

Amended AS 4000 – 1997

[Insert description of the Works]

Tomago Aluminium Company Pty Limited

acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited

[insert name of Contractor]

FORMAL INSTRUMENT OF AGREEMENT

BETWEEN

Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, of 638 Tomago Road, Tomago NSW 2322
(Principal)

AND

[#INSERT CONTRACTOR] ([#INSERT ACN]) of [#INSERT ADDRESS] (**Contractor**)

RECITALS

- A. The Principal requires the Contractor to complete the Works.
- B. The Contractor warrants to the Principal that it has the necessary experience, skill, capability and resources needed to complete the Works in accordance with this Contract.
- C. The parties wish to evidence in writing their agreement on the terms set out in this Contract.

THE PARTIES AGREE as follows:

1. Contract

This Contract is comprised of the following documents:

Document	Annexure
This Formal Instrument of Agreement	
General Conditions of Contract	
Contract Particulars	Annexure A
Approved Form of Unconditional Undertaking	Annexure B
Subcontractor Statement and Statutory Declaration	Annexure C
Schedule of Rates	Annexure D
Scope of Works	Annexure E
Deed of Guarantee and Indemnity	Annexure F
Form of Subcontractor Warranty	Annexure G

2. Parties to carry out obligations

The parties promise to:

- (a) perform their respective obligations in accordance with this Contract; and
- (b) do everything reasonably necessary to give effect to this Contract.

3. Prior work

This Contract applies retrospectively to all WUC which has or should have been undertaken by the Contractor whether or not that WUC has been undertaken prior to the Date of Contract.

A payment made to the Contractor for WUC which has or should have been undertaken by the Contractor prior to the Date of Contract as part of the WUC is part payment of the Contract Sum.

The Contractor acknowledges and agrees that it is not entitled to bring any Claim against the Principal (other than for payment of the Contract Sum) in respect of any act, matter or thing which has occurred or should have occurred prior to the Date of Contract.

EXECUTED as an **AGREEMENT** on [insert date]

EXECUTED by **Tomago Aluminium Company Pty Limited (ABN 68 001 862 228)**, acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, by its authorised representative in the presence of:

Signature of Witness

Signature of Authorised Representative

Name of Witness

Name of Authorised Representative

EXECUTED by **[insert name of Contractor] (ABN [*)]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Director / Secretary

Name of Director

Name of Director / Secretary

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GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following terms have the following meanings in this Contract:

Acceleration Direction has the meaning in clause 33.4.

Access Permit means a written permit issued by the Superintendent to the Contractor to access and/or carry out WUC within a Restricted Area during an approved period.

Applicable Codes and Standards means the most recent editions of all codes, standards, regulations and requirements relevant to the WUC, including those listed in Item 11.

Approval means any licence, permit, consent, approval, determination, certificate or other requirement of any Authority or under any Law, which must be obtained or satisfied to perform the WUC, occupy the Works, use the Works or connect the Works with any third party infrastructure or works located either on or off the Site or otherwise comply with any Law.

Archaeological Remains has the meaning in clause 25.6;

Authority means any:

- (a) governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, authority, agency, Minister, statutory corporation or instrumentality; or
- (b) other person having a right to impose a requirement or whose consent is required under any Law with respect to any WUC or Works, including any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works.

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in Newcastle; or
- (b) 27, 28, 29, 30 or 31 December.

Certificate of Practical Completion has the meaning in clause 35.7(b).

Claim includes any claim, allegation, demand, remedy, cause of action, suit, right, proceeding, order or judgement, whether present or future:

- (a) arising out of, or in any way in connection with, this Contract (including any direction of the Principal or Superintendent) or the WUC; and
- (b) whether under this Contract or otherwise at law or in equity, including by statute, in tort (for negligence or otherwise) or for restitution,

including for an increase in the Contract Sum, payment of money or an EOT.

Compensable Cause means a default or negligent act or omission of the Principal.

Confidential Information means information revealed by or on behalf of the Principal to the Contractor concerning the Principal's:

- (a) past, present or future structure, activities, strategies, plans, assets, designs, trade secrets, know-how, processes, techniques or financial affairs; and
- (b) all other information that:
 - (i) is by its nature confidential;
 - (ii) is marked or designated as confidential at the time of its disclosure; or
 - (iii) the Contractor knows or ought to know is confidential.

Construction Plant means things used in performing WUC, but not forming part of the Works.

Construction Program has the meaning in clause 33.5.

Contract has the meaning in clause 1 of the Formal Instrument of Agreement.

Contract Sum means, where Item 9 includes:

- (a) a lump sum only, that lump sum;
- (b) rates only, the sum ascertained by multiplying those rates and relevant rates included in the Schedule of Rates by the actual quantity of relevant WUC performed; or
- (c) a lump sum and rates, the aggregate of the sums in paragraphs (a) and (b),

including Provisional Sums, but excluding additions or deductions which may be required to be made under this Contract.

Contractor means the person named in Item 3.

Contractor's Representative means the person named in Item 5 or any replacement appointed in accordance with clause 23(c).

Date for Practical Completion means where:

- (a) Item 8(a) provides a date for Practical Completion, that date; or
- (b) Item 8(b) provides a period for Practical Completion, the last day of that period,

but if an EOT is Directed by the Superintendent or Principal, it means the date resulting therefrom.

Date of Contract means the date on which the last party executes this Contract.

Date of Practical Completion means:

- (a) the date evidenced in a Certificate of Practical Completion as the date on which Practical Completion was achieved; or
- (b) where another date is determined in any dispute resolution proceeding as the date on which Practical Completion was achieved, that other date.

Defect includes any:

- (a) defect or deficiency in materials or workmanship;
- (b) shrinkage or fault in the WUC or Works;
- (c) omission of any WUC or Works;
- (d) aspect of the WUC or Works which is not strictly in accordance with this Contract; and
- (e) damage to any WUC or Works resulting from anything referred to in any of paragraphs (a) – (d).

Defects Liability Period means the period defined in clause 37.1.

Design Obligations means the design obligations described in Item 22.

Direction includes any direction, approval, assessment, decision, demand, explanation, instruction, notice, order, permission, rejection, request or requirement.

Dispute has the meaning in clause 46.1.

