

**Alder Constructions Pty Ltd**

ABN: 31 106 657 470

PO Box 1531

OXENFORD QLD 4210

Phone: 07 5514 4900

Fax: 07 5556 0845

SUBCONTRACT ORDER

Order To:

SafetyLyne
6-8 Industrial Place
Yandina QLD 4561
Phone : 5456 4491
Fax :
ABN : 60 705 808 013

Order No. : P2119010**Order Type : L****Job** : P211 Lexicon Commercial Facade Upgr**Comments** : Metalwork

ITEM	DESCRIPTION	JOB	COST CENTRE	QUANTITY	RATE	UOM	ITEM TOTAL
1	SC1 Mechanical Grille to Wharf St - Option 2 - Hi-Lite replica screen	P211	51001 / S	1.00	27,980.00	ITEM	27,980.00
2	PC1 Horizontal Battens to Building Entry	P211	51001 / S	1.00	13,275.00	ITEM	13,275.00
3	Removal, storage and reinstate balustrade	P211	51001 / S	1.00	15,000.00	ITEM	15,000.00
4	347 Signage to Building Entry	P211	51001 / S	1.00	2,000.00	ITEM	2,000.00

Special Instructions

This Subcontract Order is not valid without an attached Works Contract Instrument and constituting documents (Works Contract) referencing the above Order No. The Works Contract applies to this Subcontract Order. The Contractor shall not be entitled to receive any payment in respect of the work under this Subcontract Order until the Works Contract is executed by the Contractor and is in the possession of Alder.

Retention 10.00 % to a maximum of 5.00 %

Plus GST 5,825.50

TOTAL 64,080.50**Proj. Mgr.** : Thomas Cross**Design Mgr.** :**Site Mgr.** : Ross Henry Stirling**Contract Mgr.** : ANDREW COLIN HOLST

WORKS CONTRACT INSTRUMENT

DATE: Works Contract made on the date executed below.

PARTIES: Alder Constructions Pty Ltd (ABN 31 106 657 470) of 116 Siganto Drive HELENSVALE QLD 4212
(Alder)

And

The entity named under "Order To" in the Subcontract Order reference P2119008.
(Contractor)

- RECITALS:**
- A. Alder has entered into a Main Contract with the Principal with respect to the Project.
 - B. The Contractor represents to Alder that it has the requisite skill, experience, ability and available resources to execute or provide the work under the Works Contract in accordance with the Works Contract.
 - C. In reliance on Recital B, Alder wishes to engage the Contractor to perform the work under the Works Contract.
 - D. The Contractor has agreed to accept such engagement upon the terms of the Works Contract.

OPERATIVE PROVISIONS:

The Works Contract is constituted by:

1.
 - a) This Works Contract Instrument
 - b) Annexure to Works Contract
 - c) Appendix 1 – Scope of Works
 - d) Appendix 2 – Schedule of Rates
 - e) Appendix 3 – Section Periods
 - f) Appendix 4 – Drawings and Specifications
 - g) Appendix 5 – Responsibility Matrix/Specific Scope of Works
 - h) Appendix 6 – Attendance Schedule
 - i) Appendix 7 – Progress Claim
 - j) Appendix 8 – Operations and Maintenance Manual
 - k) Appendix 9 – Warranty
 - l) Appendix 10 – Statutory Declaration
 - m) Appendix 11 – Deed of Release
 - n) Appendix 12 – Design and Documentation
 - o) Appendix 13 – Quality System
 - p) Appendix 14 – Head Contract Conditions
 - q) Appendix 15 – The Works Contract Conditions
 - r) The Subcontract Order covering this Works Contract Instrument (Subcontract Order).
2. The Contractor shall perform the work under the Works Contract in accordance with the Works Contract.
3. The basis of Alder's role under the Works Contract is stated in Annexure A.
4. In executing the Works Contract the parties acknowledge and agree that they have no claims or actions arising out of dealings prior to the date of the Works Contract in any way connected with the Project, other than under the terms of the Works Contract.

-
5. The Contractor shall not be entitled to receive any payment in respect of the work under the Works Contract until the Works Contract is executed by the Contractor and is in the possession of Alder.
6. Each party warrants that:
- (a) it has the power to execute the Works Contract and all necessary corporate and other action has been taken to authorise that execution; and
 - (b) the Works Contract shall be executed on its behalf by an authorised signatory.

EXECUTED as an agreement on the _____ day of _____ 20____

EXECUTED for and on behalf of the **Contractor** by its authorised signatory:

(signature) _____ (name) _____

witnessed by:

(signature) _____ (name) _____

EXECUTED for and on behalf of **Alder** by its authorised signatory:

(signature) _____ (name) _____

witnessed by:

(signature) _____ (name) _____

ANNEXURE TO WORKS CONTRACT

Basis of Alder's role under the Works Contract

(Clause 3 of the Works Contract Instrument)

Alder enters into the Works Contract

- (a) ☒ in its own right
- (b) ☐ as agent of the Principal. Alder shall administer the Works Contract, including the financial aspects of the Works Contract, but shall not itself incur liability under the Works Contract.

[Cross one box only]

Contract Amount (Clause 1)

The Contract Amount is:

- (a) ☒ a lump sum;
- (b) ☐ the sum of the amounts calculated by multiplying the rate for a scheduled item described in the Schedule of Rates Table in Appendix 2 by the quantity of that scheduled item actually directed and performed; or
- (c) ☐ the aggregate of the sum referred to in (a) and (b) above.

[Cross the applicable box]

To the extent that (a) or (c) above applies, the lump sum Contract Amount is made up in accordance with the breakdown included within the Subcontract Order.

Causes of Excusable Delay (Clause 1)

- (a) An act of prevention by Alder and/or the Principal and/or if relevant the Superintendent.
- (b)

Principal (Clause 1) Lexicon Apartments CTS 32384 of c/o Strata Dynamics, GPO Box 525673, Brisbane QLD 4001

Project (Clause 1) Lexicon Commercial Façade Upgrade

Substantial Completion (Clause 1)

The requirements for Substantial Completion, in addition to requirements (a) to (e) inclusive in the definition of Substantial Completion, are as follows:

Not Applicable

General Scope of the Works (Clause 1)

See Appendix 1 – Scope of Works

Order of Precedence (Clause 3.3)

The order of precedence stated in Clause 3.3 is amended as follows:

Proper Law (relevant State or Territory) (Clause 4) State of Queensland

Amount of Security (Clause 5) 5%

Notices (Clause 6)

(a) Alder	Address:	PO Box 1531, Oxenford QLD 4210
	Facsimile:	07 5556 0845
	e-mail:	mail@aldercon.com.au
	Attention:	Tom Cross
(b) Contractor	Address:	As per Subcontract Order.
	Facsimile:	As per Subcontract Order.
	e-mail:	graeme.p@safetylyne.com.au
	Attention:	Graeme Partland

Terminology (Clause 7.5)

The following terminology shall be deemed to mean "Alder"

- (a) Principal
- (b) Superintendent

Submission of documents and other information (Clause 7.8) 5 Business Days (if nothing stated Clause 7.8 applies)

Copies of Documents for Review (Clause 7.9) 3 Copies

Copies of Documents after Review (Clause 7.11) 3 Copies

Copyright (Clause 7.13)

- ☒ The copyright in documents prepared by the Contractor for the Project shall be the property of Alder. Alder may pass on the copyright to the Principal if required by the Main Contract.
- ☐ The copyright in documents prepared by the Contractor that specifically relate to the Project and/or documents prepared by the Contractor based on concepts and ideas of general application developed jointly with Alder shall be the jointly owned property of the Contractor and Alder. The Contractor hereby grants Alder and the Principal an irrevocable non-exclusive royalty free license to use for the purpose of the design, construction, operation, repair, maintenance, upgrading and/or improvement of the Project including if necessary to arrange completion of the work under the Works Contract in the event of termination or novation of the Works Contract, documents setting out concepts and ideas of general application prepared by the Contractor prior to the commencement of the work under the Works Contract and/or documents prepared by the Contractor during the performance of the work under the Works Contract setting out concepts and ideas of general application developed solely by the Contractor and without input from Alder.

☐

The copyright in documents prepared by the Contractor for the Project shall be the property of the Contractor. The Contractor hereby grants Alder and the Principal an irrevocable non-exclusive royalty-free licence to use the documents for the purpose of the design, construction, operation, repair, maintenance, upgrading and/or improvement of the Project including if necessary to arrange completion of the work under the Works Contract in the event of termination or novation of the Works Contract.

[Cross the applicable box]

Key Personnel (Clause 10)

Name:

Nominated Role:

Graeme Partland

Consultant

Andy Yeo

Operations Manager

Relevant Date for Statutory Requirements (Clause 14.1)

Date of Works Contract

Relevant Date for Standards (Clause 14.2)

Date of Works Contract

Insurance (Clause 18)

(a) Amount for Works insurance

Value of the Works

(b) Amount for Public Liability insurance

\$20,000,000

Contractor's Representative (Clause 22)

Graeme Partland

Alder's Representative (Clause 23)

Project Manager or his delegate

Working Days and Working Hours (Clause 24)

Working Days:

Working Hours:

Monday to Friday

7:00am to 5:00pm

Saturday

7:00am to 5:00pm

Sunday

No work permitted

Date for Commencement on Site (Clause 1 and 27)

The Date for Commencement on Site is expected to be within the range of the following dates:

18/02/2019 to 4/03/2019

Date for Substantial Completion (Clause 1 and 27)

The Date for Substantial Completion shall be the last day of the following period commencing from the Date for Commencement on Site:

38 days

Separable Portion (Clause 27.3)

Ref	Description	Date for Commencement on Site, is between		Period from Commencement for Substantial Completion
		Earliest	Latest	Days
1	N/A			
2				
3				
4				

Liquidated Damages (Clause 27.5) At proven cost at time of delay**Delay** (Clause 28.2)

Period for notices: 5 Business Days (if nothing stated Clause 28.2 applies)

Extension Claim (Clause 28.3)

Period for claims: 5 Business Days (if nothing stated Clause 28.3 applies)

Variations (Clause 33.2)

Period for notices: 5 Business Days (if nothing stated Clause 33.2 applies)

Valuation Percentages (Clause 33.6)

- (a) Percentage for wages and allowances 5% (unless stated otherwise, 5%)
- (b) Percentage for overheads, profit and other costs 5% (unless stated otherwise, 5%)

Payment Terms (Clause 35)

- (a) Time for submission of a progress claim
- (i) ☒ 25th day of month (or next earliest business day if 25th isn't a business day)
- (ii) ☐ alternate Fridays
- [cross one box only and complete (i) if applicable]

- (b) Period for payment release

30 days from the end of the month in which a valid Progress Claim, or next business day thereafter.

If (a)(i) applies the period for payment shall be the Friday following the number of days stated in (b) from the last day of the month to which the claim relates.

If (a)(ii) applies the period for payment shall be the Friday following the number of days stated in (b) from the time for submission of claims.]

Retention Terms (Clauses 5, 35 and 37)

The percentage of progress payments to be retained by Alder until Substantial Completion:

As per Subcontract Order.

Defects Liability Period (Clause 39.1)

52 weeks

Period for prescribed notice (Clause 45.1)

10 Business Days (if nothing stated Clause 45.1 applies)

Please forward your tax invoices in one only of the following ways:

Email: accounts@aldercon.com.au

Mail: PO Box 1531 OXENFORD QLD 4210

If you email tax invoices through you will receive a confirmation of receipt by return email. If you do not receive a confirmation of receipt then please contact Alder and/or send by an alternative means.

APPENDIX 1 – SCOPE OF WORKS

The Work under this Works Contract comprises the provision of all necessary labour, plant, equipment, materials and sundries to complete the Works in accordance with the Drawings and Specifications listed in Appendix 4.

Works shall include, be subject to, but not be limited to that listed within the attached Responsibility Matrix/Specific Scope of Works, Appendix 5, and Attendance Schedule, Appendix 6.

The Contractor is also required to comply with the following General Requirements.

Safety & Environmental

1. Compliance with all Alder Safety requirements and current and relevant WH&S Acts & WH&S Regulations, including, subject to, but not limited to the following:
 - a. Allow to attend Alder general induction before commencement of works onsite.
 - b. Compliance with all site rules as per the Site Specific Induction requirements and all statutory legislative safety requirements.
 - c. Representation at Workplace Health & Safety Committee meetings.
 - d. Attendance at regular tool box talks and documentation of such tool box talks.
 - e. Completion of all Alder safety records and reports that are to be completed for the management of safety on the project and provision of such records to Alder at Project Completion.
 - f. Allow to provide all project specific Safe Work Method Statements (SWMS) for approval.
 - g. Allow to provide all Hazardous & Dangerous Substances MSDS sheets prior to any works commencing.
 - h. Allow to provide all temporary task specific barricading, lighting, warning signs and the like to WH&S requirements (solid project hoarding and site fencing by Alder only).
 - i. Evidence of any required licenses, certificates and / or competencies necessary to undertake their Works.
 - j. Any other documentation associated with their requirements under the Act/s and / or Regulations.
 - k. Prior to the Commencement of Works, the Contractor shall provide the information of company insurances, inspection and test plans, quality plan and other details prior to the scheduled start on site date.
 - l. Compliance with Environmental Protection Legislation.
 - m. The Contractor acknowledges that they must have regard to the requirements of:
 - (i) ISO 14001/4:1996 Environmental Management;
 - (ii) AS/NZS 4804:2001 in relation to Occupational Health and Safety Management; and
 - n. In conjunction with an Alder constructions Representative, the Contractor will be required to complete and sign off safety, environmental and quality checklists daily.
 - o. The Contractor will immediately notify Alder of all environmental, quality assurance or health and safety incidents which are either work related or occur within the vicinity of the site.

Site Requirements

2. Compliance with all site rules as per the Alder Constructions Safety Management Plan and Site Specific Induction requirements.
3. Any connections / works outside of the construction zone must be approved by Alder prior to commencement and appropriately fenced and signed whilst the works are being undertaken.
4. Ensure that all staff are respectful of the public around the construction area, keep noise to a minimum and not engage in harassment of people walking by the job site. Public will be managed within site with hoarding. No smoking or bad language will be tolerated on site.
5. Ensure that staff always conduct their behaviour in the best interest of Alder Constructions and be considerate and polite to

current tenants of the adjacent stage one developments keeping noise at a minimum, especially early mornings.

6. Ensure that there is no music being played on site at any time.
7. Ensure that staff are well hydrated in summer months and take care to wear the appropriate PPE and sun protection as necessary.
8. Under no circumstances leak information about the project to media and direct any requests to the Project Manager.

Program

9. Every Contractor is to participate in programme meetings, provide advice in writing in regards to program and identify issues/problems in advance to site management. This must include advise as to how much man power will be needed to accomplish each task in accordance with the programme provided by Alder Constructions.
10. The Contractor MUST ensure that at all times there will be sufficient labour on site to perform the required tasks in accordance with the contract programme which is subject to change at notice from Alder Constructions. The Contractor is to ensure that they liaise regularly with Alder to ensure there are no delays to the scheduled works. Alder Constructions reserve the right to engage extra labour should there not be enough man power supplied on the day of the works being undertaken.

Samples and Submissions

11. Where applicable, samples, submissions and shop drawings must be provided as per the project specifications and or request of Alder. Where applicable provide samples in a timely manner as requested for approval generally two months prior to works starting on site or ordering for long lead time items. It is up to the Contractor to advise/seek approval from Alder where applicable. A schedule of these must be provided to the Contract Administrator within a week of being engaged. Samples where necessary must be constructed on site for viewing by the client.

Site Services and Facilities

12. Alder Constructions has undertaken to supply water and/or power to the Contractor for their free use. No responsibility is taken for continuity of supply of these items where disruption may occur due to shut downs by the supply authorities, temporary shutdowns for safety or maintenance purposes, or loss of supply due to damage caused by other contractors on the project. The Contractor should be aware of this possibility occurring and make adequate provisions for continuity of work, i.e. provide small generators, stored water, battery operated tools etc.
13. Power will be supplied for the use of the Contractor for small tools. This power will be supplied to a position no greater than 30 metres from the work face. The cost of connection from temporary boards to tools, site sheds etc. is at the cost of the Contractor. The Contractor is responsible to ensure regular safety checks are carried out on all hand held power tools, leads and plugs by a licensed electrician.
14. Three phase power will not be made available on this Site unless prior agreement with the Project Manager.
15. The Contractor shall provide their own storage facilities for their own materials, plant & equipment. Storage of materials onsite requires prior arrangement / consultation with the Site Manager.

Parking

16. The Contractor shall allow for all staff to park away from the site due to limited local parking. This may mean providing if necessary alternative transport to ensure staff can get to the site from a distant car parking area.

Deliveries

17. The Contractor is to ensure that ALL deliveries are scheduled in with the Site Manager on a weekly basis with a minimum two days notice before they arrive to site so that the crane can be booked. Failure to do so will result in the delivery being turned away at the Contractors expense.
18. Allow to obtain any other working permits that are required associated with your Works.

Materials Handling

19. All crange required by the Contractor shall be coordinated with the Site Manager on a weekly basis to confirm booking times in advance.
20. Allow for all materials handling to and from the construction site in accordance with the instructions given by Alder.
21. The Contractor is to allow for all access equipment & horizontal movement required to carry out the works.
22. Provision of elevated work platforms such as EWP's, mobile scaffolds and scissor lifts.

Survey and Setout

23. Alder Constructions will provide surveyed gridlines with the Contractor to provide setout of all works from surveyed gridlines.

Trade Coordination

24. Allow to coordinate all works with existing and / or new services and other trades.
25. The Contractor is aware that the coordination of their subcontract works is the responsibility of the Contractor. Abortive or additional works due to poor coordination are the Contractors responsibility.
26. The Contractor is to allow for attendance at regular Design Development and Construction Progress Co-ordination meetings as considered necessary by Alder.
27. The Contractor is to work collaboratively with other trades in order to ensure that there is harmony, coordination and cooperation in achieving each trades programme requirements. Hostile action towards other parties will result in immediate cancellation of the offending Contractors contract.

Waste Management

28. All Contractors rubbish shall be placed into the skip bin provided by Alder. Allow to clean all trade specific items at completion of the project and at the completion of each day. If the contractor fails to clean and maintain a tidy and safe site, Alder Constructions will engage a labourer at the Contractors expense to undertake such work. A tidy site is a safe site.
29. All wet trades such as concrete, tiling, plastering, painting, waterproofing etc. shall use the environmental wash out facilities.

Protection

30. Except where agreed to be provided by Others elsewhere in the contract documentation, the cost to establish, manage, maintain all temporary access such as temporary fences, hoardings screens, guards, handrails, barriers, temporary safety and directional signage
31. The Contractor is to provide soft and hard protection of the contract works to the satisfaction of the Site Manager to finished surfaces. The protection is to be maintained until the project Practical Completion date then removed and disposed off site by the Contractor.

