unless the Contractor has provided to the Principal's Representative a written statement addressed to the Principal and signed by the Contractor and the supplier of the item to the effect that, property in the item has vested in the Principal, and there are no liens or encumbrances of any kind existing with respect to the item.

Any additional Security provided for any item of unfixed plant and materials will otherwise be released in accordance with Clause 5.9.

42.5 Certificate of Practical Completion

The Contractor must give the Independent Certifier at least 10 Business Days' notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

Subject to Clause 42.4, when the Contractor considers that Practical Completion has been reached the Contractor must in writing request the Independent Certifier to issue a Certificate of Practical Completion. Within 10 Business Days of the receipt of the request, the Independent Certifier must give to the Contractor and the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

Subject to Clause 42.4, when the Independent Certifier considers in its reasonable opinion that Practical Completion has been reached, the Independent Certifier may issue a Certificate of Practical Completion whether or not the Contractor has made a request for its issue.

42.6 Effect of Certificates

The issue of a payment certificate or a Certificate of Practical Completion does not constitute approval of any work or other matter and does not prejudice any claim by the Principal or the Contractor.

Before the granting of any Certificate of Practical Completion, the Contractor as a precondition to the date on which a claim for the Final Payment Claim may be made must give the Independent Certifier the Practical Completion Statutory Declaration completed by a duly authorised representative of the Contractor who is in a position to know the facts declared.

42.7 Final Payment Claim

- (a) Within 20 Business Days after the latter of:
 - (i) expiration of the Defects Liability Period;
 - (ii) where there is more than one Defects Liability Period, including any separate Defects Liability Period directed pursuant to Clause 37, the last to expire;
 - (iii) the rectification of any Defect notified by the Independent Certifier to the Contractor prior to the expiration of the Defects Liability Period;
 - (iv) the completion of all obligations of the Contractor under the Contract; and
 - (v) the satisfaction of the Claims Preconditions.

the Contractor may submit to the Independent Certifier a Final Payment Claim endorsed 'Final Payment Claim'.
- (b) The Contractor must include in the Final Payment Claim all Claims that the Contractor has against the Principal under the Contract or for any alleged breach of the Contract. All such Claims which have not already been barred, will be barred after the expiration of the period for lodging a Final Payment Claim.
- (c) Before, and as a condition precedent to, the issue of the Final Payment Claim, the Contractor must have rectified all Defects in the work under the Contract notified to it during the Defects Liability Period. If the Contractor gives the Independent Certifier the Final Payment Claim before the date on which any defects in the work under the Contract have been rectified, the Independent Certifier must reject the Final Payment Claim and give reasons why the Final Certificate will not be issued.

42.8 Final Certificate

Within 10 Business Days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in Clause 42.7 for the lodgement of the Final Payment Claim by the Contractor, the Independent Certifier must issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate'. In the certificate the Independent Certifier must certify the amount which in the Independent Certifier's reasonable opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach of the Contract. In such Final Certificate the Independent Certifier must also set out such of the allowances in Clause 42.1(j) to 42.1(n) inclusive as are appropriate to such Final Certificate.

Subject to Clause 5.11, within 10 Business Days after the issue of a Final Certificate which certifies a balance owing by the Principal to the Contractor and presentation by the Contractor to the Principal of the Deed of Release executed by the Contractor, the Principal must release to the Contractor any remaining Security then held by the Principal.

42.9 Interest on Overdue Payments

If any moneys due to either party remains unpaid after the date upon which or the expiry of the period within which it should have been paid, interest is payable on the money from but excluding the date upon which the expiry of the period within which it should have been paid to and including the date on which the money is paid. The rate of interest is the rate specified in Annexure Part A. Interest shall be compounded at six monthly intervals.

42.10 Set Offs by the Principal

Without limiting the Principal's rights under any provision in the Contract and notwithstanding the provision of, or the issue of a payment certificate by the Independent Certifier, the Principal may deduct from any moneys due to the Contractor (including from any payment certificate) any sum which the Principal reasonably asserts is or may become payable by the Contractor to the Principal, whether or not—

- (a) the Principal's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
- (b) the factual basis giving rise to the Principal's right to payment arises out of this Contract, any other contract, or is independent of any contract.

If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Principal, the Principal may subject to the requirements of Clause 5 have recourse to the Security. Nothing in this Clause 42.10 shall affect the right of the Principal to recover from the Contractor the whole of any such moneys or any balance that remains owing.

42.11 Recourse for Unpaid Moneys

Where, within the time provided by the Contract, a party fails to pay the other party an amount due and payable under the Contract, the other party may, subject to Clause 5.5, have recourse to Security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.

42.12 GST

Other than terms defined in the Contract, capitalised expressions set out in this Clause 42.12 have the same meaning as those expressions in the GST Act.

Except where express provision is made to the contrary, and subject to this Clause 42.12, any amount that may be payable under this Contract is exclusive of any GST.

If the one party ('Payee') makes a Taxable Supply in connection with the Contract, then the other party ('Payor') must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

The Payee's right to payment under this Clause 42.12 is subject to a valid Tax Invoice (or an adjustment note as appropriate) being delivered to the Payor.

43 PAYMENT OF WORKERS AND SUBCONTRACTORS

43.1 Payment of Workers and Subcontractors

With each claim for payment submitted under Clause 42, the Contractor must give the Principal's Representative and the Independent Certifier a Contractor's Statement in the form of Annexure Part D.

43.2 Withholding of Payment

If the Contractor fails to comply with Clause 43.1 then, despite Clause 42, the Principal may withhold payment of money due to the Contractor until the Contractor's Statement is received by the Principal's Representative and the Independent Certifier.

43.3 Direct Payment

Where the Contractor has failed to comply with Clause 43.1—

- (a) the Principal may make payments directly to subcontractors on behalf of the Contractor; and
- (b) amounts paid by the Principal to subcontractors will be debts due from the Contractor to the Principal or may be deducted from any payment otherwise due from the Principal to the Contractor or may be deducted from the Security.

43.4 Other payments

- (a) At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor and the amount paid will be a debt due from the Contractor to the Principal or may be deducted from any payment otherwise due from the Principal to the Contractor.
- (b) If a payment is made in respect of money referred to in a Contractor's Statement by the Principal to or in respect of a worker or subcontractor in compliance with a Legislative Requirement, the

amount paid will be a debt due from the Contractor to the Principal or may be deducted from any payment otherwise due from the Principal to the Contractor or may be deducted from the Security.

- (c) If any worker or subcontractor obtains a court order in respect of money referred to in a Contractor's Statement and produces to the Principal:
 - (i) the court order;
 - (ii) any other evidence the Principal requires; and
 - (iii) a statutory declaration that it remains unpaid,
 the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid will be a debt due from the Contractor to the Principal or may be deducted from any payment otherwise due from the Principal to the Contractor or may be deducted from the Security.
- (d) After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Act) in respect of the Contractor, the Principal must not make any payment (other than a payment made under a Legislative Requirement) to a worker or subcontractor without the agreement of the applicable insolvency administrator.

44 DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

If a party breaches or repudiates the Contract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

44.2 Default by the Contractor

If the Contractor commits a substantial breach of contract, the Principal may give the Contractor a written notice to show cause titled "Contractor's Show Cause Notice" ('**Contractor's Show Cause Notice**').

Substantial breaches under the Contract include –

- (a) failing to provide Security (including under clause 42.4);
- (b) failing to provide evidence of insurance;
- (c) failing to comply with a direction of the Principal's Representative under Clause 30.3;
- (d) failing to use the materials or standards of workmanship required by the Contract;
- (e) suspension of work which is not in accordance with the Contract;
- (f) failing to proceed with due expedition and without delay in breach of Clause 33.1; and
- (g) in respect of Clause 43, knowingly providing a Subcontractor Statement, statutory declaration or documentary evidence which contains a statement that is untrue.

44.3 Requirements of a Notice by the Principal to Show Cause

A Contractor's Show Cause Notice given under Clause 44.2 must –

- (a) state that it is a Contractor's Show Cause Notice under Clause 44 of the General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 44.4;
- (d) specify the time and date by which the Contractor must show cause (which time must not be less than 5 Business Days after the notice is given to the Contractor).

44.4 Rights of the Principal

If by the time specified in a notice under Clause 44.2 the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in Clause 44.4, 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; or
- (b) terminate the Contract.

If the Contractor fails to show cause by the time specified in the notice under Clause 44.2, the Principal may suspend payments to the Contractor until the earliest of—

- (i) the date on which the Contractor shows reasonable cause;
- (ii) the date on which the Principal takes action under Clause 44.4(a) or 44.4(b); or
- (iii) the date which is 5 Business Days after the last day for showing cause in the notice under Clause 44.2.

If the Principal exercises the right under Clause 44.4(a), the Contractor is not entitled to any further payment in respect of the work taken out of its hands unless a payment becomes due to the Contractor under Clause 44.6.