Documentation includes plans, designs, drawings, calculations, data, sketches, samples, specifications, notes, reports, maps and accounts (whether in tangible or electronic form).

Environment includes land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetic.

Environmental Law means any Law regulating or otherwise concerning the Environment.

EOT (extension of time) has the meaning in clause 35.3.

Error has the meaning in clause 7.1.

Excepted Risks has the meaning in clause 17.3.

Existing Operations means all infrastructure, assets and improvements on or about the Site and its surrounds and all activities undertaken by or on behalf of the Principal or with the Principal's consent in such areas.

Final Certificate has the meaning in clause 39.5.

Final Payment Claim means the final payment claim contemplated in clause 39.5.

Force Majeure Event means each of the following, including their effects, to the extent they are beyond the reasonable control of the affected party and are not caused or contributed to by the affected party or any of its Personnel:

- (a) confiscation by order of any Authority;
- (b) mass sickness or illness, including COVID-19; and
- (c) earthquake, fire, flood, cyclone or hurricane.

Free Issue Items has the meaning in clause 29.2.

GST has the meaning in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all regulations and applicable rulings issued by the Commissioner of Taxation in relation to that Act.

Guarantor means the person named in Item 17(g).

Hazardous Material means all material, including asbestos, perfluorinated alkyl substances, polyfluorinated alkyl substances, perfluorooctane sulphonate and perfluorooctanoic acid and any form of organic or chemical matter, whether solid, liquid, gas, odour, heat, sand, vibration, radiation or substance, which makes or has the capacity to make the Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

Indemnified Person has the meaning in clause 47.1.

Information Documents means all:

- (a) information, data, test results, sample reports (including of geotechnical or other investigations) and documents provided to the Contractor by or on behalf of the Principal; and
- (b) other information, data and documents referred to or incorporated by reference in any information, data or document referred to in paragraph (a).

Insolvency Event means, in respect of the Contractor, the occurrence of any of the following:

- (a) the Contractor makes a statement or informs the Principal in writing, or creditors generally, that the Contractor is insolvent or financially unable to proceed with this Contract;
- (b) execution is levied against the Contractor by a creditor;
- (c) notice is given of a meeting of creditors with a view to the Contractor entering into a deed of company arrangement;
- (d) the Contractor enters into a deed of company arrangement with its creditors;
- (e) a controller or administrator is appointed in respect of the Contractor;
- (f) an application is made to a court for the Contractor's winding up and it is not stayed within 14 days;
- (g) a winding up order is made in respect of the Contractor;
- (h) the Contractor resolves by special resolution that it be wound up voluntarily; or
- (i) a mortgagee of any of the Contractor's property takes possession of that property.

Intellectual Property Rights means all intellectual property rights and other proprietary rights in relation to inventions, innovations, ideas, patents, applications for patents, copyright (including future copyright), registered and unregistered designs, registered and unregistered trademarks, utility models, designs, rights in relation to circuit layouts and circuit layout designs, mask rights, rights in relation to technologies in development, trade secrets, know-how and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organization of July 1967, including any right to register those rights.

Item means an item of Annexure A.

JSEA means a Job Safety and Environmental Analysis.

Latent Condition has the meaning in clause 26.1.

Laws includes all:

- (a) laws applicable to the Works or the carrying out of the WUC, including Acts, ordinances, regulations, by-laws, orders, awards and proclamations;
- (b) Approvals and other Authority requirements; and
- (c) fees and charges payable in connection with the foregoing.

Long Term Permit to Work means a permit of that name issued by the Principal.

Loss means:

- (a) damages, Claims, fees, losses, liabilities, costs, charges, outgoings, payments and expenses of any kind, including legal fees on an indemnity basis and disbursements and costs of investigation, litigation, settlement, judgment and interest; and
- (b) to the extent not prohibited by Law, fines and penalties.

Moral Rights means the rights of integrity of authorship, attribution of authorship of a work and not to have authorship of a work falsely attributed, created by the *Copyright Act 1968* (Cth) and similar rights in other jurisdictions.

Notice of Dispute has the meaning in clause 46.1.

Payment Schedule has the meaning in clause 39.2.

Permit to Work means a permit of that name issued by the Principal.

Personnel means, in relation to the:

- (a) Principal, officers, employees, agents, contractors and subcontractors of the Principal (excluding the Contractor); or
- (b) Contractor, officers, employees, agents, contractors and Subcontractors of the Contractor and persons for whom the Contractor is otherwise responsible or vicariously liable in relation to the Principal.

Policies and Procedures means:

- (a) the policies and procedures listed in Item 12; and
- (b) all other policies and procedures of the Principal (available at www.tomago.com.au/products/suppliers-and-contractors),

in each case as amended by the Principal from time-to-time.

PPSA means the *Personal Property Securities Act 2009* (Cth).

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

- (a) the Works are complete except for minor Defects:
 - (i) which do not prevent the Works from being used for their intended purpose;
 - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Works;
- (b) the Works comply with all Laws and relevant Australian Standards;
- (c) all Tests which are required by this Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed;

- (d) all plant, equipment and services provided for in this Contract have been installed in or connected to the Works, commissioned and finally tested and are working to the standards and requirements of this Contract and all relevant Authorities;
- (e) the Contractor has supplied the Superintendent with originals of all Approvals which must be issued as a condition precedent to the Works being used for their intended purpose;
- (f) all Approvals the Contractor is required to obtain under this Contract have been obtained and copies provided to the Superintendent;
- (g) all Documentation:
 - (i) required by this Contract to be provided to the Principal as a condition precedent to Practical Completion; and
 - (ii) which, in the Superintendent's view, is necessary for the proper use, operation and maintenance of the Works,has been supplied to the Superintendent in the forms required by the Principal;
- (h) the Contractor has provided the Principal with final and accurate hard and electronic:
 - (i) work as executed drawings of all of the Works; and
 - (ii) operation and maintenance manuals;
- (i) the Contractor has provided the Principal with:
 - (i) all warranties required by this Contract; and
 - (ii) a certificate from a structural engineer which certifies that the Works have not had a detrimental impact on the structural integrity of any building or the Site;
- (j) the Works:
 - (i) are tidy and free of rubbish and debris;
 - (ii) have been washed and cleaned thoroughly in accordance with all relevant manufacturer's and cleaning product manufacturer's instructions; and
 - (iii) are safe and secure;
- (k) all keys and other access devices have been labelled and returned to the Principal;
- (l) all Temporary Works and Construction Plant has been removed from the Site; and
- (m) all other things required by this Contract to be done by the Contractor as conditions precedent to the achievement of Practical Completion, including those listed in Item 15, have been done to the satisfaction of the Superintendent.

