[Version – 14 March 2019]

Formal Instrument of Agreement

[Insert Address – project description]

Australian Catholic University Limited

[Insert]

Amended AS2124 -1992

Construct Only Contract

Formal Instrument of Agreement

Parties

1. **Australian Catholic University Limited ABN 15 050 192 660** of 40 Edward Street, North Sydney, NSW 2060 (**Principal)**.
2. **[Insert] ACN [Insert]** of [Insert] (**Contractor**).

Background

1. The Principal has decided to engage the Contractor to undertake the work under the Contract on the terms and conditions contained in this Deed.

Operative Provisions

# Definitions and Interpretation

Unless the context otherwise requires:

### **General Conditions** means the General Conditions of Contract AS 2124 - 1992.

### Other words and expressions used in this Deed have the same meaning as in the General Conditions.

# Undertaking the Works

## General Obligations

Subject to this document the Contractor shall undertake the work under the Contract and the Principal shall pay the Contract Sum to the Contractor on the terms and conditions contained in the Contract which is comprised in the following documents, copies of which are annexed hereto:

### the General Conditions, which are incorporated into this Formal Instrument by reference, as amended by the special conditions attached at Annexure Part B;

### Annexure Part A;

### all other Annexures to the General Conditions; and

### any documents expressly incorporated into the Contract by either of the above.

## Contract Sum

## The Contract Sum is a lump sum amount of $[Insert] (excl GST).

# Execution

The Contract is executed as, and shall be interpreted as, a Deed.

Signing page

**Executed** as a Deed.

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| Executed by **Australian Catholic University Limited ABN 15 050 192 660** in accordance with section 127(1) of the *Corporations Act 2001*: |  |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Secretary |
|  |  |  |
| Name of Director (Block Letters) |  | Name of Director/Secretary (Block Letters) |

|  |  |  |
| --- | --- | --- |
| Executed by **[Insert]** **ACN [Insert]** in accordance with section 127(1) of the *Corporations Act 2001*: |  |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Secretary |
|  |  |  |
| Name of Director (Block Letters) |  | Name of Director/Secretary (Block Letters) |

Attachments

Note that the General Conditions of AS 2124-1992 are incorporated by reference.

1. Annexure Part A
2. Annexure Part B - Special Conditions
3. Annexure Part C – Approved Form of Unconditional Undertaking
4. Annexure Part D - Deed of Guarantee, Undertaking and Substitution
5. Annexure Part E - Key Personnel
6. Annexure Part F - Provisional Sums Schedule
7. Annexure Part G - Schedule of Drawings and Specifications
8. Annexure Part H – Site Plan
9. Annexure Part I – Working Day Calendar
10. Annexure Part J – Program
11. Annexure Part K – Preliminaries

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | | | | | | PART A |
| This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract. | | | | | | |
|  | |  | |  | | |
| 1 | | The law applicable is that of the State or Territory of:  (Clause 1) | | [INSERT] | | |
|  | |  | |  | | |
| 2 | | Payments under the Contract shall be made at:  (Clause 1) | | [INSERT] | | |
|  | |  | |  | | |
| 3 | | The Principal:  (Clause 2) | | Australian Catholic University Limited  ABN 15 050 192 660 | | |
|  | |  | |  | | |
| 4 | | The address of the Principal: | | 40 Edward Street, North Sydney, NSW 2060 | | |
|  | |  | |  | | |
| 5 | | The Superintendent:  (Clause 2) | | [INSERT] | | |
|  | |  | |  | | |
| 6 | | The address of the Superintendent: | | [INSERT] | | |
|  | |  | |  | | |
| 7 | | The Contractor:  (Clause 2) | | [INSERT] | | |
|  | |  | |  | | |
| 8 | | The address of the Contractor: | | [INSERT] | | |
|  | |  | |  | | |
| 9 | | Site:  (Clause 2) | | [INSERT] | | |
|  | |  | |  | | |
| 10 | | Contractor shall provide security in the amount of:  (Clause 5.2) | | 5% of the Contract Sum by way of 2 Bank Guarantees each of 2.5% of the Contract Sum without an expiry date or with an expiry of no less than 2 years after the Date for Practical Completion | | |
|  |  | |  | | | |
| 11 | The percentage to which the entitlement to security and retention moneys is reduced:  (Clause 5.7) | | Reduced by 50% - see Special Conditions | | | |
|  |  | |  | | | |
| 12 | The number of copies to be supplied by the Principal:  (Clause 8.3) | | 1 copy | | | |
|  |  | |  | | | |
| 13 | The number of copies to be supplied by the Contractor:  (Clause 8.4) | | 4 copies | | | |
|  |  | |  | | | |
| 14 | The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies:  (Clause 8.4) | | 10 Business Days | | | |
|  |  | |  | | | |
| 15 | Work which cannot be subcontracted without approval:  (Clause 9.2) | | [INSERT] | | | |
|  |  | |  | | | |
| 16 | The percentage for profit, attendance, overheads and preliminaries:  (Clause 11.8) | | 10% | | | |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| 17 | Insurance of the Works—the alternative applying:  (Clause 18) | Alternative 1 – Contractor to supply |
|  |  |  |
| 18 | The assessment for insurance purposes of the costs of demolition and removal of debris:  (Clause 18(ii)) | 10% of Contract Sum |
|  |  |  |
| 19 | The assessment for insurance purposes of consultants' fees:  (Clause 18(iii)) | 10% of Contract Sum |
| 20 | The value of materials to be supplied by the Principal:  (Clause 18 (iv)) | 10% of Contract Sum |
|  |  |  |
| 21 | The additional amount or percentage:  (Clause 18(v)) | 10% of the total of paragraphs (i) to (iv) of Clause 18 |
|  |  |  |
| 22 | Public Liability Insurance—the alternative applying:  (Clause 19) | Alternative 1 – Contractor to supply |
|  |  |  |
| 23 | The amount of Public Liability Insurance shall be not less than:  (Clause 19) | $20,000,000 |
|  |  |  |
| 24 | The time for giving access to the Site:  (Clause 27.1) | [INSERT] |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| 25 | Working Hours and Working Days:  (Clause 32) | Normal working hours are 7am – 5.30pm, Monday – Friday inclusive, 7am – 12.30pm, Saturday, except public holidays and industry rostered days off and otherwise as per Annexure Part I. |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| 26 | The Date for Practical Completion:  (Clause 35.2) | [INSERT] |
|  |  |  |
| 27 | Liquidated Damages per calendar day:  (Clause 35.6) | [INSERT] |
|  |  |  |
| 28 | Maximum daily cost for Delay or Disruption:  (Clause 36) | NIL |
|  |  |  |
| 29 | The Defects Liability Period:  (Clause 37) | 12 months from the Date of Practical Completion |
|  |  |  |
| 30 | The Charge for agreed margin for preliminaries, overheads, profit, etc. for Variations:  (Clause 40.5) | 10% for additions  No margin for deductions |
|  |  |  |
| 31 | The Charge for preliminaries, overheads, profit, etc. for Daywork:  (Clause 41(f)) | 10% |
|  |  |  |
| 32 | Times for Payment Claims:  (Clause 42.1) | 25th day of each Month |
|  |  |  |
| 33 | Time for payment:  (Clause 42.1) | [INSERT number of Business Days by reference to relevant Security of Payments Act] after receipt of a Payment Claim (or, if a Payment Claim is submitted early, the date that Payment Claim was to have been made in accordance with this Contract) |
|  |  |  |
| 34 | Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works:  (Clause 42.1(b)(ii)) | Nil |
|  |  |  |
| 35 | Retention Moneys on:  (Clause 42.3) | Not applicable |
|  |  |  |
| 36 | Unfixed Plant or Materials—the alternative applying:  (Clause 42.4) | Alternative 2 and an unconditional Bank Guarantee in accordance with Clause 5.3. |
|  |  |  |
| 37 | The rate of interest on overdue payments:  (Clause 42.9) | 5% per annum |
|  |  |  |
| 38 | The delay in giving access of the Site which shall be a substantial breach:  (Clause 44.7) | 3 months beyond date for access of Site |
|  |  |  |
| 39 | The alternative required in proceeding with dispute resolution:  (Clause 47.2) | Alternative 2 |
|  |  |  |
| 40 | The person to nominate an arbitrator | The Chairperson for the time being of the Resolution Institute. |

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART B |

**Deletions, Amendments and Additions**

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# SC1 CONSTRUCTION OF THE SPECIAL CONDITIONS

Clause numbering in these Special Conditions is prefixed with SC and, with the exception of this Special Condition, the construction of the Special Conditions is as follows:

### Where a Special Condition deletes, amends or replaces a Clause of the General Conditions the Special Condition has the same number as the General Condition which it deletes, amends or replaces.

### Special Conditions which are additional to the subject headings in the General Conditions commence from SC49.

### As a consequence of this construction, gaps in the numbering of Special Conditions SC1 to SC48 are intentional.

### A reference to a Clause means a reference to a Clause of the General Conditions (as modified by any Special Condition) unless the reference includes the name of another document.

If there is any inconsistency between the General Conditions and the Special Conditions, the Special Conditions shall prevail.

# SC2 INTERPRETATION

In Clause 2 add or amend, as the case may be, the following definitions:‑

**Approved Program** means the construction program referred to in Clause 33.2 once approved and thereafter as amended and approved;

**Australian Privacy Principles** has the meaning given in the *Privacy Act 1988* (Cth);

**Authority** includes:

### (a) any government in any jurisdiction, whether federal, state, territorial or local;

### (b) any provider of public utility services, whether statutory or not; and

### (c) any other person, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Site or the Works;

**Business Day** has the meaning given in the Security of Payment Act.

**Civil Liability Legislation** means, if the Relevant Jurisdiction is:

(a) Victoria, the *Wrongs Act 1958* (Vic), Part IVAA;

(b) NSW, the *Civil Liability Act 2002* (NSW), Part 4;

(c) South Australia, the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), Part 3; or

(e) Tasmania, the *Civil Liability Act 2002* (Tas), Part 9A.

**Contract** means the agreement between the Principal and the Contractor which shall comprise the documents listed in the Formal Instrument of Agreement or, until a Formal Instrument of Agreement is signed, the documents listed in the written notice of acceptance of tender;

**Contractor** means the Contractor stated in Annexure Part A who is bound to execute the works under the Contract;

**Contract Sum** means the fixed lump sum accepted by the Principal (which is deemed to include, without limitation, all costs, expenses, overheads, profits, fees, taxes (except GST), duties, preliminaries, provisional sums and site and any other allowances) adjusted in accordance with this Contract;

**Date of Acceptance of Tender** means the date which appears on the notice in writing of acceptance of the tender or if there is none, the earliest of the date of the Contract or the date access to the Site is granted by the Principal to the Contractor;

**Discrepancy** means any error, ambiguity, inconsistency, discrepancy or other fault in any document prepared for the purpose of executing the work under the Contract;

**Excepted Risk** means any of the risks referred to in Clause 16.3;

**Legislative Requirements** includes-

(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the 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 Contract;

(c) fees and charges payable in connection with the foregoing; and

(d) any requirement imposed by an Authority;

**Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), and any similar legislation in force from time to time in any State of Territory of Australia;

**OH&S Act** means the occupational or work health and safety legislation operative in the State or Territory the Site is located;

**Practical Completion** is that stage in the execution of the work under the Contract when:

### the Works are complete except for minor omissions and minor defects:

#### which do not prevent the Works from being reasonably capable of being used for their stated purpose;

#### which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and

#### rectification of which will not prejudice the convenient use of the Works;

### those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion, have been carried out and passed;

### all warranties, certificates and performance guarantees have been provided to the Superintendent together with all other documents and other information required under the Contract or which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works have been supplied, including without limitation an Occupancy Permit;

### all rubbish, surplus material and minor items of plant and equipment has been removed from the Site so as to leave the Site in a clean and tidy condition, except for those items which the Superintendent consents in writing to remain on the Site for the purpose of performing work during the Defects Liability Period;

### all services and installations perform as required by the terms of the Contract both under normal operating conditions and under simulated emergency operating conditions and all normal and emergency start up and shut down functions perform in sequence without interruption or malfunction;

### the Works are compliant with the Building Code of Australia and all required construction certificates have been issued, including all fire rating certificates for the Works as specified for various materials and certificates for such other parts of the Works as may be required by any of the Authorities have been provided by the Contractor to the Superintendent;

### all required approvals have been obtained;

### all shop drawings and as built drawings as required by the Contract or requested by the Superintendent have been provided to the Superintendent;

### the originals of all operating and maintenance manuals for all plant and equipment forming part of the Works have been provided to the Superintendent; and

### any other requirements set out in the Contract as a condition precedent to, or a requirement of Practical Completion, have been met;

**Privacy Law** means any law regulating the collection and handling of personal information and includes the *Privacy Act 1988* (Cth)

**Provisional Sums Schedule** means Annexure Part F to the Contract;

**PS Works** has the meaning given in Clause 11;

**Separate Contractor** means any other contractor engaged by or on behalf of the Principal for works in or supply of materials or services to or adjacent to the Site;

**Site** means the land made available to the Contractor by the Principal for the purpose of the Contract as delineated on the Site Plan in Annexure Part H;

**Survey mark** means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract;

**test** includes examine and measure;

**Variation** means any of those actions which the Superintendent is able to direct the Contractor to do pursuant to Clause 40.1 but does not include work or materials not shown in the Contract documents which are necessary to complete or render operable any part of the Works shown in the Contract documents; and

**Work Day Calendar** means the calendar in Annexure Part I.

The last three paragraphs in clause 2 appearing after the NOTE that follows the definition of 'Works', are deleted and replaced with the following:

"**2.2 Interpretation**

* + 1. The clause headings and sub clause headings in the General Conditions of Contract do not form part of the General Conditions of Contract and must not be used in the interpretation of the Contract.
    2. Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
    3. Words importing a gender include every gender.
    4. If any provision of this Contract is deemed to be or becomes void, voidable or unenforceable, it will be read down or, if incapable of being read down, severed and the remaining provisions of this Contract will continue to have full force and effect.
    5. This Contract may not be modified, amended or added to or varied except by a document in writing signed by the parties.
    6. An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any organisations having jurisdiction in connection with the carrying out of the work under the Contract.
    7. A reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph implies that performance of part of an obligation constitutes performance of the obligation.
    8. A reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Contract and a reference to this Contract includes any annexure, exhibit and schedule.
    9. A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
    10. A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
    11. A reference to a party to a document includes that party's successors and permitted assigns.
    12. No provision of this Contract will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Contract or that provision.
    13. A covenant or agreement on the part of two or more persons binds them jointly and severally.
    14. A reference to an agreement other than this Contract includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing.
    15. A reference to a document includes any agreement or contract in writing, or any certificate, notice, instrument or other document of any kind.
    16. A reference to a body, other than a party to this Contract (including an institute, association or Authority), whether statutory or not:
        1. which ceases to exist; or
        2. whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

* + 1. Use of the word 'include' or 'including' is to be read as if followed by '(without limitation)'."