On termination of the Contract under Clause 44.4, the Contractor must immediately return to the Principal any property of the Principal in the possession of the Contractor, its Consultants, employees, agents or subcontractors.

44.5 Procedure when the Principal Takes Over Work

If the Principal takes work out of the Contractor's hands under Clause 44.4(a) the Principal may complete or procure the completion of that work and the Principal may, without payment of compensation, take possession of any of the Constructional Plant and other things on or in the vicinity of the Site owned by the Contractor which are reasonably required by the Principal to facilitate completion of the work. The Principal must keep records of the cost of completing the work.

If the Principal takes possession of Constructional Plant or other things, the Principal must maintain the Constructional Plant and, subject to Clause 44.6, on completion of work the Principal must return to the Contractor the Constructional Plant and any things taken under this Clause which are surplus.

44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

When work taken out of the Contractor's hands under Clause 44.4(a) is completed the Independent Certifier must ascertain the cost incurred by the Principal in completing work and must issue a certificate under this Clause 44.6 to the Principal and the Contractor certifying—

- (a) the amount of that cost, and setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor; and
- (c) the difference.

If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference will be a debt due to the Contractor from the Principal.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional 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.

44.7 Default of the Principal

If the Principal commits a substantial breach of the Contract, the Contractor may, by registered post or by hand, give the Principal a written notice to show cause titled 'Principal's Show Cause Notice' ('Principal's Show Cause Notice').

Substantial breaches means –

- (a) failing to make a payment due under the Contract;
- (b) failure by the Independent Certifier to either issue a Certificate of Practical Completion or give the Contractor written reasons for not issuing that Certificate within 10 Business Days of receipt of a request by the Contractor to issue the Certificate, in breach of Clause 42.5.

44.8 Requirements of a Notice by the Contractor to Show Cause

A Principal's Show Cause Notice given under Clause 44.7 must –

- (a) state that it is a Principal's Show Cause Notice under Clause 44 of the General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing, why the Contractor should not exercise a right referred to in Clause 44.9; and
- (d) specify the time and date by which the Principal must show cause (which must not be less than 5 Business Days after the notice is given to the Principal).

44.9 Rights of the Contractor

If by the time specified in a notice under Clause 44.7 the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 44.9, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

The Contractor must lift the suspension if the Principal remedies the breach. If within 20 Business Days of the date of suspension under this Clause 44.9, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice in writing to the Principal terminate the Contract.

44.10 Rights of the Parties on Termination

Subject to Clause 44.12, if the Contract is terminated under Clause 44.4(b) or Clause 44.9 the rights and liabilities of the parties are the same as they would have been at common law if the defaulting party had repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

The parties acknowledge that the Contract may be terminated in the circumstances provided by the general law and this does not prevent the parties agreeing to additional circumstances in which the Contract may be terminated.

44.11 Insolvency

- (a) If the Contractor commits an Insolvency Event the Principal may, without giving a notice to show cause, exercise the rights under Clause 44.4; and
- (b) If the Principal commits an Insolvency Event, the Contractor may, without giving a notice to show cause, exercise the rights under Clause 44.9.

44.12 Termination for Convenience

- (a) Notwithstanding any other provision of this Contract:
 - (i) the Principal may at its sole discretion, and without giving any reason, terminate this Contract by giving 20 Business Days' written notice to the Contractor; and
 - (ii) the Contractor must:

- (A) stop doing the work under the Contract within the time specified in the notice;
 - (B) properly secure the work under the Contract and leave the Site in a safe condition; and
 - (C) hand over all Drawings to the Principal.
- (b) If this Contract is terminated under Clause 44.12(a)(i), the Contractor may, after demobilisation from the Contractor's Site, submit a statement (within 15 Business Days of the termination), in a form approved by the Independent Certifier, showing:
 - (i) the value of the work under the Contract done by the Contractor;
 - (ii) the cost of materials, plant and equipment ordered for the Works, to the extent the Contractor cannot cancel such orders, provided that:
 - (A) on payment by the Principal, the unencumbered title to the materials passes to the Principal; and
 - (B) the materials have not been prematurely ordered;
 - (iii) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract; and
 - (iv) the reasonable demobilisation costs incurred by the Contractor.

For the avoidance of doubt, the statement given under this Clause 44.12(b) may not request payment of any Entitlement and is simply for purposes of providing information to the Independent Certifier. If the Contractor does not submit a statement in accordance with this Clause 44.12(b), it shall have no Entitlement to payment under or in connection with a termination pursuant to this Clause 44.12.
- (c) Following receipt of a statement under Clause 44.12(b), the Independent Certifier must, subject to Clause 49, determine the amount payable (if any) and issue a certificate to the Principal and the Contractor setting out that determination and showing:
 - (i) the Independent Certifier's assessment of the value of the items referred to in that statement, after allowing for the cost of rectifying any defects;
 - (ii) the value of the work under the Contract done by the Contractor assessed by the Independent Certifier's and taken into account in determining the amount certified for payment to the Contractor by the Principal, or to the Principal by the Contractor, in the last certificate issued under Clause 42.1 or Clause 49, as the case may be;
 - (iii) any moneys which are due, or which may become due, from the Contractor to the Principal in respect of this Contract or the work under the Contract; and
 - (iv) the amount certified as then being due for payment to the Contractor by the Principal or to the Principal by the Contractor.
- (d) The Contractor must, within 2 Business Days of receipt of that certificate, give the Principal a tax invoice for the amount described in Clause 44.12(c)(iv) if there is an amount owing to the Contractor.
- (e) Where an amount is certified as being due for payment to the Contractor by the Principal in a certificate under Clause 44.12(c), the Principal must pay the Contractor the amount certified by the later of:
 - (i) 20 Business Days after receipt by the Independent Certifier of the statement under Clause 44.12(b); and
 - (ii) the receipt by the Principal's Representative and Independent Certifier of the signed written statement referred to in Clause 43.1.

- (f) Where an amount is certified as being due for payment to the Principal by the Contractor in a certificate under Clause 44.12(c), the Contractor must pay the Principal the amount certified within 10 Business Days after receipt of that certificate.
- (g) Except as expressly provided in this Clause 44.12, the Contractor has no other Entitlement as a result of the Principal exercising its rights under Clause 44.12(a)(i).
- (h) If the Principal terminates, or purports to terminate, under this agreement or otherwise at law (including by way of accepting, or purportedly accepting, repudiatory conduct), and it is subsequently held to be invalid, void or otherwise unenforceable then the Principal will be deemed to have terminated for convenience under Clause 44.12 as at the same date and time as the original notice of termination (subject to time limits in Clause 44.12(a)(i)). The Contractor's sole entitlement will be a payment under Clause 44.12 and the Contractor waives any Entitlement it has, or would have had, but for this Clause 44.12 arising out of or in connection with any termination, or purported termination, by the Principal under other Clause of this Contract or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

45 Not used

46 NOTIFICATION OF CLAIMS

46.1 Not used

46.2 Not used

46.3 Notice of Claims

Except for claims for—

- (a) an extension of time under Clause 35.5;
- (b) payment under Clause 42.1; or
- (c) a Variation expressly directed under Clause 40.1,

the Contractor must give the Principal's Representative the notices required by Clause 46.4 if it wishes to make a Claim against the Principal in respect of any direction by the Principal's Representative or any other thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the work under the Contract or the Contract, including anything in respect of which—

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract provides that the Contract Sum will be increased.

46.4 Prescribed notices

The notices referred to in Clause 46.3 are—

- (a) a written notice within 10 Business Days of the receipt of the relevant direction or within 20 Business Days of the first occurrence of the other fact, matter or thing on 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 on which the Claim will be based; and
- (b) a written Claim within 15 Business Days of giving the written notice under paragraph (a), which must include:
 - (i) particulars concerning the direction or other fact, matter or thing on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;

- (c) the facts relied on in support of the Claim in sufficient detail to permit verification; and
- (d) details of the amount claimed and how it has been calculated.

46.5 Continuing events

If the direction or fact, matter or thing on which the Claim under Clause 46.3 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by Clause 46.4(b) every 20 Business Days after the written Claim under Clause 46.4(b) was submitted or given to the Principal's Representative, until after the direction or fact, matter or thing on which the Claim is based has, or the consequences thereof have, ceased.

46.6 Time bar

If the Contractor fails to comply with Clause 46.3—

- (a) the Principal is not liable (so far as it is possible to exclude liability) on any Claim by the Contractor; and
- (b) the Contractor is 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 the case may be) to which Clause 46.3 applies.

46.7 Other provisions unaffected

Nothing in Clauses 46.3 to 46.6 limits the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative or Independent Certifier in order to preserve an entitlement to make a Claim against the Principal.

47 DISPUTE RESOLUTION

47.1 Notice of Dispute

If there is a dispute between the parties relating to or arising under or in any way in connection with the Contract, including a dispute concerning a direction or assessment given by the Principal's Representative, either party must before instituting any proceedings against the other party, deliver to the other party and to the Principal's Representative a written notice of dispute titled "Notice of Dispute" ('**Notice of Dispute**') adequately identifying and providing details of the dispute.