Principal means the person stated in Item 1.

Principal Assets has the meaning in clause 53(a).

Principal Contractor has the meaning in the WHS Legislation.

Project Documents means all Documentation prepared by or on behalf of the Contractor in relation to the performance of this Contract.

Project Plans means the plans referred to in Item 13 and finalised in accordance with clause 11.1.

Provisional Sum means the work described in clause 3 and the work identified in Item 10.

Qualifying Cause of Delay means:

- (a) a breach of this Contract by, or negligent act or omission of, the Principal;
- (b) a Direction under clause 36.1(b)(i)(A) where an act or omission of the Contractor or any of its Personnel is not the cause of such Direction;
- (c) inclement weather; and
- (d) a suspension of the WUC Directed by the Superintendent where the Contractor is entitled to its additional costs under clause 34.4.

Restricted Area means the area(s) identified in Item 16.

Schedule of Rates means the schedule set out in Annexure Part D.

Scope of Works means the documents listed in Annexure Part E.

Security means:

- (a) an unconditional undertaking in a form (the form in Annexure Part B is approved) and issued by a bank, in each case approved by the Superintendent in writing; or
- (b) any other form of security approved by the Superintendent in writing.

Security Interest means a mortgage, charge, lien, pledge, security interest, title retention, trust, preferential right or encumbrance and includes that term as defined in the PPSA.

Selected Subcontract Work has the meaning in clause 10.3.

Selected Subcontractor has the meaning in clause 10.3.

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

Separate Contractor means any person, other than the Contractor and any of its Personnel, engaged by the Principal to perform works or services on or about the Site or any Existing Operations.

Site means the lands and other places made available for the performance of the Works as described in Item 14.

Site Access Rules means the rules, Policies and Procedures and conditions on which Contractor Personnel may enter onto, gain access to or perform work on the Site or any relevant Restricted Area.

Site Information means all Documentation relevant to physical conditions on, under or over the surface of, or in the vicinity of, the Site (including Latent Conditions) which was or is made available to the Contractor by or on behalf of the Principal.

SOPA means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Statutory Declaration means a statutory declaration in the form set out in Annexure Part C.

Subcontractor means a subcontractor engaged by the Contractor to perform any WUC.

Subcontractor Statement means a statement in the form set out in Annexure Part C.

Superintendent means the person named in Item 6 or any replacement notified to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative.

Superintendent's Representative means a person appointed in writing by the Superintendent under clause 22.

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 WUC.

SWMS has the meaning in clause 13.5(a)(i).

Tax means any income, stamp, indirect (excluding GST) or other tax, levy, impost, deduction, charge, duty or compulsory withholding.

Temporary Work means work used in performing the WUC, but not forming part of the Works.

Test has the meaning in clause 31.1 and includes commission, examine and measure.

User means any user or occupier of or visitor to any Existing Operations.

Variation has the meaning in clause 38.2(a).

Variation Offer has the meaning in clause 38.3.

Variation Proposal has the meaning in clause 38.3.

WHS Act means the *Work Health and Safety Act 2011 (NSW)*.

WHS Legislation means the WHS Act and WHS Regulations and all other legislation relevant to work health and safety.

WHS Plan means the work health and safety plan:

- (a) prepared by the Contractor;
- (b) submitted to the Superintendent by the Contractor by the time stated in Item 13; and
- (c) which must appropriately:
 - (i) detail the procedures the Contractor will implement to manage work health and safety issues relevant to the WUC;
 - (ii) describe how the Contractor will ensure its compliance with the WHS Legislation for the term of this Contract; and
 - (iii) address all other matters relevant to work health and safety and Directed by the Superintendent.

WHS Regulations means the *Work Health and Safety Regulations 2017 (NSW)*.

Work Plan means the plan referenced in Item 47, as amended in accordance with this Contract.

Works means the works described in the Scope of Works which must be completed by the Contractor and handed over to the Principal.

WUC (work under the Contract) means the work and, where relevant, Design Obligations, the Contractor is or may be required to carry out and complete under this Contract, as described in the Scope of Works, and includes Variations, remedial work, Construction Plant and Temporary Works.

1.2 Interpretation

In this Contract:

- (a) a reference to any document includes all variations to or replacements of it;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes its executors, administrators, successors, substitutes and assigns;
- (d) a reference to time is to time in Newcastle;
- (e) references to days means calendar days;

- (f) if a period is specified, it is to be calculated exclusive of the day on which the relevant notice is given or event occurs;
- (g) if the day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day (as appropriate);
- (h) if a word or phrase is defined in this Contract, its other grammatical forms have corresponding meanings;
- (i) general words are not limited by the use of the words 'including' or 'includes';
- (j) headings do not form part of and are not to be used in interpreting this Contract;
- (k) a reference to 'dollar' or '\$' is a reference to Australian dollars;
- (l) measurements must be in the legal units of measurement of Australia;
- (m) all communications between the parties must be in English;
- (n) no term or provision of this Contract will be construed against a party on the basis that this Contract or the term in question was put forward by or on behalf of the party; and
- (o) unless stated otherwise in this Contract, the Principal and Superintendent may exercise their discretions and rights under this Contract in their absolute discretion and grant, refuse or grant subject to conditions any consent required from the Principal or Superintendent in their absolute discretion.

2. NATURE OF CONTRACT

2.1 Performance and payment

- (a) The Contractor must carry out and complete the:
 - (i) WUC in accordance with this Contract and all Directions authorised by it; and
 - (ii) Design Obligations where Item 22 states that the Contractor must do so.
- (b) The WUC includes all work:
 - (i) specifically referred to in this Contract; and
 - (ii) which is otherwise necessary and reasonably incidental to the proper performance of the Contractor's obligations under this Contract.
- (c) If the Superintendent considers that the Contractor is not complying with this Contract, it may give the Contractor a Direction in respect of that non-compliance which:
 - (i) identifies the relevant non-compliance; and
 - (ii) states the date by which the Contractor must rectify that non-compliance,

and the Contractor must comply with that Direction.