# SC3 NATURE OF CONTRACT

**SC3.3 Adjustment for Actual Quantities – Schedule of Rates**

In Clause 3.3 subclause (b) is deleted and substituted with the following:

“(b) where the Principal accepted a rate for the item, the rate shall apply to the greater or lesser quantities.”

**SC3.4 Rise and fall**

The following Clause 3.4 is inserted:

**3.4 Rise and Fall**

The Contractor acknowledges and agrees that:

1. the Contract and the Contract Sum are not subject to any cost adjustment or rise and fall for any reason including, without limitation:

#### any site allowances, height allowances or industrial agreements;

#### fluctuations in exchange rates; or

#### changes in the cost of labour and materials; and

1. the Contractor is not entitled to make any claim against the Principal and the Principal is not obliged to pay the Contractor any reimbursement for payments which the Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or any other similar employee fund.

# SC4 BILL OF QUANTITIES

Clauses 4.1 to 4.4 are deleted and replaced with the following clause:

**4.1 Purpose of the Bill of Quantities**

The Bill of Quantities and the Priced Bill of Quantities do not form part of this Contract except to the extent that the Priced Bill of Quantities may be used by the Superintendent for:

* + 1. the calculation of Variation prices in accordance with Clause 40.5; and
    2. the valuation of progress claims and progress payments.

The parties agree that any Bill of Quantities or Priced Bill of Quantities provided by the Principal to the Contractor does not and is not intended to define the Works or any part of the Works for any other purposes. No error, inaccuracy or other defect in the Bill of Quantities or Priced Bill of Quantities entitles the Contractor to claim for any extension of time to any Date for Practical Completion or adjustment to the Contract Sum.

# SC4A WARRANTIES

**SC4A Warranties**

A new clause 4A is inserted, as follows:

**4A Warranties**

**4A.1 Contractor's warranties**

Without limiting the generality of Clause 3.1, the Contractor warrants to the Principal that the Contractor:

* + 1. is and at all times will be suitably qualified and experienced, and will perform the work under the Contract with a degree of professional skill, care and diligence expected of a contractor that is an expert in carrying out work of a nature similar to the work under the Contract. the Contractor acknowledges that the Principal has entered into this Contract in reliance upon the Contractor's representation that it has the skill, experience and ability to provide the work under the Contract in accordance with this Clause 4A.1;
    2. subject to Clause 9, will engage and retain subcontractors who are suitably qualified and experienced and will coordinate the activities of subcontractors so that the Works are executed in a proper and workmanlike manner;
    3. will execute and complete the work under the Contract so that the Works, when completed, comply with all the requirements of this Contract and all Legislative Requirements;
    4. has the capacity, power and authority to enter into, perform and complete its obligations under this Contract;
    5. is incorporated, organised and validly existing and in good standing under all applicable laws and has all necessary power and authority to carry on its business as presently conducted and to enter into and perform its obligations under this Contract;
    6. is financially solvent, able to pay its debts as they fall due, and possesses sufficient working capital and financial strength to complete its obligations under this Contract;
    7. is the beneficial owner of, and has good title to, or is otherwise entitled to use, all property, materials and equipment held by it or on its behalf necessary to undertake the work under the Contract;
    8. will not engage in any activity which might reasonably be expected to adversely affect or impair the Contractor's ability to carry out the work under the Contract in an independent and reliable manner; and
    9. has examined all the information obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances which might have an adverse or beneficial effect on the performance of the work under the Contract, the Contractor's responsibilities and obligations under this Contract including the conditions of the Site.

The Contractor represents, warrants and undertakes to the Principal that, to the extent that the Contractor has control over the Principal’s assets, including the Site, it will:

* + 1. take all reasonable steps (having regard to the risks) to prevent unauthorised access, only allow access to those persons who are properly trained and authorised, and report all unauthorised access to the Superintendent as soon as discovered; and
    2. provide safeguards for the protection of the Principal’s assets and of all persons and other property in the course of carrying out the work under the Contract.

**4A.2 Warranties unaffected**

The Contractor acknowledges and agrees that the warranties in Clause 4A.1 remain unaffected notwithstanding any one or more of the following:

### any receipt or review of, or comment or direction by the Principal or the Superintendent on, any document;

* + 1. any Variation under Clause 40; or
    2. any receipt, review, comment, rejection or expression of satisfaction or dissatisfaction by or on behalf of the Principal or the Superintendent whether under the Contract or otherwise with:
       1. any of the Contractor's selection of subcontractors;
       2. any of the Contractor's materials, plant or equipment selections used in the Works; or
       3. the execution of any work under the Contract.

**4A.3 Acknowledgement of reliance**

The Contractor acknowledges and agrees that the Principal:

### has relied on each of the warranties, acknowledgements, agreements and representations given in Clauses 4A.1 and 4A.2; and

* + 1. would not have entered into this Contract but for those warranties, acknowledgements, agreements and representations.

# SC5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

SC5.2 Provision of Security

Clause 5.2 is deleted and the following is substituted:

“If it is provided in Annexure Part A that the Contractor shall provide security then the Contractor shall provide security in the amount stated in Annexure Part A and in accordance with this Clause 5.

Where any security has an expiry date, the Contractor must replace that security at least 2 months' prior to the expiry date being reached if, at that time, the event which triggers the obligation to return that security has not occurred, failing which, the Principal is entitled to have recourse to that security pursuant to clause 5.5 and hold the cash as security. Any replacement security:

### may have an expiry date, provided the expiry date is no earlier than 12 months after the date the replacement security is delivered to the Principal; and

* + 1. must otherwise be no less favourable to the Principal, satisfy the requirements of this clause 5.2 and be for the same value as the security it is replacing."

SC5.3 Form of Security

Clause 5.3 is deleted and the following is substituted:

“The security must be in the form of an unconditional and irrevocable undertaking to pay on demand in the form at Annexure Part C to this Contract or as approved by the Principal and given by a bank licensed under the provisions of the *Banking Act 1959* (as amended) approved by the Principal.

The Principal has discretion to approve or disapprove of the form of an unconditional and irrevocable undertaking and the financial institution giving it.”

SC5.4 Time for Lodgement of Security

Clause 5.4 is deleted and the following is substituted:

“Security must be lodged:

(a) the date that is 14 days after the Date of Acceptance of Tender; or

(b) prior to the commencement of any works on Site by the Contractor,

whichever is the earlier.

The Principal shall not be obliged to make any payment under the Contract until the required security has been lodged by the Contractor.”

SC5.5 Recourse to Retention Moneys and Conversion of Security

Clause 5.5 is deleted and the following is substituted:

"The Principal may have recourse to any of the security to pay for any costs, expenses or damages which the Principal claims that it has incurred or reasonably considers it might in the future incur pursuant to any right of the Principal under or relating to this Contract or as a consequence of any act or omission of the Contractor which the Principal asserts constitutes a breach of this Contract by the Contractor.

The Principal may, at any time, convert into money, security that does not consist of money, whether or not it is then entitled to exercise a right under the Contract in respect of the security.

The Principal is not liable for any loss or damage caused by conversion of the security in accordance with this clause 5.5.

The Contractor covenants with the Principal that it will not institute any proceedings whatsoever or exercise any rights or take any steps to injunct any institution providing any security, or the Principal or in any way to restrain the Principal from exercising its rights relating to any security."

**SC5.6 Substitution of Security for Retention Moneys**

Clause 5.6 is deleted.

SC5.7 Reduction of Security and Retention Moneys

The first paragraph of Clause 5.7 is deleted and the following is substituted:

“Upon the later of 28 days after:

(a) the issue of the Certificate of Practical Completion; or

(b) the provision of all as-built drawings and manuals to the Superintendent; and

(c) the rectification of all defects and omissions in the work under the Contract notified to the Contractor at or prior to the date of the Certificate of Practical Completion has been completed,

the Principal's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in Annexure Part A or, if no percentage is stated, to 50 per cent thereof.”

SC5.8 Release of Security

The second paragraph of Clause 5.8 is deleted.

SC5.9 Interest on Security and Retention Moneys

Clause 5.9 is deleted.

SC5.10 Deed of Guarantee, Undertaking and Substitution

Clause 5.10 is amended as follows:

**5.10 Deed of Guarantee, Undertaking and Substitution**

Where the Contractor is a corporation that is related to or is a subsidiary of another corporation as defined in the *Corporations Act 2001* as amended from time to time the Contractor must, if requested by the Principal or the Superintendent within 14 days of the Date of Acceptance of the Tender provide to the Principal a Deed of Guarantee, Undertaking and Substitution in the form included at Annexure Part D executed by the holding company or such other related corporation or corporation of which the Contractor is a subsidiary as the Principal may require to secure performance of the Contractor’s obligations under the Contract.

For the purpose of this Clause 5.10, the terms `corporation' and `subsidiary' have the meanings defined in the *Corporations Act 2001*.

# SC6 EVIDENCE OF CONTRACT

SC6.2 Formal Instrument of Agreement

Clause 6.2 is deleted and the following substituted:-

“The Contractor must execute the Formal Instrument of Agreement in the manner directed by the Principal forthwith after receiving it and must promptly return it to the Principal.

The Principal is not obliged to make any payment under the Contract until the Formal Instrument of Agreement has been executed and returned to the Principal.”

# SC8 CONTRACT DOCUMENTS

SC8.1 Discrepancies

Amend Clause 8.1 to read as follows:

## 8.1 Discrepancies

The several documents forming the Contract are to be taken as complementary documents and what is required by or contained in one of them shall be as binding as if required or contained in all of them. In the event of inconsistency between the terms and conditions of the Contract documents, the following order of precedence will apply:

A. Formal Instrument of Agreement

B. General Conditions of Contract as amended by the Special Conditions

C. Specifications

D. Drawings

E. All other Contract documents

If either party discovers any Discrepancy in any document prepared for the purpose of executing the work under the Contract, that party shall notify the Superintendent in writing of the Discrepancy. In the event of a Discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work. The Contractor shall not be entitled to any extension of time or adjustment to the Contract Sum or other monetary compensation arising from any Discrepancy in the Contract documents or any direction by the Superintendent under this Clause 8 unless the relevant direction related to a Discrepancy which is an error or fault relating to design and which would prevent the Works, or any part thereof, being constructed and which error or fault would not reasonably have been discovered by a competent contractor, experienced in undertaking work similar to the work under the Contract, had the contractor:

(a) examined all information made available in writing by or on behalf of the Principal to the Contractor for the purposes of tendering;

(b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and

(c) inspected the Site and its surroundings,

and the Contractor is required to undertake additional work as a result of that direction, in which case the Contractor shall, subject to strict compliance with Clause 40.2, be entitled to claim that the Superintendent directed a Variation and, subject to strict compliance with Clause 35.5, be entitled to claim an extension of time to the Date for Practical Completion.

SC8.2 Dimensions

In Clause 8.2 insert the words “save that figured dimensions should be checked prior to the Contractor commencing on Site for Discrepancies when the relevant part of the work commences.” at the end of the paragraph.

SC8.7 Media Releases

Clause 8.7 is amended as follows:

“The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Principal, which approval shall be within the Principal’s sole discretion. The Contractor shall refer to the Principal any enquiries concerning the Works or the work under the Contract from any media.”

**SC8.8 Privacy**

A new Clause 8.8 is inserted as follows:

The Contractor:

(a) agrees to be bound by and must comply with, and must ensure that its subcontractors are bound by and comply with, the Australian Privacy Principles and all relevant Privacy Laws with respect to any act done, or practice engaged in, by the Contractor or its subcontractors in connection with the Contract or the work under the Contract; and

(b) releases the Principal from any claim, and must indemnify the Principal on demand from and against any claim, loss or liability (including any claim made by or liability to a third party) suffered or incurred by the Principal, arising out of or in connection with any act done or practice engaged in by the Contractor or any of its subcontractors in connection with the Contract or the work under the Contract which contravenes one or more of the Australian Privacy Principles or any relevant Privacy Law."

**SC8.9 Copy of documents**

A new Clause 8.9 is inserted as follows:

**8.9 Copy of documents**

The Contractor must, upon receipt of a request from the Superintendent or Principal, provide a copy of all electronic documents and data files transferred to or from the Superintendent or the Principal (whether by email, Aconex or other document management system) relevant to the work under the Contract, on a CD Rom or USB storage device."

# SC9 ASSIGNMENT AND SUBCONTRACTING

SC9.1 Assignment

Clause 9.1 is amended to read as follows:

“The Contractor must not, without the prior written approval of the Principal and except on such terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or any other right or benefit or interest thereunder.”

SC9.2 Subcontracting

Clause 9.2 is deleted and replaced with the following new Clause 9.2:

“For the purposes of this Clause 9.2:

‘Subcontract’ means a contract between the Contractor and a third party whereby the third party (in this Clause called the "**Subcontractor**") agrees to perform work comprising part of the work under the Contract; and

‘Secondary Subcontract’ means a subcontract between the Subcontractor and a subcontractor to the Subcontractor.

The Contractor must not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a Subcontractor to assign or enter into a Secondary Subcontract for any of the work under the Contract where the amount payable under that contract exceeds the lesser of:

(a) the sum of $50,000; or

(b) 10% of the Contract Sum.

With a request for approval, the Contractor shall provide to the Superintendent:

(i) particulars in writing of the work to be subcontracted and the name and the address of the proposed Subcontractor;

(ii) written confirmation, where the proposed subcontract sum for the particular work is greater than $20,000, that the proposed subcontract conditions incorporate AS2545-1993 Subcontract Conditions and contain no amendments to those subcontract conditions other than those necessary to reflect the Main Contract General Conditions of Contract;

(iii) a written warranty, the breach of which shall be deemed to be a substantial breach of contract for the purposes of Clause 44.2 of these General Conditions of Contract, that the Subcontract will be entered into in accordance with the requirements of this Clause 9.2; and

(iv) any other information which the Superintendent reasonably requests, including the proposed Subcontract documents without prices.