Despite the existence of a dispute, the Principal and the Contractor must continue to perform their obligations under the Contract and, subject to Clause 44, the Contractor must continue with the work under the Contract and the Principal and the Contractor must continue to comply with Clause 42.1.

47.2 Not used

47.3 Not used

47.4 Not used

47.5 Negotiation

If a party delivers a notice of dispute to the other party and the Principal's Representative —

- (a) within 10 Business Days of a delivery of the Notice of Dispute, representatives of the parties must meet and use reasonable endeavours to resolve the dispute by joint discussions; and
- (b) if the dispute is not resolved in accordance with Clause 47.5(a), within 20 Business Days of a delivery of the Notice of Dispute must be referred to the Dispute Resolution Executives of the parties who must meet and use reasonable endeavours to resolve the dispute by joint discussions.

47.6 Expert Determination

- (a) If the dispute is not resolved in accordance with Clause 47.5(b), the parties may, by agreement, refer those parts of the dispute which remain unresolved to an expert for determination in accordance with Clauses 47.6(b) to 47.6(u) inclusive.

- (b) Within 5 Business Days after agreement is reached pursuant to Clause 47.6(a), the parties must exchange written lists of 3 persons from whom the expert is to be chosen in order of preference.
- (c) A dispute required to be referred to or resolved by expert determination will be determined by an independent expert being:
 - (i) any person that appears on each parties' list under Clause 47.6(b); and
 - (ii) if more than one person appears on each list the person given the highest order of priority by the party that gave the notice under Clause 47.6(a).
- (d) If no person appears on the list of each party, the party which gave the notice under Clause 47.6(a) must procure the National President (or acting National President for the time being) of the Resolution Institute to nominate a person to act as the expert.
- (e) The expert determination process is to be administered in accordance with Clauses 47.6(j) to 47.6(o).
- (f) It is the intention of the parties that the expert appointed to determine a dispute will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (g) The parties will not be entitled to challenge the appointment of an expert under Clause 47.6 on the basis that the expert does not satisfy the requirements of Clause 47.6(f).
- (h) Any agreement for expert determination under the Contract will not constitute an Arbitration Agreement for the purposes of the *Commercial Arbitration Act 2013* (Qld).
- (i) The parties must enter into an agreement with the expert on such terms as the expert may require.
- (j) The expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks appropriate without being bound to observe the rules of evidence;
 - (iii) take into consideration all documents, information and other material which the parties give the expert including documents, information and material relating to the facts in dispute and to arguments and submissions on the matters in dispute;
 - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks it is appropriate;
 - (v) use his or her own expertise in forming his or her conclusions; and
 - (vi) make his or her determination of the dispute within 30 Business Days from the acceptance by the expert of the appointment or such extended period as the parties may agree.
- (k) The expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the parties, together but not separately, and in connection with any such meeting or discussions:
 - (i) a party may be accompanied by legal or other advisers; and
 - (ii) 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 or discussions.
- (l) Without restricting the generality of Clause 47.6(k)(ii), the parties agree and undertake to produce such information and documents as the expert may from time to time direct at such place and at such time as the expert may direct. Nothing in this Clause 47 requires the production of any documents to which a party is entitled to claim legal professional privilege.
- (m) The expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the expert in his or her determination.

- (n) The parties indemnify the expert for the reasonable cost of retaining those advisers or consultants.
- (o) The expert will disclose to the parties any relationship or interest with the parties or their respective officers, employees, contractors, consultants or agents who are involved in expert determination and any interest the expert has in the matters in dispute.
- (p) If the expert becomes aware of any circumstance, which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert will immediately inform the parties.
- (q) After the parties have had the opportunity to consider the expert's disclosure then either party may require that the dispute be referred to another expert for resolution in accordance with Clauses 47.6(b) to 47.6(u) inclusive by giving notice to the other party within 5 Business Days of the date on which it was informed of the circumstance.
- (r) The determination of the expert must be in writing and will be final and binding on the parties.
- (s) On submission by either party or at the instigation of the expert, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
 - (iv) a Defect in form.
- (t) The expert will not be liable in respect of the expert determination, except in the case of fraud on the part of the expert. The parties agree to release and indemnify the expert from and against all claims which may be made against him or her by any person in respect of the expert's appointment to determine the dispute, except in the case of fraud on the part of the expert.
- (u) The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert.

47.7 Upstream Dispute

Notwithstanding any other provision of this Contract, the parties acknowledge and agree that:

- (a) disputes arising between:
 - (i) the Principal and the Contractor under this Contract may be concerned with matters which also arise in respect of the respective rights and obligations of the Principal, the Investor and the MEDQ in respect of the Development Agreement; and
 - (ii) the Principal, the Investor and the MEDQ in respect of the Development Agreement may be concerned with matters which also arise in respect of the respective rights and obligations of the Principal and the Contractor under this Contract;
- (b) where a dispute arises under the Development Agreement and this Contract with respect to the same subject matter, then subject to the Principal performing its obligations under Clauses 47.7(b)(iii), 47.7(b)(iv) and 47.7(b)(v) to the reasonable satisfaction of the Contractor:
 - (i) the dispute under this Contract shall not be progressed while the dispute under the Development Agreement is in progress and the Contractor is bound by the resolution of the dispute under the relevant agreement for the purposes of the corresponding dispute under this Contract. Alternatively, the Contractor will, at the request of the Principal consent to the consolidation or hearing together of such disputes if the Principal requests the dispute under the Contract proceed in parallel with the dispute under the Development Agreement;
 - (ii) subject to any express term of the Contract to the contrary, the Contractor agrees to accept in full satisfaction of any entitlement which it is agreed or determined to have under this Contract, the amount of (or the Contractor's proportion of the amount of) the corresponding

entitlement that the Principal is finally determined to have under the Development Agreement:

- (A) if the amount of money attributable to the Contractor's Claim is expressly stated in writing by the body determining the relevant dispute, that amount;
 - (B) if the amount of money attributable to the Contractor's Claim is not expressly stated in writing by the body determining the relevant dispute, the amount agreed by the Principal and the Contractor; or
 - (C) where the Principal and the Contractor are unable to agree pursuant to Clause 47.7(b)(ii)(B), an amount determined in accordance with Clauses 47.5 and 47.6;
- (iii) the parties shall act in good faith towards each other to co-operate with each other in the conduct of dispute resolution under the Development Agreement to the extent that such co-operation is reasonably required to enable matters common to the relevant dispute to be diligently pursued by the Principal and resolved promptly in accordance with the Development Agreement, as the case may be;
- (iv) in the conduct of dispute resolution under the Development Agreement, as the case may be, the Principal shall consult with the Contractor and provide the Contractor:
- (A) with copies of all relevant documents and information relevant to the dispute resolution procedure; and
 - (B) an opportunity to attend, make written submissions, observe and participate (via the Principal or otherwise) in the dispute resolution procedure, and the Contractor will provide the Principal with all information, documents and access to and assistance by employees of the Contractor and its subcontractors as reasonably required by the Principal for the conduct of the dispute resolution process; and
- (v) the Principal must not agree to a resolution or settlement of any dispute in circumstances where the Contractor's rights or obligations under this Contract are affected without the prior written consent of the Contractor which consent must not be unreasonably withheld or delayed.

47.8 Summary relief

Nothing in this Clause 47 prejudices the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

48 WAIVER

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.

A power or right may only be waived in writing, signed by the party to be bound by the waiver.

49 TERMINATION REFERENCE DATE & NO INSOLVENCY PAYMENTS

Notwithstanding anything else in the Contract to the contrary or which would otherwise limit the operation of this paragraph (including termination of the Contract), if the Contract is terminated for any reason, the Contractor is entitled to make a single payment claim in accordance with Clause 42.1 (whether or not the Contractor has satisfied the Claim Preconditions which would otherwise apply in respect of that payment claim) on and from the termination date, such termination date being considered a 'reference date' for the purposes of the SOPA ('**Termination Reference Date**').

For the avoidance of doubt, nothing prevents the Principal's Representative, Independent Certifier or the Principal setting off or withholding any amount arising out of, or in connection with, a failure of the

Contractor to satisfy any Claim Preconditions, where such failure is also a breach of this Contract or results in any other Claim of the Principal against the Contractor.

The Contractor may only include in the payment claim contemplated by this Clause 49 (such claim to be assessed in accordance with the Contract), any amount which is due and payable to the Contractor under the Contract in respect of work under the Contract properly undertaken prior to or on the Termination Reference Date.

Unless instructed by the Principal to act otherwise, the Independent Certifier must not assess any other amounts and the Principal shall have no obligation to pay another amounts, including amounts contemplated under Clause 44.12, until such time as the payment claim contemplated by this Clause 49 has been made and assessed in a payment certificate by the Independent Certifier (or the time for making such a payment claim has elapsed under the SOPA).