- (d) The Principal must pay the Contractor the Contract Sum in respect of WUC performed in accordance with this Contract.
- (e) Other than as set out in this Contract, the Contract Sum is:
 - (i) not subject to adjustment for any reason; and
 - (ii) the Contractor's sole remuneration for its performance of this Contract.

2.2 Principal and Contractor relationship

- (a) Nothing in this Contract:
 - (i) is intended or will be construed as creating or requiring any representative, agency or employee relationship between the parties;
 - (ii) creates or is intended to create any joint venture, partnership, agency, trust or other fiduciary relationship between the parties; or
 - (iii) is to be construed as creating or requiring any continuing relationship between the parties after the date of the Final Certificate.
- (b) The Contractor:
 - (i) acknowledges and agrees that it is an independent contractor solely responsible under an arm's length contract for the performance of this Contract; and
 - (ii) must not act for or bind the Principal, nor hold itself out as having the authority or right, to assume, create or undertake any obligation on behalf of or in the name of the Principal.

2.3 Contractor's warranties

- (a) The Contractor warrants to the Principal and repeats on each day of the term of this Contract, that:
 - (i) it has full power and authority to execute and perform this Contract in accordance with its terms;
 - (ii) the Contractor:
 - (A) will at all times:
 - (I) be suitably qualified, skilled and experienced;

- (II) carry out and complete the WUC exercising the highest level of skill, care and diligence, in a proper and workmanlike manner and under competent supervision; and
 - (III) perform this Contract in accordance with all relevant Laws, Policies and Procedures, Applicable Codes and Standards and Approvals;
- (B) has examined, understands and will comply with, and will ensure that its Personnel comply with, the Policies and Procedures, Site Access Rules, any applicable Access Permit and documents that together comprise this Contract;
- (C) will not, and will ensure that its Personnel do not, at any time do anything which will or could interrupt or interfere with any Existing Operations, other than where it is expressly permitted to do so by this Contract;
- (D) has done everything that would be expected of a prudent, competent and experienced contractor in assessing the risks it is assuming under this Contract and ensuring that the Contract Sum and Construction Program contain allowances to protect it against any of these risks eventuating;
- (E) has examined the Scope of Works, including all design documents contained therein and confirmed that they are suitable, appropriate and adequate for all intended purposes; and
- (F) has satisfied itself completely as to the Latent Conditions;
- (iii) all relevant Contractor Personnel will be suitably qualified, trained, licensed and experienced;
- (iv) it enters into this Contract based on its own investigations, examinations and determinations;
- (v) it is not aware of any actual or threatened Claim or circumstance that could prohibit or hinder its performance of this Contract;
- (vi) all material and equipment used in completing the WUC will be new, of merchantable quality and of the standard required by this Contract;
- (vii) it will procure that all warranties in respect of materials or equipment furnished to the Contractor by any manufacture, supplier or Subcontractor apply for the Principal's direct benefit and for the periods stated in Item 27;
- (viii) on the Date of Practical Completion the Works will be structurally sound and in good condition and repair;

- (ix) it is able to comply with its obligations under this Contract without the need for a Variation;
 - (x) no Security Interest exists over anything to be incorporated into the Works and the Principal will receive title to all such things free of any Security Interest; and
 - (xi) it will carry out and complete the WUC so that the completed Works will:
 - (A) be fit for their intended purposes;
 - (B) comply with this Contract in full; and
 - (C) enable maintenance and repairs to be completed in no less efficient manner than would be expected of work similar to the Works.
- (b) The Contractor acknowledges and agrees that:
- (i) the Principal is relying on the Contractor's skill, care and diligence;
 - (ii) it is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the design documents included in this Contract;
 - (iii) the Principal has entered into this Contract in reliance on the representations and warranties given by the Contractor within it; and
 - (iv) all representations and warranties provided by the Contractor in this Contract will remain unaffected and accurate for the duration of this Contract and the Contractor will bear and continue to bear full liability and responsibility in accordance with this Contract for the performance of WUC, notwithstanding:
 - (A) that design work has been carried out by or on behalf of the Principal;
 - (B) any receipt or review of, or comment or Direction on, any such design documents or any part of the WUC by or on behalf of the Principal;
 - (C) any Variation or failure by the Principal to Direct a Variation;
 - (D) any receipt or review of, or comment on, or rejection or approval of, or permission to use or deemed permission to use, or expression of satisfaction or dissatisfaction with any:
 - (I) document or information provided by the Contractor;
 - (II) submission, proposal or recommendation by the Contractor;
or
 - (III) of the Contractor's work methods or procedures,

by or on behalf of the Principal or Superintendent; or

- (E) the making available to the Contractor, or the provision to the Contractor, by or on behalf of the Principal or Superintendent (whether prior to or after the Date of Contract), of any Information Documents.

2.4 Contractor's Existing Operations-related obligations

- (a) The Contractor must:
 - (i) to the extent relevant to its obligations under this Contract or its access to Existing Operations, comply with, and ensure that its Personnel comply with, all:
 - (A) Laws and other obligations of the Principal relevant to any Existing Operations; and
 - (B) relevant Site Access Rules, Policies and Procedures and Access Permits;
 - (ii) promptly upon becoming so aware, notify the Superintendent in writing if any Existing Operations are not working or are damaged;
 - (iii) not do or omit to do anything which may cause the Principal to breach any Law(s); and
 - (iv) except to the extent expressly permitted by this Contract, not interfere with, alter or damage any Existing Operations, without the prior written consent of the Superintendent.
- (b) Subject to the Principal's obligations under clause 25.1, but notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that:
 - (i) access to the Existing Operations is subject to the demands of other Users;
 - (ii) use of Existing Operations may be constrained by applicable Laws and the acts and decisions of Authorities; and
 - (iii) the Principal may close all or any part of the Existing Operations for any period considered appropriate or operationally necessary when in its reasonable opinion it is necessary to do so.