Within 14 days after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the Subcontract including:

(A) a provision that the Subcontractor shall not assign or enter into a Secondary Subcontract for any of the work under the Contract without the consent in writing of the Contractor; and

(B) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.

SC9.3 Contractor’s Responsibility

In Clause 9.3 delete the words "Except where the Contract otherwise provides" in line 2 of the paragraph.

# SC11 PROVISIONAL SUMS

Clause 11 is deleted in its entirety and the following inserted:-

## 11.1 Contract Sum

(a) Provisional sums included in the Contract Sum are not payable to the Contractor by the Principal except in accordance with this Clause 11.

(b) The Superintendent may by instruction in writing add provisional sums(s) to the Provisional Sum Schedule in respect of work the Superintendent wishes to have undertaken and completed under this Clause 11. Any such additions shall, if the Contractor is instructed to proceed with the work the subject of the provisional sum, be deemed to be a variation under Clause 40.

## 11.2 Instruction to Contractor

(a) The Superintendent may instruct the Contractor to call for tenders, accept any tender received and/or proceed with the work the subject of any provisional sum.

(b) The Contractor shall, if it has any role in the design, report periodically as required by the Superintendent during the design of any work the subject of a provisional sum as to progress, compliance with budgets and as otherwise reasonably required by the Superintendent.

## 11.3 Instruction and process

If the Superintendent instructs the Contractor to call for tenders in respect of the works the subject of a provisional sum (in this Clause the “**PS Works**”):

(a) the Contractor shall prepare and assemble all the documents and information necessary and desirable for tenders to be called (in this Clause the “**Tender Package**”) and, submit the Tender Package to the Superintendent for its consideration and approval. The Tender Package shall be prepared in accordance with the requirements of the Specification, including without limitation the exclusion and inclusion of specified preliminaries referrable to the PS Works. The Tender Package shall include AS2545 - 1993 as the General Conditions of Subcontract and may include special conditions consistent with the General Conditions of this Contract and such other terms as the Superintendent may require due to, among other things, the special nature of the PS Works and the quality of works required;

(b) the Superintendent shall inform the Contractor of the changes, if any, required and the Contractor shall amend the Tender Package accordingly;

(c) the Contractor shall upon request by the Superintendent nominate 4, or such lesser number as the Superintendent may allow, proposed tenderers for the PS Works for the approval of the Superintendent, such approval to be in the absolute discretion of the Superintendent. The Superintendent shall be entitled to nominate such further tenderers as it considers desirable for the approval of the Contractor, such approval not to be unreasonably withheld;

(d) if the Superintendent so directs the Contractor shall invite tenders from the approved and nominated tenderers on the terms of the Tender Package;

(e) the Contractor and the Superintendent shall jointly review the tenders, the Contractor shall make recommendations to the Superintendent as to the acceptance of a tender to which the Superintendent shall pay due regard and the Superintendent will decide whether any tender and if so which tender shall be accepted by the Contractor and direct the Contractor accordingly;

(f) if, the Superintendent directs the Contractor to accept a tender the amount payable to the subcontractor shall become payable to the Contractor as part of the Contract Sum and the Contract Sum shall be adjusted accordingly on the basis of:

(i) the allowance included in the Contract Sum for the PS Works; and

(ii) any subsequent adjustments which should be made to the amount payable to the Contractor;

but disregarding any damages which may be payable by the Contractor to the subcontractor or vice versa.

## 11.4 Work and materials

Where the work and materials the subject of a provisional sum is performed and supplied by the Contractor and not the subject of a direction under Clause 11.3 the work and materials shall subject to Clause 11.7 be valued under Clause 40.5.

## 11.5 Subcontractors

Where the work and materials the subject of the provisional sum is performed or supplied by a subcontractor the Principal shall pay to the Contractor the amount payable to the subcontractor for the work and materials disregarding any damages payable by the Contractor to the subcontractor or vice versa.

## 11.6 Net cost

The amount payable to a subcontractor for work and materials is to be taken to be the net cost to the Contractor disregarding any deduction of any discount for early or prompt payment.

## 11.7 Contractor acknowledgments

The Contractor acknowledges:

(a) that the Contract Sum includes allowances for its Preliminaries, overheads, profit and attendance in respect of all provisional sums set out in the Provisional Sum Schedule and no additional amount shall be allowed by way of adjustment to the Contract Sum;

(b) that on the information available at the Date of Acceptance of Tender the provisional sums were adequate for the works the subject of these sums; and

(c) that the times and other allowances set out in the Approved Program detail the necessary steps for the letting and completion of PS Works and are appropriate and adequate.

## 11.8 Net increases

The Contractor shall be entitled to the percentage specified in the Annexure for profit, overhead and preliminaries in respect of any net increases in the aggregate of cost of the PS Works.

**11.9 Separate Contractors**

The Contractor acknowledges that the Principal shall not be obliged to instruct the Contractor to carry out any PS Works and shall be entitled to:

(a) have those Works carried out by a Separate Contractor;

(b) delete those Works; or

(c) postpone indefinitely any PS Works.

# SC12 PROJECT CONDITIONS

Clause 12 is deleted in its entirety and the following clauses inserted:

**12.1 Knowledge of Site Conditions**

The Contractor is deemed to have:‑

### inspected the Site and other associated work areas to ascertain the extent of the Site and its surroundings and the site conditions, and as far as practical, the existing buildings and their surroundings;

### examined all information and documentation made available to it by the Principal or its agents for the purposes of tendering;

### examined all physical, sub-surface, meteorological and water conditions at the Site including bench levels and surface preparation of the Site;

### made itself aware of all:

#### existing services (to the extent it is reasonably able to do so applying the requirements of Clauses 12.3(a)(i), 12.3(a)(ii) and 12.3(a)(iii)) and required temporary and future services and all requirements for the installation and delivery of services and systems to the Site;

#### physical and structural conditions above, upon, below and adjacent to the Site including any partially completed structures or in ground works;

#### climatic and weather conditions, rain, surface water, run-off and draining, water seepage, wind blown dust and sand, and seasons;

#### all existing systems and services (to the extent it is reasonably able to do so applying the requirements of Clause 12.3(a)(i), 12.3(a)(ii) and 12.3(a)(iii)), above or below ground level and the location of all facilities with which such systems and services are connected;

### obtained all information relevant to the risks, contingencies and other circumstances which could affect the Contract and which is obtainable by making enquiries;

### ascertained as far as practicable the nature of the Works and materials necessary for the execution of the Works under the Contract, the means of access to and facilities at the Site and transport deliveries to the Site; and

### made itself aware of all other information relevant to the execution of the Works or any matter which may in any way effect the performance of the Contractor under the Contract.

**12.2** **Risk**

### Subject to Clause 12.3:

### (a) failure of the Contractor to do all or any of the matters referred to in Clause 12.1 will not relieve the Contractor of the liability to perform all the obligations stated, inferred or otherwise under the Contract and the Contractor shall not be entitled to any increase in the Contract Sum, an extension of time or compensation for any risks or expenses arising out of any of the matters referred to in Clause 12.1;

### (b) the Contractor accepts sole responsibility for and assumes the risk of all increased costs, losses and expenses arising out of the physical conditions and characteristics of the Site and its surroundings encountered in the execution of the Works; and

### (c) the Principal is not liable in contract, tort, breach of statutory duty or otherwise for any costs, loss, expense or damage suffered or incurred by the Contractor whether arising by the negligence of the Principal, Superintendent, its servants, consultants, agents or otherwise howsoever caused arising out of or in connection with the provision of or lack of provision of information to the Contractor.

## 12.3 Additional costs due to Latent Conditions

### (a) In this Clause 12.3 “Latent Condition” is:

the presence of existing services, asbestos, hazardous waste and contamination, which differ materially from the physical or site conditions which should reasonably have been anticipated by the Contractor as at the date of execution of this Contract if the Contractor had:

#### examined all information made available in writing by the Principal to the Contractor for the purpose of tendering;

#### examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and

#### inspected the Site and its surroundings in accordance with Clause 12.1.

(b) If the Contractor becomes aware of a Latent Condition, the Contractor shall promptly and where possible before the Latent Condition is disturbed, give written notice thereof to the Superintendent. The notice provided by the Contractor shall specify:

#### the Latent Condition encountered and in what respects it differs materially;

#### the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;

#### the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;

#### the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and

#### other details reasonably required by the Superintendent.

### (c) If a Latent Condition causes the Contractor to:

#### carry out more work;

#### use more Constructional Plant; or

#### incur more cost (excluding extra costs for delay or disruption),

### than the Contractor could reasonably have anticipated at the dated of execution of this Contract, a valuation shall be made under Clause 40.5 and subject to strict compliance with this Clause 12.3 and Clause 35.5, the Contractor shall be entitled to an extension of time.

### (d) Where pursuant to this Clause 12.3 a valuation is to be made under Clause 40.5, regard shall not be had to the value of more work carried out, more Constructional Plant used or more cost incurred earlier than the date on which the Contractor gives the written notice required by Clause 12.3(b), and the Contractor shall not be entitled to any costs for delay or disruption.

## 12.4 Action with Asbestos

(a) This Clause 12.4 shall not apply to any AoS Material which is or may be encountered as part of the Works which is required to be removed as part of the Works or is otherwise dealt with the Contract.

(b) If the Contractor encounters material which contains or may contain asbestos or synthetic mineral fibres (“**AoS Material**”) in the execution of the Works it shall forthwith stop work in proximity of the AoS Material and give verbal notice to the Superintendent such notice to be confirmed in writing by the Contractor as soon as practicable thereafter.

(c) The Contractor shall engage an appropriately qualified and experienced industrial hygienist to inspect, report promptly on the AoS Material and recommend an appropriate course of action. Unless otherwise directed by the Superintendent the Contractor shall adopt and implement any recommendation of the industrial hygienist contained in the written report of the industrial hygienist. The Superintendent shall be kept informed of all developments and be provided with a copy of any report.

(d) The Contractor will follow the Superintendent’s directions, provide any assistance requested, redeploy resources that were working in proximity to the AoS Material and use its best endeavours to avoid any delay to the progress of the Works due to encountering AoS Material.

(e) The parties agree that AoS Material, provided the requirements of clause 12.3 have otherwise been satisfied, is a Latent Condition and that the Contractor may seek an extension of time and increase in the Contract Sum in accordance with Clause 12.3 if it encounters AoS Material.

# SC14 LEGISLATIVE REQUIREMENTS

SC14.1 Complying with Legislative Requirements

Clause 14.1 is deleted and substituted with the following:

“The Contractor must satisfy all Legislative Requirements. If a Legislative Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor must notify the Superintendent in writing specifying the difference.

Except to the extent that the Contract provides for reimbursement in respect of a Legislative Requirement under Clause 14.2, the Contractor must bear the cost of complying with the Legislative Requirement, whether the requirement existed at the time of tendering or not.”

SC14.2 Changes in Legislative Requirements

Clause 14.2 is deleted and substituted with the following:

“If a Legislative Requirement-

(a) necessitates a significant change to the cost of the Works and/or has a significant impact on the Approved Program;

(b) has effect after the 14th day prior to the date of closing of tenders; and

(c) could not reasonably have been anticipated at that prior date,

then to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 40.5.”

SC14.3 Notices and Fees

In Clause 14.3 the words “Subject to Clause 14.2,” are inserted at the start of paragraph 4.

SC14.5 Personal Property Security Act 2009 (Cth)

* + 1. In this clause 14.5, capitalised expressions have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (“**PPSA**”).
    2. The Contractor acknowledges and agrees that, by entering into this Contract, the Contractor grants to the Principal a Security Interest in any item of unfixed plant and materials for which the Contractor seeks and/or receives any payment from the Principal prior to their incorporation into the Works including any such item of unfixed plant and/or materials acquired by, or which comes into the possession or control of, the Contractor after the date of the Contract.
    3. The Contractor consents to the Principal registering any one or more Financing Statements or Financing Change Statements in respect of any Security Interest created by or contemplated under this Contract, and undertakes to do all things reasonably required by the Principal to enable the Principal to do so.
    4. The Contractor must promptly do anything required by the Principal to ensure that any Security Interest granted to the Principal is a perfected Security Interest and must ensure that:
       1. all prior Security Interests in any such item of unfixed plant and equipment are discharged promptly upon payment by the Principal of the amount claimed for them; and
       2. any further Security Interest will only arise in respect of the item if it is approved in writing by the Principal, is solely for the purpose of ongoing manufacture or improvement off-site, and will be subordinated to the Security Interest of the Principal to the extent of all payments made by the Principal for the unfixed plant or materials.
    5. The Contractor agrees not to cause (directly or indirectly) the registration of a Financing Change Statement, or the discharge of any registration of a Security Interest under this clause 14.6 in respect of any item of unfixed plant and/or material or to make any Amendment Demand without the Principal’s prior written consent. If, in breach of this clause 14.6(e), the Contractor has sought to perfect under the PPSA a Security Interest in any item of unfixed plant and/or material, the Contractor must take all steps as necessary to reverse the perfection of the Security Interest.
    6. To the extent permitted by law, the parties agree that the following provisions of the PPSA will not apply to this Contract: section 95 (notice of removal of accession); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

# SC15 PROTECTION OF PEOPLE AND PROPERTY

The following paragraph is added as the final paragraph of Clause 15:

“The Contractor shall ensure that all construction activities relating to the Works are carried out so that the impact upon the surrounding environment is minimised and that all Legislative Requirements which could be reasonably anticipated by the Contractor are complied with. These requirements include that noise and dust shall be minimised.

The Contractor shall so far as is practicable ensure that in connection with the execution of the work under the Contract the Principal does not become liable in connection with any environmental pollution or like matter and the Contractor shall, to the extent permitted by law, indemnify the Principal in respect of any such liability or any allegation thereof and associated costs, losses or expenses.”

# SC16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

SC16.2 Reinstatement

In Clause 16.2 the following words at the end of the paragraph are deleted “promptly make good the loss or damage” and the following substituted:

“rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract. The Contractor must comply with any direction from the Superintendent to rectify loss or damage, even if the Contractor disputes its obligation to rectify the loss or damage (but such compliance does not compromise the Contractor's entitlement to claim a variation if it successfully disputes its obligation to rectify the loss or damage).