The parties acknowledge and agree that where the Contract is terminated for any reason the Termination Reference Date will be the sole and final 'reference date' under the SOPA to survive beyond termination.

At any time following a termination, including after the submission and assessment of any payment claim contemplated by this Clause 49, the Principal may request the Independent Certifier to issue a payment certificate, including to assess any amounts owing either to the Principal from the Contractor, or to the Contractor from the Principal, as the case may be.

Within 15 Business Days of receipt of such a request, the Independent Certifier must issue a payment certificate to the Principal and the Contractor. Any amount owing under the payment certificate must be paid by the Contractor to the Principal, or the Principal to the Contractor, as the case may be, within 15 Business Days of the date of the payment certificate.

Without limitation, the provisions of Clauses 63.3 and 63.12 apply to the Payment Claim contemplated by this Clause 49 and in issuing the payment certificate contemplated under this Clause 49 the Independent Certifier must also have regard to the principles under Clauses 63.4 and 63.12.

Despite any other provision of this Contract, if the Principal exercises a right to terminate this Contract, and the Contractor at the time of termination:

- (a) is subject to an Insolvency Event;
- (b) has not provided a statutory declaration in accordance with Clause 42.3; or
- (c) has provided the statutory declaration which the Contractor is required to provide in accordance with Clause 42.3 and such statements are determined by the Principal (acting reasonably) to be untrue, false or misleading (as applicable),

then the Principal will not be liable to make any payment under this Clause 49 or Clause 44.12 or otherwise in connection with this Contract, and for the avoidance of doubt, any payment certificate to be issued by the Independent Certifier after termination will not show an amount owing to the Contractor.

50 NO CAVEAT

The Contractor must not lodge a caveat on any title forming part of the Site.

51 ENTIRE AGREEMENT

The Contract and any annexures is the entire agreement of the parties on the subject matter.

The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the Contract.

All representations, communications and prior deeds in relation to the subject matter are merged in and superseded by the Contract.

52 COUNTERPARTS

The Contract may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

53 FAILURE TO SIGN

Any failure by a nominated party to the Contract to sign it will not invalidate its operation as against the parties who have signed it.

54 FURTHER ASSURANCES

Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to the Contract and the rights and obligations of the parties under it.

55 AMENDMENT

The Contract may only be amended or supplemented in writing signed by the parties.

56 GOVERNING LAW AND JURISDICTION

- (a) The Contract is governed by the law in force in Queensland.
- (b) The parties submit to the exclusive jurisdiction of the Courts of Queensland and any Court that may hear appeals from those Courts in respect of any proceedings in connection with the Contract.

57 COSTS

Each party will pay its own costs, fees and expenses in connection with the preparation, negotiation and execution of the Contract.

58 PROPORTIONATE LIABILITY

58.1 Exclusion of operation of Civil Liability Act 2003

- (a) To the extent permitted by law, the operation of the apportionment of liability provisions in Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) is excluded in relation to any and all of the Contractor's obligations and liabilities, and the Principal's Claims and rights, arising under or in relation to this Contract howsoever such Claims, rights, obligations or liabilities are sought to be enforced.
- (b) The parties agree that the Contractor's obligations and liabilities, and the Principal's Claims and rights will be those which would exist if Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) did not apply.

58.2 Indemnity for proportionate claims

The Contractor indemnifies the Principal on demand for the difference (if any) between:

- (a) the amount of any loss, damage, cost and expense suffered or incurred by the Principal for which, but for the *Civil Liability Act 2003* (Qld), the Principal would otherwise have been entitled to recover from the Contractor arising out of or in connection with an act or omission of the Contractor under the Contract; and
- (b) the liability of the Contractor to the Principal as determined by the court pursuant to the *Civil Liability Act 2003* (Qld) arising out of or in connection with such act or omission of the Contractor.

59 PPSA

- (a) In enforcing a security interest arising in favour of the Principal under this Contract, the Contractor agrees that the Principal need not comply with ss95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the *Personal Property Securities Act 2009* (Cth).
- (b) If the Principal enforces a security interest arising in its favour under this Contract, the Contractor agrees not to exercise its rights under ss142 and 143 of the *Personal Property Securities Act 2009* (Cth).
- (c) The Contractor waives its right to receive any notice of verification statement from the Principal.
- (d) The Contractor agrees to do, at its own expense, all things which the Principal asks to ensure each security interest arising in favour of the Principal under this Contract is enforceable, perfected and otherwise effective and has the priority the Principal requires.
- (e) The Contractor must not change any of its details required for registration by the Principal of any security interest arising in favour of the Principal under this Contract, without giving the Principal at least 14 days' prior written notice containing full details of the change.
- (f) Without the prior written consent of the Principal, the Contractor must not in any way deal with, or part with possession of, any item used in or forming part of the Work other than to the Principal.
- (g) Without the prior written consent of the Principal, the Contractor must not create, allow to exist, or agree to give, a security interest in favour of any third party over any item used in or forming part of the Work.
- (h) The Contractor must immediately notify the Principal in writing of any breach of Clauses 59(e), 59(f) or 59(g), such notice to include full details of the breach.
- (i) The Contractor indemnifies and will keep indemnified the Principal against any loss, damage, claim or expense arising out of or in connection with any breach by the Contractor of this Clause 59.
- (j) In this Clause 59, each of the expressions "perfected", "notice of verification statement" and "security interest" has the meaning given in the *Personal Property Securities Act 2009* (Cth).

60 FINANCE AND SECURITY OBLIGATIONS

- (a) The Contractor agrees that the Principal may assign, mortgage or charge the benefit of this Contract to the Principal's Financier.
- (b) The Contractor must allow the Principal's Financier or any consultant or agent thereof to attend any meetings or other forums which the Financier wishes to attend. The Contractor must promptly provide to the Financier or its consultants or agents any information in relation to the work under the Contract which the Financier or its consultants or agents may request, whether at any such meeting or forum or otherwise at any time and from time to time.
- (c) The Contractor acknowledges that it is anticipated by the Principal that the conditions imposed by the Principal's Financier for the provision of financial accommodation to the Principal may include entry into a deed between the Contractor, the Principal and the Principal's Financier, under which the Contractor must covenant, on terms reasonably satisfactory to the Principal's Financier and the Principal:
 - (i) in favour of the Principal's Financier to perform its obligations under this Contract;
 - (ii) to give notice of a breach or other default by the Principal under or in respect of this Contract simultaneously to the Principal and the Principal's Financier;
 - (iii) to give the Principal's Financier a reasonable period to remedy any payment breach or default by the Principal;
 - (iv) to give the Principal's Financier an additional period to cure or compensate to the reasonable satisfaction of the Contractor any other breach or default by the Principal;

- (v) not to terminate the Contract prior to expiry of any notice given to the Principal's Financier under the preceding paragraphs;
 - (vi) to give the Principal's Financier an option to require the assignment or novation of the Contract from the Principal to the Principal's Financier or its nominee in case of any such breach or default which is capable of remedy but not remedied by the Principal within time or which is incapable of remedy, provided that the Principal's Financier or its nominee assumes all future obligations of the Principal to the Contractor thereunder and liability for any unpaid certified amounts then due to the Contractor;
 - (vii) that the enforcement by the Principal's Financier of any securities granted to the Financier by the Principal will not of itself constitute an event of default under this Contract;
 - (viii) that the Contractor must, upon termination of this Contract or the termination of its employment as Contractor under this Contract, assign to the Principal's Financier or its nominees (provided the nominee is acceptable to the Contractor acting reasonably) any subcontract or other Contract entered into by the Contractor for or in respect of the work under the Contract;
 - (ix) that certification of progress payments by the Independent Certifier shall be subject to consultation with and prior approval of a quantity surveyor or other appropriately qualified professional consultant appointed by or on behalf of the Principal's Financier for that purpose;
 - (x) to allow the Principal's Financier to "step in" to cure a default by the Principal under the Contract and to "step out" again, without assuming liability for all of the obligations of the Principal under the Contract; and
 - (xi) notwithstanding any action taken by the Principal's Financier to cure or remedy a default or to assume any of the obligations of the Principal under the Contract, to allow the Principal's Financier to cease to perform any such obligations at any time.
- (d) Prior to commencement of the work under the Contract, the parties shall enter into a deed with the Principal's Financier to the effect of the covenants set out in this Clause 63 and any other conditions reasonably required by the Principal's Financier, in a form reasonably satisfactory to the Principal's Financier and the Principal.