3. PROVISIONAL SUMS

A Provisional Sum is not payable by the Principal but where pursuant to a Direction the item or Work to which the Provisional Sum relates is carried out or supplied by the Contractor, the item or Work will be priced by the Superintendent (without any allowance for profit or overhead), and the difference added to or deducted from the Contract Sum.

Where any part of such Work or item is carried out or supplied by a Subcontractor, the Superintendent must allow the amount payable by the Contractor to the Subcontractor for the item or Work, disregarding any:

- (a) damages payable by the Contractor to the Subcontractor or vice versa; and
- (b) deduction or cash discount for prompt payment,

as assessed by the Superintendent, plus an amount for profit and attendance calculated by applying the percentage stated in Item 17.

The Contractor must:

- (c) document and maintain detailed and accurate records (including all relevant supporting materials) of all costs it incurs in performing or having performed any Provisional Sum work; and

- (d) maintain all other records Directed by the Superintendent,

and provide such information to the Superintendent if Directed to do so.

4. SEPARABLE PORTIONS

4.1 Separable Portions

In this Contract, the terms Practical Completion, Date for Practical Completion, Date of Practical Completion, Defect and Defects Liability Period apply separately to each Separable Portion and references therein to the Works and WUC mean so much of the Works and WUC as is comprised in the relevant Separable Portion.

4.2 Superintendent may direct

Separable Portions may be Directed by the Superintendent, who must clearly identify for each, the:

- (a) relevant portion of the Works;
- (b) Date for Practical Completion; and
- (c) respective amounts for Security, liquidated damages and delay damages.

5. SECURITY

5.1 Provision

The Contractor must provide Security to the Principal in accordance with this clause 5 and Item 18.

If the Contractor fails to provide Security in accordance with this clause 5, the Principal will, notwithstanding any other provision in this Contract, be entitled to withhold (as retention) from

any amount payable to the Contractor under this Contract an amount equal to the value of the Security the Contractor has failed to provide until such time as the Contractor complies with this clause 5.

5.2 Recourse

The Principal may at any time convert the Security into money and have recourse to it or have recourse to any Security provided by way of retention:

- (a) if the Contractor is in breach of this Contract;
- (b) if it has an entitlement to moneys due under or in connection with this Contract;
- (c) to recover any debt or other money due and payable or likely to become due and payable to the Principal from the Contractor under or arising out of this Contract; or
- (d) where the Principal has or may have a Claim against the Contractor under or in connection with this Contract.

5.3 No steps to restrain Principal

- (a) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of Security from paying the Principal pursuant to the Security; or
 - (ii) the Principal from taking any steps to:
 - (A) exercise its rights (including to obtain payment) under the Security;
 - (B) convert the Security into money and have recourse to it; or
 - (C) use the proceeds of any Security.
- (b) The Principal is not required to give the Contractor any notice of its intention to have recourse to the Security and is not liable for any Loss occasioned by the conversion of any Security into money or the Principal's recourse to it.

5.4 Reduction and release

- (a) Upon the issue of a Certificate of Practical Completion, the Principal's entitlement to Security (excluding any Security provided pursuant to clause 39.4) will be reduced by the percentage in Item 18(e).
- (b) The Principal's entitlement to Security in Item 18(d) will cease 14 days after incorporation into the Works of the relevant plant or materials.
- (c) The Principal's entitlement otherwise to Security will cease 14 days after the issuing of a Final Certificate.

- (d) Upon the Principal's entitlement to Security ceasing, it must release and return all Security then held to the Contractor.

5.5 Holding of and interest on Security

- (a) The Principal does not hold any Security, or any moneys resulting from the conversion of any Security, on trust for the Contractor and is not obliged to hold any moneys resulting from the conversion of Security in any particular or defined account.
- (b) If the Principal converts Security into money, all interest earned on those moneys will be retained by the Principal.

5.6 Deed of guarantee and indemnity

The Contractor must provide the Principal with a deed of guarantee and indemnity:

- (a) in the form set out in Annexure Part F; and
- (b) duly executed by and enforceable against the Guarantor,
within 2 Business Days after:
 - (c) the Date of Contract if Item 18(f) states that such a deed is required; or
 - (d) receiving a writing direction from the Principal to do so if Item 18(f) states that such a deed is not required as at the Date of Contract.

6. NOTICES

- (a) A notice, approval, consent or other communication under or in connection with this Contract is only effective if it is:
 - (i) in writing and in English;
 - (ii) signed by a person duly authorised by the sender;
 - (iii) addressed to the party to whom it is to be given at the address in Item 2, 4 or 7 (as relevant);
 - (iv) marked to the attention of the recipient's Representative; and
 - (v) either left at the recipient's address or sent to it by mail or email.
- (b) Where a notice, approval, consent or other communication is:
 - (i) left at the recipient's address, it is taken to have been received when it is left provided that it is left in the presence of a representative of the recipient; or
 - (ii) sent by:
 - (A) mail, it is taken to have been received, if sent:

- (I) within Australia, four Business Days after posting; or
- (II) to or from a place outside of Australia, ten Business Days after posting; or
- (B) email, the *Electronics Transactions Act 2000* (NSW) will apply to determine when it is received,

except that if, as a result of this clause 5.6(b), a notice, approval, consent or communication will be taken to have been received on a day that is not a Business Day or after 5:00pm on a Business Day, it will be taken to be received at 9:00am on the next Business Day.

- (c) Each party must promptly notify the other in writing of any change of the notifying party's address.

7. CONTRACT DOCUMENTS

7.1 Discrepancies

- (a) Figured prevail over scaled dimensions in the event of a discrepancy.
- (b) The several documents that form this Contract are to be read together and if this Contract provides for standards that are inconsistent, the higher standard will apply.
- (c) If either party discovers any inconsistency, error, ambiguity, conflict, omission or discrepancy (each an **Error**) in any document that:

- (i) forms part of this Contract; or
- (ii) is prepared for the purpose of carrying out any WUC,

it must give the Superintendent written notice of it. The Superintendent, thereupon, or upon otherwise becoming aware, must Direct the Contractor as to the interpretation to be followed and the Contractor must comply with that Direction.