Amendments and Correspondence

32. All variations must be RFI'd to the Project Manager & Contract Administrator prior to proceeding, if not, the contractor risks not being paid for any additional costs which may apply as a result.
33. All RFI's must be submitted in writing with a recommended solution and a budget estimate of cost and time.
34. All variations must be submitted with a full break down of materials and labour costs for assessment.
35. All documents will be issued in electronic format via an internet based document control system. Contractors will receive notifications when they are issued with new or revised documents. All other documents are also available on this system and the contractor should review all documents to ensure that their works are appropriately coordinated with that of others. It is the contractor's responsibility to regularly download, print, distribute and otherwise utilise these documents to ensure the works constructed in accordance with the latest documents.

Interfaces & Coordination

36. No claim is allowed against any shortfall or delay in work that precedes the Work under this Subcontract, but the requirements of following works are to be adequately allowed for and the Works under this Subcontract delivered in a timely manner to ensure that there is no delay to the following works.
37. The requirements of the preceding and following works may include, but is not limited to;
- Formation of holes, chases, recesses, set downs, upstands, plinths, trenches, pits etc including set out and make good.
 - Disposal of excess material.
 - Supply of sundry materials.
 - Provision of support from or within primary structure.
 - Levelling up or down of substrates.
 - Cutting or filling to make up out of tolerance works.
 - Flashing or sealing interface joints.
 - Connection in to or out of plant and equipment.
 - Coordination of works to avoid clashes or incompatibility.
 - Cleaning down pre commencement and post completion.

- k. Checking and supplementing material quantities, including inefficient use of Alder supplied materials causing excessive waste.
- l. Making good of minor defects such as scratches, dents, marks etc.
- m. Removal and application of protection.
- n. Out of sequence working to accommodate interface and coordination.

APPENDIX 2 – SCHEDULE OF RATES

Ref	Description	Rate	Unit	Comments
	Labour	\$80	Hr	Normal Time
	Semi-Skilled	\$92	Hr	Normal Time
	Skilled	\$106	Hr	Normal Time

The Subcontractor warrants that it; has reviewed in detail the Reports, Drawings and Specification; it understands the intent of the design; that the Drawings and Technical Specification are adequate and sufficient for the full construction and commissioning of the Subcontract Works; it has made sufficient allowance in the Subcontract Rates to cover all errors and omissions in the Drawings and Technical Specifications and all coordination of the Subcontract Works; it has made adequate allowance in the Subcontract Rates for the costs of any delay or coordination issues associated with the Subcontract Works.

The rates provided are composite and as such encompass all of the associated works or supply which are required to perform their function, and which are not defined by another rate description. The composite rates include overhead and profit, preliminaries, fabrication, mobilisation/demobilisation, transport, certification, servicing, fuel, insurance, labour, plant and material, and all other requirements. The unit of measurement relates to the nett quantity of functional works or supply undertaken and the associated rate allows for any and all costs expended in providing that functional item of work or supply. Where there are no dimensional or quantified parameters to the rates application, then that rate applies to any dimension or quantity of that described item of work or supply. The rates are to be applied to any increase or decrease in the scope of described work or supply regardless of the location on site, timing of its undertaking or quantity.

APPENDIX 3 – SECTION PERIODS, CLAUSE 27.4

The Contractor must reach Substantial Completion within the periods specified in Annexure A.

The Contractor must also complete the Sections of the works within the periods specified below.

Ref	Section	Period	Comments
1a	Shop Drawings issued for consultant review	5 days from contract award	SC1 to Wharf Street
1b	Manufacture and power coating from shop drawing approval	10 business days	SC1 to Wharf Street
1c	Installation	5 days	SC1 to Wharf Street
2a	Shop Drawings issued for consultant review	5 days from contract award	PC1 and 347 Signage and Entry
2b	Manufacture and power coating from Shop Drawing approval	10 business days	PC1 and 347 Signage and Entry
2c	Installation	5 days	PC1 and 347 Signage and Entry
3a	Dismantle, remove and store offsite	1 day	Balustrades level 1 and ground floor
3b	Reinstate balustrade	1 day	Balustrades level 1 and ground floor

Commencement of a Section shall be as directed on site, or through the program. The Key Date to finish each Section is derived from the Section commencement date plus the Section period defined above.

The Contractor accepts that these periods and the implied number of visits are reasonable and will work with Alder to sequence the works to suit the most efficient methodology.

The period, sequence and number of visits in these sections may vary as directed by Alder through the program issued under clause 25. Periods and visits may be concurrent and/or non-continuous.

The Contractor shall re-program their works to suit, without entitlement to extension of time, delay costs or variation.

APPENDIX 4 – DRAWINGS AND SPECIFICATIONS

The Works shall be performed in accordance with all applicable standards and in strict accordance with the documents listed in the tables below, as updated from time to time.

Current Drawings

Drawing No.	Drawing Title	Revision No.	Drawing Date	Received Date	Set
Architectural					
A0-000	COVER SHEET	C	14/11/2018		Contract Set (14/11/18)
A1-200	GROUND FLOOR PLAN - DEMOLITION	C	14/11/2018		Contract Set (14/11/18)
A1-201	GROUND FLOOR PLAN - PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A1-202	TOWER FLOOR PLANS - PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A1-210	ROOF PLANS	D	14/11/2018		Contract Set (14/11/18)
A1-211	BALCONY - DEMOLITION & PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A1-400	REFLECTED CEILING PLAN - DEMOLITION	C	14/11/2018		Contract Set (14/11/18)
A1-401	REFLECTED CEILING PLAN - PROPOSED	D	14/11/2018		Contract Set (14/11/18)
A2-100	ELEVATIONS - EXISTING	C	14/11/2018		Contract Set (14/11/18)
A2-101	ELEVATIONS - DEMOLITION	C	14/11/2018		Contract Set (14/11/18)
A2-102	NORTH WEST ELEVATION - PROPOSED	D	14/11/2018		Contract Set (14/11/18)
A2-103	NORTH EAST ELEVATION - PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A2-200	PODIUM COLOUR ELEVATIONS - PROPOSED	D	14/11/2018		Contract Set (14/11/18)
A2-201	TOWER COLOUR ELEVATIONS - PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A2-202	TOWER COLOUR ELEVATIONS - PROPOSED	C	14/11/2018		Contract Set (14/11/18)
A5-100	CONSTRUCTION DETAILS - SHEET 01	D	14/11/2018		Contract Set (14/11/18)
A5-101	CONSTRUCTION DETAILS - SHEET 02	D	14/11/2018		Contract Set (14/11/18)
A5-102	CONSTRUCTION DETAILS - SHEET 03	C	14/11/2018		Contract Set (14/11/18)
A5-103	CONSTRUCTION DETAILS - SHEET 04	E	14/11/2018		Contract Set (14/11/18)
A5-104	CONSTRUCTION DETAILS - SHEET 05	C	14/11/2018		Contract Set (14/11/18)
Scaffold					
BEIS-RSLFU-01-AS01-01	PLAN VIEW - GANTRY LEVEL (STAGE 1)	C	04/01/2019		Scaffold (04/01/19)
BEIS-RSLFU-01-AS01-02	PLAN VIEW - FACADE SCAFFOLD (STAGE 2)	A	04/01/2019		Scaffold (04/01/19)
BEIS-RSLFU-01-AS02-01	SECTION A - STAGE 2	B	04/01/2019		Scaffold (04/01/19)
BEIS-RSLFU-01-AS02-02	SECTION B - STAGE 2	A	04/01/2019		Scaffold (04/01/19)
BEIS-RSLFU-01-AS02-03	SECTION C - STAGE 2	A	04/01/2019		Scaffold (04/01/19)
BEIS-RSLFU-01-AS03-01	TYPICAL GANTRY SECTION	A	04/01/2019		Scaffold (04/01/19)
Traffic Control					
18/9996	Traffic Guidance Scheme - Wharf Street	1	04/01/2019		Traffic Control (04/01/19)
18/9997	Traffic Guidance Scheme - Ann Street	1	04/01/2019		Traffic Control (04/01/19)

Current Specifications

Number	Description	Revision	Issued Date	Received Date	Set
01 - Specifications & Schedules					
0818	Technical Specifications and Contract Documents	0	14/12/18		Specifications & Schedules
180713	Structural Remediation Consultant Specification	0	14/12/18		Specifications & Schedules
A1-6-400	Appendix A - Arqus Scope of Works	D	14/11/18		Specifications & Schedules
A-6-500	Finishes Schedule	G	14/11/18		Specifications & Schedules

APPENDIX 5 – RESPONSIBILITY MATRIX/SPECIFIC SCOPE OF WORKS



The Subcontractor shall supply all labour, materials, plant and equipment as necessary to complete the **External balustrade, Architectural Metalwork and Signage package** in strict accordance with the Drawings and Specifications as is further identified herein.

The Subcontractor has allowed for the following:

Level 1 Balcony and ground floor balustrades

Remove existing handrails and glass balustrade, store off site, replace all fixings, and reinstall with new base plates as per construction documents and relevant standards.

Wharf street façade screen

Design, supply and install Powder coated SC1 grille to wharf street façade including material handling. Grille to be manufactured offsite with consideration of onsite installation. Allowance made for fixing and connection to the existing substrate. Provide 600 x 600 finished sample with shop drawings for review 5 days from contract award prior to manufacture.

Price option associated with Wharf street façade screen design

Contract Lump sum price for option 2 = \$58,255 exc GST for Hi-lite replica screen. Alternative Option 1 price for Louvre style screen proposed by Safetylyne = \$54,025 exc GST. If Option 1 design is approved for construction by Client, Alder are entitled to a credit of \$4,230 to be deducted as a negative variation against the contract sum.

Horizontal entry batten to awning at corner of Ann and Wharf Street

Design, supply and install new Powder coated PC1 aluminium horizontal entry battens. Allowance made for fixing and connection to the existing substrate. Powder coating to all aluminium components of the batten system, framing and fixings. Provide 600 long sample with shop drawings for review 5 days from contract award prior to manufacture.

Building signage

Design, supply and install new building numbering that connects to the horizontal entry batten. Provide sample with shop drawings for review 5 days from contract award prior to manufacture.

Trade specific allowances

The Subcontractor has allowed for protection between dissimilar metals - Appropriate fixings and separation/treatment between materials to be used as required for the long-term life and satisfactory maintenance of the works.

Subcontractor has allowed to provide all certification as required. This is a design and construct element of the project.

The Subcontractor has allowed for all warranties as per the documentation.

The Subcontractor has allowed for pre-paint site check of the existing substrate.

48 hours' notice is required for any adjustments to the scaffolding, as the scaffolding is a gantry Alder note that adjustments will be limited to the function of the scaffolding system and note all adjustments requested may not be able be facilitated and generally the scaffold provided on the drawings is considered fit for use by Scaffolding Subcontractor and Alder.

Subcontractor has made consideration for material handling relevant to the site environment noting that manual handling of material on the gantry and scaffolding.

The scope of works in an extension of the agreed meeting minutes prior to contract award.

This package is not subject to remeasure and is considered as a lump sum price.

No variations will be approved without formal Procore site instruction provided by Project Manager or Contracts Administrator.

Site specific requirements

The Subcontractor acknowledges that they have been to site, are aware of the constraints. This project is highly visible, has multiple stake holders, is in a live environment on a main road in the centre of the Brisbane CBD. The Subcontractor ensures they will work diligently in accordance within Alders WHS Management plan, Site rules and legislation.

The Subcontractor has allowed to progressively clean their works and dispose of rubbish to the satisfaction of the Site Manager at the completion of each day or sooner and/or as deemed necessary by Alder.

The Subcontractor has allowed for parking off site.

The Subcontractor has been to site, has inspected the works and is aware there is limited storage facilities available. Subcontractor is to provide a weekly updated material delivery register for the Site manager review and approval to coordinate deliveries with the Client. 48 hours' notice is required prior to any material deliveries.

Samantha Amos

From: Andrew Holst
Sent: Thursday, 24 January 2019 2:43 PM
To: Samantha Amos
Subject: P211 - Lexicon - Metalwork - Pre contract award meeting actions

From: Graeme Partland <graeme.p@safetylyne.com.au>
Sent: Wednesday, 23 January 2019 2:39 PM
To: Andrew Holst <andrew.holst@aldercon.com.au>
Cc: Andy Yeo <Andy.Yeo@safetylyne.com.au>
Subject: Fwd: P211 - Lexicon - Metalwork - Pre contract award meeting actions

Hey mate

We have reviewed the pricing in order to identify any savings and I can advise the following.

In terms of Option 1, with a total project value of \$54,025, we have been unable to identify any further reductions.

With the preferred Option 2 (replicating Hi-lite screen) we can revise the project value from \$60,255 to \$58,255.

Whilst we weren't able to identify any additional savings we want to support Alder in delivering a positive outcome on this, our first, project with you. We also see great potential in working with you on future projects.

I trust this meets with your approval. If so I will have our quote revised and re-submitted.

Thanks
Graeme

APPENDIX 6 – ATTENDANCE SCHEDULE

Adequate allowance has been made within the Contract Amount for the attendance allocation identified below.

Description	Alder	Contractor	Comments
ACCOMMODATION & WELFARE			
Space only for office storage facilities	✓		
Space only for materials/plant storage	✓		
Provision/erection/dismantling/ removal of offices/stores		N/A	
Making good areas affected after removal of offices/stores		N/A	
Electrical Supplies to accommodation		N/A	
Welfare Facilities	✓		
MATERIALS & PLANT			
Materials and plant unloading		✓	
Materials & Plant hoisting / distribution		✓	
Forklift / driver		✓	
Crane Mobile / Tower	N/A		
Hoist Goods / Passenger	N/A		
Scissor Lifts		✓	
Mixers		N/A	
Concrete Pumps		N/A	
Mechanical Plant for sub-contract works		N/A	
Fuel and plant hired on behalf of Contractor		✓	
Checking of instruments & test equipment		✓	
Other:		✓	
SCAFFOLDING & ACCESS			
Use Of Erected Scaffold	✓		
Special Scaffold For the works	✓		
Mobile Access Towers	✓		
TEMPORARY SERVICES	✓		
Temporary 240v power	✓		
Transformers & Leads		✓	
Temporary general lighting	✓		
Local task lighting		✓	
Water Supply from a primary supply		✓	
Telephone/ fax / data		✓	
SETTING OUT			
Gridlines and datum's	✓		
From Gridlines to datum's		✓	
PROTECTION & CLEANING			
Clearing and sorting of rubbish to skip		✓	
Provisions of rubbish skip	✓		
Cleaning down on completion		✓	
Cleaning Highway		N/A	
Protection of Sub-Contract Works		✓	
Security		✓	
GENERAL			
Small tools and equipment		✓	
Personal protective equipment		✓	
Holes, chases and builders work		✓	
Traffic Control		✓	

APPENDIX 7 – PAYMENT CLAIM FORMAT

Presentation of Progress Claims in the below format, supported by both delivery dockets and reinforcement schedules, is a condition precedent to payment. A draft breakdown of the Contract Amount shall be presented for agreement prior to Progress Claim.

Trade:
Subcontractor:
Date:

				Claim			Comments
Ref	Description	Detail	Final Value	Cumulative	Previous	Current	
1	CONTRACT WORKS	Split per element, level etc					
	Sub Total						
2	VARIATIONS	1-?					
	Sub Total						
	TOTAL						

APPENDIX 8 – OPERATION AND MAINTENANCE MANUAL

The provision of an Operation and Maintenance Manual in draft format 4 months before head contract completion and in final format 1 month before head contract completion is a condition precedent to Substantial Completion.

The format should be split into the below sections (with guide as to content);

1. Company Details – Full name, address, business contact details, ABN.
2. Scope of Works – Itemised list of all scope including whether each element included supply, install or both. Description of where in the building each item of scope was undertaken and any specific inclusions/exclusions/interfaces. Include Subcontract reference.
3. Contact Details – Names and contacts phone and e-mails of key personnel in responding to warranty/O&M queries. Should include a director, the project manager and person who will respond to queries and attend site.
4. Product Details/Manuals – These should be exhaustive enough to guide the client through the use and maintenance of the building, but not so detailed that they remove the obligation of the client to understand the building they have designed. It should address each item of scope and specified item of equipment or finish.
5. Training Schedule – Timing/scope of proposed user training, record of having undertaken.
6. Maintenance Schedule – Timing/scope of routine maintenance, who is responsible, record of having undertaken.
7. Spares/Keys/Tools schedule – Record how many of what has been provided.
8. Drawings/Specifications – Schedule of the final design documents your works are based upon.
9. As Built – Record of the location of the works, equipment locations, finish locations etc.
10. Form 16 and any other testing/certification/commissioning requirements – List of all requirements, pass status and evidence attached.
11. Warranties – against both the as built works and the supply of plant, equipment and materials.

It is important that item 4 includes all maintenance requirements so as to ensure the works remain usable by the client and/or finish remains at specified level.

APPENDIX 9 – WARRANTY

DEED POLL made the day of 20.....

By
(Subcontractor)

RECITALS:

- A. Alder Constructions Pty Ltd (Contractor) has entered into a building contract with the Principal identified in Item 1 of the Schedule under which the Contractor has agreed to carry out the project described generally in Item 2 of the Schedule (Project).
- B. The Contractor has entered into a contract with the Subcontractor (Subcontract) under which the Subcontractor has agreed to perform the works described generally in Item 4 of the Schedule.
- C. The Subcontractor wishes to provide this Deed Poll for the benefit of the Principal and the Contractor and has agreed to warrant that the work and materials it supplies will satisfy the requirements set out or identified in this Deed.

OPERATIVE:

Nature of Deed Poll

1. This Deed Poll may be relied on and enforced by the Principal and the Contractor in accordance with its terms even though neither the Principal nor the Contractor is a party to it.
2. Warranty
3. The Subcontractor warrants for the period stated in Item 6 of the schedule that the work and materials supplied by it in connection with the Project will satisfy all of the requirements of the Subcontract which is referred to in Item 3 of the Schedule and of the Specification which is referred to in Item 5 of the Schedule and, without limiting the foregoing, that such work and materials are fit for the purposes for which such work and materials are ordinarily used. Any defects which may arise during the warranty period shall be made good and any additional work in other trades resulting from such making good shall be undertaken all at the expense of the Subcontractor.
4. Amendment and Termination
5. This Deed Poll may be amended or terminated only by another deed approved by the Contractor and the Principal.
6. Assignment
7. The rights and obligations of the Subcontractor under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior written consent of the Contractor and the Principal.
8. No waiver
9. No failure to exercise and no delay in exercising any right, power or remedy under this Deed Poll will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
10. No merger
11. The rights and obligations of the Subcontractor, the Contractor and the Principal will not merge on completion of this Deed Poll or any transaction under or contemplated by this Deed Poll.
12. Governing law
13. This Deed Poll is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED as a deed.