61 ETHICS

- (a) The Contractor warrants:
- (i) it holds, and shall maintain until the end of the last Defects Liability Period, all licences required to enable it to lawfully carry out the work under the Contract;
 - (ii) it has no knowledge of the price of any other tenderer for the work under the Contract at the time of the submission of its tender; and
 - (iii) neither it nor its Related Entities has:
 - (A) colluded with, accepted any consideration from or offered any consideration to any other party in connection with the tender for the work under the Contract;
 - (B) entered into any improper or anticompetitive contract, arrangement or understanding with any other party in connection with the tender for or carrying out of the work under the Contract;
 - (C) offered or provided to any agent or employee of the Principal any consideration or other benefit in connection with the tender for or carrying out of the work under the Contract; and
 - (D) entered into any contract, arrangement or understanding to pay, or allow any money to be paid, directly or indirectly to any third party, including a trade or industry association; and

- (iv) in the event of the Contractor paying or allowing to be paid, to or on behalf of a trade or industry association any money in breach of these conditions, such money shall be held in trust for and become immediately payable to the Principal. The Principal shall be entitled to withhold from any payment due the Contractor on any account, an equivalent sum as liquidated damages.
- (b) The Contractor agrees that a breach of any of the warranties in Clause 61 constitutes a substantial breach of Contract by the Contractor.

62 QBCC

62.1 Provisions subject to QBCC Act

- (a) The rights and obligations of the parties under the Contract are subject to the provisions of the QBCC Act to the extent they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Contract and the QBCC Act, the QBCC Act shall prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this Clause 62 and defined in the QBCC Act, shall have the meaning given to them by the QBCC Act.

62.2 Contractor's registration

The Contractor warrants it is currently registered under the QBCC Act (under the registration number set out in Annexure Part A) to carry out the work under the Contract.

62.3 Directions in writing

If the Contractor intends to not comply with a direction until the direction is given in writing, the Contractor shall notify the Principal's Representative or Independent Certifier of that intention immediately after the direction is first given.

62.4 Security

Despite any other provision of the Contract, the parties agree that to the extent that:

- (a) the QBCC Act applies; and
- (b) the Contract provides for the total of:
 - (i) all retention amounts withheld by the Principal; and
 - (ii) all securities held by the Principal,
 to exceed 2.5% of the contract sum for the Contract (which under the QBCC Act includes adjustments for variations) after Practical Completion has been reached,

the amount of the excess does not relate to the need to correct Defects identified in the Defects Liability Period but instead to the recovery by the Principal of any other costs, damages, liabilities or other amounts which may become payable to the Principal by the Contractor under or in connection with the Contract, the Contractor's performance of the Contract or any breach of contract by the Contractor.

62.5 Application of section 67J QBCC Act

The parties agree that for the purposes of section 67J of the QBCC Act ('relevant section') to the extent it applies:

- (a) the Principal authorises the Principal's Representative to give on behalf of the Principal the notices referred to in the relevant section;
- (b) the Contractor accepts that any progress or other certificate issued by the Independent Certifier or the Principal which refers to an amount owed by the Contractor to the Principal shall be taken to be advice from the Principal of the proposed use of Security (as defined in the QBCC Act) held by the Principal to obtain the amount owed; and

- (c) to the extent required by the relevant section, the Principal's Representative shall give to the Contractor on the Principal's behalf any notice required pursuant to the relevant section to ensure the Principal's rights to use Security (as defined in the QBCC Act) are not prejudiced.

63 SOPA REQUIREMENTS

63.1 Provisions subject to the SOPA

- (a) The rights and obligations of the parties under the Contract are subject to the provisions of the SOPA to the extent that they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Contract and the SOPA, the SOPA shall prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this Clause 63 and defined in the SOPA, shall have the meaning given to them by the SOPA.

63.2 Definition of reference date for the purposes of the SOPA

- (a) The Contractor shall only be entitled to make a claim for a progress payment from each date stated in or worked out under the Contract (including subclause 63.2(b)).
- (b) Despite any other provision of the Contract to the contrary, where the Contract provides that until the satisfaction of any condition or occurrence of any event that is a precondition to the date on which a claim for a progress payment (including a progress claim under subclause 42.1 and the final payment claim) may be made, then the only date on which a claim for that progress payment may be made by the Contractor shall be the later of:
 - (i) the date the last Claim Precondition is satisfied; and
 - (ii) the date after which that claim for a progress payment can otherwise be made under the Contract.

63.3 Calculation or valuation of progress payments under the SOPA

Despite any other provision of the Contract and notwithstanding subclause 42.1, in calculating any progress payment to which the Contractor is entitled to in relation to the Contract, and in respect of which the Contractor is entitled to claim in any progress claim:

- (a) the following amounts shall not be included:
 - (i) any amount which the Contract provides cannot be claimed or is not payable because of the failure by the Contractor to take any action (including to give notice to the Principal or Independent Certifier);
 - (ii) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - (iii) any amount which the Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied; or
 - (iv) any amount in respect of which the obligation of the Principal to make payment has been suspended under the Contract;
- (b) the following amounts shall be deducted:
 - (i) any amounts which:
 - (A) have become due from the Contractor to the Principal under the Contract;
 - (B) have been claimed by the Principal (acting bona fide) under or in connection with the Contract at any time;
 - (C) the Principal is entitled under the Contract to set off against the progress payment;

- (D) are estimated to be amounts likely to become due from the Contractor to the Principal under or in connection with the Contract as a result of any act or omission of the Contractor (including breach of the Contract);
- (ii) any amounts which the Principal is entitled under the Contract to withhold, deduct or retain from the progress payment (including pursuant to Clause 5); and
- (iii) any amounts stated in the Contractor's Statement provided by the Contractor in accordance with Clause 43 as remaining payable to subcontractors or workers;
- (c) in determining amounts to be excluded or deducted under subclause 63.3(a) and 63.3(b), regard shall be had to matters or circumstances occurring at any time before the date that the determination is being made; and
- (d) the value of any work under the Contract relevant to the progress payment shall:
 - (i) be determined having regard to the contract sum (with additions or deductions provided for by the Contract);
 - (ii) include a deduction equal to the greater of:
 - (A) the diminution in value of work under the Contract resulting from; and
 - (B) the estimated cost of rectifying in accordance with the Contract, any omitted or defective work under the Contract;
 - (iii) exclude the value of any unfixed materials (unless the Contract expressly provides for payment for the unfixed materials and the Contractor has fully satisfied those requirements which the Contract provides are to be fulfilled before the Principal is required to pay for those items); and
 - (iv) not include any amount in respect of which the Contractor has failed to provide supporting material or information as required by the Contract.

63.4 Service under the SOPA on Independent Certifier

Notwithstanding any other provision of the Contract, and subject to section 103 of the *Building and Construction Industry Payments Act 2004* (Qld) and section 102 of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), the Contractor agrees that in the event it is seeking to serve any claims, notices and other documents upon the Principal under the SOPA, the Contractor shall only do so by serving such claim, notice or other document upon the Independent Certifier in accordance with Clause 7. The Independent Certifier is the Principal's agent for such purpose.

63.5 Payment schedule issued by the Independent Certifier

- (a) If within the time allowed by the SOPA for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the Contractor that the Independent Certifier does not have authority from the Principal to issue the payment schedule on its behalf,
 then a progress certificate issued by the Independent Certifier under the Contract which relates to the period relevant to the claim for progress payment shall be taken to be the payment schedule for the purposes of the SOPA (whether or not it is expressly stated to be a payment schedule).
- (b) The Principal authorises the Independent Certifier to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (c) Nothing in subclause 63.5(a) or 63.5(b) shall prejudice the obligations of the Principal relating to the manner in which the Independent Certifier is to exercise its function of issuing a payment certificate, whether or not the payment certificate is or may also be a payment schedule.

- (d) In responding to the Contractor under the SOPA, the Independent Certifier also acts as the agent of the Principal.

63.6 Notice of communications to the Independent Certifier

The Contractor shall:

- (a) ensure that a copy of any written communication it delivers (or arranges to deliver) to the Principal of whatever nature in relation to the SOPA, (including a payment claim under the SOPA), is provided to the Independent Certifier at the same time;
- (b) promptly (and within one business day) give the Independent Certifier a copy of any written communication of whatever nature in relation to the SOPA (including a payment claim, adjudication application, adjudication determination or notice to suspend works under the SOPA), which the Contractor receives from a subcontractor or which a subcontractor has received from any of the subcontractor's subcontractors.

63.7 Contractor's remedies limited

Nothing in the Contract shall be construed to:

- (a) make any act or omission of the Principal in contravention of the SOPA (including a failure to pay an amount becoming due under the SOPA), a breach of the Contract (unless the Principal would have been in breach of the Contract had the SOPA had no application); or
- (b) give to the Contractor rights or remedies under the Contract which extend or are in addition to rights or remedies given to the Contractor by the SOPA in respect of any act or omission of the Principal in contravention of the SOPA.

63.8 Suspension by Contractor

If the Contractor suspends the whole or any part of the work under the Contract at any time pursuant to the SOPA, then despite any other provision of the Contract:

- (a) the date for practical completion shall not be affected but the suspension shall be a cause of delay for which the Contractor may claim an extension of time in accordance with the Contract;
- (b) except as expressly provided in subclause 63.8(a), subclause 63.7 shall apply; and
- (c) except to the extent as expressly provided under the SOPA, the Principal shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension.