- (d) Despite any other provisions of this Contract, the Contractor:
 - (i) is not entitled to make and the Principal will not be liable upon, any Claim in respect of any delay or Loss suffered or incurred by the Contractor arising out of any Error, including any Direction by the Superintendent to resolve it;
 - (ii) must bear the cost of compliance with a Direction under clause 7.1(c); and
 - (iii) is not entitled to any extra payment or EOT in respect of such compliance.

7.2 Principal-supplied Documentation

The Principal must supply to the Contractor the documents and number of copies thereof, both stated in Item 19.

All such documents:

- (a) remain the Principal's property and must be returned to the Principal on demand; and
- (b) must not be used, copied or reproduced for any purpose other than performing WUC.

The Contractor bears all risk in all documents supplied to it by or on behalf of the Principal.

7.3 Contractor-supplied Documentation

- (a) The Contractor must supply to the Superintendent the documents in Item 20 in the number and at the times stated in that same Item.
- (b) Other documents and information required by this Contract, unless elsewhere stated in this Contract, must be supplied not less than the number of days set out in Item 21 before the Work described in the documents is commenced and must be in a form satisfactory to the Superintendent.
- (c) If the Contractor submits Documentation to the Superintendent:
 - (i) the Superintendent is not required to check such Documentation for Errors or compliance with this Contract;
 - (ii) any Superintendent's acknowledgment or approval will not prejudice the Contractor's obligations or the Principal's rights; and
 - (iii) if this Contract requires the Contractor to obtain the Superintendent's Direction about such Documentation, the Superintendent must give its Direction within the period stated in Item 21, including reasons if it is unsuitable.
- (d) Copies of Documentation supplied by the Contractor to the Principal are the Principal's property on and from their supply.

7.4 Availability

The Contractor must keep available to the Superintendent and Principal:

- (a) on the Site, one complete set of Documentation affecting the WUC; and
- (b) at the place of manufacture or assembly of any significant part of the WUC off Site, a complete set of Documentation affecting that part.

7.5 Confidential Information

- (a) Subject to clause 7.5(b), the Contractor must not at any time, without the prior written consent of the Principal, divulge or permit its Personnel to divulge to any person (other than to their Personnel who require such information to enable them to properly perform their duties under this Contract) any of the contents of this Contract or any Confidential Information.

- (b) Clause 7.5(a) does not apply to the disclosure of Confidential Information:
 - (i) which is now or hereafter comes into the public domain through no default of the Contractor or any of its Personnel;
 - (ii) which is required to be disclosed by Law; or
 - (iii) to a court, arbitrator, expert or administrative tribunal in the course of proceedings to which the Contractor is a party.
- (c) Immediately upon the termination or expiration of this Contract or on Direction by the Principal, the Contractor must, at the Principal's election, return to the Principal, destroy or, in the case of machine readable records, delete, all Confidential Information in the Contractor's possession or control.
- (d) When the Contractor has complied with 7.5(c), it must certify to the Principal in writing that it has done so.
- (e) The Contractor acknowledges and agrees that monetary damages may not be a sufficient remedy for a breach of this clause 7.5, and that the Principal will be entitled, without limiting any of its other rights or remedies, to such injunctive relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.

7.6 Media

The Contractor must:

- (a) not make any public announcement or disclose any information concerning the Site, WUC, Works, this Contract or the Principal (including its Personnel) for distribution through any media without the Superintendent's prior written approval; and
- (b) refer to the Superintendent all enquiries from any media concerning the Site, WUC, Works, this Contract or the Principal (including its Personnel).

8. INFORMATION DOCUMENTS

8.1 No warranty by Principal

The Principal does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the Contractor with respect to the suitability, completeness, accuracy or adequacy of any Information Document and such documents do not form part of this Contract.

8.2 Warranty by Contractor

The Contractor warrants to the Principal and repeats on each day of the term of this Contract that the Contractor:

- (a) has not relied on the suitability, completeness, accuracy or adequacy of any Information Document;

- (b) has made its own evaluation of the suitability and accuracy of all Information Documents;
- (c) enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;
- (d) satisfied itself that the Contract Sum covers the cost of performing this Contract; and
- (e) obtained all relevant professional and technical advice with respect to the matters referred to in this clause 8.2,

and the Contractor:

- (f) acknowledges and agrees that the Principal entered into this Contract relying on the warranties given by the Contractor in this clause 8.2 and would not have done so but for them; and
- (g) will ensure that all Subcontractors similarly acknowledge that they have placed no reliance on the completeness, accuracy or adequacy of any Information Documents.

8.3 Principal not liable

The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any:

- (a) error in or omission from any Information Document;
- (b) use of or reliance upon any Information Document by or on behalf of the Contractor;
- (c) other fact or matter arising out of or in connection with any Information Document; or
- (d) failure by the Principal to make available to the Contractor any other document or information from investigations it undertook or was aware of.

8.4 Risk accepted by the Contractor

The Contractor accepts all risk arising out of its use of or reliance upon any Information Document.

9. DESIGN OBLIGATIONS

9.1 Application

This clause 9 only applies if Item 22 states that the Contractor must perform the Design Obligations.

9.2 Design Obligations

- (a) The Contractor must carry out the Design Obligations so that all relevant:
 - (i) designs are properly coordinated and integrated with one another; and

- (ii) Works are fit for their intended purposes and comply with this Contract.
- (b) The Contractor warrants for the benefit of the Principal and repeats on each day of the term of the Contract, that:
 - (i) all designs prepared, developed or documented by the Contractor will:
 - (A) comply with all relevant Laws and Applicable Codes and Standards;
 - (B) be prepared by appropriately accredited and experienced Personnel;
 - (C) be properly coordinated and integrated with the remainder of the Works and all structures adjoining or abutting the Works; and
 - (D) be suitable, appropriate, adequate and fit for all intended purposes; and
 - (ii) the Design Obligations will be undertaken in a manner which constitutes predictable design development.
- (c) The Contractor acknowledges and agrees that:
 - (i) it is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Contractor completing the Design Obligations; and
 - (ii) all representations and warranties provided by the Contractor in this Contract remain unaffected and accurate notwithstanding any receipt or review of, or comment or Direction by the Principal or anyone on its behalf on, any design prepared, developed or documented by the Contractor.