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall, if and to the extent directed by the Superintendent, rectify the loss or damage, which shall be deemed to be a variation under Clause 40.5. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.”

# SC17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

In Clause 17.1 the following words are inserted after the word “Contractor” in sub-paragraph 17.1(iii):

“(or any of its servants, agents or subcontractors)”

Clause 17.2 is deleted.

A new Clause 17.3 is inserted as follows:

"**17.3 Indemnity ongoing**

Each indemnity given by the Contractor under this Contract is a continuing obligation, separate and independent from the other obligations of the Contractor under this Contract and will survive termination or expiry of this Contract."

# SC18A ADDITIONAL INSURANCE REQUIREMENTS

The following Clause 18A is inserted:

**“18A Additional Insurance Requirements**

Nothing in Clause 21.5 operates to require the Principal to instruct the Contractor to proceed to reinstate the loss or damage.

The Contractor shall ensure that each policy of insurance effected by the Contractor includes a provision that the failure by any person comprising the insured to observe and fulfil the terms of the policy shall not prejudice the insurance in regard to any other insured under the policy.

The Contractor must at all times fully co‑operate with the Principal in pursuing recovery of any insurance claim. This may include the provision of reports, information and other matters required by the Principal from time to time.

The Contractor must ensure that, prior to any subcontractor commencing the Works, that subcontractor (and any of its subcontractors) has in place a public liability policy:

(a) in the joint names of the subcontractor and the parties to this Contract; and

(b) otherwise on the same terms as the public liability policy described in clauses 19 and this 18A.”

# SC21 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

SC21.1 Proof of Insurance

In Clause 21.1 the following paragraph is added at the end of the clause:

“The Principal shall not be obliged to make any payment under the Contract until evidence to the satisfaction of the Superintendent of the necessary insurances effected is provided.”

SC21.5 Settlement of Claim

In Clause 21.5, subclause (a) is deleted and the following substituted:

“(a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall be paid to the Principal. As the Contractor proceeds to reinstate the loss or damage, the Superintendent shall certify the cost of reinstatement from the Principal; and”

In subparagraph (b) the following words are inserted after “Contractor” in line 4:

“as quantified by the Superintendent”.

# SC23 SUPERINTENDENT

Clause 23 is deleted and the following substituted:

“(a) The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent:

(i) acts honestly and fairly;

(ii) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time; and

(iii) arrives at a reasonable measure or value of work, quantities or time.

(b) The Contractor acknowledges and agrees that except where the terms of the Contract require the Superintendent is to act as an independent certifier, valuer or assessor, the Superintendent acts as the representative of the Principal.

(c) If, pursuant to a provision of the Contract enabling the Superintendent to give directions, the Superintendent gives a direction, the Contractor shall comply with the direction. Except where the Contract otherwise provides, a direction may be given orally but the Superintendent shall, if requested by the Contractor, as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall be bound to comply with the direction and the Superintendent shall promptly confirm it in writing.

(d) The Superintendent shall have:

(i) access to the Site and the work under the Contract; and

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

for the purposes of discharging the functions of the Superintendent under the Contract.

(e) Neither the Superintendent nor the Principal assumes any responsibility or duty of care to the Contractor to manage the construction process or to coordinate or integrate that process in respect of the Works.”

# SC25A KEY PERSONNEL

The following clause is inserted:

“**25A Personnel**

**25A.1 Key Personnel**

The Contractor has as part of its tender provided the Superintendent with a list of the Contractor’s key personnel to be engaged on the work under the Contract (being those persons referred to in Annexure Part E together with a summary of experience or the curriculum vitae of each such person). In respect thereof:

(a) the Contractor shall maintain the same team of personnel throughout the execution of the work under the Contract;

(b) no key personnel shall be replaced during the continuance of this Contract unless:

(i) the Superintendent approves the substitute;

(ii) an instruction is given by the Superintendent pursuant to Clause 26;

(iii) that person dies, retires or resigns (other than to accept other employment with the Contractor or any associate of the Contractor) or otherwise suffers from ill health or some serious domestic problem; or

(iv) that person’s section of the work under the Contract has been completed;

(c) any vacancy of key personnel shall be promptly filled by the Contractor with a person approved by the Superintendent;

* + 1. The Contractor must ensure that all persons involved in carrying out the work under the Contract:
       1. are adequately trained and are competent to carry out their duties in relation to the work under the Contract;
       2. act in a professional and safe manner at all times and are dressed in neat and tidy work clothes appropriate to the work environment;
       3. if required by the Superintendent, display on their person an identity card which contains their photograph, their name, and the Contractor's logo; and
       4. are provided with the tools and equipment required to complete the work under the Contract in a safe and timely manner; and
    2. The Contractor will provide any relevant information relating to the Contractor’s personnel which may be requested by the Superintendent or the Principal.

**25A.2 Removal of personnel**

The Contractor must if so directed by the Superintendent remove any person or persons from the Site if the Superintendent considers that person or persons to be a danger to or offensive to the Principal’s staff, students, invitees, visitors or the Works or any property of the Principal or any of the Principal’s staff, students, invitees or visitors.”

# SC27 SITE

SC27.1 Access to Site

In Clause 27.1 the words “possession of” are deleted and replaced with the words “access to” wherever they appear.

The following paragraph is inserted at the end of the Clause:

“The Contractor acknowledges that Separate Contractors may be carrying out works on the Site concurrently with performance of the work under the Contract.”

SC27.2 Access for the Principal and Others

In Clause 27.2 the second, third and fifth paragraphs are deleted and the following is inserted at the end of the Clause:

“The Contractor:-

(a) shall permit the execution of work on the Site by Separate Contractors and shall co-operate with them and coordinate the Contractor’s work with their work;

(b) shall not unreasonably interfere with the Separate Contractors in the performance of the Separate Contractor’s work; and

(c) shall facilitate the execution of work by Separate Contractors, including by making available facilities which are otherwise on the Site or used by the Contractor to the Separate Contractors and as further provided in the Specification.

The Principal shall endeavour to ensure that the Contractor’s reasonable requirements in respect of Separate Contractors are implemented. If requested by the Contractor, the Principal shall provide to the Contractor the names of the Separate Contractors engaged by the Principal.

The Contractor shall also permit any Authority to access the Site at any time.”

SC27.6 Security and Safety

Clause 27.6 is inserted as follows:

“The Contractor must ensure that all areas of the Site where works are being undertaken are secure and adequately protected from unauthorised personnel during the construction work. “

SC27.7 Access Restrictions

Clause 27.7 is inserted as follows:

“The Contractor shall limit all access for people and vehicles to the parts of the Site where works are being undertaken, to specific routes and access roads nominated by the Superintendent at the time the Contractor is given access to the relevant part of the Site.”

# SC28 SETTING OUT THE WORKS

SC28.1 Setting out

In Clause 28.1 the following is inserted at the end of the paragraph:

“The Contractor expressly acknowledges that the Contract Sum includes all set out costs.”

SC28.3 Errors in Setting out

In Clause 28.3 the words “at its cost” is inserted at the end of the first paragraph.

Paragraph 2 is deleted.

# SC29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

SC29.1 Provision of Materials, Labour and Constructional Plant

The following is inserted at the end of the clause:

“…., including without limitation, all scaffolding, materials handling equipment, hoists, cranes and similar equipment.”

# SC30 MATERIALS AND WORK

SC30.1 Quality of Materials and Work

Delete the text of Clause 30.1 and substitute the following:

“The Contractor shall execute and complete the Works as follows:

(a) in accordance with the provisions of this Contract;

(b) in a proper and workmanlike manner, ensuring that the standard and quality of workmanship and materials to be incorporated in the Works are at least of the standard and quality specified in the drawings and specifications;

(c) in the absence of any other express provision in this Contract, any material or standard of workmanship, as the case may be, shall be a kind which is both suitable for its purpose and consistent with the nature and character of that part of the Works in which it is to be used;

(d) any materials not otherwise specified shall be first quality and new;

(e) in the absence of any standard being specified, the Works shall comply with the relevant standard of the Standards Association of Australia;

(f) adopting best practices of the respective trades relevant to the carrying out of the Works;

(g) in a safe manner including without limitation in accordance with the requirements of the OH&S Act; and

(h) where the work includes design, development or completion of the design of part of the Works, a performance specification or any combination of these, the Contractor shall:

(i) exercise skill, care and diligence to the standard expected of a specialist engineer or consultant as the case may be providing design services in Australia of a similar nature in respect of projects comparable to the Works;

(ii) ensure that the relevant parts of the Works, when constructed, are functional, fit for their stated purpose and comply with the intent of the Contract documents; and

(iii) ensure that the work has been certified or warranted as complying with the Contract requirements by the designer who must have appropriate qualifications and/or experience.”

# SC33 PROGRESS AND PROGRAMMING OF THE WORKS

SC33.1 Rate of Progress

The following is inserted immediately before the last paragraph of Clause 33.1:

“The Contractor must forthwith, and in any event within 7 days after a direction being given, provide the Superintendent with the particulars of the Contractor’s additional costs that will be incurred as a result of the direction (if any).”

SC33.2 Construction Program

Clause 33.2 is deleted and the following substituted:

### Within 14 days after the Date of Acceptance of Tender or the granting by the Principal to the Contractor of access to the Site to commence the Works whichever is earlier, the Contractor shall submit to the Superintendent for its approval a comprehensive construction program, in both hard-copy and electronic form (such electronic form to be able to be manipulated through the use of MS Project, or such other software program as the Superintendent shall determine), such approval not to be unreasonably withheld. In order to be approved, the construction program shall:

#### be derived from a critical path network analysis,

#### be presented in the form of a time scaled bar chart, and

#### show for each activity the activity name, code number, duration, early start and finish dates, late start and finish dates, float and predecessor activities.

#### The network analysis shall:

#### indicate all the logic dependencies between activities, off Site activities, commissioning, submissions, approvals from authorities, and order manufacture and delivery of materials and essential plant;

#### include all steps which may be required of the Superintendent and/or the Principal in respect of the Works and shall be such that the contract intention and sequence are clearly defined; and

#### include without limitation the earliest and latest start dates for PS Works.

#### The construction program shall show the sequence of activities which constitute the critical path.

### If the Superintendent considers that any part of a construction program submitted pursuant to Clause 33.2(a) or the Approved Program is unsatisfactory or requires amendment or updating the Contractor must provide an amended construction program within seven days of being requested to do so by the Superintendent or such additional time as the Superintendent may allow.

### The Principal is not obliged to make any payment under the Contract until the Contractor provides an Approved Program in accordance with this Clause 33.2.

### The furnishing of the construction program or of a revised construction program or any approval of same, shall not relieve the Contractor of any obligation under the Contract, including the obligation to refrain from departing from any earlier Approved Program without reasonable cause.

### Notwithstanding this Clause 33 and the review or approval of any construction program or part thereof submitted to the Superintendent, the Contractor remains responsible for all construction means, methods, techniques, sequences and procedures employed in and about the execution of the Works.

### If the Contractor fails to submit and obtain the approval of the Superintendent to a construction program whether pursuant to Clause 33.2(a) or Clause 33.2(b) and the failure continues for any reason for a continuous period exceeding 21 days after request by the Principal pursuant to this Clause 33.2 to provide or revise the construction program, the Principal shall be entitled to withhold payment of monies which but for this clause would have been due and payable.

### The Works are to be executed according to the latest Approved Program. The Contractor shall be entitled to advance execution but shall notify the Superintendent in writing of any proposed change to the Approved Program.

### The Contractor shall provide a calendar relating work day numbers to calendar dates after accounting for holidays and work days per week.”

SC33.3 Four Weekly Program

Add a new Clause 33.3 as follows:

**“33.3 Four weekly program**

### (a) The detailed progress of work under the Contract must be controlled by four weekly programs (**4-week program**), which must show in detail where work is to be carried out on a day to day basis. The 4-week program must be based on the Approved Program and form the basis of a daily control of site labour and subcontractors to achieve the Approved Program objectives and must be revised by the Contractor at the end of the third week of each 4-weekly period.

### (b) For ongoing work of a repetitive nature, each 4-week program must be accompanied with a report in graph format as approved by the Superintendent which provides appropriate monitors of construction progress together with trend graphs prepared to show planned progress by the Contractor against time.

### (c) The Contractor must submit three copies and an electronic copy of the initial 4-week program and of each of the revised 4-week programs to the Superintendent or number of copies agreed between the Superintendent and the Contractor.”

SC33.4 Reporting

Add a new Clause 33.4 as follows:

**“33.4 Reporting**

(a)The Contractor's progress with the Works shall be reported upon monthly by the Contractor to the Superintendent. These reports will compare actual progress of the work under the Contract against the Contractor’s Program and will be presented in a form acceptable to the Superintendent.

(b) The Contractor shall submit program status reports to the Superintendent in a form satisfactory to the Superintendent monthly, including:

(i) for each critical activity set out in the Approved Program, the original completion time, current status in terms of working days behind or ahead of the Approved Program together with percentage of the Works complete;

(ii) total time elapsed, original completion duration time and Date for Practical Completion of Separable Portions; and

(iii) a summary of the time lost during the preceding month, together with the cumulative time lost during the Contract. The summary shall include reasons for the lost time, and whether an entitlement to an extension of time arises and has been claimed pursuant to Clause 35.5 or not.

(c) The Contractor shall provide the Superintendent with 4 copies of progressive photographic evidence of the progress of the work under the Contract monthly if requested.

(d) The Approved Program shall be revised by the Contractor as required by the Superintendent, but not more often than on a monthly basis, to incorporate those matters referred to in the Approved Program in the same level of detail, and shall reflect the following matters (if applicable):

(i) any change in scope of the works under the Contract;

(ii) any change in the Contractor's sequence of the execution of the Works;

(iii) methods (if available) by which the Contractor proposes to complete the Works by the Date for Practical Completion when the program status reports submitted pursuant to Clause 33.4(b) demonstrate delays in progress of the works under the Contract; and

(iv) any extensions of time for Practical Completion of the Works given by the Superintendent.”

# SC34 SUSPENSION OF THE WORKS

SC34.4 Cost of Suspension

In Clause 34.4 insert the words “solely” in the second line after “suspension is” and delete the words “the Superintendent” before the words “…or an employee,”.