63.9 Suspension by Subcontractors

Despite any other provision of the Contract, if any subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the work under the Contract) pursuant to the SOPA:

- (a) the Contractor shall not be relieved of any of its obligations under the Contract and the suspension by the subcontractor shall not entitle the Contractor to any claim (including, without limitation, for an extension of time under Clause 35.5 or delay or disruption costs under subclause 36); and
- (b) the Contractor shall immediately provide the Principal full details of the circumstances giving rise to the subcontractor's right (or alleged right) to suspend or take any other action.

63.10 Adjudication

Where an adjudication occurs under the SOPA and, if required by the SOPA to do so, the Principal has paid the adjudicated amount to the Contractor:

- (a) the Principal may provide a copy of the adjudicator's determination to the Independent Certifier;
- (b) if the Independent Certifier disagrees with the adjudicator's determination, the Independent Certifier may take into account in any subsequent progress certificate or final certificate the

amount by which the Independent Certifier determines has been overpaid to the Contractor as a result of the adjudicator's determination; and

- (c) where an adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount shall become a debt due and immediately payable by the Contractor to the Principal.

63.11 Construction of Contract provisions

To the extent any provision of the Contract is (or may, if not for the operation of this subclause 63.11, be) found to be void under the SOPA, the provision shall be construed or severed from the Contract in a manner which:

- (a) avoids the provision, or any other provision of the Contract, being void; and
- (b) subject to subclause 63.11(a), preserves to the maximum possible extent:
 - (i) the enforceability of the provision and the other provisions of the Contract; and
 - (ii) the original effect and intent of the Contract.

63.12 Further Conditions for Payment Claim

In addition to the provisions of Clause 42.1 and Clause 42.5:

- (a) if the time for:
 - (i) delivery of any Payment Claim; or
 - (ii) payment of any claim,
 under Clauses 42.1 and 42.5 falls due on a day which is not a Business Day, the claim may be delivered or the payment made on the next Business Day;
- (b) the Contractor shall not be entitled to submit a Payment Claim more frequently or at any time earlier than at the time specified in the Contract;
- (c) if, at any time prior to the date on which the Contractor is otherwise entitled to make a Payment Claim, the Contract requires or the Principal's Representative or Independent Certifier has directed the Contractor to deliver certain material or information in support of its Payment Claim, then the Contractor submitting that material or information is a precondition to the date on which the Payment Claim may be made by the Contractor;
- (d) the amount to be allowed by the Independent Certifier in any certificate under Clauses 42.1, 42.6 or 44.6 as the amount due to the Contractor arising out of or in connection with the Contract shall be calculated in accordance with the provisions of the Contract (including Clause 63.3); and
- (e) as a precondition to the date on which the Payment Claim may be made by the Contractor, the Contractor shall submit, one Business Day prior to the submission of the relevant Payment Claim, a completed Contractor's Statement in the form set out in Annexure Part D relating to that Payment Claim; and
- (f) as a precondition to the date on which the Final Payment Claim may be made, the Contractor shall submit, one Business Day prior to the submission of the Final Payment Claim, a completed Contractor's Statement in the form set out in Annexure Part D relating to that Final Payment Claim.

64 SUBCONTRACTOR'S CHARGES

Where any person at any time lodges, or purports to lodge, under the *Subcontractor's Charges Act 1974* (Qld) or the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) a charge over any moneys (including security) payable under the Contract by the Principal to the Contractor, the Contractor agrees that any additional costs or expenses that the Principal suffers or incurs arising from or in connection with the lodgement of the charge (including, without limitation, in responding to any notice of charge or paying any moneys into court) shall be a debt due and immediately payable to the Principal by the

Contractor, whether or not the charge is validly lodged or any action taken by the person lodging the charge is successful.

65 EXISTING ASSETS

65.1 Existing Assets obligations

- (a) The Contractor acknowledges that the Existing Assets may be in use or operation during the carrying out of the work under the Contract and the Works, and the Contractor shall take all measures to allow those Existing Assets to continue to be used and operated during the carrying out of the work under the Contract and the Works.
- (b) The Contractor shall comply, and shall ensure that its employees and subcontractors and suppliers comply, with all directions of the Principal's Representative and the Principal in connection with the Existing Assets.

65.2 Access to the Site

The Contractor shall access the Site only at the point of entry and exit and via the routes having regard to the applicable Legislative Requirements and the Approvals and otherwise which:

- (a) ensure minimum disturbance and inconvenience to the users and operations of the Existing Assets; and
- (b) the Principal's Representative approves from time to time (which approval shall be given on a reasonable basis, having regard to the applicable Legislative Requirements and the Approvals).

65.3 Services, facilities and utilities

- (a) The Contractor shall provide and bear the cost of all services, facilities and utilities (except for, the services, facilities and utilities at the site listed in Annexure Part A which the Principal may make available 'Principal Supplied SFU') which are necessary to comply with its obligations for the safe and satisfactory performance of the work under the Contract and keep these serviced and in good condition.
- (b) Despite the Principal Supplied SFU, the Contractor shall make provision for any services, facilities and utilities on the site for its use as may be necessary for the proper and timely completion by it of the work under the Contract.
- (c) The Principal does not warrant the availability of space on the Site for the Contractor's intended services, facilities or utilities. Unless agreed otherwise with the Principal's Representative, services, facilities and utilities provided on the site by the Contractor shall be promptly demobilised and removed from the Site when no longer required for the performance of the work under the Contract (excluding the services, facilities and utilities which are required to be incorporated in the Works).
- (d) The Contractor acknowledges that no warranty or other liability on the part of the Principal or of other contractors shall be created or implied with regard to the fitness, condition, suitability or performance of any Principal Supplied SFU made available, or not made available, by the Principal.
- (e) The Contractor acknowledges that it will only use Principal Supplied SFU reasonably and for its intended purpose.

65.4 Use and damage to Existing Assets

- (a) Without limiting any other obligations of the Contractor, the Contractor shall:
 - (i) not use or access, nor allow any of its employees and subcontractors to use or access, whether for parking or any other purposes, any part of any of the Existing Assets other than as allowed by the Contract or as directed by the Principal or the Principal's Representative from time to time;

- (ii) not interfere with free movement of traffic (vehicular and pedestrian) into and out of, adjacent to, around, on or about the site or Existing Assets or block or impair access to any premises, carparks, roadways, pedestrian ways or other facilities associated with the Existing Assets and comply with the Principal's Representative reasonable directions in relation to them;
- (iii) comply with the Principal's Representative and the Principal's directions in connection with:
 - (A) the Existing Assets (including, without limitation, access to and use of the site of the Existing Assets of the Principal's existing environmental controls;
 - (B) the times at which any part of the Existing Assets may be shut down to allow the work under the Contract to be carried out in respect of that part;
 - (C) any part of the Existing Assets, the access to or use of which is prohibited and restricted by the Contractor, subcontractors or their agents or employees; and
 - (D) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under workplace health and safety Legislative Requirements;
- (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Legislative Requirements applying to the Existing Assets on the Site;
- (v) ensure that in carrying out the Contractor's Design Obligations and the work under the Contract, the Works properly interface and integrate with, and connect to, the Existing Assets (if applicable) so as to enable the Works, when completed, to fully comply with the requirements of the Contract;
- (vi) at the Contractor's own cost immediately:
 - (A) repair and make good any damage to pavements, kerbs, roadways or other Existing Assets arising from or in connection with the work under the Contract or the Works (to the Principal's and Principal's Representative satisfaction); and
 - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this subclause 65.3 are complied with; and
 - (C) subject to subclause 65.6, and as a condition precedent to connecting any service, submit all appropriate test results (including, without limitation, pressure and sterilisation) to the Principal's Representative and the Principal.

65.5 Interference with Existing Assets

Except to the extent expressly permitted by the Contract or approved by the Principal's Representative, the Contractor shall:

- (a) not disrupt, interrupt or interfere in any way with the use, daily operations or access of the Existing Assets, except where:
 - (i) the disruption, interruption or interference is the direct and unavoidable consequence of performing work under the Contract in accordance with the Contract; and
 - (ii) the time for the disruption, interruption or interference is included in the Construction Program that has been approved by the Principal's Representative in accordance with Clause 33;
- (b) not cause any nuisance, inconvenience or disruption to users of the Existing Assets; and
- (c) identify, program and co-ordinate all work under the Contract using Best Practice and so as to minimise the effect that the carrying out of the work under the Contract has on the Existing Assets

(including, without limitation, the continuing and safe access to, use or operation of, the Existing Assets).

65.6 Interference with services to Existing Assets

Without limiting subclause 65.5, the Contractor shall:

- (a) notify the Principal's Representative and the Principal immediately upon being aware of any requirement for (and no later than 5 Business Days before or any other period directed by the Principal's Representative) any disconnection or other interference with services to the Existing Assets; and
- (b) provide at the Contractor's own cost such alternative temporary services as are required to ensure that there is no disruption to the operations of the Existing Assets.