9.3 Design review

- (a) The Contractor must submit design packages prepared by or on behalf of the Contractor to the Superintendent for review as Directed by the Superintendent.
- (b) The Principal need not respond to the Contractor about any design submitted to it, but may request additional information to assist it with its review and, where it does so, the Contractor must promptly provide all such information.
- (c) If the Principal objects to a design provided to it by or on behalf of the Contractor, the Contractor, at its own cost and within 5 Business Days thereafter, must amend the relevant design to address the concerns and submit the amended drafts to the Superintendent. The Contractor must promptly correct any Defect in any of its designs.
- (d) The Contractor must not:
 - (i) commence manufacturing, fabricating or constructing any WUC to which a Design Obligation relates unless the Superintendent has had the number of days in Item 21 to reject the relevant design and has not done so; or

- (ii) depart from any design it is authorised under this Contract to use unless it has first submitted to the Superintendent all relevant amended designs and the Superintendent has had the number of days in Item 21 to reject the relevant design and has not done so.

9.4 Professional indemnity insurance

Before commencing any Design Obligations and for 7 years following the last Date of Practical Completion or earlier termination of this Contract, the Contractor must effect and maintain a professional indemnity insurance policy:

- (a) with a:
 - (i) solvent and reputable insurer represented in Australia and otherwise approved in writing by the Principal; and
 - (ii) level of cover not less than the amount set out in Item 23; and
- (b) covering the Contractor's liability in connection with the provision of all relevant professional services.

The Contractor must ensure that all Subcontractors who provide services in a professional capacity in respect of the WUC are equally insured before they commence performing any WUC.

9.5 Intellectual Property Rights

- (a) All Intellectual Property Rights created by or on behalf of the Contractor in its performance of this Contract vest in the Principal on their creation and the Contractor must do all things Directed by the Principal to effect such vesting.
- (b) The Contractor warrants to the Principal and repeats on each day of the term of this Contract, that:
 - (i) it has all rights needed to perform its obligations under clause 9.5(a); and
 - (ii) all things used by the Contractor in the performance of this Contract or otherwise provided to the Principal do not infringe any Intellectual Property Right.

9.6 Moral Rights

- (a) The Contractor must:
 - (i) ensure that it does not infringe any Moral Right of any author of any work in carrying out any WUC;
 - (ii) ensure that it obtains an irrevocable and unconditional:

- (A) written consent on terms reasonably required by the Principal from the author of any work to be incorporated into the Works, or used during, or as part of the performance of the WUC, including all necessary consents from its Personnel to doing or authorising any act or making or authorising any omission anywhere in the world which, but for the consent, infringes or may infringe an author's Moral Rights in the work; and
- (B) waiver on terms reasonably required by the Principal, to the extent permitted by Law, of any and all Moral Rights to which that author may be entitled anywhere in the world in relation to the relevant work;
- (iii) not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular, in procuring consents and waivers under this clause 9.6; and
- (iv) indemnify the Indemnified Persons from and against all Claims they suffer or incur arising out of or in connection with any actual or alleged infringement of any author's Moral Rights arising out of or in connection with the Works or WUC, or arising in the future out of or in connection with any change, distortion, alteration, relocation or destruction of the Works.
- (b) This clause 9.6 survives the termination of this Contract and the completion of the Works.
- (c) Where used in this clause 9.6, the terms 'author' and 'work' have the meanings given to them in the *Copyright Act 1968* (Cth).

10. ASSIGNMENT AND SUBCONTRACTING

10.1 Assignment

The Contractor must not, without the Principal's prior written approval (which may be conditional), assign, transfer, mortgage, pledge, charge or otherwise encumber this Contract or any payment or other right, benefit or interest thereunder.

10.2 Subcontracting generally

- (a) The Contractor must not, without the Superintendent's prior written approval, which must not be unreasonably withheld:
 - (i) subcontract or allow a Subcontractor to subcontract any of the WUC described in Item 24; or
 - (ii) allow a Subcontractor to assign a subcontract or any payment or other right, benefit or interest thereunder.

- (b) With a request for approval to subcontract, the Contractor must give the Superintendent:
 - (i) written particulars of the WUC proposed to be subcontracted and the name and address of the proposed Subcontractor; and
 - (ii) all other information the Superintendent reasonably requires, including the proposed subcontract without prices.
- (c) Within 10 days after the Contractor's request for approval, the Superintendent must give the Contractor written notice of approval or reasons why approval is not given, and any approval may be conditional upon the relevant subcontract including provisions that:
 - (i) the subcontractor must not assign or subcontract WUC without the Contractor's prior written consent;
 - (ii) may be reasonably necessary to enable the Contractor to fulfil its obligations to the Principal under or arising out of this Contract; and
 - (iii) if this Contract is terminated or WUC is taken out of the hands of the Contractor, the Contractor and subcontractor must, immediately after the Principal directs them to do so, execute a deed of novation in the form required by the Principal novating the subcontract from the Contractor to the Principal or its nominee.
- (d) For the purpose of effecting the novation referred to in clause 10.2(c)(iii), the Contractor irrevocably appoints the Principal as the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.

10.3 Selected Subcontract Work

- (a) If Item 25 includes a list of selected subcontractors (**Selected Subcontractors**) for particular WUC (**Selected Subcontract Work**), the Contractor must subcontract that WUC to a Selected Subcontractor and thereupon give the Superintendent written notice of the Selected Subcontractor's name.
- (b) If no Subcontractor listed in Item 25 will subcontract to perform the Selected Subcontract Work, the Contractor must provide a list of alternative subcontractors for the written approval or rejection of the Superintendent.

10.4 Novation

- (a) Whenever Directed by the Principal, the Contractor, without being entitled to compensation, must promptly execute a deed of novation in the form required by the Principal novating a subcontract stated in Item 26 from the Principal to the Contractor.

- (b) For the purpose of effecting the novation contemplated in clause 10.4(a), the Contractor irrevocably appoints the Principal to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.