Insert the following at the end of the clause:

“The difference referred to in the preceding paragraph must be added to or deducted from the Contract Sum, as the case may be, provided that the Contractor is not entitled to any adjustment to the Contract Sum unless:‑

(a) the order to suspend the Works is in writing and specifically identified as a “**Suspension Order**”;

(b) the Contractor immediately upon receipt of the Suspension Order advises the Superintendent in writing what additional costs will be incurred by the Contractor and their likely quantum; and

(c) the Contractor’s claim for the additional costs clearly demonstrates:

(i) that the costs incurred are direct costs, are reasonable and are substantiated by reference to accurate daily records and such other information as the Superintendent reasonably requires; and

(ii) that the costs which would not otherwise have been incurred are substantiated by reference to any estimates for the work included in the Contractor’s tendered price or rates.”

# SC35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

SC35.4 Use of Partly Completed Works And Creating Additional Separable Portions

In Clause 35.4 the words “and Creating Additional Separable Portions" are inserted into the heading and the following paragraph is inserted at the start of the Clause:

“The Superintendent may at any time prior to the Date for Practical Completion determine that parts of the Works shall comprise Separable Portions or additional Separable Portions (as the case may be). The Superintendent must determine a reasonable time for Practical Completion of any such Separable Portion, notify the Contractor of the nature and extent of any such Separable Portion, the time for Practical Completion of any such Separable Portion and apportion the liquidated damages payable under the Contract by reference to the value of the Works comprised in the Separable Portion.”

SC35.5 Extension of Time for Practical Completion

Clause 35.5 is deleted and the following is substituted:

“(a) The Contractor must take all proper steps to prevent delay to the progress of the Works or any Separable Portion and take all proper and reasonable steps to preclude the occurrence of delay and to minimise or avoid the consequences thereof.

(b) If it becomes evident to the Contractor that anything, including an act or omission of the Principal, an employee or agent of the Principal may delay the work under the Contract, the Contractor shall immediately and in any event within 7 days notify the Superintendent in writing with details of the possible delay and its cause.

(c) If the progress of the Works or any Separable Portion is delayed and the Contractor is or will be delayed in reaching Practical Completion due to:

(i) any act, default or omission by the Principal, an employee or agent of the Principal or a Separate Contractor, other than any such act or omission which the Principal or Separate Contractor is permitted to take (or not take) under this Contract;

(ii) variations instructed by the Superintendent or a direction to suspend the Contractor’s performance under Clause 34 provided that the instruction or direction was not rendered necessary by an act, default or omission of the Contractor;

(iii) any State-wide industrial dispute which:

(A) did not originate at the Site or another site controlled by the Contractor or an associate of the Contractor; or

(B) is not directly or indirectly caused or contributed to by the Contractor;

(iv) a change in a Legislative Requirement which satisfies the criteria in Clause 14.2; or

(v) a Latent Condition which satisfies the criteria in Clause 12.3,

the Contractor shall, subject to strict compliance with this Clause 35.5, be entitled to a reasonable extension of the Date for Practical Completion of the Works or any Separable Portion which is delayed.

(d) If the Contractor wishes to claim an extension of time it must give written notice of the claim to the Superintendent within 10 days after the cause of the delay commences to operate or arose. If the delay exceeds 14 days the Contractor must provide a further notice every 14 days until the delay ceases to operate. Any notice under this Clause 35.5 must contain comprehensive details of each of the following:

(i) the extension of time claimed;

(ii) the cause of the delay and its effect on the Approved Program and any applicable Separable Portion, including by provision of a status critical path network program, in electronic form and capable of being manipulated by using software approved by the Superintendent under Clause 33.2(a), showing the current progress of the work under the Contract without the effect of the delay and separately a version of the current Approved Program, in electronic form and capable of being manipulated by using software approved by the Superintendent under Clause 33.2(a), showing the effect of the delay;

(iii) the steps the Contractor has taken to minimise the delay; and

(iv) any practical options or courses of action which the Contractor acting reasonably considers are or may be desirable and available to the Principal to avoid or minimise the delay, including ones which may involve the expenditure of moneys by the Principal.

(e) As soon as practicable after receipt of the claim pursuant to Clause 35.5(d) the Superintendent will advise the Contractor of:

(i) what extension of time, if any, it has granted; or

(ii) the further information the Superintendent requires in order to determine the extension of time, if any, which may be granted.

In determining a reasonable extension of time for an event causing delay the Superintendent shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay and the extension of time shall be reduced to the extent that the delay has been extended by any failure by the Contractor to take reasonable steps to minimise the delay.

(f) It is a condition precedent to the granting of an extension of time that:

(i) the Contractor has served upon the Superintendent any notice or notices required to be given by the Contractor pursuant to this Clause 35.5 within the respective times required;

(ii) the delay claimed affects the critical path of the progress of the Works;

(iii) in the reasonable opinion of the Superintendent, the Contractor will actually be delayed in achieving Practical Completion of the Works by the Date for Practical Completion; and

(iv) the Contractor must demonstrate, by reference to the Approved Program, the methods used to avoid or minimise delay, including the allocation of the Contractor’s resources, rescheduling, resequencing, reprogramming but not acceleration.

(g) Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in paragraph (c), then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

(h) Notwithstanding that the Contractor has not claimed an extension of time, the Superintendent with the prior approval in writing of the Principal may at any time before the issue of the Final Payment Certificate by notice in writing to the Contractor extend the Date for Practical Completion of the Works or any Separable Portion for any reason. The Superintendent is not obliged to exercise this Clause for the benefit of the Contractor.”

**SC35.6 Liquidated Damages for Delay in Reaching Practical Completion**

Clause 35.6 is amended by the insertion of the following paragraph at the end of Clause 35.6:

“If there are Separable Portions, the liquidated damages payable in respect of each Separable Portion shall be cumulative.”

**SC35.7 Limit on Liquidated Damages**

Delete this Clause 35.7.

**SC35.8 Bonus for Early Practical Completion**

Delete this Clause 35.8.

**SC35.9 Direction to Accelerate**

### Insert the following clause as Clause 35.9:

“**35.9 Direction to Accelerate**

The Superintendent may (subject to the Superintendent accepting the extra costs and expenses referred to in Clause 35.10), direct the Contractor to accelerate the Works whether as an alternative to granting part or all of an extension of time to the Date for Practical Completion which but for the direction to accelerate the Contractor would have been entitled to or for any other reason, provided that such direction may be withdrawn by the Principal or the Superintendent at any time before the Contractor commences to accelerate the Works. The direction must be in writing and specify steps or a method or manner of accelerating the Works which is reasonably achievable.”

SC35.10 Estimate of Cost to Accelerate

Insert the following clause as Clause 35.10:

“**35.10 Estimate of Cost to Accelerate**

Upon receipt of a written direction from the Superintendent to accelerate, the Contractor must forthwith and in any event within 7 days provide to the Superintendent the following information:

(a) details of additional labour and construction plant which the Contractor considers will be required to comply with the direction;

(b) an estimate of the hours of work which will be required to be performed by the Contractor outside the usual working hours to enable the Contractor to comply with the direction;

(c) details of additional supervision which the Contractor will be required to provide to comply with the direction;

(d) the Contractor’s estimate of the extra costs and expenses (including any consultancy fees) which it may incur in complying with the direction; and

(e) a revised construction program for the period which will elapse between the date on which the acceleration of the Works commences, and the date notified by the Principal in the direction as being the date for the completion of the Works or any part of the Works.”

SC35.11 Acceptance or Determination of Costs

Insert the following clause as Clause 35.11:

“**35.11 Acceptance or Determination of Costs**

Within 28 days of receipt of the information referred to in Clause 35.10 the Superintendent must inform the Contractor whether it accepts the estimate of costs and expenses referred to in Clause 35.10. If such costs and expenses are accepted the Contract Sum shall be adjusted accordingly. If the Superintendent does not accept the Contractor’s estimate of the costs and expenses of acceleration the Superintendent may confirm the instruction to the Contractor and Clause 47 will apply.”

# SC36 DELAY OR DISRUPTION COSTS

Clause 36 is deleted and the following is substituted:

## 36.1 Delay costs payable

Subject to clause 36.2, if the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clauses 35.5(c)(i) (excepting delays caused by Separate Contractors), 35.5(c)(ii) or 35.5(c)(iv) the Principal shall subject to this Clause 36 pay to the Contractor:

(a) such extra costs and expenses as are necessarily incurred by the Contractor by reason of the delay which are referrable to the time the cause of delay commences to operate or arose; or

(b) the limit per day specified in Annexure Part A,

whichever is the lesser.

## 36.2 Conditions to be satisfied

The Contractor shall only be entitled to payment of costs incurred by the Contractor as a result of delay or disruption in achieving Practical Completion of the Works if the following conditions precedent are satisfied:

(a) the delay or disruption is caused by:

(i) a cause described in Clause 35.5(c)(i) (excepting delays caused by Separate Contractors); or

(ii) a cause described in Clause 35.5(c)(ii) (other than the issue of a Suspension Order, where Clause 34.4 may apply); or

(iii) a cause described in Clause 35(c)(iv),

and the Contractor has been granted an extension of time under the Contract;

(b) the Contractor has:

(i) given notice to the Superintendent of its intention to claim such costs within 14 days after the cause of the delay or disruption in carrying out the Works commenced to operate or first arose;

(ii) given a written claim to the Superintendent:

1. within 14 days after the notice of intention to claim delay costs; or
2. where the delay is a continuing delay, the Contractor must give a written claim no later than 14 days after the notice of intention to claim delay costs and thereafter give additional claims every 14 days until after the end of the delay;

(c) none of those costs are payable by virtue of any other provision of the Contract or have not been and should not be included in the value of any variation; and

(d) the Contractor is actually delayed reaching Practical Completion.

## 36.3 Effect of this Clause on other claims

Except as provided in this Clause 36, the Contractor is not entitled to any adjustment to the Contract Sum or payment of any amount whether under the Contract or not as compensation for any cost, loss, expense or damage which the Contractor may incur as a result of delay or disruption, including delays for which an extension of time has or should have been granted pursuant to the Contract. Any extension of time so granted, and any rights under this Clause 36, is deemed to be in full settlement of any cost, loss, expense or damage the Contractor may suffer due to delay or disruption.

# SC37 DEFECTS LIABILITY

The following shall be added to clause 37:

"If the Contractor has not completed the rectification of any defects or omissions within 60 days after notification in writing from the Principal or the Superintendent, the Principal may have recourse to any security the Principal may be holding and utilise such moneys to arrange the rectification of the defects or omissions by others."

# 40 VARIATIONS

**SC40.1 Variations to the Work**

The following is inserted at the end of the first sentence:

“… do any one or more of the following:"

The last paragraph is amended to read as follows:

“Except where otherwise provided in the Contract the Superintendent shall not direct a variation after Practical Completion.”

**SC40.2 Proposed Variations**

Delete Clause 40.2 and replace with the following:

“Upon receipt of a notice in writing from the Superintendent advising the Contractor of a proposed variation under Clause 40, the Contractor shall notify the Superintendent within 7 days:

whether or not the variation can be effected; and if so

the effect which the Contractor anticipates that the variation will have on the Approved Program and time for Practical Completion; and

the cost (including delay costs, if any) of the proposed variation.

If the Contractor considers that it has been required to carry out a Variation, but has not received a written direction from the Superintendent stating that the direction is a Variation, the Contractor shall as soon as practicable after receipt of the direction and before commencing work on the subject matter of the direction (and in any event no later than 7 days after receipt of the direction), notify the Superintendent:

that it considers that the direction constitutes or involves a Variation;

the effect which the Contractor anticipates that the Variation will have on the Approved Program and time for Practical Completion; and

the estimated cost (including delay costs, if any) of the Variation.

The Superintendent must, within 7 days after receipt of the notice from the Contractor under Clause 40.2(b), notify the Contractor that either:

the direction is withdrawn, (in which case the Contractor shall have no claim for adjustment to the Contract Sum or any extension of time in respect of the withdrawn direction);

the Superintendent agrees that the direction constitutes a Variation; or

the Superintendent does not agree that the direction constitutes a Variation, and the Contractor must comply with the direction.

The Contractor shall within 7 days after giving the notice under Clause 40.2(b), submit a further written notice to the Superintendent of the cost (including delay costs, if any) of the variation the Contractor claims to have been directed to carry out.

If the Contractor fails to notify the Superintendent strictly within the timeframes specified in this clause and with the information required by this clause, the Contractor shall be barred from pursuing any claim for adjustment to the Contract Sum, any extension of time or any other compensation of any nature in respect of that direction.”

**SC40.3 Pricing the Variation**

Insert the words “or Clause 40.2” after the words “approved by the Superintendent under Clause 40.1” in Clause 40.3.

**SC40.5 Valuation**

In Clause 40.5:

(a) Subclause (d) is amended to read as follows:

“in determining the deduction to be made for work which is taken out of the Contract, the percentage specified in Annexure Part A shall be added to the value of the work deducted, such amount being the agreed margin for non-time related preliminaries, profit, overheads and contract administration;”

(b) Subclause (g) is amended to read as follows:

“in determining the increase in the Contract Sum to be made for work added to the Contract, the percentage specified in Annexure Part A shall be added to the value of the work, such amount being the agreed margin for non-time related preliminaries, profit, overheads and contract administration; and”

(c) The last paragraph is deleted.

**SC 40.6 Minor or Incidental Works**

The following Clause 40.6 is inserted:

**“40.6 Minor or Incidental Works**

Minor or incidental items not expressly mentioned in the Contract but which are necessary for the due and proper completion and performance of the work under the Contract and the Works to achieve a standard of work which is fit for the purpose intended shall be deemed to be included as part of the work under the Contract. The cost of such minor items shall be deemed to be included in the Contract Sum and the Contractor shall not be entitled to a Variation or any change to the Contract Sum or other remuneration for work, whether or not expressly instructed by the Superintendent, which is merely incidental to the carrying out of the Works.”

# SC42 CERTIFICATES AND PAYMENTS

**SC42.1 Payment Claims, Certificates, Calculations and Time for Payment**

Clause 42.1 is deleted and the following is substituted:

“(a) It is a condition precedent to the Contractor’s entitlement to receive payment under or in relation to this Contract that the Contractor has:

(i) provided the Principal with the security required by Clause 5;

(ii) provided the Superintendent with evidence of compliance with the insurance requirements of this Contract which are satisfactory to the Superintendent acting reasonably

(iii) complied with the requirements of Clause 43; and

(iv) provided any other information and documents and complied with any other provision of the Contract required to be provided or complied with prior to being entitled to payment.