65.7 Indemnity

The Contractor shall indemnify the Principal in respect of all demands, claims, costs, expenses, damages and other liabilities arising from the breach by the Contractor of this Clause 65 (including, without limitation, any claim by a user of the Existing Assets for compensation or damages arising from disruption).

65.8 Stop Work Order

Without limitation to any of the Principal's or the Principal's Representative's powers or rights under the Contract, the Principal or the Principal's Representative may direct the Contractor to stop the whole or any part of the work under the Contract (including the delivery of materials to the Site) if the Principal or the Principal's Representative (in their absolute discretion) consider that the Contractor or any of its employees or subcontractors failed (or would have failed) to comply with any requirement under this Clause 65 ('**Stop Work Order**'). The Contractor must comply with a Stop Work Order, and the Contractor will have no Entitlement in connection with a Stop Work Order.

66 SIGNAGE

- (a) Subject to Clause 66(b), the Contractor must not, and must ensure that its Associates in carrying out the work under the Contract do not, erect, install, paint or display any advertising, promotional or similar sign age or material on, in or near any part of the work under the Contract or the Site (or permit any third party to do so) at any time.
- (b) The Contractor may (with the prior written approval of the Principal) install and maintain the following signage on or near the Site:
 - (i) operational directional signage stated in the Specification;
 - (ii) temporary directional signage to assist businesses in the vicinity of the Site, access to which has been, or is likely to be, adversely affected by the work under the Contract;
 - (iii) signage required by a Legislative Requirement or reasonably required for the safety and security of the work under the Contract;
 - (iv) project identification signage approved by the Principal;
 - (v) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the work under the Contract;
 - (vi) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Site; and
 - (vii) any such other signage which the Principal may approve in its absolute discretion.
- (c) All signs installed in accordance with this Clause must be removed, and any damage caused must be made good by the Contractor, as a condition precedent to Practical Completion (except to the extent any signs form part of the Works).

- (d) The Contractor acknowledges that the Principal, MEDQ and others the Principal permits may, in its absolute discretion, erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Site (or permit any third party to do so) at any time provided any rights that the Principal, MEDQ and other the Principal permits exercise in connection with this Clause do not interfere with the work under the Contract.

67 COMPLAINTS

(Contractor to notify Principal): The Contractor must immediately notify the Principal in writing if any:

- (a) complaint is made or any proceedings are instituted or threatened;
- (b) letter of demand is issued; or
- (c) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee near the Site) against the Contractor or its subcontractors in respect of any aspect of the carrying out of the work under the Contract, including:

- (d) any Contamination or an Environmental Harm relating to the work under the Contract;
- (e) the Contractor's non-compliance with any environmental management plan or any Legislative Requirement relating to the Environment; and
- (f) the Contractor's use or occupation of the Contractor's Site or its adjoining areas.

(Contractor to resolve): To the extent the complaint, proceedings, letter of demand, order or direction referred to above relates to the Contractor or the work under the Contract, the Contractor must:

- (g) if directed to do so by the Principal, deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in the paragraphs above;
- (h) take all reasonable measures to resolve those matters as soon as possible subject to the agreement to such action by the Principal's Representative ; and
- (i) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in the paragraphs above which contains full details of:
 - (i) each complaint, proceedings, letter of demand, order and direction; and
 - (ii) the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - (iii) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - (iv) may be inspected by the Principal or the MEDQ whenever the Principal reasonably requires.

68 INDUSTRIAL ISSUES

- (a) **(IR duties):** The Contractor, in carrying out the work under the Contract, must to the extent permitted by law:
 - (i) manage all aspects of industrial relations in relation to its employees engaged in the Works **(Contractor's Workforce)**;
 - (ii) be responsible for maintaining good industrial relations with its employees for preventing or mitigating any disruption to the work under the Contract caused by industrial relations issues including the settlement of strikes, walk-outs, lock-outs, bans or limitations or other industrial disputes or disruptions involving the Contractor's Workforce;

- (iii) take reasonable steps to keep the Principal fully and promptly informed of industrial relations problems or issues which affect or (with reasonable foresight) may potentially affect the carrying out of the work under the Contract;
 - (iv) without limitation on other provisions of this Contract and the WRMP, keep the Principal fully and promptly informed of any industrial relations matters relating to the Contractor's Workforce that have the potential (with reasonable foresight) to impact a date for completion of the Works;
 - (v) coordinate responses and proposed responses of the Contractor with the Principal to any industrial relations matters relating to the Contractor's Workforce that have the potential (with reasonable foresight) to impact a date for completion of the Works;
 - (vi) comply with the terms of the Contractor's WRMP (consistent with subclause 68(h)); and
 - (vii) use all reasonable avenues available to it to enforce its own legal rights in relation to any actions by a third party that unlawfully interferes with performance of the work under the Contract.
- (b) **(IR compliance):** The Contractor shall ensure that it complies with:
 - (i) all applicable Legislative Requirements;
 - (ii) the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise agreements or at law for all employees engaged by the Contractor; and
 - (iii) the provisions of any applicable document in this Contract (including, without limitation, in the Specification); and
 - (iv) its WRMP (to the extent, if any, that it is applicable), in carrying out and the work under the Contract.
- (c) **(Notification of industrial disputes etc.):** The Contractor must, as soon as it becomes aware of an industrial dispute or potential industrial dispute that may cause disruption to the work under the Contract, advise the Principal (initially by phone and email if it is an urgent matter, and later in a formal written notification). The advice to the Principal shall describe the issue that may cause the disruption, when such disruption may occur, the likely nature of any disruption and the action the Contractor intends to take to seek to mitigate the likelihood or impact of such disruption occurs.
- (d) **(Co-operation during industrial disputes):** In the event of an industrial dispute or potential industrial dispute at any part of the Site associated with the work under the Contract:
 - (i) the Principal may, at its discretion, liaise with the Contractor as to the actions which may be taken by the Contractor to respond to that industrial dispute; and
 - (ii) the Contractor must, if requested, provide advice of their proposed response to the industrial dispute to the Principal.
- (e) **(Notification of code breach etc.):** The Contractor shall advise the Principal and the Director of the Building Construction Code Branch of any threatened, impending, possible, probable or actual unlawful industrial conduct or breach of the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (as published by the Department of Justice and Attorney-General) (Queensland Guidelines) within 24 hours of becoming aware of the conduct.
- (f) **(No right to Claim):** Unless otherwise specified in this Contract, the Contractor shall not be entitled to make any Claim arising out of or relating to any act or omission of the Principal under this Clause 69 in respect of any industrial dispute or potential industrial dispute.
- (g) **(Resolving disputes):** The Contractor must use all reasonable and lawful avenues available to them under the applicable law or industrial instrument to assist in promptly resolving any

industrial dispute and bringing any disruptions to the work under the Contract arising out of an industrial dispute to an end.

- (h) **(Contractor obligations):** The Contractor will require its subcontractors to comply with the same obligations and requirements as imposed on the Contractor under subclauses 68(a) to (g) above and this subclause (h) in relation to that subcontractor's own workforce.

69 COMPLIANCE WITH THE QUEENSLAND CODE AND QUEENSLAND GUIDELINES

- (a) **(Definitions)** In this Clause, Queensland Code and Queensland Guidelines have the same meaning as is attributed to them in the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (Queensland Guidelines) (as published by the Department of Justice and Attorney-General). In addition to terms defined in this Contract, terms used in this Clause 69 have the same meaning as is attributed to them in the Queensland Code.
- (b) **(Primary Obligation)** The Contractor must comply with, and meet any obligations imposed by, the Queensland Code and Queensland Guidelines.
- (c) The Contractor must notify Principal and the Building Construction Code Branch (or nominee) and the MEDQ of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (d) Where the Contractor is authorised to engage a subcontractor, and it does so, the Contractor must ensure that any secondary contract imposes on the subcontractor equivalent obligations to those in this Clause 69, including that the subcontractor must comply with, and meet any obligations imposed by the Queensland Code and the Queensland Guidelines.
- (e) The Contractor must not appoint or engage another party in relation to the work under the Contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code or Queensland Guidelines.
- (f) **(Access and information)** The Contractor must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors and personnel.
- (g) The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the Building Construction Code Branch) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including the Contractor's Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the work under the Contract;
 - (v) have access to personnel;
 - (vi) interview any person; and
 - (vii) as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Contractor or any subcontractor.
- (h) The Contractor, and its related bodies corporate, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the Building Construction Code Branch) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (i) **(Sanctions)** The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related bodies corporate, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code and Queensland Guidelines apply.