The common seal of the Subcontractor was fixed
by the authority of the Board of Directors in the
presence of

.....
Signature of director

.....
Signature of director/company secretary
(Please delete as applicable)

.....
Name of director (print)

.....
Name of director/company secretary (print)

SCHEDULE TO WARRANTY DEED POLL

Item 1: The Principal is
(Recital A)

Item 2: The Project is
(Recital A)

Item 3: The Subcontract is
(Recital B and clause 2)

Item 4: The Subcontract work is
(Recital B)

Item 5: The Specification is
(clause 2)

Item 6: Period of Warranty (commencing on
date of Head Contract Practical Completion)
(clause 2)

**As required by the head contract, the documents listed in
Appendix 4 and/or under Statutory.**

APPENDIX 10 – STATUTORY DECLARATION

This document must be completed and executed in full as a condition precedent to payment.

Project:Subcontract Work Package:
.....

I,(name) of
..... (address)
in the State of Queensland (occupation)

do solemnly and sincerely declare, for the purposes of clauses 35.3 (a) of the Subcontract (**Subcontract**) between Contractor
and (**Subcontractor**)

dated, as follows:

1. I hold the position of (title) and am duly authorised by the Subcontractor to make this declaration on its behalf.
2. As at the date of this statutory declaration, the Subcontractor is not in breach of any obligation or any referred to in the National Code of Practice for the Construction Industry 1997 and 2009 Guidelines. I acknowledge that the workplace arrangements in place comply with the same.
4. To the best of my knowledge all workers and employees employed under the workplace arrangements who have at any time been employed by the Subcontractor on work under the Subcontract have as at the date of this declaration been paid all moneys due and payable to them in respect of their employment on work under the Subcontract.
5. To the best of my knowledge all sub-subcontractors and suppliers who have at any time been employed by the Subcontractor for work under the Subcontract have as at the date of this declaration been paid all moneys due and payable to them in respect of their employment in relation to that work.
6. To the best of my knowledge all payments have been made and the Subcontractor is not in arrears in contributions to all and/or any relevant superannuation fund, or any other applicable fund or scheme, to the extent it is required by the relevant certified enterprise agreement or award applicable to the Subcontractor and its workers or employees, employed under the workplace arrangements who have at any time been employed by the Subcontractor on work under the Subcontract as at the date of this declaration.
7. As at the date of this statutory declaration the Subcontractor is not in breach of any obligation in relation to employees Superannuation contribution.
8. I acknowledge on behalf of the Subcontractor that by submitting this Statutory Declaration the Subcontractor thereby releases Contractor from any Claim (whether for time or money or otherwise and whether pursuant to the Subcontract or otherwise) not notified in accordance with the Subcontract. As at the date of this statutory declaration the Subcontractor is not in breach of any obligation or any agreement referred to in the Subcontract.
9. As at the date of this statutory declaration the Subcontractor has been paid by the Contractor all amounts owing in accordance with the Subcontract.
10. The property in goods or materials against which payment has been received in accordance with the Contract has passed unconditionally to the Contractor and the property is free from any reservation of title or encumbrance.

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).

.....
Signature of Declarant

SUBSCRIBED and DECLARED)

at)

this day of 20..)

Before me:

.....
Justice of the Peace

APPENDIX 11 – DEED OF RELEASE

This document must be completed and executed in full as a condition precedent to Substantial Completion.

TO: ALDER CONSTRUCTIONS PTY LTD (Alder)

PROJECT:

PRINCIPAL:

CONTRACTOR:

SUBCONTRACT:

AGREEMENT NO:

The Contractor agrees that the total monies due under or in any way arising out of the subcontract or the Project is as follows:

Original Subcontract

Variations to Subcontract

Revised Subcontract Sum

LESS Amounts which the Contractor acknowledges having received of

LESS Retention

Leaving a Balance of

The Contractor acknowledges that upon payment of the balance of \$ the same, together with the payment of retention of \$ in accordance with the Subcontract is accepted as the final payment due to the Contractor in connection with the said Subcontract; and the Contractor hereby releases and forever holds harmless Alder, its agents, consultants, and employees from all liabilities, claims, damages, expenses and costs howsoever arising out of the Subcontract or the relationship between the Contractor and Main Contractor whether such liabilities, claims, damages, expenses and costs be direct or indirect or consequential, past, present or future, certain or contingent, ascertained or not ascertained and whether for monies payable pursuant to the Subcontract of liabilities, claims, damages, expenses or costs arising out of the Subcontract or the relationship to the intent that all issues and questions between the Contractor and Main Contractor arising out of the Subcontract or relationship which might but for these presents arise at any time shall be finally settled and the Contractor agrees to indemnify and keep indemnified Alder, its agents, consultants and employees from all such liabilities, claims, damages, expenses and costs provided that the Contractor's liability to indemnify Alder, its agents, consultants, and employees, shall be reduced proportionally to the extent that the act of omission of Alder, its agents, consultants or employees may have contributed to the loss, damage, injury or death.

Contractor hereby certifies that:

- (a) all wages and allowances which become due and payable to all employees of the Contractor and its contractors who were at any time engaged on the Works under the Subcontract have been paid in full;
- (b) all contractors engaged by the Contractor on the Works under the Subcontract and suppliers to the Contractor of plant, equipment and material for the Works under the Subcontract have been paid in full; and
- (c) all statutory requirements, including but not limited to taxation requirements; workers compensation, public liability insurance premiums; and long service leave, superannuation and redundancy provision requirements have been paid in full;

**Signed for and behalf of the
Contractor**

In the presence of

Signature of Witness

Dated day of

APPENDIX 12 – DESIGN AND DOCUMENTATION

SC1.0 DESIGN AND DOCUMENTATION

SC1.1 Design and Documentation Requirements

The work under the Works Contract required by this Special Condition SC1 shall be carried out in a proper, thorough, careful, skilful and professional manner and shall include:-

- (a) the development and detailing of the design of the Works and, where relevant, any necessary temporary works in accordance with the requirements of the Works Contract; and
- (b) the preparation of documentation and other information with respect to such design as may be reasonably necessary for the efficient and orderly construction of the Works and their economic and effective use, maintenance and repair.
- (c) The other requirements of the Works Contract.

The documentation shall include:-

- (d) design calculations and reports;
- (e) design details and shop drawings;
- (f) detailed specifications;
- (g) penetration drawings;
- (h) as-built documentation;
- (i) operation and maintenance manuals;
- (j) The other requirements of the Works Contract.

In addition to the requirements of Clause 7.8 of the Works Contract Conditions the Contractor shall submit design documents to Alder as each document reaches the following stages:-

- (q) at 30% design completion (completion of preliminary design);
- (r) at 80% design completion (completion of detailed design but not checked); and
- (s) at 100% design completion (complete and checked).

The design documents completed to the stages described in paragraphs (q) and (r) above shall be submitted progressively to Alder in sufficient time to enable Alder to review them in an orderly manner. The design documents completed to the stage described in paragraph(s) above shall be submitted to Alder within the time required by Clause 7.8 of the Works Contract Conditions.

The Contractor shall submit to Alder with the design documents relevant to a part of the Works to be submitted to the Principal and/or the Superintendent, a Contractor's Design Certificate in the form set out in Annexure H.

The Contractor's Design Certificate must be signed by a principal of the consultant subcontractor employed by the Contractor to prepare the design documents or, if the design documents have been prepared in-house by the Contractor, the Contractor's Design Manager.

SC1.2 Obtain Information

Notwithstanding the provisions of Clause 7.1 of the Works Contract Conditions, the Contractor acknowledges that, unless stated otherwise, it is responsible for obtaining such further information and carrying out such further investigations as may be necessary to ensure that the work under the Works Contract is performed in accordance with the Works Contract.

SC1.3 Design Assurance and Coordination

The Contractor shall ensure that its design of the Works and, where relevant, any necessary temporary works:

- (a) satisfies the performance and other requirements of the Works Contract;
- (b) provides an effective and efficient solution that is fit for its intended purpose;

- (c) complies with all relevant common law, statutory and Authority requirements, including without limitation those requirements relating to safety and health and environmental protection and all relevant Australian Standards;
- (d) does not infringe any patent, registered design, trademark or name, copyright or other protected rights; and
- (e) is fully co-ordinated with other components of the Main Contract Works that will or may interface with the Works.

As a pre-condition of Substantial Completion the Contractor shall provide Alder with a certificate from a suitably qualified engineer acceptable to Alder that the Works have been completed in accordance with paragraphs (a) to (e) inclusive of this Special Condition SC1.3.

With respect to the co-ordination of the design, the Contractor shall actively co-operate with relevant other contractors, (including Alder's design consultants), so that the co-ordination of the design of the Works and, where relevant, the temporary works is achieved in an effective and timely manner. Any written communication between the Contractor and the other contractors regarding such co-ordination shall be copied to Alder. Other than for the purposes of the co-ordination of the design the provisions of Clause 23.2 of the Works Contract Conditions regarding communication with other contractors shall prevail.

In the event that the Contractor and other contractors cannot agree in a timely manner on an appropriate co-ordinated design, the matter shall be referred to Alder whose decision shall be final and binding. Matters arising out of Alder's decision in this regard shall not be grounds for an extension of time or an increase in the Contract Sum.

SC1.4 Buildability and Interface

The Contractor shall pay particular regard to the buildability of the Works.

The Contractor shall actively liaise with Alder regarding the design of the Works where the Works interface with adjoining works. The Contractor shall be responsible for obtaining all relevant information regarding such adjoining works, including, where relevant, making site measurements, to ensure that design of the Works is compatible in all aspects with the adjoining works including but not limited to dimensions, tolerances and buildability.

The Contractor shall give prompt notice to Alder as soon as it becomes aware of any matter relevant to the adjoining work which could adversely affect the Works at the interface with the adjoining work.

SC1.5 Value Management Studies

Alder may elect, at its discretion, to carry out value management studies in respect of a part of the Main Contract Works including the Works. If requested by Alder, the Contractor shall attend and participate in such value management studies. The Contract Amount shall be deemed to include attendance and participation in value management studies and the implementation of the value management action plan issued by Alder as a result of such studies. If the Contractor considers that any aspect of a value management action plan issued by Alder to the Contractor could entitle the Contractor to an increase in the Contract Sum and/or could affect its ability to perform the Works in a timely manner and in accordance with the Works Contract, the Contractor shall forthwith give written notice to Alder. Unless Alder gives a written direction to the Contractor as a result of such a notice from the Contractor, the Contractor shall perform the work under the Works Contract, (including where applicable amending the documents and other information), in accordance with the action plan developed in the value management studies.

SC1.6 Submission of Documents

The Contractor shall submit the documentation and other information (if any) described in Special Condition SC1.1 to Alder for review. The provisions of Clauses 7.7 to 7.13 of the Works Contract Conditions shall apply to such documents and other information.

Documents shall be numbered in accordance with Alder's Project Procedure "Design Document Numbering System".

SC1.7 Professional Indemnity Insurance

Before commencing work under the Works Contract, the Contractor and, where relevant, its consultant Secondary subcontractor shall ensure that it has or shall affect professional indemnity insurance cover for not less than \$3 million. The Contractor and, where relevant, its consultant Secondary subcontractor shall maintain professional indemnity insurance to provide continuity of cover for their potential liability at law. The provisions of Clause 21 and Clause 34.1 of the Works Contract Conditions shall apply to such insurance.

SC1.8 Subcontracting

For the purposes of Clause 13.1 of the Works Contract Conditions, Alder has no objection to the Contractor's seeking approval of a consultant as a Secondary subcontractor for the work under the Works Contract described in this Special Condition SC1. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Works Contract.

SC1.9 Professional Standards Act

The Contractor:

- (a) declares that at the date of executing this Works Contract it is not a person to whom a scheme under the NSW Professional Standards Act is applicable;
- (b) undertakes for the period of its potential liability at law in respect of this Works Contract, it will not become a person to whom such a scheme applies, including a scheme which may become applicable under legislation of similar general intent to the NSW Professional Standards Act, unless it receives prior written advice from Alder that Alder has no objection to the Contractor becoming a person to whom such a scheme applies; and
- (c) where relevant, undertakes to include conditions similar to paragraphs (a) and (b) above in its contract with its consultant Secondary subcontractor.

SC1.10 Moral Rights

For the purposes of this Special Condition SC1.10 a 'Moral Rights Owner' means an owner of moral rights under the Copyright Amendment (Moral Rights) Act 2000, which exist or arise in respect of the Project as a result of the performance of the work under the Works Contract.

The Contractor shall procure that:

- (a) each Moral Rights Owner, in relation to any design or other work made, created, provided or procured as part of the performance of the work under the Works Contract executes a Moral Rights Deed in the form contained in Annexure I; and
- (b) each employee of the Contractor and each Secondary subcontractor engaged in the performance of the design or other work described in paragraph (a) above consents to all or any acts or omissions (whether occurring before or after the consent is given) in relation to all works made or to be made by the employee in the course of his or her employment in relation to the performance of the work under the Works Contract.

The Contractor shall provide all reasonable assistance requested by Alder (and the Principal if Alder is the agent of the Principal) in relation to any communication between Alder and a Moral Rights Owner, or between any Beneficiary named in any executed Moral Rights Deed and a Moral Rights Owner, in relation to the matters the subject of any executed Moral Rights Deed or an employee's consent.

The Contractor indemnifies Alder (and the Principal if Alder is the agent of the Principal) against all actions, claims, demands, losses, damages, expenses and other legal liability suffered or incurred by Alder (and the Principal if Alder is the agent of the Principal) arising out of any failure by the Contractor to comply with its obligations under this Special Condition SC1.10.

APPENDIX 13 – QUALITY SYSTEM

SC2.0 QUALITY SYSTEM – IF THE CONTRACTOR HAS THEIR OWN QUALITY SYSTEM

SC2.1 GENERAL REQUIREMENTS

A Quality System in accordance with ISO 9001:2008 is being implemented by Alder on the Project.

The Contractor shall co-operate with and provide access and reasonable facility to Alder and/or others authorised by Alder for the purposes of inspection, testing, audit and/or surveillance to any place where the work under the Works Contract is being or is to be carried out.

Alder operate an Inspection and Testing regime against key high risk works and the Contractor must utilise the relevant Inspection and Test Plan forms if their Works include or interface with these key high risk works. The Contractor has inspected and allowed for the utilisation of these forms. The Works will not be accepted and thus payment made for them if these forms are not fully utilised.

The Contractor shall plan, establish, implement and maintain a Quality System to provide assurance to Alder that the work under the Works Contract complies with the requirements of the Works Contract. The Contractor shall provide Alder with a Quality Manual and associated Procedures (when and if so required by Alder) and a Project Quality Plan providing details of the Contractor's Quality System for the work under the Works Contract for review and acceptance by Alder before commencement of the work under the Works Contract.

The Project Quality Plan:

- (a) shall document by specific references to the requirements of the Works Contract, how such requirements will be met and what records will be used to assure compliance;
- (b) shall, with respect to Quality System activities to be conducted by Secondary subcontractors:
 - (i) identify such activities;
 - (ii) explain how the Contractor will monitor such activities; and
 - (iii) explain how the Contractor will report to Alder on the status and effectiveness of such activities;
- (c) shall be kept up to date during the progress of the work under the Works Contract; and
- (d) shall include a Design Plan if the Contractor has any design responsibility for the work under the Works Contract.

The Contractor shall audit and report to Alder its compliance with the Contractor's Quality System, at such times as required by the Contractor's Quality System or as reasonably required by Alder from time to time.

As a pre-condition of Substantial Completion the Contractor shall provide Alder with a written statement certifying that the work under the Works Contract complies with the requirements of the Works Contract.

The implementation of the Quality System shall not change the Contractor's obligation to perform the work under the Works Contract in accordance with the requirements of the Works Contract.

SC2.2 SPECIFIC REQUIREMENTS

The Contractor's Quality System shall:

- (a) meet the requirements of ISO 9001:2008; and
- (b) satisfy the Quality System Elements identified in the following Quality System Elements Table:

QUALITY SYSTEM ELEMENTS TABLE			
4.0	Quality Management System	7.0	Product Realisation
	4.1 – General Requirements		7.1 – Planning of Product Realisation
	4.2 – Documentation		7.2 – Customer Related Processes
5.0	Management Responsibility		7.3 – See below
	5.1 – Management Commitment		7.4 – Purchasing

	5.2 – Customer Focus		7.5 - Production & Service Provision
	5.3 – Quality Policy		7.6 – Control of Monitoring & Measuring Devices
	5.4 – Planning	8.0	Measurement, Analysis & Improvement
	5.5 – Responsibility, Authority and Communication		8.1 – General
	5.6 – Management Review		8.2 – Monitoring & Measurement
6.0	Resource Management		8.3 – Control of Nonconforming Product
	6.1 – Provision of Resources		8.4 – Analysis of Data
	6.2 – Human Resources		8.5 – Improvement
	6.3 – Infrastructure		
	6.4 – Work Environment		
In addition to the Quality System Elements identified above, the Subcontractors Quality System shall satisfy Quality System Element “7.3 – Design and Development” if the Subcontractor has any: - design and/or documentation responsibility; and/or - development responsibility (such as software and/or intellectual property development), Under the Subcontract.			

The Contractor's Quality System shall include but is not necessarily limited to the following Project specific requirements:

- (c) the identification of product on Site in accordance with Alder's Project Procedure “Lot Identification System”. Lot numbers shall be as directed by Alder. All Quality System records specifically associated with product on Site shall incorporate the relevant Lot number;
- (d) separate Process Control Plans (or Inspection and Test Plans) for each manufacturing and construction process. Hold Points and Witness Points shall be nominated by the Contractor for inspections and tests required under the Works Contract;
- (e) the identification of non-conformances with “Use-As-Is” or “Repair” proposed disposition as Hold Points. Any such proposed disposition must be submitted to Alder in writing prior to its implementation. Alder at its sole discretion may accept or reject the proposed disposition with or without concession;
- (f) the identification of items and activities proposed by the Contractor to be traced and how such traceability will be achieved. Such items and activities shall be defined, demonstrated to be satisfactory for the Works and subject to Alder's approval;
- (g) the numbering of design and/or shop drawings (where required) in accordance with Alder's Project Procedure “Design Document Numbering System”; and
- (h) a ‘subcontract verification list’ (SVL). This is a checklist of the requirements of the Works Contract which are not otherwise covered by Process Control Plans (or inspection and Test Plans). For example, the SVL is likely to include (without limitation) once only requirements such as Authority certificates, warranties, samples and approvals. An example SVL is available from Alder.