(b) Each claim for payment (“**Payment Claim**”) must be supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require, including but not limited to:

(i) the value of the work carried out by the Contractor in the performance of the Contract; and

(ii) all amounts which the Contractor claims are due to the Contractor arising out of or in connection with the Contract or for any alleged breach thereof.

The Payment Claim must include a tax invoice (within the meaning of the GST Act) and set out:

(iii) the Contractor’s Australian Business Number;

(iv) the amount claimed by the Contractor and the basis for calculation of that amount;

(v) the amount of any GST paid or payable by the Contractor with respect to the amount claimed;

(vi) the Contractor’s address for payment; and

(vii) the Principal’s Reference number.

The Payment Claim must be accompanied by the documentary evidence required under Clause 43.1.

(c) The Contractor may make a Payment Claim at:

(i) the times for Payment Claims stated in Annexure Part A; and

(ii) within the time prescribed by Clause 42.7.

(d) Within 10 Business Days after receipt of a valid Payment Claim under this Clause 42.1, the Superintendent shall for and on behalf of the Principal, issue to the Principal and to the Contractor a payment schedule (“**Payment Schedule**”) stating the amount of the payment which, in the opinion of the Superintendent, is to be made by the Principal to the Contractor or the Contractor to the Principal. The Superintendent may set off any liquidated damages accrued pursuant to Clause 35.6 against monies due to the Contractor for the purposes of this Clause 42.1.

(e) The Superintendent must set out in the Payment Schedule:

(i) the Payment Claim to which it relates;

(ii) the calculations employed to arrive at the amount of the Payment Schedule; and

(iii) if the amount is more or less than claimed by the Contractor, the reasons for the difference.

(f) The Superintendent must allow in any Payment Schedule and in any Final Certificate issued under Clause 42.8, amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and due from the Contractor to the Principal arising out of or in connection with the Contract including any amount due or to be credited under any provision of the Contract.

(g) Failure by the Superintendent to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal’s right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

(h) If the Contractor fails to make a claim for payment under this Clause 42.1, the Superintendent may nevertheless issue a Payment Schedule.

(i) Within the number of days set out in Annexure Part A after receipt by the Superintendent of a valid Payment Claim, the Principal must pay to the Contractor or the Contractor must pay to the Principal, as the case may be, an amount not less than the amount shown in the Payment Schedule as due to the Contractor or to the Principal as the case may be.

(j) A payment made under this Clause does not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable.

(k) Payment of moneys does not evidence the value of work and is not evidence that work has been executed satisfactorily, but shall be a payment on account only.”

**SC42.4 Unfixed Plant and Materials**

In Clause 42.4 in subparagraph *Alternative 2:*

The words “in its absolute discretion” are inserted following the words “Principal may” in line 3.

A new subparagraph (d) is inserted as follows:

“(d) the Contractor has provided additional security equal to the payment claimed for the plant or materials;”

The following sentence is inserted at the end of the last paragraph:

“If the Contractor has provided to the Principal additional security for payment for plant or material, the Principal must release the security to the Contractor once the plant or materials are incorporated into the Works.”

**SC42.5 Certificate of Practical Completion**

In Clause 42.5, the first paragraph is deleted and the following is substituted:

“(a) The Contractor shall give the Superintendent at least 28 days' notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

(b) Fourteen days after the date the Contractor gave the notice referred to in Clause 42.5(a), the Contractor shall give the Superintendent a further notice:

(i) confirming the date upon which the Contractor anticipates that Practical Completion will be reached; or

(ii) if the anticipated date for Practical Completion has changed (which new date may only be a date after the original anticipated Date of Practical Completion), notifying the new anticipated date upon which the Contractor anticipates that Practical Completion will be reached.

(c) If the Contractor has given notice under Clause 42.5(b)(ii) of a new date that the Contractor anticipates that Practical Completion will be reached, the Contractor must give a further notice at least 7 days before the new anticipated date confirming the date upon which the Contractor anticipates that Practical Completion will be reached.

(d) If, at any time after the Contractor has given a notice under Clause 42.5(b)(i) or Clause 42.5(b)(ii), the Contractor considers that the date that Practical Completion will be achieved is different than the date most recently notified to the Superintendent, the Contractor must give a notice to the Superintendent of that belief and stating a new date the Contractor reasonably anticipates that Practical Completion will be achieved.

(e) The Contractor acknowledges that the Principal is relying on the date nominated in the notices given by the Contractor under this Clause to make arrangements for the decanting of equipment and personnel from one part of the Site to the Separable Portion (or part thereof) the subject of the notice of anticipated date for Practical Completion, and that a failure by the Contractor to provide the correct date of Practical Completion and prompt notice of any change to the anticipated date for Practical Completion in respect of a Separable Portion may lead to a delay in the Contractor obtaining access to parts of the Site the subject of Works in later Separable Portions. Any failure by the Contractor to provide the notices required under this Clause will disentitle the Contractor to any claim to an extension of time to the date for Practical Completion for any later Separable Portion or to claim an increase in the Contract Sum which results from the Principal failing to provide access to the Contractor due to delays in decanting of equipment and/or personnel from that part of the Site because the date nominated by the Contractor in a notice was incorrect.”

**SC42.7 Final Payment Claim**

In Clause 42.7 the last 2 paragraphs are deleted and the following is substituted:

“In addition to claims for payment required to be included in a Payment Claim under Clause 42.1, the Contractor shall include in the Final Payment Claim all claims for moneys which the Contractor considers to be due from the Principal arising out of any alleged breach of the Contract. All such claims, whether under Clause 42.1 or this Clause 42.7, which have not already been barred, shall be barred after the expiration of the period for lodging a final claim.”

**SC42.8 Final Certificates**

In Clause 42.8:

(a) the words “on behalf of the Principal” are inserted in the first paragraph after the word “shall”; and

(b) the words “prima facie” are inserted before “evidence” in the third line of the second paragraph.

**SC42.9 Interest on Overdue Payments**

In Clause 42.9 the words “18 percent per annum” are deleted and the following words are substituted “at the interest rate stated in the Annexure”.

**SC42.10 Set Offs by the Principal**

Clause 42.10 is deleted and the following is substituted:

“The Principal may, without limiting any other right which it may have under the Contract or at law but only to the extent permitted by law, deduct:

(a) from any amount owing to the Contractor or which may become owing to the Contractor (whether such amount is included within a Payment Schedule, certificate, claim or otherwise); or

(b) from any security,

any:

(c) amount which the Principal may have paid on behalf of the Contractor, whether expressly authorised by this Contract or not;

(d) amount which the Principal acting reasonably considers necessary to pay in the interests of completing the Works;

(e) claim to money the Principal may have against the Contractor whether for damages or otherwise; or

(f) amount which is otherwise due and owing to the Principal by the Contractor whether in connection with the Works or otherwise.

Any amount remaining after such deduction may be recovered by the Principal as a debt due and owing.”

# SC43 PAYMENT OF WORKERS AND SUBCONTRACTORS

Clause 43 is deleted and the following is substituted:

**43.1 Payment**

Together with any Payment Claim under Clause 42.1, the Contractor must:

(a) give the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on work under the Contract have been paid all monies due and payable to them in respect of their employment on the work under the Contract; and

(b) provide documentary evidence to the Superintendent that at the date of the Payment Claim all workers who have been employed by a subcontractor of the Contractor have been paid all monies due and payable to them in respect of their employment on the work under the Contract, including without limitation all on-costs and like amounts; and/or

(c) provide such other evidence of payment of workers and subcontractors employed on the work under the Contract as the Superintendent may reasonably require.

**43.2 Payment of subcontractors**

Not later than 10 days after the Contractor has made each claim for payment under Clause 42.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Principal a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors have been paid all monies due and payable to them in respect of work under the Contract.

**43.3 Withholding of payment**

If the Contractor fails to comply with Clause 43.1 or Clause 43.2, then notwithstanding Clause 42.1, the Principal may withhold payment of monies due to the Contractor until the statutory declaration or documentary evidence, as the case may be, is received by the Principal.

**43.4 Direct payment**

At the written request of the Contractor, and out of monies payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

If any worker or subcontractor obtains a court order in respect of monies referred to in Clause 43.1 or Clause 43.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal. If a payment is made in respect of monies referred to in Clause 43.1 or Clause 43.2 by the Principal to or in respect of a worker or subcontract in compliance with a Legislative Requirement, the amount paid shall be a debt due from the Contractor to the Principal.

If any monies are due and payable by the Contractor to any subcontractor, workers employed on the Works or by a subcontractor to any workers employed on the Works and in the reasonable opinion of the Principal the failure to pay those monies when due or at any time after they became due is likely to cause delay to the Works, the Principal shall be entitled to pay from monies which are due or may become due to the Contractor under the Contract the amounts outstanding to the workers or in respect of their employment or, in respect of a subcontractor, their engagement, including without limitation all on-costs and similar expenses. The amounts so paid shall be treated as having been paid on behalf of the Contractor and if no amount or an insufficient amount was or should become due to the Contractor by the Principal to fully extinguish the amount paid by the Principal to the subcontractor, workers or in respect of the worker’s employment, the amount paid by the Principal shall be a debt due to the Principal by the Contractor.

# SC44 DEFAULT OR INSOLVENCY

**SC44.2 Default by the Contractor**

In Clause 44.2:

(a) the words “and the Principal considers that damages may not be an adequate remedy” are deleted from the first sentence;

(b) the words “in breach of Clause 33.1” are deleted and the words “not having received a Suspension Order under Clause 34” are substituted.

**SC44.5 Procedure When The Principal Takes Over Work**

The second paragraph of Clause 44.5 is deleted and the following inserted:‑

“The Contractor must, if required by the Principal, assign to the Principal, without payment, the benefit of any subcontract or agreement for the manufacture or supply of goods and equipment or for the performance of any work for the purposes of the Contract. For the purposes of effecting such assignment, the Contractor irrevocably appoints the Principal to be the true and lawful attorney of the Contractor with full power and authority to execute such assignment on behalf of the Contractor and to bind the Contractor accordingly. The assignment will be on terms under which the relevant manufacturer, supplier or subcontractor will be entitled to make any reasonable objection to any further assignment by the Principal.

The Principal may pay any manufacturer, supplier or subcontractor for any goods and equipment delivered or work performed (including design work) for the purposes of the Contract (whether before or after the date the Principal takes over the work) if the price has not already been paid by the Contractor. Payments made under this Clause 44.5 may be deducted from any sum due or to become due to the Contractor. The Principal’s rights under this Clause 44.5 are in addition to its rights to pay suppliers, manufacturers or subcontractors as provided elsewhere in the Contract.

The Contractor will, when required in writing by the Superintendent (and not before), remove from the Site any Constructional Plant, Temporary Works and goods. If, within a reasonable time after receipt of such request, the Contractor does not comply, then the Principal may remove or sell any such property of the Contractor.

The Contractor will execute all documents required by the Principal to enable the Principal to obtain the benefit of any approval, consent or permit issued by any relevant authority. For the purposes of obtaining such benefit, the Contractor irrevocably appoints the Principal to be the true and lawful attorney of the Contractor with full power and authority to execute such documents on behalf of the Contractor and to bind the Contractor accordingly.”

**SC44.7 Default Of The Principal**

Clauses 44.7(b) and 44.7(e) are deleted.

Clause 44.7(d) is amended by deleting the words "possession of" and substituting "access to".

**SC44.11 Insolvency**

In Clause 44.11:

(a) Clause 44.11(a) is deleted and the following is substituted:

“(a) a party informs the other party or any group or class of creditors or creditors generally that the party is insolvent or is financially unable to proceed with the Contract;”

(b) the words “and/or” at the end of the subclause 44.11(k) are deleted;

(c) the words “and/or” are inserted at the end of subclause 44.11(l)(i);

(d) the following subclauses 44.11(m) and 44.11(n) are inserted:

“(m) the Contractor suspends payment generally or ceases or threatens to cease to carry on business or is, or states that it is unable to pay its debts as they fall due or is taken to fail to comply with a statutory demand in accordance with Section 459F of the *Corporations Act* 2001;

(n) a party passes a resolution to appoint an administrator;

(o) a receiver, receiver and manager, administrator, controller or similar officer of a party's assets or the whole or any part of a party's undertaking, is appointed;

(p) a court order is made appointing a liquidator or provisional liquidator to a party, or a liquidator or provisional liquidator is appointed to a party, whether or not under a court order;

(q) a party resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a reconstruction or amalgamation while solvent on terms approved by the other party, or it is otherwise wound up or dissolved;

(r) as a result of the operation of s 459F(1) of the *Corporations Act 2001* (Cth), a party is taken to have failed to comply with a statutory demand; or

(s) anything occurs which is analogous or has a substantially similar effect to any of the events specified above,"

**SC44.12 Quantum Meruit**

New Clause 44.12 is inserted as follows:

**44.12 Quantum Meruit**

If the Principal repudiates the Contract and the Contractor terminates the Contract, the Contractor is:

(a) only entitled to claim damages for breach of Contract (subject to any limitations on liability under the Contract); and

(b) not entitled to claim or be paid on a quantum meruit.

This Clause 44.12 survives termination of the Contract.

# SC45 TERMINATION BY FRUSTRATION

Clause 45 is amended to read as follows:

“If under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor the amount due to the Contractor shown in any unpaid payment certificate.

If the Contractor has provided security other than cash security, the Principal shall promptly release that security to the Contractor.”

# SC46 NOTIFICATION OF CLAIMS

## SC46.1 Communication of Claims

Clause 46.1 is deleted and the following substituted:

## 46.1 Contractor’s Prescribed Notice

The Principal shall not be liable upon any claim by the Contractor in respect of or arising out of a breach of the Contract unless within 28 days after the first day upon which the Contractor could reasonably have been aware of the breach, the Contractor has given to the Superintendent the prescribed notice.

The Principal shall not be liable upon any other claim by the Contractor for any extra cost or expense in respect of or arising out of any direction or approval by the Superintendent unless within any time limit specified in the Contract in relation to any particular direction or approval or within 28 days after the first day upon which the Contractor could reasonably have been aware of the entitlement to make the claim (whichever is earlier), the Contractor has given to the Superintendent the prescribed notice.