- (j) If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code and Queensland Guidelines.
- (k) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of Queensland (through its agencies, Ministers and the Building Construction Code Branch) is entitled to:
 - (A) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its related bodies corporate, in respect of work to which the Queensland Code and Queensland Guidelines apply.
- (l) **(Compliance)** The Contractor bears the cost of ensuring its compliance with the Queensland Code and Queensland Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Queensland Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal for such costs.
- (m) Compliance with the Queensland Code and Queensland Guidelines does not relieve the Contractor from responsibility to perform the work under the Contract and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from compliance with the Queensland Code and Queensland Guidelines.
- (n) Where a change in the Contract or the work under the Contract is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor must immediately notify the Principal of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to the work under the Contract) and the Principal's Representative will direct the Contractor as to the course it must adopt within 5 Business Days of receiving notice.

70 LOCAL INDUSTRY PARTICIPATION

The Contractor must, and must ensure that its subcontractors:

- (a) implement the Local Industry Participation Plan in Annexure Part R; and
- (b) comply the requirements of the Specification in relation to local industry participation.

71 INDIGENOUS PARTICIPATION PLAN

The Principal shall provide to the Contractor an Indigenous Participation Plan.

The Contractor must, and must ensure that its subcontractors:

- (a) implement the Indigenous Participation Plan in Annexure Part R; and
- (b) comply the requirements of the Specification in relation to indigenous participation.

**ANNEXURE to the Australian Standard
General Conditions of Contract**

PART A

This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

This Annexure shall be completed and issued as part of the tender documents and subject to any amendments to be incorporated into the Contract, is to be attached to these General Conditions of Contract and shall be read as part of the Contract.

Item

- | | | |
|-----|--|--|
| 1. | The law applicable is that of the State or Territory of:
(Clause 1) | Queensland |
| 2. | Payments under the Contract shall be made at:
(Clause 1) | The Principal's address |
| 3. | The Principal:
(Clause 2) | MG Group Project Management
Pty Ltd ACN 668 762 776 |
| 4. | The address of the Principal: | 2172 Gold Coast Highway.
Miami, QLD, 4220 |
| 5. | The Contractor:
(Clause 2) | Alder Constructions Pty Ltd
ABN 31 106 657 470 ACN 106
657 470 |
| 6. | The address of the Contractor: | 116 Siganto Drive, Helensvale,
QLD, 4220
Phone: 07-5514 4900
Email: tyanna.childs@aldercon.com.au
Attention: Tyanna Childs |
| 7. | The Independent Certifier:
(Clause 2) | Buildable Approvals Pty Ltd |
| 8. | The address of the Independent Certifier: | 701 Albany Creek Rd, Albany
Creek, QLD, 4035 |
| 8A. | Contract Documents
(Clause 2) | Those documents listed in the
Formal Instrument of Agreement |
| 8B. | Contract Sum
(Clause 2) | \$249,175.40 Excluding GST. |
| 8C. | Key Personnel
(Clause 2) | Project Manager: Vishaan Rana
Contract Administrator: Tyanna
Childs |

Where there are Separable Portions, these items shall be deleted

Item		Quality Manager: Mark Otte HSE: Paul Fullwood Site Manager: Dave Cooney
8D.	Site Interested Party (Clause 2)	Minister for Economic Development Queensland
8F.	Principal Supplied SFU (Clause 65.3)	NIL
9.	The Date for Practical Completion: (Clause 2)	14 th August 2024
10.	Contractor shall provide Security in the amount of: (Clause 5.2)	Two unconditional bank guarantees with no expiry dates, each equal in value to 2.5% of the Contract Sum.
11.	Provisional sums (Clause 2)	NIL
12.	Subcontractor Warranty Deeds (Clauses 2 and 9.5)	To be provided to the Principal on completed Contract.
12A	Time period required for the Subcontractor Warranty Deeds (Clause 9.5)	7 Days after signed Contract and returned.
13.	Not used	
14.	Work which cannot be subcontracted without approval: (Clause 9.2)	N/A
15.	Not used	
16.	Not used	
17.	Permits required to be obtained by the Contractor (Clause 14.5)	N/A – Permits to be obtained by the Principal.
18.	Principal's mandatory Work Health and Safety Requirements (Clause 12)	The Contractor is required to include as a minimum: (a) ... adopting the Principal's PPE requirements, namely:

Item

		(i)long sleeves; (ii)trousers; (iii)safety vest; (iv)hard hats; (v)steel cap boots; (vi)safety glasses; and (vii)gloves; (b)incident notification to the Principal;
19.	The amount of public liability insurance shall be not less than: (Clause 18)	\$20,000,000
20.	Not used	
21.	The time by which access to the Site shall be given: (Clause 27.1)	29 th April 2024
22.	Rate of liquidated damages: (Clause 35.6)	\$750.00 per day
23.	Not used	
24.	Not used	
25.	Delay Costs: (Clause 36)	Maximum per day = \$100.00
26.	The Defects Liability Period (Clause 37)	12 months
27.	Not used	
28.	The charge for overheads, administrative costs, Site supervision, establishment costs, attendance and profit for Daywork: (Clause 41(f))	
	(a) Times under the Contract for payment claims: (Clause 42.1)	The later of: (b) in respect of the progress claim first issued after the Date of Practical Completion, the last day of the month immediately following the month in which Practical Completion was achieved; and

Item

	(b) Stages of the work under the Contract for payment claims: (Clause 42.1)	N/A
29.	Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works: (Clause 42.4)	As agreed to in writing by the Independent Certifier
30.	The amount of additional Security for unfixed plant and materials: (Clause 42.4)	An unconditional bank guarantee with no expiry date, equal in value to the amount claimed for unfixed plant and materials.
31.	The rate of interest on overdue payments: (Clause 42.9)	5% per annum
32.	QBCC registration number (Clause 62.2)	1066730

**ANNEXURE to the Australian Standard
General Conditions of Contract****PART B**

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended or added to Australian Standard 2124-1992

DELETIONS, AMENDMENTS AND ADDITIONS

All deletions, amendments and additions are contained the Contract Conditions

**ANNEXURE to the Australian Standard
General Conditions of Contract**

PART C

STATUTORY DECLARATION

CONTRACT NO.: 1651

River Park Lifestyle Village Display Unit – Unit 32

QUEENSLAND

I,

.....

of

.....

in the State of Queensland, do solemnly and sincerely declare that:

- (a) I am the **Contract Administrator** for **Alder Constructions Pty Ltd ACN 106 657 470 of 116 Siganto Drive, Helensvale, QLD, 4212** (*'Contractor'*) engaged by **MG Group Project Management Pty Ltd** to carry out the works known as Contract No. **#1651** (*'Works'*) and I am duly authorised to make this declaration on the Contractor's behalf.
- (b) All wages and claims of workmen employed on or about the Works (including all workers employed by subcontractors) which are due and payable have been paid in accordance with all relevant Legislative Requirements (including the *Fair Work Act 2009* (Cth)) up to the date of this declaration.
- (c) All subcontractors, suppliers and consultants of the Contractor have been paid all that has been claimed by them up to the date of this declaration in respect of their part of the *Works* other than in respect of the following amounts for the following reasons:

Amount in dispute	Reason
.....	
- (d) The Contractor is solvent and is not subject to an Insolvency Event as that terms is defined in the Contract for the Works.

**AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING
THE SAME TO BE TRUE, AND BY VIRTUE OF THE PROVISIONS OF THE OATHS
ACT OF 1867 (QLD).**

Signature of declarant

Taken and declared before me, at, in the State of Queensland this
..... day of 20..... before me.

Signature

Full name
Justice of the Peace/Commissioner for
Declarations/Solicitor

**ANNEXURE to the Australian Standard
General Conditions of Contract**

PART D

APPROVED FORM OF UNCONDITIONAL UNDERTAKING

At the request of ACN (“the Contractor”)
and in consideration of ACN (“the Principal”
accepting this undertaking in respect of the contract for
..... (“the Project”)
..... ACN (“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 shall immediately cease.

DATED at this day of 20

**ANNEXURE to the Australian Standard
General Conditions of Contract****PART E**

PRACTICAL COMPLETION STATUTORY DECLARATION

Contract: River Park Lifestyle Village Display Unit – Unit 32. Contract #: 1651

Principal: MG Group Project Management Pty Ltd ACN 668 762 776 of 2172 Gold Coast Highway, Miami, QLD, 4220

Contractor: Alder Constructions Pty Ltd CAN 106 657 470 of 116 Siganto Drive, Helensvale, QLD, 4212

I, _____ of _____ do
solemnly and sincerely declare that:

1. I hold the office of _____ and I am authorised to make this declaration.
2. I am in a position to know the facts attested to in this declaration.
3. The Contractor and the Principal have entered into a construction contract for the Works (**Contract**).
3. Title to all parts of the Works has passed from the Contractor to the Principal.
4. No part of the Works is subject to any retention of title or other provision that operates to prevent title passing from the Contractor to the Principal.
5. Capitalised terms have the same meaning as in the Contract

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* (Qld).

SUBSCRIBED AND DECLARED at)
[Insert place] on [Insert date])
Before me:)

.....
Signature of declarant

.....
Justice of the Peace¹

.....
Name of declarant (BLOCK LETTERS)

¹ Or any other person authorized to administer an oath under the *Oaths Act 1867* (Qld).