SC2.3

SUBMISSION TIMES

The Contractor shall submit Quality System documents to Alder in accordance with the following “Submission Timetable”:

SUBMISSION TIMETABLE	
Document	Time for Submission
Project Quality Plan	At least 7 days prior to commencing the work under the Works Contract
Process Control Plans (or Inspection and Test Plans)	At least 3 days prior to commencing the work under the Works Contract

Details of "Use-As-Is" or "Repair" non-conformances	Within 1 day of each non-conformance
Details of other non-conformances	As requested by Alder
Lot records including but not necessarily limited to checklists and compliance sheets	Progressive and consistent with construction status and within 3 days of the Contractor verifying compliance of the Lot. Checklists and compliance sheets for work which requires compliance prior to immediate follow-on work by other contractors shall be submitted immediately upon such work being completed.
Names and sample signatures of persons who will sign quality records	At least 7 days prior to commencing the work under the Works Contract and upon any change of persons who will sign quality records
Report on Quality System activities conducted by Secondary subcontractors	At least monthly

SC2.4

QUALITY MANAGEMENT REPRESENTATIVE

The Contractor shall nominate and maintain at all times a Quality Management Representative on the Site (or at such other place where the work under the Works Contract is being carried out) satisfactory to Alder who has defined authority and responsibility for ensuring that the requirements of this Special Condition are implemented and maintained to the satisfaction of Alder. If the Quality Management Representative does not perform his/her duties in a proper and timely manner to the satisfaction of Alder, the Contractor shall forthwith nominate a replacement Quality Management Representative satisfactory to Alder.

The duties of the Quality Management Representative and/or other appropriate representative(s) of the Contractor shall include but are not necessarily limited to:

- (a) attending meetings as required by Alder to discuss Quality System procedures;
- (b) familiarisation with the standards specified for the work and the requirements of the documented Process Control Plans (or Inspection and Test Plans);
- (c) reviewing proposed subcontract documents between the Contractor and the Secondary subcontractors to ensure the incorporation of adequate Quality System requirements;
- (d) documenting Process Control Plans (or Inspection and Test Plans);
- (e) carrying out inspections and tests to verify conformance to specified requirements;
- (f) completion of checklists as developed from Process Control Plans (or Inspection and Test Plans);
- (g) maintenance of copies of checklists, certificates, test results and all other records of inspections and tests and submission of the following to Alder:-
 - (i) a copy of each checklist or compliance sheet which verifies compliance for each Lot; and
 - (ii) originals of all quality records signed and/or issued by independent third parties including without limitation quality records signed and/or issued by any Authority;
- (h) identification, indexing and filing of copies of all quality records and retaining such records until advised otherwise by Alder;
- (i) reporting non-conformances to Alder for review and evaluation;
- (j) re-inspection of the Works following rework or repair and obtaining acceptance of such rework or repair from Alder;
- (k) advising Alder of verification methods to be applied for controlling product manufactured off Site prior to its dispatch to the Site;
- (l) giving Alder not less than 24 hours notice in writing prior to conducting any inspection or test in

relation to a Witness Point or Hold Point approved by Alder;

- (m) advising Alder (in a form satisfactory to Alder) of the names and sample signatures of all persons who will sign quality records with respect to the work under the Works Contract; and
- (n) reporting to Alder on the status and effectiveness of Quality System activities undertaken by Secondary subcontractors.

SC2. QUALITY SYSTEM – IF THE CONTRACTOR DOES NOT HAVE THEIR OWN QUALITY SYSTEM

SC2.1 GENERAL REQUIREMENTS

A Quality System in accordance with ISO 9001:2008 is being implemented by Alder on the Project.

The Contractor shall co-operate with and provide access and reasonable facility to Alder and/or others authorised by Alder for the purposes of inspection, testing, audit and/or surveillance to any place where the work under the Works Contract is being or is to be carried out.

Alder operate an Inspection and Testing regime against key high risk works and the Contractor must utilise the relevant Inspection and Test Plan forms if their Works include or interface with these key high risk works. The Contractor has inspected and allowed for the utilisation of these forms. The Works will not be accepted and thus payment made for them if these forms are not fully utilised.

As a pre-condition of Substantial Completion the Contractor shall provide Alder with a written statement certifying that the work under the Works Contract complies with the requirements of the Works Contract.

The implementation of the Quality System shall not change the Contractor's obligation to perform the work under the Works Contract in accordance with the requirements of the Works Contract.

SC2.2 SUBMISSION TIMES

The Contractor shall submit Quality System documents to Alder in accordance with the following "Submission Timetable":

SUBMISSION TIMETABLE	
Document	Time for Submission
Details of "Use-As-Is" or "Repair" non-conformances	Within 1 day of each non-conformance
Details of other non-conformances	As requested by Alder
Names and sample signatures of persons who will sign quality records	At least 7 days prior to commencing the work under the Works Contract and upon any change of persons who will sign quality records

SC2.3 QUALITY MANAGEMENT REPRESENTATIVE

The Contractor shall nominate and maintain at all times a Quality Management Representative on the Site (or at such other place where the work under the Works Contract is being carried out) satisfactory to Alder who has defined authority and responsibility for ensuring that the requirements of this Special Condition are implemented and maintained to the satisfaction of Alder. If the Quality Management Representative does not perform his/her duties in a proper and timely manner to the satisfaction of Alder, the Contractor shall forthwith nominate a replacement Quality Management Representative satisfactory to Alder.

The duties of the Quality Management Representative and/or other appropriate representative(s) of the Contractor shall include but are not necessarily limited to:

- (a) attending meetings as required by Alder to discuss Quality System procedures;
- (b) familiarisation with the standards specified for the work and the requirements of the documented Process Control Plans (or Inspection and Test Plans);
- (c) assisting Alder in documenting Process Control Plans (or Inspection and Test Plans);
- (d) carrying out inspections and tests to verify conformance to specified requirements;
- (e) completion of checklists as developed from Process Control Plans (or Inspection and Test Plans);
- (f) reporting non-conformances to Alder for review and evaluation;
- (g) re-inspection of the Works following rework or repair and obtaining acceptance of such rework or repair from Alder;
- (h) giving Alder not less than 24 hours notice in writing prior to conducting any inspection or test in relation to a Witness Point or Hold Point approved by Alder; and
- (i) advising Alder (in a form satisfactory to Alder) of the names and sample signatures of all persons who will sign quality records with respect to the work under the Works Contract.

APPENDIX 14 – HEAD CONTRACT CONDITIONS

WHEREIN REFERENCE TO PRINCIPAL SHALL MEAN ALDER AND ANY DISCREPENCY BETWEEN THE DEFINED TERMS WITHIN THE HEAD CONTRACT AND THE WORKS CONTRACT CONDITIONS SHALL BE CONSTRUED AS SHARING THE SAME IMPLIED MEANING. THESE CONDITIONS SUPPLEMENT THE WORKS CONTRACT CONDITIONS AND WHERE THERE IS ANY AMBIGUITY THEN THE MORE ONEROUS REQUIREMENT PREVAILS, WITHOUT ENTITLEMENT TO VARIATION OR EXTENSION OF TIME.

APPENDIX 15 – WORKS CONTRACT CONDITIONS

CONTENTS

1	Definitions
2	Operative Date
3	Conflict or Inconsistency
4	Proper Law
5	Security and Retention
6	Notices
7	Documents and Other Information
8	Contractor to Inform Itself
9	Nature of Contract
10	Contractor's Resources
11	Co-operation, Co-ordination and Integration
12	Assignment and Novation
13	Subcontracting and Approval of Installers
14	Statutory Requirements and Australian Standards
15	Approvals, Permits, Fees, Duties and Taxes
16	Care of the Work under the Works Contract and Reinstatement
17	Damage to Persons and Property
18	Works Insurance and Public Liability Insurance
19	Insurance of Employees
20	Contractor's Vehicles, Plant and Equipment
21	General Requirements for Insurance
22	Contractor's Representative
23	Alder's Representative and Dealings with Others
24	Working Hours
25	Program
26	Suspension
27	Commencement and Completion
28	Delay and Acceleration
29	Testing
30	Quality Management
31	Occupational Health and Safety and Environmental Management
32	Industrial Relations and Site Induction
33	Variations
34	Independent Audit
35	Progress Claims and Payments
36	Release
37	Return of Security and Retention
38	Warranties
39	Defects
40	Services and Facilities
41	Rubbish
42	Termination, Default, Insolvency or Death
43	Termination in Other Circumstances
44	Waiver
45	Claims
46	Dispute Resolution

1 DEFINITIONS

In the Works Contract, unless a contrary intention appears:

An **“all-in method of payment”** means any payment system for employees which comprises an all inclusive amount or hourly/daily rate in lieu of payment for overtime or for any other condition or benefit of employment;

“an act of default” as referred to in clause 42.2(a) includes, but is not limited to, any of the following:-

- (a) wrongful suspension of the work under the Works Contract or any part of the work under the Works Contract;
- (b) failure to carry out the work under the Works Contract with reasonable diligence or in a competent manner without delay;
- (c) failure to comply with a direction from Alder;
- (d) failure to provide evidence of insurance;
- (e) providing a statutory declaration or documentary evidence which contains a statement that is untrue;
- (f) failure to hold the appropriate licence under the Queensland Building and Construction Commission Act 1991 to lawfully carry out the work under the Works Contract.

“Authority” means any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) other body or instrumentality,

which has a right to impose a requirement or whose approval is required with respect to or in connection with the Works or the work under the Works Contract;

“Business Day” means any day except Saturdays, Sundays, public holidays and days between Christmas Day and New Years Day;

“Contract Amount” means, where Alder accepted:

- (a) a lump sum, the lump sum;
 - (b) rates, the sum of the amounts calculated by multiplying the rate for an item described in Appendix 2 by the quantity of that item actually directed and performed; or
 - (c) a lump sum and rates, the aggregate of the sums referred to in (a) and (b) above,
- excluding any additions or deductions which may be required to be made under the Works Contract. Unless stated otherwise, all lump sums and rates stated in the Works Contract are deemed to include GST.

“Contract Sum” means the amount payable to the Contractor for the performance of the work under the Works Contract in accordance with the Works Contract including any additions or deductions to the Contract Amount which may be required to be made under the Works Contract or otherwise;

“Date for Commencement on Site” means a date expected to be within the period set out in Annexure A advised in writing by Alder to the Contractor upon which the Contractor shall have access to the Site sufficient to commence the work under the Works Contract at the Site. The actual Date for Commencement on Site depends upon the progress of the work under the Main Contract. Alder shall advise the Contractor of the Date for Commencement on Site;

“Date for Substantial Completion” means the last day of the period stated in Annexure A by which the Contractor shall bring the work under the Works Contract to the stage of Substantial Completion but, if an extension of time for Substantial Completion is granted by Alder or Alder determines a reduction of time for Substantial Completion, it means the date resulting from the extension or reduction of time;

“Date of Finishing a Section of the Works” means the date upon which a Section of the Works was finished in accordance with Clause 27;

“Date of Substantial Completion” means the date upon which the work under the Works Contract reached Substantial Completion;

“day” means calendar day;

“document” includes design, drawing, specification, schedule, manual, program, description or other document required to perform the Works Contract;

“Excusable Delay” means a delay resulting from the occurrence of one or more of the causes stated in Annexure A except where the occurrence is caused by an act, default, breach or omission by the Contractor;

“Key Date” means the Key Date for Finishing a Section of the Works stated in Annexure A but, if an extension of time for finishing a Section of the Works is granted by Alder or Alder determines a reduction of time for finishing a Section of the Works, it means the date resulting from the extension or reduction of time;

“Legislative Requirements” includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, a State, a Territory or other Authority in which the work under the Works Contract or any part thereof is being carried out;
 - (b) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Works Contract; and
 - (c) Fees and charges payable in connection with the foregoing,
- but excludes an act or omission of the Principal, the Superintendent and/or Alder which is pursuant to or in respect of the lawful exercise of their respective rights under the Main Contract and/or the Works Contract;

“Main Contract” means the contract between Alder and the Principal;

“Main Contract Works”

- (a) where Alder enters into the Works Contract in its own right, “Main Contract Works” means the whole of the work to be executed in accordance with the Main Contract, which by the Main Contract is to be handed over to the Principal.
- (b) where Alder enters into the Works Contract as agent for the Principal, “Main Contract Works” means the whole of the work to be managed by Alder in accordance with the Main Contract, including variations to those works, which are to be handed over to the Principal.

“month” means calendar month;

“other contractors” means Alder’s other contractors, its consultants, suppliers, employees, special tradesmen or their assistants, separate contractors and others executing work under the Main Contract and others executing work or services at the Site;

“person” includes a firm or body corporate or unincorporated as well as an individual;

“Principal” means the person stated in Annexure A and includes if relevant the Principal’s Representative(s);

“Project” means the project described in Annexure A;

“Secondary subcontract” means a contract between the Contractor and a Secondary subcontractor;

“Secondary subcontractors” means the Contractor’s subcontractors, suppliers, and/or consultants as the context may require;

“Section of the Works” means a portion of the work under the Works Contract described in Annexure A as a Section of the Works;

“Separable Portion” means a portion of the work under the Works Contract described in Annexure A as a Separable Portion;

“Site” means the land upon or through which the Project is being constructed together with any adjacent or nearby land obtained by Alder for access purposes, temporary works or other activities in relation to the Project;

“Site Conditions” means the physical conditions on the Site or its surroundings, the subsurface conditions (including topographical geological and hydrological conditions), local conditions (including climatic, topographical, geological and hydrological conditions near or relevant to the Site) and services and obstructions upon, above or below the surface of the Site or its surroundings;

“Site Information” means any document, information, data, report or sample, whatever its form, regarding the Site Conditions and/or work under the Works Contract that is not expressly stated to the Specification(s) and/or Drawings;

“Substantial Completion” means that stage in the execution of the work under the Works Contract when:

- (a) the Works are complete except for minor omissions and minor defects the immediate making good of which by the Contractor is not practical and:
 - (i) which do not prevent the Works from being used for their intended purpose and which do not cause any legal impediment to the use or occupation of the Works or the Project;
 - (ii) in relation to which Alder determines that the Contractor has reasonable grounds for not promptly carrying out the work of rectification; and
 - (iii) rectification of which will not prejudice the work of other contractors or the convenient use of the Works;
- (b) those tests including commissioning tests required by the Works Contract before the Works reach Substantial Completion have been carried out and passed;
- (c) all Authority approvals and permits that the Contractor is required to obtain pursuant to Clause 15, have been obtained;
- (d) the warranties required by Clause 38.2, have been provided;
- (e) the documents and other information required to be provided by the Date of Substantial Completion, including but not limited to those which are essential for the use, operation and maintenance of the Works have been supplied; and
- (f) the other requirements (if any) stated in Annexure A have been satisfied;

“Superintendent” means an independent certifier (if any) appointed pursuant to the Main Contract and includes if relevant the Superintendent’s Representative(s);

“the Act” refers to the Building and Construction Industry Payments Act 2004 (Qld).

“Works” means the whole of the work to be executed in accordance with the Works Contract, including variations, which is to be handed over to Alder. The general scope of the Works is described in Annexure A;

“work under the Main Contract”

- (a) where Alder enters into the Works Contract in its own right, “work under the Main Contract” means the work Alder is required to perform under the Main Contract and includes variations, remedial work, constructional plant and temporary works.
- (b) where Alder enters in the Works Contract as agent for the Principal, “work under the Main Contract” means the work to be managed by Alder in accordance with the Main Contract, including variations, remedial work, constructional plant and temporary works.

“work under the Works Contract” means the work the Contractor is required to execute under the Works Contract and includes variations, remedial work, constructional plant and temporary works;

unless stated otherwise or unless the context requires otherwise, references to the Contractor shall be deemed to include reference to its employees, agents and Secondary Contractors;

clause headings shall not form part of the terms of the Works Contract and shall not be used in the interpretation of the Works Contract;

words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;

where a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

words importing a gender include all genders;

monetary amounts or rates stated in the Works Contract and all payments due under the Works Contract shall be in Australian currency unless stated otherwise;

reference to a party includes the party's executors, administrators, successors and permitted assigns;

"including" and similar expressions are not words of limitation;

a term of this Works Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Works Contract or the inclusion of the provision in the Works Contract;

where the Contractor is required under this Works Contract to perform an obligation, matter or thing, or discharge a liability the Contractor must do so at its own cost, unless expressly provided otherwise; and

a reference to any statute, regulation, rule or other legislative provision or requirement includes any amendment or statutory modification or re-enactment of legislative provisions or requirements, substituted for and any statutory instrument issued under that statute, regulation, rule or other legislative provision or requirement.

2 OPERATIVE DATE

The terms of the Works Contract shall apply from the date of:

- (a) Alder's written notification of award or intent to award the Works Contract;
 - (b) Commencement of the work under the Works Contract upon authorisation by Alder; or
 - (c) the Works Contract,
- whichever is the earliest.

3 CONFLICT OR INCONSISTENCY

- 3.1 This Works Contract contains the entire agreement between the parties and no regard shall be had to any prior dealings. Any terms that may have been attached or embodied in the Contractor's tender or offer are deemed to have been withdrawn in favour of the terms of the Works Contract. The terms of the Works Contract include all matters agreed by the parties arising out of any post-tender discussions, correspondence, meetings etc. The Contractor agrees that it does not rely on any document or other information given to it by Alder or that it has provided to Alder, other than as expressly included or referred to in the Works Contract. The Contractor accepts all risks associated with the work under the Works Contract on the terms set out in the Works Contract.
- 3.2 In case any one or more of the terms of this Works Contract should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms of this Works Contract shall not be affected or impaired thereby in any way.
- 3.3 In the event of any ambiguity, conflict, discrepancy or inconsistency between the various documents constituting the Works Contract, then to the extent only of such ambiguity, conflict, discrepancy or inconsistency the more onerous requirement applies. If the event remains unresolved following order of precedence (as may be amended in Annexure A) shall prevail:-
- (a) the Works Contract instrument
 - (b) the Works Contract Annexure A
 - (c) the Works Contract Special Conditions
 - (d) the Works Contract Conditions
 - (e) the Scope of Works (and documents referred to therein)
 - (f) Project-specific Drawings & Specifications
 - (g) Non-Project specific Drawings & Specifications
 - (h) Appendices

There is no entitlement to Variation or Extension of Time against such resolution.

4 PROPER LAW

The Works Contract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory stated in Annexure A or if not so stated the State or Territory in which the Site is located.

5 SECURITY AND RETENTION

- 5.1 Security and retention are for the purpose of ensuring due and proper performance of the Works Contract.
- 5.2 The Contractor shall provide security to Alder in the amount stated in Annexure A within 5 Business Days of the date of the Works Contract.
- 5.3 The security shall be in the form of two unconditional undertakings in a form acceptable to Alder. Each unconditional undertaking shall be for an amount equal to 50% of the security stated in Annexure A.
- 5.4 The amount of retention to be retained by Alder is stated in Annexure A.
- 5.5 The release of security and retention is dealt with under Clause 37.
- 5.6 Where the Contractor is:
- (a) a corporation that is a subsidiary of or is related to another corporation within the meaning of Division 6 of the Corporations Law;
 - (b) a private company; or

(c) a partnership,

if so requested in writing by Alder at any time during the performance of the Works Contract, the Contractor shall procure and lodge with Alder, at Alder's discretion, either a Deed of Guarantee, Undertaking and Substitution or a Legally Binding Letter:

(d) in the case of paragraph (a) above, from the holding or related company (or, if so directed, from all of them);

(e) in the case of paragraph (b) above, from the directors of the company; or

(f) in the case of paragraph (c) above, from the partners of the partnership,

in the form provided by Alder (or, if no such form is provided, in terms acceptable to Alder) for the performance and discharge of the Contractor's obligations and liabilities under the Works Contract.