The prescribed notice is a notice in writing which includes particulars of all of the following:

### (a) the breach, act, omission, direction, approval or circumstances on which the claim is or will be based;

### (b) the provision of the Contract or other basis for the claim or proposed claim; and

### (c) the quantum or likely quantum of the claim.

This Clause 46.1 shall not have any application to:

### (d) any claim for payment to the Contractor of an amount or amounts forming part of the Contract Sum or any part thereof; or

### (e) any claim for an extension of time.”

# SC47 DISPUTE RESOLUTION

## SC47.3 Arbitration

Clause 47.3 is amended by deleting the words "Institute of Arbitrators Australia" in the third line and substituting "Resolution Institute".

# SC49 DISRUPTION

### (a) The Contractor acknowledges that the Works are to be carried out in, around and adjacent to parts of an operating university (“the **University**”) which will continue to operate and be occupied by students and staff members who must be able to access facilities conveniently and safely at all times.

### (b) The Contractor agrees that all unduly noisy, dusty or otherwise disruptive works shall only be carried out after the Contractor has obtained the prior approval of the Superintendent as to the time and manner in which those works or works of that type or in that part of the Site are to be undertaken.

### (c) The Contractor must take all reasonable steps to minimise or avoid disruption and/or inconvenience to any adjoining owners, students, staff members, visitors or invitees to the University, including in respect of roads, footpaths and access to and around the University.

### (d) The Contractor acknowledges that the Contract Sum is deemed to include due allowance for undertaking works in accordance with all requirements of the Specifications and otherwise in such a manner that is reasonably necessary in order to avoid disrupting or unduly inconveniencing adjoining owners, students, staff members, visitors and invitees to the University.

### (e) The Contractor must comply with any direction the Superintendent acting reasonably may give in respect of minimising or avoiding disruption or inconvenience to adjoining owners, students, staff members, visitors and invitees to the University.

### (f) The Contractor acknowledges and agrees that the Superintendent’s decision on when and how the works can be undertaken is final and binding and will give the highest priority to avoiding disruption to adjoining owners, students, staff members, visitors and invitees to the University.

### (g) The Contractor agrees that any fee, payment or charge incurred by the Principal as a result of the Contractor or its employees, agents or subcontractors negligently or otherwise triggering any fire or other alarm at, adjacent to or near the *site* shall be re-imbursed to the Principalandis a debt due and owing from the Contractor to the Principal.

### (h) This clause 49 applies to activities undertaken both prior to Practical Completion as well as during any Defects Liability Period or in connection with the rectification of any defect or omission.

# SC50 GOODS AND SERVICES TAX

### (a) **GST Exclusive**

The parties acknowledge that unless specified otherwise, any *Consideration* payable under this Agreement has been negotiated without any allowance for a *GST* and is the *Value* of a *Taxable Supply*.

### (b) **GST Amounts**

A *Recipient* under this Agreement must, in addition to any *Consideration*, pay or reimburse the *Supplier* any amount of GST for which the *Supplier* is or may become liable with respect to the *Taxable Supply* to which that Consideration relates, so that the net amount retained by the *Supplier* after payment of that *GST* is the same as if the Supplier was not liable to pay *GST* in respect of that *Taxable Supply*.

### (c) **Time of Payment**

The *Recipient* must pay to the *Supplier* the amount of any *GST* owing in accordance with this Agreement at the same time and in the same manner as the *Recipient* is required to pay for the *Taxable Supply* to which that amount of *GST* relates.

### (d) **Tax Invoice**

The Recipient will not be obliged to pay any amount of *GST* to the Supplier under the Agreement unless the *Supplier* has first issued to the *Recipient* a *Tax Invoice* which complies with the GST Act.

### (e) **Reimbursements**

If this Agreement requires the *Recipient* to pay, reimburse or contribute to an amount paid or payable by the *Supplier*, in respect of an *Acquisition* from a third party for which the *Supplier* is entitled to an *Input Tax Credit*, the amount for payment, reimbursement or contribution will be:

(i) the *Value* of the *Acquisition* by the *Supplier*; plus

(ii) if the *Supplier’s* recovery from the *Recipient* of the *Value* of the *Acquisition* will be a *Taxable Supply*, the *GST* payable in respect of that *Taxable Supply*.

### (f) **Other Supplies**

This Clause 50 applies to *Consideration* for *Taxable Supplies* relating to the breach, termination of, and indemnities arising from this Contract.

### (g) **Definitions**

In this Clause 50:

(i) **Consideration** means any amount payable or treated as payable (whether or not monetary) for a supply made under this Contract.

(ii) **GST** means a tax, any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Act.

(iii) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 and/or any other Act relating to the imposition or administration of a goods and services tax.

(iv) **Recipient** means in relation to a supply made under or in relation to this Agreement the entity to which the supply was made.

(v) **Supplier** means in relation to a supply made under or in relation to this Contract the entity which made the supply.

(vi) **Value** has the meaning given to that term in the GST Act, and in relation to a Taxable Supply or a Creditable Acquisition, means the GST-exclusive amount of that Taxable Supply or Creditable Acquisition; and

#### (vii) Any expression in italics has the meaning given to that term in the GST Act.

# SC51 BUILDING INDUSTRY AND SUPPLY CHAIN (MODERN SLAVERY)

**51.1 Employee requirements applicable to the building industry**

The Contractor shall ensure continuity of cover for itself and its subcontractors and shall, when called upon to do so, provide documentation to demonstrate that:

### (a) the statutory requirements of workers’ compensation, payroll tax (where applicable) and construction industry long service leave, PAYE taxation, the prescribed payments scheme and redundancy payment central fund are being complied with; and

### (b) the provisions of workers’ superannuation schemes, where agreed between employees/unions and employers, are being complied with.

**51.2 Industrial relations acknowledgment**

The Contractor acknowledges and agrees that the Contract Sum includes an allowance to compensate the Contractor for all risks arising concerning, connected or associated with industrial relations at the Site or the Works including, without limitation, demarcation disputes, site allowances, site agreements, increases in labour costs, any reduction in construction industry working hours per week, demonstrations or labour disputation, special allowances or compensation or any reduction in labour or hours worked on the Works and claims by all unions including those not involved in the Works but which impact upon the Works (**Industrial Matters**). The Contractor is not entitled to claim any compensation from the Principal for any cost whatsoever associated with any of the foregoing.

The Contractor indemnifies the Principal from and against any loss, cost or expense which is incurred by the Principal arising directly or indirectly as a result of any Industrial Matters concerning, connected or associated with or arising at any of the Site or the Works caused by or relating to:

### (a) any act or omission of the Contractor or an associate, agent, employee, contractor or servant of the Contractor, whether at the Site or elsewhere; or

### (b) any matter arising at the Site.

In this Clause 51.2 **associate** has the meaning given to that term in the Corporations Act 2001.

**51.3 Industrial Relations**

### (a) The Contractor is responsible for the co-ordination of all industrial matters and disputes relating to the Works and the Site, including the conduct of the Separate Contractors.

### (b) The Contractor must use its best endeavours to procure that all subcontractors and Separate Contractors comply with the Contractor’s industrial relations and safety policy.

### (c) Nothing in this Clause 51 requires the Contractor to enter into any particular kind of industrial instrument, or take any action or make any payment that would amount to a breach of legislation.

**51.4 Site and Other Allowances**

The Contractor acknowledges that without limiting the operation of Clause 51 or any other provision of this Contract:

(a) all or any site allowance which may be payable under any industrial or industry agreement or on any other basis as a result of this Contract has been fully allowed for by the Contractor as part of the Contract Sum;

(b) the Contractor has made or is deemed to have made itself fully aware of any likely claims by unions, including those not directly involved in the Works but which impact upon the Works and that due allowance for these and any associated costs has been made for by the Contractor as part of the Contract Sum; and

(c) that the Contractor will have no entitled to any adjustment in the Contract Sum for any cause associated with site allowances and/or industrial relations.

**51.5 Supply Chain and Modern Slavery**

The Contractor must:

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

# SC52 TAXES AND DUTIES

The Contract Sum is deemed to include all sales tax and all customs duty, primage and other like charges payable for all goods, materials and equipment to be supplied or delivered under the Contract as part of the Works other than GST. The Contractor shall pay these charges and not claim any monies in addition to the Contract Sum for this reason.

# SC53 OCCUPATIONAL HEALTH AND SAFETY

### **53.1 Definitions**

### For the purposes of this clause, the following terms have these meanings:

### '**Claim**' includes any claim for an increase in any amount payable under this Contract, for payment of money (including damages), for an extension of time or for a Variation.

### '**OH&S'** means occupational or work health and safety.

### **53.2 Occupational Health and Safety**

### For the purposes of the OH&S Act, the Principal:

### (a) appoints the Contractor as ‘principal contractor’ and the Contractor accepts that appointment for executing the Works;

### (b) authorises the Contractor to exercise such authority of the Principal as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor pursuant to the OH&S Act; and

### (c) authorises the Contractor to exclude any person from the Site who does not comply with its reasonable and proper requirements and/or directions necessary to enable the Contractor to discharge the responsibilities imposed on the Contractor pursuant to the OH&S Act for the purposes of executing the Works.

### **53.3 Health and Safety – General**

### (a) The Contractor shall as far as practicable in connection with the execution of the Works ensure the health and safety of all persons including without limitation, members of the public, the Contractor’s employees, subcontractors and agents. The Contractor and any subcontractors engaged to perform work under the Contract must at all times identify and exercise all necessary precautions for the OH&S of all persons including the Contractor’s employees and members of the public who may be affected by the work under the Contract.

### (b) The Contractor shall implement and maintain, and at the request of the Principal demonstrate, a system of obtaining and updating information on statutory requirements and codes of practice dealing with OH&S. The Contractor must allow the Principal to undertake audits on the Contractor’s OH&S plans and practices on Site at any time.

### (c) When requested by the Superintendent or the Principal, the Contractor must submit a complete copy of their OH&S management system documentation which must include as a minimum requirement:

(i) OH&S policy and objectives;

(ii) the organisational structure and responsibilities;

(iii) safe work practices and procedures;

(iv) OH&S training and induction;

(v) OH&S auditing and inspection procedures;

(vi) OH&S consultation procedures; and

(vii) OH&S performance monitoring.

### (d) The Contractor shall ensure, and at the request of the Principal demonstrate, that it has in place and complies with safe systems for and in relation to the execution of the Works in accordance with:

### (i) all relevant compliance codes and codes of practice; and

### (ii) the OH&S Act.

### (e) The Contractor shall strictly comply, and ensure that the personnel comply, with the OH&S Act and any OH&S policies, procedures or measures implemented or adopted by the Principal. In the event of any inconsistency, the Contractor shall comply, and ensure that personnel comply with such procedures or measures as will produce the highest level of OH&S.

### (f) Where the Works contain design, the Contractor must ensure that the building, structure or part thereof the subject of the design works is designed to be safe and without risk to persons using the building, structure or part thereof.

### (g) The Contractor shall ensure that each person, including its employees, subcontractors and sub-consultants, undergoes an OH&S induction to the extent required by the OH&S Act prior to entering or working on the Site.

**53.4 Health and Safety Coordination Plan**

(a) The Contractor shall prepare, prior to commencing the work under the Contract, a health and safety coordination plan for construction work in accordance with the OH&S Act (**Health and Safety Coordination Plan**). The Contractor must monitor, maintain and keep the Health and Safety Coordination Plan up to date during the course of the work under the Contract. The health and safety coordination plan must include:

(i) a list of the names, positions and responsibilities of all persons who will have specific responsibilities for health and safety;

(ii) the arrangements for the coordination of the health and safety of persons engaged to perform work under the Contract;

(iii) the arrangements for managing OH&S incidents when they occur; and

(iv) any site safety rules, with the arrangements for ensuring that all persons at the workplace are informed of the rules.

(b) The Contractor must ensure that a copy of the Health and Safety Coordination Plan and any revisions to the Health and Safety Coordination Plan are retained for the duration of the construction project and are available for inspection throughout the course of the construction work by persons including:

(i) any person engaged to perform construction work at the workplace;

(ii) any person about to commence work at the workplace; and

(iii) an employee member of a health and safety committee, a health and safety representative or a person nominated under the OH&S Act.

(c) Before any person commences construction work at a workplace the Contractor must ensure that the person:

(i) is aware of the Health and Safety Coordination Plan for the workplace and any revisions of the Health and Safety Coordination Plan; and

(ii) is provided with access to the Health and Safety Coordination Plan and any revisions of the Health and Safety Coordination Plan.

(d) The Contractor shall include for and organise for a series of independent audits to be undertaken by an independent third party holding auditor accreditation (RAB QSA or equivalent) on its Health and Safety Coordination Plan. The audits will consist of a review of the Health and Safety Coordination Plan and verification of its implementation on site. This will include desk top audits and site inspections. The first audit shall be undertaken prior to mobilisation to site and then at four monthly intervals for the duration of the project. A copy of the audit report and any non-conformances shall be provided to the Superintendent within 10 working days of the audit.

(e) Prior to commencing the works under the Contract the Contractor shall update the Health and Safety Coordination Plan with specific information relevant to the initial activities required under the Contract.

(f) The Health and Safety Coordination Plan shall consider and respond to the specific OH&S hazards and issues relevant to the Contract works and shall document the systems and methods to be implemented for the term of the Contract.

### **53.5 Risk Assessment**

### The Contractor must prepare and submit to the Superintendent a Site hazard identification and risk assessment prior to commencing the works under the Contract. A risk assessment form must be used to record the risk assessment and risk control methods to be employed by the Contractor.

### The completed risk assessment must be submitted to the Principal prior to commencement of works under the Contract, or within 10 working days after receipt of the letter of acceptance by the Contractor, whichever is the earlier.

### **53.6 Non-compliance**

(a) If during the performance of work under the Contract the Superintendent or Principal informs the Contractor that it is the opinion of the Superintendent or Principal that the Contractor is:

(i) not conducting the work in compliance with the Contractor’s Safety Plan, OH&S management procedures, relevant legislation or OH&S procedures provided by the Principal from time to time; or

(ii) conducting the work in such a way as to endanger the OH&S of Contractor’s employees or the Principal’s or its Separate Contractors and subcontractors employees, plant, equipment or materials,

the Contractor shall promptly remedy that breach of OH&S.

(b) The Superintendent or Principal may direct the Contractor to suspend the work until such time as the Contractor satisfies the Superintendent and the Principal that the work will be resumed in conformity with applicable OH&S provisions.

(c) The Principal shall not be required to make any payment whatsoever to the Contractor for delays and costs incurred as a result of such suspension.