- 5.7 The Contractor shall not be entitled to receive any payment in respect of the work under the Works Contract until the Contractor has provided Alder the security required pursuant to Clause 5.2 and 5.3 and if requested by Alder the Contractor has provided to Alder the Deed of Guarantee, Undertaking and Substitution or Legally Binding Letter in accordance with Clause 5.6.

6 NOTICES

- 6.1 A notice shall be in writing and shall be deemed to have been properly given when it is received by the person to whom it is transmitted or addressed, or it is delivered to that person's address, whichever is the earlier.

A notice will be deemed to be delivered to a person's address:

(a) in the case of prepaid post being sent and received in Australia) on the third day after the date of posting;

(b) in the case of prepaid post being sent or received outside Australia) on the fifth day after the date of posting;

(c) in the case of delivery by hand on delivery, provided that where delivery is made after 4.00pm on a Business Day or where delivery is made on a day which is not a Business Day then in such cases delivery shall be at 9.00am on the next following Business Day.

(d) In the case of e-mail sent by the Contractor by receipt of return confirmation e-mail or read receipt. In the case of e-mail sent by Alder by proof of sending.

- 6.2 The addresses, facsimile numbers and e-mail addresses of Alder and the Contractor for the purposes of this clause shall be as stated in Annexure A or such change in address or facsimile number as last communicated in writing by the other party to the party giving notice.

- 6.3 Without limiting its meaning, a "notice" includes documents and instructions.

7 DOCUMENTS AND OTHER INFORMATION

Documents and other information supplied by Alder

- 7.1 The Contractor understands and accepts that:-

(a) the design and documentation of the Main Contract Works may be carried out progressively and concurrently with the construction of the Main Contract Works;

(b) the Specification(s) and the Drawings identified in the Works Contract are not necessarily the final documents for the performance of the work under the Works Contract;

(c) further documents and other information and/or changes to previously issued documentation and other information may be issued progressively to the Contractor during the performance of the work under the Works Contract. Such documents and other information shall form part of the Works Contract;

(d) any changes to the work under the Works Contract and/or the timely issue of documents and other information shall be dealt with in accordance with the terms of the Works Contract. The Contractor's entitlement under the Works Contract with respect to such matters shall be its sole entitlement; and

(e) all documents supplied to the Contractor (and all copies and reproductions of them) shall, as between Alder and the Contractor, remain the property of Alder and shall be returned by the Contractor to Alder on demand in writing. The documents shall not, without the prior written approval of Alder, be used, copied or reproduced for any purpose other than the execution of the work under the Works Contract.

General Requirements

- 7.2 Except as provided for in Clause 3.3, the documents and other information which constitute the Works Contract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all.

- 7.3 The Contractor shall promptly upon discovery, refer to Alder for direction any omission, ambiguity, discrepancy or inconsistency in the documents and other information which constitute the Works Contract.

- 7.4 Minor items not expressly mentioned in the Works Contract, but which are necessary for the satisfactory completion and performance of the work under the Works Contract and do not cause preceding or following contractors to incur expense or delay, shall be supplied and executed by the Contractor at its expense.

- 7.5 To provide consistency in terminology between the documents that make up the Works Contract, the terminology as listed in Annexure A shall be deemed to mean Alder.

- 7.6 Figured dimensions shall be used in preference to dimensions indicated by scale.

Documents and other information supplied by the Contractor

7.7 The Contractor shall submit all documents and other information relevant to the work under the Works Contract to Alder for review.

The review process by Alder is to enable Alder amongst other things to alert the Contractor if Alder identifies something on the documents or other information that does not comply with the requirements of the Works Contract.

Review of a document or other information submitted by the Contractor shall be deemed to signify that Alder has no objection to the Contractor using that document or other information, at the Contractor's risk, for the purpose of the Works Contract.

Any failure by Alder to identify something on the Contractor's documents or other information that does not comply with the requirements of the Works Contract shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the Contractor's obligation to carry out the work under the Works Contract in accordance with the Works Contract.

7.8 Unless stated otherwise in Annexure A, the Contractor shall submit the documents and other information to Alder in a reasonable timeframe so as to facilitate, and not delay, the Works and/or the design, approvals or planning required for the Works. This shall be not less than 15 Business Days prior to the documents and other information being required for use by the Contractor on the work under the Works Contract. If the Contractor does not receive a response from Alder in respect of a document or other information within the relevant period stated above, Alder shall be deemed to have no objection to the Contractor using the document or other information at the Contractor's risk.

7.9 Unless stated otherwise in Annexure A the Contractor shall submit 3 copies of documents for review. Software to be provided by the Contractor shall be deemed to be documents for the purposes of the Works Contract. Other information, including but not limited to samples, models, prototypes, patterns and videos, shall be submitted for review in such manner and quantity as may be required by Alder.

7.10 Documents and other information to be provided by the Contractor after the Date of Substantial Completion, (ie. Documents and other information not required for use by the Contractor on the work under the Works Contract or required as a condition precedent for Substantial Completion), shall be provided final and complete to Alder within 1 month of the Date of Substantial Completion. Drafts for review shall be provided to Alder 1 month prior to the Date of Substantial Completion.

7.11 After review of a document, unless stated otherwise in Annexure A, the Contractor shall provide 3 copies of the document to Alder. The Contractor shall also submit a copy of the document in computer disk format for documents prepared in an electronic medium. The Contractor shall ensure that the computer disk format is compatible with Alder's software requirements.

After review of other information, the Contractor shall provide the reviewed information to Alder in such a manner and quantity as may be required by Alder.

7.12 Copies of documents supplied by the Contractor shall, as between Alder and the Contractor, be the property of Alder but shall not be used or copied otherwise than in connection with the design, construction, use, maintenance or alteration of the Project.

7.13 The ownership of the copyright in documents prepared by the Contractor for the Project shall be as stated in Annexure A.

Confidentiality

7.14 The Contractor shall regard the details of the Works Contract and all information provided by Alder as confidential and the Contractor shall not disclose such details and information to a third party without the written approval of Alder. This obligation shall survive the completion or termination of the Works Contract and shall stay in effect and be enforceable by Alder and where relevant the Principal for a period of 5 years from the date of such completion or termination.

7.15 The Contractor shall not issue for publication any information concerning the Project in any media without the written approval of Alder. The Contractor shall refer to Alder any enquiries concerning the Project from any media.

8 CONTRACTOR TO INFORM ITSELF

8.1 The Contractor shall be deemed to have:

- (a) fully and properly satisfied itself of:
 - (i) the requirements of the Works Contract;
 - (ii) existing Site Conditions on and below the surface of the Site and the surrounding land; and
 - (iii) all other circumstances, conditions and requirements pertaining to or connected with the performance of the work under the Works Contract;
- (b) assumed the risk of the matters described in paragraph (a) above including (without limitation) directions given by Alder to deal with Site Conditions found on and below the surface of the Site in order to properly carry out and complete the work under the Works Contract; and
- (c) satisfied itself and assumed the risk that the Contract Amount covers the cost to the Contractor of complying with its obligations under the Works Contract.

8.2 Alder does not warrant or make any representation with respect to:-

- (a) the completeness, accuracy, adequacy or content of any Site Information provided to the Contractor by or on behalf of Alder;
- (b) any interpretations, deductions, opinions or conclusions set out in any such Site Information; or
- (c) the suitability or adequacy of or any other aspect of the Site Conditions.

Any Site Information provided to the Contractor by or on behalf of Alder shall not form part of the Works Contract.

Alder and where relevant the Principal shall not be liable to the Contractor to the extent permitted by law, whether in contract, tort or otherwise, in respect of any error in any or any fact, matter or thing arising out of or in any way connected with any Site Information provided to the Contractor by or on behalf of Alder or where relevant the Principal or arising out of or in any way connected with Alder's or where relevant the Principal's failure to provide Site Information to the Contractor.

9 NATURE OF CONTRACT

The Nature of the Contract shall be either a Lump Sum or Schedule of Rates, as nominated in Annexure A.

Lump sum

9.1 A lump sum Contract Amount is deemed to compensate the Contractor for performing the work under the Works Contract as described in the Specification(s) and shown on the Drawings in accordance with the Works Contract. Accordingly, the Contractor acknowledges that:

- (a) any bill or schedule of quantities indicating the build-up of a lump sum Contract Amount is a "bulk" bill or schedule indicating only the approximate quantities and/or general descriptions of certain of the work under the Works Contract relevant to that lump sum Contract Amount; and
- (b) it did not rely on the completeness or accuracy of the items or quantities in any such bill or schedule in calculating the lump sum Contract Amount.

Schedule of Rates

The items described in Appendix 2 shall be carried out on a Schedule of Rates basis.

Payment for a scheduled item shall be based on the relevant rate in the table for the quantity of the scheduled item actually directed and performed, taking into account valuations made under Clause 33.5 of the Works Contract Conditions and the requirements of Clause 35 of the Works Contract Conditions.

The rate for a scheduled item includes all things necessary to carry out and complete the scheduled item in accordance with the requirements of the Works Contract and is deemed to include all on site and off site overheads and profit in connection with the scheduled item.

Work under the Works Contract not separately itemised, but which is reasonably associated with a scheduled item is deemed to be included in that scheduled item and no separate or extra payment will be made for such work under the Works Contract.

The Rates for the scheduled items may be used for valuations pursuant to paragraph (b) of Clause 33.5 of the Works Contract Conditions to the extent that it is reasonable to use them.

10 CONTRACTOR'S RESOURCES

10.1 The Contractor shall ensure that:

- (a) it employs sufficient suitable resources to carry out and complete the work under the Works Contract in a proper and workmanlike manner with due diligence and expedition in accordance with the Works Contract;
- (b) the key personnel nominated in Annexure A are directly engaged in the performance of the work under the Works Contract in the nominated roles. Should the Contractor wish to substitute alternative personnel to those nominated in Annexure A the Contractor shall first obtain the written approval of Alder. Such approval will not be unreasonably withheld provided Alder is satisfied that the qualifications, experience and other relevant attributes of the proposed alternative personnel are at least equivalent to the nominated key personnel;
- (c) subject to paragraph (d) below, only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed on the work under the Works Contract and that where relevant, such persons hold relevant licences to legally perform the work under the Works Contract; and
- (d) it employs apprentices and/or trainees on the work under the Works Contract as required by law and, where relevant, as required by the Works Contract Special Conditions.

10.2 If there is reasonable evidence that the Contractor is not complying with obligations under Clause 10.1 Alder may, without prejudice to any other remedy it may have and after giving the Contractor 24 hours notice to rectify the situation:-

- (a) take possession of unfinished work, unfixed plant and/or unfixed materials whether or not such work, plant and/or materials have been delivered to the Site and take action on behalf of the Contractor to complete the work under the Works Contract in respect of such work, plant and/or materials; and/or
- (b) employ on behalf of the Contractor resources which satisfy the requirements of Clause 10.1,

and a valuation shall be made under Clause 33.5 in respect of things done by Alder on behalf of the Contractor.

10.3 Alder may direct the Contractor to remove or have removed from the Site or from any activity any person employed in connection with the work under the Works Contract.

11 CO-OPERATION, CO-ORDINATION AND INTEGRATION

General Requirements

11.1 The Contractor shall:

- (a) promptly provide all information that Alder may request regarding the performance of the work under the Works Contract, including the preferred sequence and interface of activities, details of proposed labour, resources, materials, plant and equipment and all other matters relevant to the work under the Works Contract;
- (b) inform Alder of the locations and routes of all openings, holes, chasings, grooves, floor outlets, traps, conduits, pipes and cables necessary for the work under the Works Contract in sufficient time to enable Alder to resolve conflicts and co-ordinate the work under the Main Contract;
- (c) except where the Works Contract states the required times, give reasonable advance notice in writing to Alder of when the Contractor reasonably requires from Alder any information, materials, plant, equipment or other things Alder is required to provide to the Contractor;
- (d) comply with any directions Alder gives for the co-ordination and integration of the work under the Works Contract with the work of other contractors;
- (e) comply with Alder's control policies and procedures for the Site and actively co-operate with Alder and other contractors on a day-by-day basis so that all facets of the work at the Site, including the work under the Main Contract, can progress in an efficient, effective and orderly manner concurrently with the performance of the work under the Works Contract;
- (f) not break, cut or damage work carried out by other contractors without the prior written approval of Alder. Any such breaking, cutting or damage shall be made good at the Contractor's expense such that the making good matches adjacent work;
- (g) inspect and check any materials, plant, equipment and/or other things supplied by Alder with respect to the work under the Works Contract and advise Alder promptly upon receipt of any such materials, plant, equipment and/or other things which do not comply with the requirements of the Works Contract;
- (h) attend meetings as required by Alder;
- (i) ensure that Alder and other persons authorised by Alder have access at all reasonable times to the work under the Works Contract at any place where the work under the Works Contract is performed or stored;
- (j) not display any sign or advertisement at the Site without the prior written approval of Alder;
- (k) ensure that all persons engaged on the work under the Works Contract at the Site who smoke, do so only in specially designated areas established by Alder;
- (l) comply with all traffic warning and restriction signs at the Site. Such signs may relate to matters including but not limited to weight, height and/or width restrictions, stopping restrictions and one-way traffic;
- (m) without limiting any other provision of this Clause 11 or the Works Contract, ensure that it does not restrict access to Alder or other contractors past any location where work under the Works Contract is being performed on the Site; and
- (n) ensure that it complies with authority requirements and its other obligations at law regarding nuisance, disturbance, interference or annoyance to third parties including the owners and occupiers of adjoining properties.

11.2 Where the Contractor is required to carry out the work under the Works Contract upon works (including but not limited to structure, surface, work, material, formation or foundation) prepared by other contractors, prior to commencing that work the Contractor shall ensure that the other contractors works are suitable in all respects for the proper performance of the work under the Works Contract. If the Contractor considers that the other contractors works are not suitable for this purpose it shall notify Alder in writing and seek instructions prior to commencing the relevant work under the Works Contract.

Traffic Management

11.3 The parties acknowledge and agree that, where relevant:

- (a) generally, Alder shall make the necessary arrangements for altering traffic flow on existing roadways from time to time in order to facilitate execution of the work under the Main Contract;
- (b) the Contractor shall co-operate with Alder to execute any work under the Works Contract which may be affected by traffic flow on existing roadways during times that arrangements are made by Alder in accordance with paragraph (a) above which facilitate such work; and
- (c) if the Contractor reasonably considers that it is necessary to interfere with traffic flow on existing roadways at times or in a manner different than the arrangements made by Alder in accordance with paragraph (a) above in order to perform certain work under the Works Contract, Alder shall endeavour to accommodate the Contractor's requirements provided that the Contractor:
 - (i) gives Alder details of the arrangements it proposes;
 - (ii) obtains Alder's written approval in respect of those arrangements (taking into account that Alder may need to seek corresponding approval under the Main Contract);
 - (iii) complies with any conditions attached to Alder's approval in respect of those arrangements;

- (iv) if required by Alder, gives the public sufficient notice of those arrangements; and
- (v) if required by Alder, makes all arrangements to modify the traffic flow and to direct and control traffic while such work is being performed.

Communication Plan

- 11.4 Alder may prepare a Communication Plan for the Project. In such event, the Contractor shall comply at all times with the Communication Plan to the extent that it is relevant to the work under the Works Contract.

Survey Marks

- 11.5 Unless stated otherwise, Alder shall supply to the Contractor the information and survey marks necessary to enable the Contractor to set out the Works. It is the Contractor's responsibility to accurately set out the Works based on these survey marks and information.

The Contractor shall rectify at its cost any disturbance or obliteration of Alder's survey marks unless the disturbance or obliteration was caused by Alder.

A survey mark means a survey peg, bench mark, reference mark, signal alignment, level mark or other mark used for the purpose of setting out, checking or measuring the work under the Works Contract.

Minerals, Fossils and Relics

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

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

12 ASSIGNMENT AND NOVATION

- 12.1 The Contractor shall not assign nor novate the whole or any part of the Works Contract or any payment thereunder without the prior written approval of Alder.

- 12.2 If required by Alder, the Contractor shall agree to a novation of the Works Contract to the Principal or the Principal's nominee.

13 SUBCONTRACTING AND APPROVAL OF INSTALLERS

- 13.1 The Contractor shall not subcontract the whole or any part of the work under the Works Contract without Alder's written approval of the proposed Secondary subcontractor for that part of the work under the Works Contract. Approval to subcontract shall:

- (a) be at the discretion of Alder and may be conditional;
- (b) not be given where the result would be pyramid subcontracting; and
- (c) not relieve the Contractor from any liability or obligation under the Works Contract.

Approval to subcontract may be conditional upon the Secondary subcontract including:-

- (d) provision that the Secondary subcontractor shall not assign, novate or subcontract without the consent in writing of the Contractor;
- (e) provisions which may be reasonably necessary to enable the Secondary subcontractor to fulfil the Contractor's obligations to Alder and the Principal; and
- (f) where the Secondary subcontractor is a consultant, provision that the consultant shall effect and maintain professional indemnity insurance on the same terms that may be required of the Contractor under Special Condition SC3.

- 13.2 Any Secondary subcontractor not approved in writing by Alder shall not be permitted to enter upon the Site and the Contractor shall not be entitled to payment for any work under the Works Contract which has been performed by a Secondary subcontractor not approved in writing by Alder.

- 13.3 The Contractor must not terminate the engagement of a Secondary subcontractor without the prior written consent of Alder.

- 13.4 If so required by Alder, the Contractor shall promptly provide Alder with a copy of any proposed or executed Secondary subcontract (including all specifications, drawings and other documents and information relating to that Secondary subcontract, other than prices).

- 13.5 If a manufacturer or supplier of plant, equipment and/or materials (a product) to be incorporated in the Works stipulates that the warranties and guarantees of its product are dependant upon the product being installed or applied by an installer or applicator approved by the manufacturer or supplier, the Contractor shall provide written confirmation from the manufacturer or supplier that the Contractor or the Contractor's proposed Secondary subcontractor is an approved installer or applicator of the product. Such written confirmation shall be provided to Alder not less than 10 Business Days prior to the proposed commencement of the installation or application of the product in the Works.

14 STATUTORY REQUIREMENTS AND AUSTRALIAN STANDARDS

14.1 The Contractor shall comply with the requirements of all Acts and Ordinances and all regulations, by-laws, orders and proclamations made or given under Acts and Ordinances (statutory requirements) relevant to the work under the Works Contract and shall ensure that the Works comply with all statutory requirements relevant to the work under the Works Contract.

If a statutory requirement is changed after the date stated in Annexure A, or if nothing is stated in Annexure A after the date of the Works Contract, and the Contractor considers that such changed requirement necessitates a change to the Works, the Contractor shall promptly notify Alder in writing of the relevant details. If Alder considers that a change in the Works is necessary as a result of the changed statutory requirement and it is not a matter for which the Contractor accepted the risk, Alder shall direct a variation under Clause 33.

14.2 The Contractor shall ensure that the work under the Works Contract and (to the extent relevant to the work under the Works Contract) the Works comply with the requirements of relevant Australian Standards, other standards identified in the Works Contract and, where relevant, the Building Code of Australia current at the date stated in Annexure A, or if nothing is stated in Annexure A current at the date of the Works Contract.

If the Contractor considers that compliance with a change in a relevant standard made after the relevant date would necessitate a change to the Works, the Contractor shall promptly notify Alder in writing of the relevant details. Alder shall direct the Contractor as to whether or not the Contractor shall comply with the changed standard. If Alder requires the Contractor to comply with the changed standard and Alder considers that a change in the Works is necessary as a result of the changed standard and it is not a matter for which the Contractor accepted the risk, Alder shall direct a variation under Clause 33.

15 APPROVALS, PERMITS, FEES, DUTIES AND TAXES

General Requirements

15.1 Unless stated otherwise, the Contractor shall:

- (a) obtain from Authorities, all approvals and permits;
- (b) give to Authorities, all necessary notices;
- (c) pay to Authorities, all fees, duties and taxes; and
- (d) comply with Authorities requirements;
applicable from time to time in connection with the work under the Works Contract.

15.2 The Contractor shall give Alder copies of documents issued to the Contractor by any Authority in respect of the work under the Works Contract and, in particular, any approvals and permits in respect of the work under the Works Contract.

Permit to Excavate

15.3 Prior to commencing excavation in an area of the Site the Contractor shall:

- (a) advise Alder in writing of the precise geographic area of the Site it wishes to excavate; and
- (b) obtain a written permit from Alder allowing it to excavate in that precise geographic area.

16 CARE OF THE WORK UNDER THE WORKS CONTRACT AND REINSTATEMENT

16.1 The Contractor shall be responsible for the care of the work under the Works Contract until the work under the Works Contract reaches the stage of Substantial Completion and thereafter for the care of outstanding work and items to be removed from the Site and for any damage caused by the Contractor in the course of completing its obligations under the Works Contract.

16.2 If loss or damage occurs to work under the Works Contract while the Contractor is responsible for its care the Contractor shall promptly make good the loss or damage at its own expense and in doing so shall:

- (a) take immediate steps to clear any debris and begin initial work to repair and/or replace the loss or damage;
- (b) consult with Alder to agree on steps to be taken to ensure:
 - (i) minimal impact to the work of other contractors;
 - (ii) if any part of the Project is operating, minimal impact to that operation; and
 - (iii) that, to the greatest extent possible, Alder and the Contractor can continue to comply with their respective obligations under the Main Contract and the Works Contract.

17 DAMAGE TO PERSONS AND PROPERTY

17.1 The Contractor shall indemnify and keep indemnified the Principal, the Superintendent and Alder against all loss or damage including but not limited to all physical loss or damage to property (other than property for which the Contractor is responsible under Clause 16) and all loss or damage resulting from death or personal injury arising out of or resulting from any act, error, omission or neglect of the Contractor, its employees, agents and Secondary subcontractors.

17.2 If urgent action is necessary to protect the Works, other work under the Works Contract, other property or people and the Contractor fails to take such action, Alder may take the necessary action. If action taken by Alder was action which the Contractor

should have taken at the Contractor's expense the cost of taking such action on behalf of the Contractor shall be valued under Clause 33.5.

If time permits, Alder shall give the Contractor prior written notice of Alder's intention to take action under this Clause 17.2.

18 WORKS INSURANCE AND PUBLIC LIABILITY INSURANCE

- 18.1 The Contractor shall insure the work under the Works Contract against loss or damage until the Contractor ceases to be responsible for its care. The insurance policy shall provide cover of not less than the amount stated in Annexure A and shall cover Secondary subcontractors.
- 18.2 The Contractor shall effect a Public Liability policy of insurance in the joint names of the Principal, Alder, the Contractor and Secondary subcontractors to cover them for their respective rights and interests against liability to third parties for loss of or damage to property and the death of or injury to any person. Such insurance policy shall:
- (a) provide cover of not less than the amount stated in Annexure A;
 - (b) be maintained until the end of the Defects Liability Period; and
 - (c) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured.
- 18.3 The Contractor must promptly notify Alder, if the Contractor cancels or allows any insurance to lapse or if the Contractor initiates any material change to the insurance policy.
- 18.4 The Contractor shall, upon becoming aware, inform Alder in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Works Contract and shall ensure that:
- (a) Alder and the Principal is kept fully informed of subsequent action and developments concerning the claim;
 - (b) the Contractor's, or its sub-contractors', insurer has provided consent to such notification;
 - (c) compliance with this clause would not or is not likely to prejudice the Contractor's or its sub-contractors' defence of a third-party claim; and
 - (d) compliance with this clause would not breach the terms and conditions of the Contractor's or its sub-contractors' insurance.

19 INSURANCE OF EMPLOYEES

- 19.1 The Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. Such insurance shall be for the maximum amount available at law and shall be maintained until all work under the Works Contract is completed.
- 19.2 The Contractor shall ensure that Secondary subcontractors are similarly insured.

20 CONTRACTOR'S VEHICLES, PLANT AND EQUIPMENT

The Contractor acknowledges and agrees that in respect of vehicles, plant and equipment (construction plant) that it brings to the Site for use on the work under the Works Contract:-

- (a) it is responsible for the care of the construction plant;
- (b) it shall ensure that the plant is in accordance with the manufacturer's specification, in good repair, fit for purpose and suitably licensed for operation;
- (c) if the plant requires the operator to be positioned upon the machine, it shall ensure that the plant is fitted with appropriate devices including but not limited to seat belts, Roll Over Protection Structures, (ROPS), and Falling Object Protection Structures, (FOPS), as required by Alder, legislation and the relevant Australian Standards. The Contractor shall produce on demand by Alder appropriate documentation to confirm that the construction plant have been inspected within the previous 12 months by a competent person and is in a safe, serviceable condition and complies with the relevant legislation and Australian Standards;
- (d) it shall ensure that the construction plant is properly maintained and repaired (as necessary) so that it is available to operate or use in an efficient, effective and safe manner at all times;
- (e) where relevant, it shall ensure that the construction plant is registered with the relevant authorities;
- (f) it shall ensure that the construction plant is insured to provide cover:-
 - (i) against loss or damage for its replacement value; and
 - (ii) for not less than \$10 million for loss or damage to property and death or injury to any person;
- (g) it shall ensure that the construction plant is used only for the purpose for which it was designed;
- (h) where relevant, it will ensure that the construction plant is operated by an experienced, competent and licensed operator;
- (i) in addition to the requirements of paragraph (c) and if required by Alder at any time and from time to time, the construction plant shall be required to be subject to and pass a mechanical and/or safety inspection in accordance with Alder's inspection requirements prior to any use, or further use, of the construction plant on the work under the Works Contract; and

- (j) the passing of, or the failure of any construction plant to pass an inspection in accordance with paragraphs (c) and/or (i) above shall in no way limit or change any obligation of the Contractor including, but not limited to, the Contractor's obligations under this Clause 20.

21 GENERAL REQUIREMENTS FOR INSURANCE

- 21.1 Each of the insurance policies required to be effected by the Contractor must be effected by the Contractor prior to the commencement of the work under the Works Contract.
- 21.2 Each policy shall be taken out with an insurer and in terms approved by Alder.
- 21.3 Whenever requested by Alder, the Contractor shall produce evidence to the satisfaction and approval of Alder that it has satisfied all of its insurance obligations under the Works Contract.
- 21.4 The effecting and maintenance of insurance by the Contractor shall not limit its liability at law or its obligations under the Works Contract.

22 CONTRACTOR'S REPRESENTATIVE

- 22.1 If not personally supervising the work under the Works Contract, the Contractor shall have a competent representative on the Site, fluent in the English language, available at all times during the performance of the work under the Works Contract.
- (a) to supervise the work under the Works Contract; and
- (b) duly authorised to receive and carry out Alder's directions.
- 22.2 The Contractor's Representative shall be the person named in Annexure A or such other person notified in writing to Alder by the Contractor who is approved by Alder.

23 ALDER'S REPRESENTATIVE AND DEALINGS WITH OTHERS

- 23.1 Alder's Representative shall be the person named in Annexure A or other person notified in writing to the Contractor by Alder.
- 23.2 The Contractor shall comply with the directions of Alder's Representative or the authorised delegates of Alder's Representative. The Contractor shall not deal directly with or comply with the directions of:
- (a) the Principal or the Superintendent; or
- (b) other contractors (including where relevant design consultants),
- without the prior written approval of Alder's Representative.

24 WORKING HOURS

- 24.1 Unless stipulated otherwise by a court order, statutory authority, relevant award, an industrial agreement for the Site or a written direction by Alder, the Contractor shall carry out the work at the Site during the working hours and working days for the Site stated in Annexure A. Unless stated otherwise, working days do not include public holidays, award holidays and days between Christmas and New Years Day.
- 24.2 Work at the Site includes (without limitation) all above and below ground works, entry and departure of heavy vehicles, delivery of materials, plant and equipment, delivery and pick up of construction plant, warming up construction plant, servicing construction plant and disposal of spoil.
- 24.3 Notwithstanding the above working days and working hours for the Site stated in Annexure A, Alder may permit work outside such times, (but is under no obligation to do so), subject to the prior written approval of Alder and relevant Authorities. For example, such work may include:-
- (a) work which would otherwise cause unacceptable disruption to traffic;
- (b) work which will not cause noise emissions to be audible at any nearby residential or other noise sensitive property; and
- (c) deliveries required outside of the working days and/or working hours as requested by police or other Authorities for safety or other reasons.

25 PROGRAM

- 25.1 The Contractor's obligation to complete the Works by the Date for Substantial Completion is paramount and this Clause shall be constructed so as not to derogate from this obligation. The Contractor must present a detailed program to Alder within 1 week of the Operative Date under clause 2. The Contractor shall demonstrate within the presented program how Substantial Completion shall be achieved, giving due consideration to the Main Contract Works. The Contractor must update, status and present the program at weekly progress meetings.
- 25.2 Alder may prepare programs, including project programs and short-range programs, which may be updated by Alder from time to time during the course of the work under the Main Contract. When updating the programs Alder shall take into account actual progress of the work under the Main Contract during the relevant periods based on information available to Alder, including information obtained from the Contractor and other contractors. The Contractor shall provide all information required by Alder to assist Alder in this regard.

- 25.3 The purpose of the programs is to facilitate the day to day co-ordination and integration of the work under the Works Contract and the work of other contractors. The programs are not statements of contractual obligations and shall not be construed as directions by Alder. If the programs show completion of the Works later than the Date for Substantial Completion, then, after consultation with Alder, the Contractor shall take whatever reasonable steps are necessary to complete the Works by the Date for Substantial Completion in a manner that does not delay or disrupt the work by other contractors.
- 25.4 The programs shall not relieve the Contractor of its obligation to complete the Works by the Date for Substantial Completion or entitle the Contractor to extensions of time to which the Contractor would not otherwise be entitled under the Works Contract or affect Alder's rights to take action under Clause 28, Clause 42 or Clause 43 or otherwise affect its rights under the Works Contract or at law.

26 SUSPENSION

- 26.1 Alder may by written notice direct the Contractor to suspend the progress of the whole or any part of the work under the Works Contract for such period as Alder determines.

Without the Contractor's concurrence, Alder cannot order a suspension the duration of which, when added to earlier periods of suspension already directed under this Clause and complied with by the Contractor, exceeds 2 years.

- 26.2 At any time Alder may, by notice in writing to the Contractor, lift the suspension in whole or in part and direct the Contractor to resume progress of the whole or any part of the work under the Works Contract.

27 COMMENCEMENT AND COMPLETION

- 27.1 The Contractor shall commence work on Site upon the Date for Commencement on Site, unless Alder agrees to a request from the Contractor to commence within such period thereafter as will not cause delay to the work under the Works Contract nor delay or disrupt the work by other contractors.

- 27.2 The Contractor shall bring the work under the Works Contract to Substantial Completion by the Date for Substantial Completion.

- 27.3 The Works may comprise various Separable Portions and these are detailed in Annexure A. In such event:

- (a) the Contractor shall bring each Separable Portion to Substantial Completion by the relevant Date for Substantial Completion; and
- (b) the interpretations of –
 - (i) Date for Commencement on Site;
 - (ii) Date for Substantial Completion;
 - (iii) Date of Substantial Completion;
 - (iv) Substantial Completion; and
 - (v) Excusable Delay,

and Clauses 16, 27.5, 28, 33, 39 and 45 shall apply separately to each Separable Portion and references therein to the Works and to work under the Works Contract shall mean so much of the Works and the work under the Works Contract as is comprised in the relevant Separable Portion.

- 27.4 The Works and/or a Separable Portion may comprise various Sections of the Works. In such event:

- (a) the Contractor shall finish each Section of the Works by the relevant Key Date;
- (b) the interpretation of Excusable Delay and Clause 27.5 and 28 shall apply separately to each Section of the Works and references therein to:
 - (i) the Works and to the work under the Works Contract shall mean so much of the Works and the work under the Works Contract as is comprised in the relevant Section of the Works;
 - (ii) the Date for Substantial Completion shall mean the Key Date for the relevant Section of the Works;
 - (iii) the Date of Substantial Completion shall mean the Date of Finishing a Section of the Works; and
 - (iv) achieving Substantial Completion shall mean Finishing a Section of the Works; and
- (c) the Date for Substantial Completion of the Works and/or the Separable Portion shall be the same date as the latest of the Key Dates for Finishing the Sections of the Works relevant to the Works and/or the Separable Portion, as the case may be.

Finishing a Section of the Works does not constitute Substantial Completion but means that stage when a Section of the Works is finished except for minor omissions and minor defects, completion of which will not delay or disrupt the orderly performance of the work under the Main Contract by other contractors.

Finishing a Section of the Works by the relevant Key Date is essential for the orderly performance of the work under the Main Contract and for the co-ordination and integration of the work by other contractors.

Liquidated Damages

27.5 Where the Contractor does not complete the Works by the Date for Substantial Completion, Liquidated Damages shall be due and payable to Alder at the rate stated in Annexure A from the Date for Substantial Completion till the Date of Substantial Completion. If no rate is provided in Annexure A, the value of Liquidated Damages shall be determined based on the cost incurred by Alder due to late completion by the Contractor.

28 DELAY AND ACCELERATION

Delay and Extension of Time

28.1 The Contractor shall submit prompt notice, but within 3 business days of when the Contractor should reasonably have become aware, to Alder of any event or circumstance which is causing or is likely to cause delay and/or disruption to the work under the Works Contract or the work under the Main Contract. The Contractor shall discuss the matter with Alder and shall take all practical steps to avoid or minimise any such delay and/or disruption and any adverse effect that might result from such event or circumstance. Such practical steps include, without limitation, taking all necessary measures towards the preservation of work in progress, the prevention of any accident and safekeeping of all materials, equipment and facilities related to the work under the Works Contract.

28.2 Alder shall be entitled at any time and from time to time to grant an extension of time to the Date for Substantial Completion for any reason, notwithstanding whether or not the Contractor is entitled to the extension of time.

The Contractor shall not be entitled to an extension of time for a delay unless:

- (a) the delay is an Excusable Delay;
- (b) a notice setting out details of the delay, including its cause, relevant facts and expected impact, is submitted to Alder by the Contractor within the period stated in Annexure A, or if nothing is stated in Annexure A within 5 Business Days, after the Contractor became aware, or ought reasonably to have become aware, of the cause of the delay;
- (c) the delay is critical to achieving Substantial Completion;
- (d) there are no concurrent delays caused by event(s) or circumstance(s) which do not entitle the Contractor to an extension of time; and
- (e) the Contractor has complied with Clause 28.3 in respect of the delay.

The fact that the Contractor is not entitled to an extension of time for a delay, or is entitled but is not granted an appropriate extension of time in a timely manner, will not cause the Date for Substantial Completion to be set at large.

28.3 If the Contractor considers that it is entitled to an extension of time for a delay and that all of the requirements of paragraphs (a) to (e) of Clause 28.2 have been satisfied with respect to that delay the Contractor shall, as soon as practical but in any event within the period stated in Annexure A, or if nothing is stated in Annexure A within 15 Business Days, after the commencement of the Excusable Delay, submit to Alder a claim for an extension of time (*Extension Claim*) setting out for that Excusable Delay:-

- (a) reasonable details of the Excusable Delay;
- (b) the impact of the Excusable Delay on its ability to achieve Substantial Completion of the Works;
- (c) the period of extension claimed; and
- (d) whether the Excusable Delay has ceased (and the date that it ceased) or is ongoing.

Updates of the Extension Claim for an ongoing delay shall be submitted by the Contractor to Alder at weekly intervals thereafter during the period of the delay until the delay has ceased.

Except to the extent that Alder takes action under Clause 28.9, Alder shall determine and certify any extension of time to the Date for Substantial Completion within 30 Business Days of receiving the last of an Extension Claim, the last update of an Extension Claim for an ongoing delay and further information that Alder may request in relation to an Extension Claim.

28.4 The Contractor shall do everything necessary at its cost to overcome all delays to which it is not entitled to an extension of time pursuant to Clause 28.2 so as to achieve Substantial Completion by the Date for Substantial Completion. The Contractor shall employ sufficient resources to achieve this requirement including, without limitation, working overtime, shift work and/or employing additional resources. If required by Alder, the Contractor shall meet with Alder to discuss the measures necessary to achieve this requirement. Should the Contractor fail to employ sufficient resources to achieve this requirement then Alder may take action and/or employ resources on behalf of the Contractor in accordance with Clause 10.2.

28.5 Any delay and/or disruption caused directly or indirectly as a result of:

- (a) Alder giving a direction required for the proper administration of the Works Contract (other than a direction pursuant to Clauses 28.9, 28.10 or 33.1); and/or
- (b) Industrial conditions, inclement weather, and/or other matters beyond Alder's reasonable control,

shall be deemed not to constitute an act of prevention by Alder.

28.6 The work under the Works Contract shall be carried out concurrently with and in interface with the work by other contractors and the Contractor shall be deemed to have allowed for working in such conditions.

Reduction of Time for Substantial Completion

28.7 Alder shall promptly notify the Contractor upon becoming aware of an event or circumstance arising out of a cause described in the next paragraph and which event or circumstance has enabled or will enable the Contractor acting reasonably to complete the work under the Works Contract earlier than it would otherwise have completed the work under the Works Contract.

The causes are any category of cause, which if it had caused a delay would entitle the Contractor to an extension of time if the Contractor had complied with the requirements of Clauses 28.1, 28.2 and 28.3.