(d) If the Contractor fails to rectify any breach of OH&S for which the work has been suspended, or if the Contractor’s performance has involved recurring breaches of OH&S, the Superintendent or Principal may, in addition to its rights under Clause 53.7, at its option immediately terminate the Contract, without further obligation to the Contractor. In this event, the Principal’s liability shall be limited to payment for the work performed and costs incurred by the Contractor up to the time of termination or an earlier suspension of works.

### **53.7 OH&S indemnity**

### The Contractor acknowledges that its acts or omissions may affect the ability of the Principal to comply with duties and obligations arising under the OH&S Act. The Contractor shall ensure so far as is practicable that it does not by its acts or omissions cause or contribute to any breach by the Principal of any provisions of the OH&S Act and shall take all steps as are practicable to assist the Principal in complying with the provisions of the Act. The Contractor shall indemnify the Principal to the extent permitted by law in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of that Act by the Principal to which the Contractor has contributed by a breach of this clause. The indemnity given under this paragraph does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under this Contract.

### **53.8 Safety Reporting**

### (a) The Contractor must:

### (i) promptly notify the Superintendent of any potentially or actually hazardous incident or accident that occurs during the carrying out of the Works whether or not the incident or accident resulted in injury or damage;

### (ii) within 3 days of any such incident or accident occurring, provide the Superintendent with a report setting out complete details of the incident or accident, including the results of any investigations into its causes and any recommendations or strategies for future prevention;

### (iii) provide the Superintendent with copies of any notice provided by the Contractor to any authority under the OH&S Act.

(b) The Contractor must when requested, provide evidence of ongoing performance of the Contractor’s OH&S management system. Without limiting the requirements of this obligation, the Contractor shall provide the following information to the Superintendent on a monthly basis in the form of a Contractor OHS Performance Report:

(i) number of lost time injuries;

(ii) working days lost due to injury;

(iii) current status of any injured personnel, damaged property or environmental damage or pollution;

(iv) status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments; and

(v) status of OH&S management system audits undertaken and close out of any non-conformances.

(c) The Contactor shall submit the OHS Performance Report using a form of report approved by the Superintendent.

(d) The Contractor shall when requested, provide reports on OH&S inspections, audits or assessments undertaken during the course of the Contract.

# SC54 WARRANTIES ON MATERIALS

(a) The Contractor shall obtain manufacturers’ and other warranties for plant and materials incorporated into the Works. Without limiting the generality of this Clause 54, warranties shall be obtained and provided to the Superintendent on the following:

(i) the “items requiring warranties” specified in Specifications; and

(ii) all mechanical and electrical plants with a value greater than $5,000.

(b) The Contractor shall ensure that all warranties are:

(i) in favour of the Principal;

(ii) legally enforceable by the Principal;

(iii) capable of assignment by the Principal; and

(iv) delivered to the Superintendent prior to Practical Completion.

(c) Nothing in this Clause 54 or any express warranty provided shall exclude any condition or warranty implied by the *Competition and Consumer Act 2010* (Cth) or the law of contract and any express warranty shall be in addition to any other right that the Principal or any subsequent purchaser may have at law.

# SC55 SECURITY OF PAYMENT ACT

**55.1 Security of Payment Act**

### ‘Security of Payment Act’ means the building and construction industry security of payment legislation operative in the State or Territory where the Site is located.

**55.2 Service of Notices under the Security of Payment Act**

The Contractor shall:

### (a) notwithstanding any other provision of this Contract, serve a copy of any notice or application under the Security of Payment Act on the Superintendent by hand delivery;

### (b) when the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, promptly and without delay give the Superintendent a copy of any written communication of whatever nature in relation to the Security of Payment Act which the Contractor receives from a subcontractor,

and the Contractor acknowledges that this obligation represents a fundamental term of this Contract, a breach of which is a substantial breach of this Contract by the Contractor.

**55.3 Payment Claim**

The date prescribed in Clause 42.1 as the time for Payment Claims is, for the purpose of the Security of Payment Act, the ‘reference date’.

**55.4 Payment Schedule**

### (a) A ‘payment schedule’ for the purposes of the Security of Payment Act is a Payment Schedule pursuant to Clause 42.1.

### (b) Failure by the Superintendent to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal’s right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

**55.5 Conduct of Adjudication**

In dealing with any adjudication application made by the Contractor under the Security of Payment Act, the Adjudicator shall:

### (a) at all times act impartially between the parties, in accordance with the laws; and

### (b) include in the determination the reasons for the determination and the basis on which any amount or date has been decided.

**55.6 Suspension of Works under the Security of Payment Act**

If the Contractor suspends the whole or part of the work under the Contract pursuant to the Security of Payment Act:

### (a) the suspension shall not affect the Date for Practical Completion but may be a ground for an extension of time under Clause 35.5; and

### (b) the Principal shall not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of the suspension.

**55.7 Subcontractor suspension**

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

**55.8 Indemnity**

The Contractor shall indemnify the Principal against all damage, expense (including legal costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Principal arising out of:

### (a) a suspension pursuant to the Security of Payment Act by a subcontractor of work which forms part of the Work; or

### (b) a failure by the Contractor to comply with Clause 55.2.

# SC56 PROJECT CONTROL GROUP

# The Superintendent must ensure that the Project Control Group is established at the commencement of the work under the Contract, the function of which is to review the progress of the work under the Contract.

# The Project Control Group must meet on a monthly basis and at any other times required by the Superintendent at the office of, or as otherwise notified by, the Superintendent.

# The Superintendent must:

# (a) convene and chair all meetings of the Project Control Group; and

# (b) prepare and promptly provide minutes of the meetings of the Project Control Group to the Principal and the Contractor.

# If requested by the Superintendent, a senior management representative of the Contractor must attend any Project Control Group meeting and provide such information and assistance reasonably required by a member of the Project Control Group to fulfil the functions of the Project Control Group.

# The parties must each meet all costs of their respective personnel and involvement in the Project Control Group. The parties acknowledge that the minutes of meeting prepared under this Clause 56 or matters stated or discussed at any Project Control Group meeting will not constitute instructions or directions to the Contractor for the purposes of the Contract.

# SC57 SITE AMENITIES, PROTECTION, SECURITY AND OTHERS

**57.1 Amenities for workers**

The Contractor must provide all statutory and necessary amenities for workers required by the relevant unions including site shedding. Site shedding may be used for site meetings, and to this end, the Contractor must equip, at its own cost, one such shed with separate telephone and fax operating off their own lines. The Contractor acknowledges that the Separate Contractors are also entitled to utilise the site shedding.

**57.2 Protection of the Works**

The Contractor must ensure that all materials and equipment for the Works are adequately stored and protected at all stages, ensure the making good of all damage done until Practical Completion and maintain protective measures in effective condition and remove at Practical Completion.

**57.3 Security**

The Contractor must take all necessary security precautions to prevent vandalism and theft at the site. The Contractor is at all times totally responsible for the security of all of the Contractor’s materials, plant and equipment on site.

**57.4 Scaffolding**

The Contractor must supply, erect, adjust/move, and finally remove all access and work platform scaffold systems required to perform the Works.

**57.5 Craneage/hoisting**

The Contractor is deemed to have included in his fixed lump sum price all craneage/hoisting necessary for the Contractors works to be undertaken for his scope of works.

**57.6 Documents**

The Contractor must provide all documentary approvals, test certificates, authorities approvals, diagrams, operational information, etc applicable to the works, prior to the issue of the Certificate of Practical Completion.

**SC58 DELETERIOUS MATERIALS**

**58.1 No instructions**

The Contractor must not specify, authorise, cause to be used, use or suffer the use in or about the Works of any materials where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of the personnel involved in the construction or maintenance of the Works or to the eventual occupants.

**58.2 Against instructions**

The Contractor must not specify, authorise, cause to be used, use or suffer the use in or about the Works of any materials which are notified by the Principal or the Superintendent to the Contractor as being prohibited in relation to the Works and/or which at the time the Works is being carried out are generally accepted or reasonably suspected within the building industry of:

* + 1. being deleterious in themselves;
    2. becoming deleterious when used in a particular situation or in combination with other materials;
    3. becoming deleterious with passage of time;
    4. becoming deleterious as a result of poor workmanship during construction;
    5. becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of the type under construction; or
    6. being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

**58.3 Definition of “deleterious”**

For the purposes of this clause 58, the word “deleterious” is deemed to include any use of materials or combinations of materials that would or might have the effect or reducing the normal life expectancy:

(a) of the materials themselves;

(b) of any materials to which they are affixed;

(c) of the structure in which they are incorporated or to which they are affixed; or

(d) of the Works or any part thereof;

to a period less than that which has been specified or would normally be expected.

# SC59 PROPORTIONATE LIABILITY

**59.1 Exclusion of operation**

Except where the Works are being performed in Queensland, the parties agree, to the extent permitted by law, that:

* + 1. the operation of Civil Liability Legislation is excluded in relation to all rights, obligations and liabilities under this Contract; and
    2. without limiting the generality of clause 59.1(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Contract and not otherwise,

whether those rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise.

**59.2 Contractor must not apply Civil Liability Legislation provisions**

Except where the Works are being performed in Queensland, the parties agree, to the extent permitted by law, that:

* + 1. the Contractor must not seek to apply the provisions of Civil Liability Legislation in any claim by the Principal against the Contractor in relation to all rights, obligations or liabilities under each subcontract entered into by the Contractor with subcontractors, whether those rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and
    2. if the provisions of Civil Liability Legislation are applied in relation to any claim by the Principal against the Contractor, the Contractor must indemnify the Principal against any loss or damage if the Principal is unable to recover from the Contractor because of the operation of those provisions in relation to the application of apportionment of liability to subcontractors or any person forming the Contractor or responsible for the performance of any part of the Works.

# SC60 ENTIRE AGREEMENT

This Contract constitutes the complete understanding of the parties concerning the project and the Works and supersedes all prior negotiations and agreements (written or otherwise) between them.

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| ANNEXURE to the Australian Standard General Conditions of Contract | PART C |

Unconditional Undertaking

**APPROVED FORM OF UNCONDITIONAL UNDERTAKING**

**(Clause 5.3)**

At the request of ACN ("the Contractor")

and in consideration of ACN ("the Principal")

accepting this undertaking in respect of the contract for

("the Project")

ACN ("the Financial Institution")

unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of $ …………..).

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

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

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of $

)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

DATED at this day of 20

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART D |

Deed of Guarantee

[*insert date*]

To: [ ]

The Principal entered into a Contract dated [ ] (“**Contract**”) with [ ] (“**Contractor**”), for a range of works (“**Works**”) to be undertaken by the Contractor.

Pursuant to the terms of the Contract, the Contractor has agreed to procure a guarantee from [ ] (“**Guarantor**”) on the terms of this Guarantee. At the request of the Contractor, the Guarantor has agreed to guarantee the performance of the Contractor under the Contract as set out in this Parent Company Guarantee (“**Guarantee**”). Capitalised terms used in this Guarantee that are defined in the Contract have the meaning given in the Contract, unless expressly stated otherwise.

In consideration of the Principal entering into the Contract, the Guarantor irrevocably and unconditionally guarantees to the Principal, as a primary obligation and not as surety, due performance by the Contractor of each and all of its obligations and liabilities under and in accordance with the Contract. Nothing in this Guarantee shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor in the Contract. The Guarantor will indemnify the Principal against all liabilities, losses, damages, costs and expenses suffered or incurred by the Principal by reason of any act failure default or omission on the part of the Contractor in performing and observing its obligations under and in accordance with the Contract.

The Guarantor’s obligations under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Guarantor waives notice of:

(a) any suspension of the Works, Variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the Principal in respect of the Contractor's obligations under the Contract;

(b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

(c) the termination of the Contract or of the employment of the Contractor under the Contract for any reason;

(d) any forbearance or waiver of any right of action or remedy the Principal may have against the Contractor or negligence by the Principal in enforcing any such right of action or remedy;

(e) any bond, undertaking, security or other guarantee held or obtained by the Principal for any of the obligations of the Contractor under the Contract or any release or waiver thereof.

This Guarantee shall extend to any Variation of or amendment to the Contract agreed between the Principal and the Contractor. The Guarantor authorises the Principal and the Contractor to make any such amendment or Variation to the Contract.

This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the Contractor under the Contract and remain in full force and effect until all the said obligations and liabilities of the Contractor have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the Principal may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Contractor.

The Guarantor agrees not to make any claim or threaten to make any claim on any ground whatsoever whether by proceedings or otherwise against the Contractor for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Principal may have against the Contractor arising out of or in connection with the Contract, until such time as such claims shall be satisfied by the Contractor or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Principal holds or may hold for any monies or liabilities due or incurred by the Contractor in respect of any payment by us hereunder. The Principal shall hold such sum in trust for the Guarantor for so long as any sum is payable (contingently or otherwise) under this Guarantee.

The Principal shall be entitled to assign the benefit of this Guarantee at any time without our consent or the consent of the Contractor being required.

Any notice required by this Guarantee shall be deemed to be duly given when delivered (in the case of personal delivery) or forty-eight (48) hours after being despatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties hereto.

This Guarantee is executed by the Guarantor as its deed.

**IN WITNESS** of which we have duly executed this Guarantee on the date stated above.

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| --- | --- | --- |
| **THE COMMON SEAL** of **XXXXXXXXX** is affixed in accordance with its constitution in the presence of:    Signature of authorised person    Office held    Name of authorised person (block letters) | )  )  )  ) | Signature of authorised person    Office held    Name of authorised person (block letters) |

Address for notices

[ ]

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| ANNEXURE to the Australian Standard General Conditions of Contract | PART E |

Key Personnel

|  |  |
| --- | --- |
| **Name** | **Position** |
| [Insert] | [Insert] |
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| ANNEXURE to the Australian Standard General Conditions of Contract | PART F |

Provisional Sums Schedule

|  |  |
| --- | --- |
| **Description** | **Sum allowed (excl. GST)** |
| [Insert] | $[Insert] |
|  |  |
|  |  |
|  |  |
|  |  |
| **Total (included in the Contract Sum)** | **$[insert]** |

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART G |

Schedule of Drawings and Specifications

[Insert]

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART H |

Site Plan

[Insert]

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART I |

Work Day Calendar

[Insert]

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART J |

Program

[Insert]

|  |  |
| --- | --- |
| ANNEXURE to the Australian Standard General Conditions of Contract | PART K |

Preliminaries

[Insert]