Alder shall be entitled to determine a reduction to the Date for Substantial Completion as may be reasonable to take account of such event or circumstance. A reduction of time pursuant to this Clause 28.7 shall not constitute a direction to accelerate the performance of the work under the Works Contract and Clause 28.9 and/or 28.10 shall not apply in such event or circumstance.

Delay and/or Disruption Costs

28.8 Delay and/or disruption costs arising from a variation shall be deemed to be valued as part of the valuation of that variation pursuant to Clause 33 and shall not be the subject of a claim pursuant to this clause.

The Contractor shall take all practical steps to avoid or minimise delay and/or disruption costs.

In the event that the Contractor is entitled under the Works Contract or otherwise at law to costs, expense, loss or damage for delay and/or disruption, the Contractor shall only be entitled to delay and/or disruption costs, expense, loss or damage that are unavoidable and arise directly from the delay and/or disruption, and the Contractor shall not be entitled to any indirect or consequential costs expense loss or damage including off-Site overheads, profit, loss of profit or loss of opportunity to earn a profit.

Acceleration

28.9 Where the Contractor is entitled to an extension of time to the Date for Substantial Completion pursuant to this Clause 28, Alder may elect instead to direct the Contractor to take such steps as Alder considers necessary to accelerate, expedite or reschedule the work under the Works Contract so as to achieve Substantial Completion by the then (unextended) Date for Substantial Completion. In this event, the Contractor shall forego its entitlement to an extension of time and shall comply with Alder's direction. The Contractor shall be entitled to be paid an amount valued under Clause 33.5 for additional costs properly and reasonably incurred by the Contractor as a result of such direction.

28.10 Alder may at any time direct the Contractor to accelerate the work under the Works Contract in order to reduce the time to bring the Works to Substantial Completion. The Contractor shall be entitled to be paid an amount valued under Clause 33.5 for additional costs properly and reasonably incurred as a result of such direction.

28.11 The Contractor shall, if requested by Alder, advise Alder about possible alternatives for achieving acceleration and their estimated cost.

28.12 No direction by Alder shall constitute a direction under Clause 28.9 or Clause 28.10 unless it is in writing and expressly states that it is a direction under such clause.

29 TESTING

29.1 The Contractor's obligation to carry out the work under the Works Contract in accordance with the Works Contract is paramount and Clause 29 shall be construed so as not to derogate from this obligation.

29.2 At any time prior to expiration of the Defects Liability Period Alder may direct that any material or work be tested. (Test includes examine and measure).

With respect to any such tests:

- (a) the Contractor shall provide such assistance and samples and make accessible such parts of the work under the Works Contract as may be required by Alder;
- (b) Alder may direct that any part of the work under the Works Contract shall not be covered up or made inaccessible without Alder's prior approval;
- (c) the test shall be conducted as provided in the Works Contract or by Alder or a person (which may include the Contractor) nominated by Alder; and/or
- (d) on completion of the test the Contractor shall make good the work under the Works Contract so that it fully complies with the Works Contract.

Before a test is conducted, the Contractor or Alder, as the case may be, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

Without prejudice to any other right, if the Contractor or Alder delays in conducting a test, the other, after giving reasonable notice in writing of its intention to do so, may conduct the test.

Results of the test shall be promptly made available by a party to the other party.

Costs of and incidental to testing shall be borne by Alder or shall be valued as a variation unless:

- (e) the Works Contract provides that the Contractor shall bear the costs or the test is one which the Contractor is required to conduct other than pursuant to a direction under this Clause 29;
- (f) the test shows that the material or work is not in accordance with the Works Contract;

- (g) the test is in respect of work under the Works Contract covered up or made inaccessible without Alder's prior approval where such was required; or
- (h) the test is consequent upon a failure of the Contractor to comply with a requirement of the Works Contract.

Where such costs are not to be borne by Alder, (or by the Principal if Alder acts as the agent of the Principal), they shall be borne by the Contractor or shall be deemed to be work performed by Alder on behalf of the Contractor for which the costs shall be valued under Clause 33.5.

30 QUALITY MANAGEMENT

The Contractor shall comply with the Quality System requirements set out in the Special Conditions. The provisions of Clause 29.2 shall apply to tests directed by Alder as part of its audit and/or surveillance of the Contractor's Quality System.

31 OCCUPATIONAL HEALTH AND SAFETY AND ENVIRONMENTAL MANAGEMENT

The Contractor shall ensure that the work under the Works Contract is at all times carried out in accordance with common law and statutory obligations relating to health and safety and environmental matters; and

- (a) all persons engaged on the Site on the work under the Works Contract shall:-
 - (i) comply with the requirements of the Site Induction Course described in Clause 32.1;
 - (ii) comply with health and safety rules and environmental rules advised in writing by Alder from time to time;
 - (iii) comply promptly with health and safety and environmental directions issued by Alder including but not limited to directions to cease and overcome work practices that are unsafe or that adversely affect the environment; and
- (iv) attend meetings in relation to health and safety and environmental issues as so required by Alder;
- (b) one in ten persons working on the Site on the work under the Works Contract hold an appropriate first aid certificate;
- (c) any dangerous or potentially dangerous condition and any fault, breakage or damage to plant, equipment or materials is promptly reported to Alder;
- (d) any accident is promptly reported to Alder;
- (e) environmental impacts caused by the work under the Works Contract at the Site are within the guidelines or conditions set out in any relevant Authority approvals;
- (f) precautions are taken to minimise noise, dust, vibration and other nuisances emanating from work under the Works Contract, including:
 - (i) fitting effective silencing devices to construction plant and equipment;
 - (ii) controlling noise and vibration from any source of the work under the Works Contract to within designated limits, as laid down in Alder's Environmental Management Plan;
 - (iii) securely covering materials being transported so as to avoid any dust or other nuisance; and
 - (iv) washing down vehicles as necessary so as to avoid the tracking of mud and other materials on to public roads and thoroughfares;
- (g) it takes such measures as are necessary to avoid damage and disturbance to flora and fauna on or in the vicinity of the Site;
- (h) it does not allow any part of the Site to be used for:-
 - (i) camping;
 - (ii) residential purposes; or
 - (iii) any purpose not connected with the work under the Works Contract; and
- (j) notwithstanding any other provision of the Works Contract, it obtains Alder's prior written permission to the use of explosives or blasting of any kind on the site. Unless otherwise stated in the Works Contract, Alder may withhold any such permission at its absolute discretion.

32 INDUSTRIAL RELATIONS AND SITE INDUCTION

Site Induction

- 32.1 All persons to be engaged on Site on the work under the Works Contract must attend a Site Induction prior to commencing work on the Site. The Contractor shall provide Alder with written details of persons that the Contractor or its Secondary subcontractors propose to engage on Site on the work under the Works Contract. A person's details shall be provided to Alder in the form required by Alder not less than 5 Business Days prior to the date that the Contractor or its Secondary subcontractor proposes that the person will commence work on Site.

The Site Induction to be conducted by Alder will outline general industry and site specific procedures, occupational health and safety issues and environmental, industrial relations and quality system requirements. Each person will receive safety guidelines and will be required to sign an undertaking to follow the safety guidelines at all times. Those persons that complete the Site Induction to the satisfaction of Alder, and if requested by Alder produce reasonable proof of identification, will be issued with a personalised identification card, which shall be carried at all times that the person is on the Site and produced for inspection to Alder upon entry to the Site and otherwise whenever requested by Alder. Alder may withdraw and cancel a person's identification card in the event of what Alder considers to be inappropriate conduct by that person. Only those persons with an identification card shall be engaged on Site on the work under the Works Contract. If a person fails to produce his/her identification card upon request by Alder he/she may be required to leave the Site immediately.

From time to time Alder may direct that a person engaged on the work under the Works Contract attend a further Site Induction or toolbox talks. Alder may withdraw or cancel that person's identification card unless that person completes the further Site Induction or toolbox talks to the satisfaction of Alder.

The Site Induction to be conducted by Alder is intended to outline procedures and requirements that will generally apply to all persons working on the Site and does not relieve the Contractor of its responsibility to properly induct persons engaged to perform the work under the Works Contract as to particular procedures and requirements relevant to that work.

Industrial Relations

- 32.2 The Contractor shall be responsible for maintaining good industrial relations with employees engaged on the work under the Works Contract while at the same time refraining from action which could affect the Principal, Alder and other contractors.

Acknowledging its shared responsibility for the overall industrial relations on the Site and the Contractor shall conduct its industrial relations in accordance with the following requirements:-

- (c) The Contractor shall ensure that all persons engaged on the work under the Works Contract are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be or become entitled by virtue of any contract or agreement, statute, award, industry agreement, enterprise agreement, determination, judgement, order of any competent court, board, commission or other industrial tribunal in force from time to time.
- (d) The Contractor shall make available to Alder (or its nominee) upon request all wage sheets and other information relating to wages, allowances, leave entitlements and industrial practices as Alder may require.
- (e) Where possible the Contractor shall advise Alder prior to, and comply with Alder's direction when any person engaged on Site on the work under the Works Contract is to be terminated.
- (f) The Contractor shall notify Alder of any industrial relations matters which may affect the performance of the work under the Works Contract and of the measures which the Contractor proposes to take to ensure that performance.
- (g) The Contractor shall immediately report to Alder any industrial dispute which has arisen or which may, in the opinion of the Contractor, arise. If a dispute is developing with any employees engaged on site on the work under the Works Contract the Contractor shall consult with Alder in an attempt to resolve the industrial dispute. At all times the Contractor shall comply with its current workplace arrangements.
- (h) In the event of an industrial dispute the parties agree to use the dispute resolution provisions contained in their workplace arrangements. In the absence of such a provision the parties may appoint an independent Arbitrator to decide the matter and the Contractor agrees to be bound by the decision of the independent Arbitrator. Alder reserves the right to be present at all meetings between the Contractor and any other relevant party or parties with respect to industrial relations matters on the Project.
- (i) The Contractor shall provide a senior representative to participate at site meetings called by Alder to discuss industrial matters.

33 VARIATIONS AND VALUATIONS

Variations

- 33.1 The Contractor shall only vary the Works or the work under the Works Contract if so directed in writing by Alder. No variation shall invalidate the Works Contract. Variations include:-

- (a) an increase, decrease or omission of any part of the Works or the work under the Works Contract;
- (b) a change in specified performance requirements or functional requirements;
- (c) a change in the character or quality of any material or work;
- (d) a change in the levels, lines, positions or dimensions of any part of the Works of the works under the Works Contract;
- (e) demolition and/or removal of material or work no longer required by Alder;
- (f) a variation directed pursuant to the terms of the Main Contract relevant to the Works or the work under the Works Contract.

- 33.2 If the Contractor considers that any direction given by Alder involves a variation or is likely to prevent it from fulfilling its obligations, the Contractor shall notify Alder in what respect it considers the direction involves a variation or is likely to prevent it from fulfilling its obligations. Such notice shall be given within the period stated in Annexure A, or if nothing is stated in Annexure A within 5 Business Days, of the date of the direction or before the Contractor proceeds with the direction, whichever is the earlier. If the

Contractor fails to submit such notice in a timely manner, the Contractor shall not be entitled to submit any claim for a variation or otherwise with respect to the direction.

- 33.3 If the Contractor requests Alder to approve a variation for the convenience of the Contractor, Alder may, in its absolute discretion, approve the variation. Unless agreed otherwise in writing and notwithstanding any other provision of the Works Contract, the Contractor shall not be entitled to any extension of time or any additional payment in respect of a variation approved for the convenience of the Contractor.
- 33.3A In the event that Alder directs the Contractor to submit a quotation with respect to a proposed variation, the Contractor shall submit its quotation within the period requested by Alder. Such quotation shall include any indirect effort and/or any extension or reduction to the Date for Substantial Completion that would be caused by the proposed variation.
- 33.3B The Contractor acknowledges and agrees that:
- (a) detailed design documentation of the Works may be incomplete at the date of the Subcontract;
 - (b) Alder may provide detailed design documentation to the Contractor after the date of this Subcontract; and
 - (c) it has made adequate allowance in the Contract Amount for the costs it may incur as a result of being provided with detailed design documentation after the date of this Subcontract.
- The Contractor shall comply with that detailed design documentation in performing the Works and shall not be entitled to a Claim arising out of or in connection with the detailed design documentation, provided:
- (d) the further design detail documentation is generally consistent with the design disclosed in the Subcontract Documents and is limited to standard construction detailing; and
 - (e) the further detailed design documentation is provided to the Contractor prior to a date to which Alder, acting reasonably, has agreed.
- 33.3C If Alder provides the Contractor with a direction then the Contractor must comply with that direction without delay. If the Contractor fails to act upon a direction without delay then clause 10.2 shall be enacted.
- 33.3D The Contractor's entitlement to variation is limited to the causes identified in clause 33.1. Notification of, recording of hours against, approval of hours by Alder against or claiming of variation does not constitute entitlement.

Valuations

33.4 Unless stated otherwise a valuation shall be made under Clause 33.5 in respect of the following matters:-

- (a) a variation directed pursuant to Clause 33.1.
- (b) work performed, things supplied and/or action taken by Alder on behalf of the Contractor at the request of the Contractor or in circumstances envisaged by the Works Contract; and
- (c) costs, losses and damage suffered by a party if the other party does not perform its obligations in a proper and/or timely manner and/or is otherwise in breach of its obligations under the Works Contract or otherwise.

33.5 Where a valuation is made under this Clause 33.5, the Contract Sum shall be increased or decreased, as the case may require, by an amount agreed by the parties or, failing such agreement, as ascertained by Alder as follows:

- (a) if the Works Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if paragraph (a) above does not apply, and if the Works Contract includes rates or prices for similar work such rates and prices shall be used to the extent that it is reasonable to use them; and/or
- (c) to the extent that neither paragraphs (a) or (b) above apply, subject to Clauses 33.6 and 33.7, reasonable rates or prices shall be used.

33.6 Unless agreed otherwise, valuations in accordance with paragraph (c) of Clause 33.5 shall not exceed:

- (a) the amount of any wages and allowances paid or payable by the Contractor or Alder, as the case may be, to its employees;
- (b) the percentage stated in Annexure A of the amount of wages and allowances valued under paragraph (a) above;
- (c) the actual cost to the Contractor or Alder, as the case may be, of any constructional plant and equipment;
- (d) any amounts properly paid or payable to Secondary subcontractors or other contractor's, as the case may be;
- (e) the percentage stated in Annexure A of the sum of paragraphs (a) to (d) inclusive above to compensate the Contractor or Alder, as the case may be, for its overheads, profit and other costs; and
- (f) the cost, losses and damage referred to in paragraph (c) of Clause 33.4.
- (g) the actual resources utilised solely for the purpose of a variation defined under clause 33.1, if undertaken efficiently and nett of any resources required to undertake the Works, supported by records of resources witnessed and signed by Alder at the start and finish of each day's work. The signing of records by Alder does not constitute entitlement to or represent the resources utilised in undertaking a variation.

33.7 For the purposes of a valuation made under paragraph (c) of Clause 33.5:

- (a) in determining the decrease in the Contract Sum for a decrease or omission of any part of the work under the Works Contract and/or for matters referred to in paragraph (b) of Clause 33.4, the decrease in the Contract Sum shall include a reasonable amount for profit and overheads; and
- (b) if the valuation relates to the costs, losses and damage referred to paragraph (c) of Clause 33.4, the valuation shall include for off-site overheads but shall not include profit.

33.8 Notwithstanding the requirements of Clause 33.5, if a valuation to be made under paragraph (c) of Clause 33.5 is required as a result of a variation to the work under the Main Contract or for any other matter for which under the Main Contract a valuation is to be made under the terms of the Main Contract, the valuation of this variation or other matter under the Works Contract shall not exceed the Principal's (or if relevant the Superintendent's or independent tribunal's) valuation of the variation or other matter after making reasonable allowance for Alder's costs, overhead and, where relevant, profit in respect of the variation or other matter.

34 INDEPENDENT AUDIT

34.1 Alder shall be entitled at any time and from time to time to arrange for an independent auditor to inspect the Contractor's business records to verify the information in statutory declaration(s) and/or evidence provided by the Contractor pursuant to paragraph (a) of Clause 35.3. The auditor shall report to both Alder and the Contractor.

34.2 The cost of such an audit shall be borne by Alder, (or by the Principal if Alder is the agent of the Principal), unless the audit shows that the Contractor's statutory declaration(s) and/or evidence is not correct in which case the cost of the audit shall be borne by the Contractor or shall be deemed work performed by Alder on behalf of the Contractor for which the cost shall be valued under Clause 33.5.

34.3 In the event that the audit shows the Contractor's statutory declaration(s) and/or evidence is not correct, Alder shall be entitled but under no obligation to take action on behalf of the Contractor at the Contractor's risk and expense to do those things that the audit shows have not been fulfilled. Such action may include the direct payment of Secondary subcontractors and/or their lower tier subcontractors.

35 PROGRESS CLAIMS AND PAYMENTS

35.1 Unless stated otherwise, the Contract Amount shall not be subject to adjustment for rise and fall in costs for any cause whatsoever, including changes in the cost of labour, plant, equipment, materials, taxation, excise, duty, fees or charges.

35.2 Payment shall be made and retentions administered in accordance with the payment and retention terms stated in Annexure A and Clause 37. Payment terms stated with EOM shall mean the end of the month that the progress claim is received.

The Contractor acknowledges and agrees that retention monies shall not be held in a definable account nor held in trust.

35.3 On or before the time for submission of a progress claim stated in Annexure A, the Contractor shall submit to Alder a progress claim comprising:-

- (a) a statutory declaration and/or evidence to the satisfaction of Alder that:
 - (i) all persons employed by the Contractor and Secondary subcontractors on the work under the Works Contract have been paid all moneys due and payable to them;
 - (ii) the Contractor and Secondary subcontractors have properly provided all other employee entitlements;
 - (iii) all Secondary subcontractors and their lower tier subcontractors have been paid all moneys due and payable to them;
 - (iv) all hire charges due and payable relevant to the work under the Works Contract have been paid;
 - (v) the Contractor and Secondary subcontractors have complied with their insurance obligations;
 - (vi) the Contractor and Secondary subcontractors have complied with all statutory obligations with respect to the work under the Supply Contract; and
 - (vii) the Works are free of any liens, charges, claims or other encumbrances;
- (b) the Contractor's assessment of:
 - (i) the GST exclusive value of work completed and incorporated in the Works at the Site adjusted for the GST exclusive value of matters valued under Clause 33.5; plus
 - (ii) the amount of GST relevant to the value assessed under paragraph (i) above; less
 - (iii) any retention moneys; and less
 - (iv) the amount included in previous progress payments; and
- (c) A tax invoice reflecting the assessment.

The Contractor acknowledges and agrees that it shall be deemed to have elected not to submit a progress claim if it does not submit on or before the due date for submission a progress claim comprising the statutory declaration and/or evidence described in paragraph (a) above and the assessment described in paragraph (b) above.

The Contractor shall provide Alder such further information regarding the progress claim as Alder may reasonably require to make a determination in accordance with Clause 35.4.

35.4 Alder shall make a determination of the amount payable in respect of a progress claim submitted in accordance with the requirements of Clause 35.3. Such determination shall take into account the matters referred to in paragraphs (i) to (iv) of paragraph (b) of Clause 35.3.

35.5 Unless otherwise agreed, payment shall be made by one of the following means:-

- (a) electronic funds transfer to the Contractor's nominated bank account;
- (b) cheque to be picked up by the Contractor on Site; or
- (c) cheque posted to the Contractor's address.

In the case of:-

- (d) paragraphs (a) and (b) above, the date of payment shall be regarded as the date on which the funds are cleared by Alder for payment, the funds being available to the Contractor within 2 Business Days thereafter; and

(e) paragraph (c) above, the date of payment shall be regarded as the date on which the cheque is posted.

35.6 Payment to the Contractor does not constitute approval of work under the Works Contract but shall be payment on account only.

35.7 In the event that Alder is required at law to provide security for payment to the Contractor, the security shall be in the form of a guarantee from Alder up to the amount of the security required.

36 RELEASE

36.1 Upon completion or termination of the Works and prior to the final payment to the Contractor, the Contractor shall fully release and discharge Alder and the Principal and each of their respective employees and agents from and against all claims, demands and cause of action and proceedings of every kind which the Contractor may or might assert to have. Acceptance of the final payment shall be deemed to constitute such release and discharge.

37 RETURN OF SECURITY AND RETENTION

37.1 If at any time Alder's determination of the value of the work under the Works Contract performed by the Contractor, taking into account retention and valuations made under Clause 33.5, is less than the amount paid by Alder to the Contractor, Alder may convert into money part or all of the security provided by the Contractor pursuant to Clause 5.

37.2 If the available security is less than the over payment referred to in Clause 37.1, the balance owing by the Contractor to Alder (or the Principal if Alder is the agent of the Principal), shall be a debt due and payable to Alder (or the Principal if Alder is the agent of the Principal).

37.3 Subject to Clauses 37.1 and 37.2:-

- (a) half of the security and retention held by Alder will be released to the Contractor upon receipt by Alder of the Contractor's executed Release and Waiver in accordance with the provisions of Clause 36; and
- (b) the balance of the security and retention held by Alder will be released or paid to the Contractor at the expiry of the Defects Liability Period or when the Contractor has fulfilled its obligations under the Works Contract, whichever is the later.

38 WARRANTIES

38.1 The Contractor expressly warrants that:

- (a) all goods, materials and workmanship satisfy the specified requirements, are free from all defects and comply with all relevant warranties expressly or impliedly available at law;
- (b) unless otherwise specified in the Works Contract, all goods and materials shall be new;
- (c) the Works shall be free of all liens, charges and encumbrances; and
- (d) any design, drawing, specification, other documents, plant, equipment, materials and methods of working used by the Contractor in connection with the work under the Works Contract shall not infringe any patent, registered design, trademark or name, copyright or other protected right.

38.2 The Contractor shall provide and/or obtain from Secondary subcontractors the warranties expressly required by the Works Contract and such other warranties as may be appropriate for the nature of the Project in respect of the plant, equipment and materials incorporated in the Works. (Warranties include guarantees). Such warranties:

- (a) shall be in a form acceptable to Alder and made out in favour of the Principal and Alder. The Contractor shall indemnify each of these parties in respect of any infringement of any patent, registered design, trademark or name, copyright or other protected right relevant to the work under the Works Contract; and
- (b) shall not in any way derogate any obligation of the Contractor under the Works Contract and in the event of any ambiguity, conflict, discrepancy or inconsistency between such warranties and the Works Contract then to the extent only of such ambiguity, conflict, discrepancy or inconsistency the Works Contract shall prevail.

39 DEFECTS

39.1 The Defects Liability Period shall commence on the date of completion of the Main Contract works and shall end on expiration of the defects liability period as stated in Annexure A.

39.2 Should the Works and/or the other work under the Works Contract be found to be defective prior to 15 Business Days after the end of the Defects Liability Period, the Contractor shall remedy such defect including any consequential effects of the defect at its own expense in accordance with this Clause 39. Defect includes omissions and faults.

Prior to completion of the Main Contract Works the remedying of defects shall be carried out at such times and in such circumstances as directed by Alder so as to cause as little inconvenience to Alder and other contractors as possible. After completion of the Main Contract Works the remedying of defects shall be carried out at such times and in such circumstances as directed by Alder so as to cause as little inconvenience to the Principal, Alder and patrons of the Project as possible.

Should the Contractor fail to remedy a defect as described above, Alder may arrange for the defect to be remedied on behalf of the Contractor and the cost of doing so shall be valued under Clause 33.5.

Alternatively Alder may, at its sole discretion, direct the Contractor that Alder will accept the non-complying Works or that it will accept the Works partially rectified by the Contractor to an agreed standard. Such direction shall be deemed to be a variation for

which a valuation shall be made under Clause 33.5 of the difference in value to Alder and/or the Principal between the Works as specified and the non-complying Works or the partially rectified Works. Among other things, the valuation shall take into account any loss and expense suffered or likely to be suffered by Alder and/or the Principal as result of accepting the non-complying Works or the partially rectified Works.

39.3 Nothing in this Clause 39 shall operate to limit or exclude the Contractor's liability at law for defective work under the Works Contract, which may continue beyond the end of the Defects Liability Period.

40 SERVICES AND FACILITIES

40.1 The Contractor shall provide all facilities not provided by Alder which are necessary to comply with its obligations for the execution of the work under the Works Contract and keep these serviced and in excellent condition. Where similar facilities are provided elsewhere on Site by Alder, the Contractor shall provide its facilities to an equal standard, unless otherwise agreed with Alder.

40.2 Unless stated otherwise in the Special Conditions or Scope of Works, Alder shall provide:

- (a) toilet, crib and change-room facilities on a shared arrangement with contractors at the Main Project compound area; and
- (b) temporary one-phase power outlet and water outlet;

40.2A The Contractor shall provide all persons engaged on the work under the Works Contract proper and adequate shorts, shirts, overalls, jackets, safety helmets, safety boots and other necessary protective and safety clothing and/or equipment.

40.3 Unless stated otherwise in the Special Condition or Scope of Works, the Contractor shall be responsible for:

- (a) the supply, delivery and hoisting of materials; and
- (b) the supply, erection and dismantling of scaffolding and temporary office and storage facilities in locations nominated by Alder.

40.4 Unless agreed otherwise with Alder, services and facilities 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 Works Contract.

40.5 Unless stated otherwise in the Special Conditions or Scope of Works, no car parking shall be available on the Site for persons engaged on the works under the Works Contract. The Contractors employees and Secondary subcontractors shall park their cars (at their own risk) in the Project compound or other areas as directed by Alder. Street parking may not be permitted if Alder considers it may cause nuisance to residents who live in the areas adjacent to the Site.

40.6 The Contractor acknowledges that no warranty or other liability on the part of Alder or of other contractors shall be created or implied with regard to the fitness condition, suitability or performance of any services or facilities provided by Alder including but not limited to the services and facilities described in this Clause 40, the Special Conditions or the Scope of Works.

41 RUBBISH

The Contractor shall regularly remove all rubbish from the Site or, if so directed by Alder, to designated areas on the Site and upon completion of the Works shall leave the Site in a clean and tidy condition. If the Contractor fails to comply within 24 hours from the receipt of a direction by Alder to remove rubbish, Alder may remove the rubbish on behalf of the Contractor and the cost of doing so shall be valued under Clause 33.5.

The Contractor agrees that it will:

- (a) take all reasonable steps to minimise the amount of rubbish generated on the Site; and
- (b) recycle rubbish wherever practicable.

42 TERMINATION, DEFAULT, INSOLVENCY OR DEATH

42.1 Nothing in this clause shall prejudice Alder's rights to recover damages or to exercise any other right.

42.2 In the event that:

- (a) the Contractor commits an act, default, omission or breach of the Works Contract and the act, default, omission or breach is not remedied within 5 days of being required to do so by Alder, and Alder considers that damages may not be an appropriate remedy;
- (b) the Contractor is insolvent or bankrupt within the meaning set out in Clause 39.11(a) to (d) of General Conditions of Contract AS4000-1997; or
- (c) the Contractor dies,

then Alder (and/or the Principal where Alder is the agent of the Principal) may in its absolute discretion:

- (d) in the case of paragraph (a) above, withhold any or all monies which are then or which may become due and payable to the Contractor until the act, default, omission or breach is remedied;
- (e) take out of the hands of the Contractor the whole or any part or parts of the work under the Works Contract remaining to be completed; or
- (f) terminate the Works Contract.

42.3 If Alder (and/or the Principal where Alder is the agent of the Principal) takes action under paragraph (e) or (f) of Clause 42.2 above, then:

- (a) Alder (and/or the Principal where Alder is the agent of the Principal) may withhold any or all monies which are then or which may become due and payable to the Contractor;
- (b) Alder may use or engage others to use the Contractor's constructional plant and equipment, temporary buildings, materials and other things on the Site to complete the work under the Works Contract and Alder may direct the Contractor to remove any such items from the Site;
- (c) Alder is hereby authorised by the Contractor to obtain and use materials to complete the work under the Works Contract which are off-Site and which were intended for use in the work under the Works Contract;
- (d) if requested by Alder, (and/or the Principal where Alder is the agent of the Principal) the Contractor shall assign or novate its rights to Alder or Alder's nominee (and/or the Principal where Alder is the agent of the Principal) under any Secondary subcontracts; and
- (e) A valuation shall be made under Clause 33.5 in respect of:
 - (i) costs, losses, and damage which Alder and/or the Principal suffers or incurs in completing the work under the Works Contract including for example payments made by Alder direct to Secondary subcontractors and other persons engaged on the work under the Works Contract;
 - (ii) costs, losses and damage suffered or incurred by Alder and/or the Principal as a result of claims, actions or proceedings including compromises of disputed claims, which arise out of or in connection with such take over or termination.

43 TERMINATION IN OTHER CIRCUMSTANCES

Alder may also terminate the Works Contract by written notice to the Contractor in any of the following circumstances:

- (a) at the convenience of Alder; or
- (b) the Main Contract is terminated for any reason; and/or
- (c) if the work which includes the Works is taken out of the hands of Alder under the Main Contract,

Subject to and without prejudice to Alder's and/or the Principal's rights under the Works Contract or otherwise, upon such termination the Contractor shall be paid:-

- (d) for work executed prior to the date of termination, the amount which would have been payable if the Works Contract had not been terminated and the Contractor had made a progress claim on the date of termination;
- (e) the reasonable cost of materials and/or goods reasonably ordered by the Contractor for the work under the Works Contract, which the Contractor is legally liable to accept, but only if materials and/or goods are:
 - (i) delivered to the Site or other place as directed by Alder;
 - (ii) labelled as directed by Alder; and
 - (iii) free from any liens, charges, claims and other encumbrances,and ownership of the materials and/or goods passes to Alder (or the Principal if Alder is the agent of the Principal) upon their delivery to and acceptance by Alder;
- (f) costs reasonably incurred by the Contractor in demobilisation; and
- (g) subject to Clause 37, retention and security held by Alder,

but Alder shall not be liable to the Contractor for any other costs, losses, expenses or damages.

- (h) In the event that Alder terminates the Works Contract for Alder's convenience at clause 43(a) the parties acknowledge that there shall be no further reference dates, as defined under the Act, available to the Contractor.
- (i) The parties acknowledge that clause 43(h) survives termination of the Works Contract.

44 INDEMNITIES AND WAIVER

44.1 Without limiting Clause 42 or any other provision of the Works Contract, to the extent that an act, default, omission or breach of the Works Contract by the Contractor causes Alder to default under the Main Contract, the Contractor shall do all things necessary to assist Alder to remedy that default.

44.2 Subject to the provisions of the Works Contract, the Contractor indemnifies Alder for and against any damages, expenses, losses or liability it suffers or incurs in respect of any breach by the Contractor of an obligation imposed under the Works Contract.

44.3 The indemnities in the Works Contract are continuing, separate and independent obligations and survive termination of the Works Contract.

44.4 None of the terms of the Works Contract (including the provisions of this Clause 44.4) shall be waived, discharged or released at law or in equity except with the prior written consent of Alder in each instance.

45 CLAIMS

45.1 Alder (and/or the Principal if Alder is the agent of the Principal) shall not be liable to the Contractor:

- (a) in respect of a matter:-
 - (i) arising out of or in connection with a breach of the Works Contract by Alder;
 - (ii) arising out of or in connection with the subject matter of the Works Contract; or
 - (iii) arising out of or in connection with any direction or approval by Alder; or
- (b) in respect of a claim or proposed claim by the Contractor:
 - (j) under or in connection with any provision of the Works Contract;
 - (ii) for any payment under the Works Contract;
 - (iii) for any valuation or other determination made by Alder under the Works Contract;
 - (iv) for damages for negligence;
 - (v) for damages or any other remedy under any statute; or
 - (vi) for quantum meruit or for restitution or based on unjust enrichment,

unless within the period stated in Annexure A, or if nothing is stated in Annexure A within 15 Business Days, after the first day upon which the Contractor could reasonably have been aware of the matter at issue the Contractor has submitted to Alder the prescribed notice.

The prescribed notice is a notice titled "Prescribed Notice" which includes particulars of all of the following:

- (c) the breach, act, omission, direction, approval or circumstance on which the claim is or will be based;
- (d) the provision of the Works Contract or other basis for the claim or proposed claim; and
- (e) the quantum or likely quantum of the claim.

Updates of the quantum or likely quantum of a claim for ongoing events or circumstances on which the claim is based shall be submitted by the Contractor to Alder at weekly intervals until the events or circumstances have ceased.

This Clause 45.1 shall not have any application to:

- (f) any claim for payment to the Contractor of the Contract Amount, for which the provisions of Clause 35 shall apply;
- (g) any claim for payment for a variation directed by Alder, for which the provisions of Clause 33 shall apply; or
- (h) any claim for an extension of time to the Date for Substantial Completion, for which the provisions of Clause 28 shall apply, however, the Clause shall apply where Alder has made a valuation or determination under the Works Contract in response to such a claim made by the Contractor.

Nothing in this Clause 45.1 shall limit the operation or effect of any other notice provision, time-bar provision, condition precedent or limitation clause contained in the Works Contract.

- (a) In addition to the requirements of Clause 45.1, if a claim or proposed claim relates to a matter which is or will be relevant to a claim between Alder and the Principal, the Contractor shall do everything necessary to enable Alder to submit notices and claims to the Principal in respect of the matter at issue in a timely manner and to progress the resolution of the claim in accordance with the requirements of the Main Contract.
- (b) Alder and the Contractor shall work together to enable Alder to put the Contractor's views to the Principal and to seek a reasonable outcome of the matter at issue having regard to Alder's and any other contractors' and other persons' direct or indirect interests in the matter at issue; and
- (c) The Contractor's entitlement in respect of the matter at issue shall not exceed the Principal's (or if relevant the Superintendent's or independent tribunal's) valuation of the Contractor's claims after making reasonable allowance for Alder's costs, overheads and, where relevant, profit in respect of the matter at issue.

45.2 The Contractor acknowledges that:-

- (a) a notice or claim required to be submitted by the Contractor to Alder must be in writing and must be clearly identified as a notice or claim and must state the provision of the Works Contract relevant to the notice or claim; and

- (b) unless stated otherwise, if the Contractor submits a notice or a claim in respect of a matter later than the time for submission of such notice or claim stated in the Works Contract, such matter shall be time barred and the Contractor shall be deemed to have waived its entitlement (if any) in respect of such matter.

46 DISPUTE RESOLUTION

Negotiation and Identification

46.1 It is the intention of the parties that in the event of a dispute, difference, controversy or claim arising out of or relating to the performance of the Works Contract or the breach, rectification, termination, frustration or invalidity thereof, (a "dispute") every endeavour shall be made to resolve the dispute on its merits by negotiation.

46.2 A party claiming that a dispute has arisen shall notify the other party in writing. Such notice:

- (a) shall state that it is a notice given pursuant to this Clause 46;
- (b) shall adequately describe the particulars of the alleged dispute including but not limited to the amount of the dispute; and
- (c) shall be signed by a Director or equivalent of the party.

Dispute Resolution

46.3 If the amount in dispute is less than \$30,000 and the dispute cannot be resolved by negotiation, then, to the extent permitted by law, the dispute shall be settled by binding expert determination by an expert appointed by agreement between the parties, or failing agreement by an expert nominated by the Chairperson of the State or Territory Chapter of the Institute of Arbitrators and Mediators Australia stated in Annexure A. 46.4.

46.4 If the amount in dispute is \$30,000 or more, the parties shall attend at least one meeting to discuss the dispute within 5 Business Days of the notification of the dispute as a condition precedent to commencing any other proceeding. If the dispute cannot be solved by negotiation as aforesaid, the parties shall confer within 5 Business Days of the breakdown of negotiations in order to ascertain whether they agree that the dispute shall first be subject to the process of conciliation, mediation, non-binding expert appraisal, mini-trial, or binding expert determination or such other alternative dispute resolution process as may be appropriate in the circumstances of the dispute and, if they so agree, the dispute shall be referred to such process.

If a dispute to which Clause 46.4 applies cannot be resolved in accordance with the procedures set out in Clause 46.4, or if at any time during the procedure either party reasonably considers that the other party is not making reasonable efforts to resolve a dispute, either party may issue a notice to the other party within 5 Business Days of the failure of the procedure or the perceived failure of the procedure, as the case may be, requiring that the dispute be referred to litigation.

Any Conciliator, Mediator, Expert or Neutral Advisor appointed by the parties pursuant to Clause 46.4, shall not be called by either party in litigation proceedings, unless both parties agree in writing.

Binding expert determination under Clause 46.3 or Clause 46.4 shall be carried out in accordance with the Institute of Arbitrators and Mediators Australia's Rules for the Expert Determination of Commercial Disputes.

Consolidation of Disputes

The Contractor shall co-operate with Alder regarding the consolidation of proceedings involving other parties relating to similar matters or issues. Without limiting the generality of the foregoing requirement, in the event that a dispute between the Contractor and Alder relates to matters or issues relevant to a dispute between Alder and the Principal, then notwithstanding the requirements of Clauses 46.3 to 46.6 the Contractor shall agree to the proceedings being consolidated and the dispute shall be resolved mutatis mutandis, (with due alteration of details), pursuant to the dispute resolution provisions of the Main Contract.

Adjudication

If the law requires that a matter must be adjudicated, the adjudication shall be performed by an adjudicator agreed by the parties, or failing agreement as nominated by the Chairperson of the State or Territory Chapter of the Institute of Arbitrators and Mediators Australia stated in Annexure A. The cost of the adjudicator shall be shared equally by the parties.

General Requirements

Unless agreed otherwise, all dispute resolution proceedings shall be conducted in the capital city of the State or Territory stated in Annexure A.

Notwithstanding the existence of a dispute, the Contractor shall continue to perform the work under the Works Contract.