10.5 Contractor's responsibility

- (a) The Contractor is liable to the Principal for the acts, defaults and omissions of the Contractor's Personnel as if they were those of the Contractor.
- (b) None of the following:
 - (i) any approval by the Superintendent under clause 10.2;
 - (ii) the inclusion in this Contract of a list of Selected Subcontractors;
 - (iii) the provision of any warranty by a Subcontractor;
 - (iv) the subcontracting of any WUC to a Subcontractor;
 - (v) the subcontracting of any WUC by a Subcontractor; or
 - (vi) the termination or rescission of a subcontract,

relieve the Contractor from any liability or obligation under or arising out of this Contract.

10.6 Warranties from Subcontractors

- (a) The Contractor must, in respect of WUC listed in Item 27, procure that all relevant Subcontractors provide warranties that are for the relevant period stated in Item 27 and in the form set out in Annexure Part G.
- (b) In addition to its obligations under clause 10.6(a), the Contractor must assign to the Principal before the expiry of the first Defects Liability Period the benefit of all other warranties obtained by the Contractor from Subcontractors and manufacturers and suppliers of plant, equipment, materials and other items incorporated into the Works where such warranties continue beyond the expiration of the Defects Liability Period. These warranties and the assigned rights thereunder must be such that they can be directly enforced by the Principal against the parties giving them.

11. PROJECT PLANS, REPORTING AND MEETINGS

11.1 Project Plans

- (a) The Contractor must:
 - (i) carry out and complete the WUC in accordance with, and otherwise implement, the Work Plan and all Project Plans; and

- (ii) for the purposes of clause 11.1(a)(i):
 - (A) prepare draft Project Plans that comply with this Contract and submit them to the Superintendent so there is no delay or disruption to the WUC and, in any event no later than 10 Business Days after the Date of Contract;
 - (B) not commence performing any WUC to which a Project Plan applies until the Superintendent has had 10 days to review the relevant Project Plan and has not rejected it;
 - (C) if a draft Project Plan is rejected by the Superintendent within the period in clause 11.1(a)(ii)(B), submit an amended draft to the Superintendent within 5 Business Days thereafter that addresses the Superintendent's reasons for rejection;
 - (D) finalise each Project Plan so there is no delay in or disruption to the WUC;
 - (E) after each Project Plan has been finalised, continue to update them and submit updated drafts to the Superintendent, after which clauses 11.1(a)(ii)(A) - (D) will reapply to the extent applicable; and
 - (F) document and maintain detailed records of all inspections and audits undertaken pursuant to a finalised Project Plan.
- (b) The Contractor is not relieved from compliance with any of its obligations or liabilities under this Contract or otherwise as a result of:
 - (i) the implementation of and its compliance with the Work Plan or any Project Plan;
 - (ii) any Direction of the Principal or Superintendent concerning the Work Plan or a Project Plan or the Contractor's compliance or non-compliance with the Work Plan or a Project Plan;
 - (iii) any audit or monitoring by or on behalf of the Superintendent of the Contractor's compliance with the Work Plan or a Project Plan; or
 - (iv) any failure by the Superintendent or anyone else acting on behalf of the Principal to detect any defect in or omission from the Work Plan or a Project Plan.

11.2 Reporting

- (a) Within 3 Business Days after the end of each calendar month prior to the Date of Practical Completion, the Contractor must submit a written report to the Superintendent that addresses the issues identified in Item 28.

- (b) In addition to its obligations under clause 11.2(a), whenever Directed to do so by the Superintendent and within the period Directed, the Contractor must provide the Superintendent with written reports in the forms and including the content required by the Superintendent.
- (c) The submission of any report required by this clause 11.2 does not constitute the submission of a notice or Claim under this Contract.

11.3 Project meetings

Whenever Directed by the Superintendent and at the time and place Directed, the Contractor must meet with the Superintendent and its nominees to discuss any issue relevant to the WUC or this Contract. The Contractor must ensure that all Contractor Personnel Directed to attend any such meeting by the Superintendent also attend.

12. LAWS

12.1 Compliance

The Contractor must:

- (a) at its cost, obtain all relevant Approvals and satisfy all relevant Laws, except those listed in Item 29 or otherwise Directed by the Superintendent to be satisfied or obtained by the Principal;
- (b) comply with all Laws in performing this Contract and ensure that all WUC and the Works satisfy all relevant Laws;
- (c) upon finding that a Law is at variance with this Contract, promptly give the Superintendent written notice of the variance and comply with the Superintendent's Direction to resolve it;
- (d) provide the Principal with all assistance it requires and in such time as Directed by the Principal, to enable the Principal to obtain all Approvals and satisfy all Laws it is required to obtain or satisfy under this Contract; and
- (e) whenever Directed to do so by the Superintendent, promptly provide it with written evidence of the Contractor's compliance with all relevant Laws.

12.2 Long service levy payment

- (a) The Contractor acknowledges and agrees that the Contract Sum includes all levies payable by either party under any Law concerning portable long service leave.
- (b) Before commencing any WUC, the Contractor must:
 - (i) pay to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the WUC under the *Building and Construction Industry Long Service Payment Act 1986* (NSW); and

- (ii) produce to the Superintendent documentation evidencing such payment.

13. WHS

13.1 General

- (a) The Contractor must maintain a safe workplace in accordance with the WHS Legislation and all relevant SafeWork NSW guidelines at all times.
- (b) Without limiting the generality of clause 13.1(a), the Contractor must:
 - (i) have a pro-active and systems management approach to work health and safety;
 - (ii) have in place systems to appropriately assess, manage and eliminate or minimise risks to health and safety at the Site relevant to the performance of the WUC which are consistent with the requirements of the WHS Legislation;
 - (iii) ensure that if a Law requires that:
 - (A) a person performing WUC:
 - (I) is authorised, registered or licensed to perform such WUC, that person is so authorised, registered or licensed for the duration of their performance of such WUC and complies with all conditions of such authorisation, registration or licence; and
 - (II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant, substance, design or work (or class of work) is authorised, registered or licensed in order for relevant work to be performed, that workplace, plant, substance, design or work is so authorised, registered or licensed;
 - (iv) carry out the WUC safely and in a manner that:
 - (A) does not put the health and safety of any person at risk; and
 - (B) protects all property and eliminates or minimises risk to the health, safety or welfare of any person on or near the Site;
 - (v) cooperate with all Separate Contractors and the Principal to ensure that all parties are able to comply with their obligations under the WHS Legislation;
 - (vi) ensure that all Contractor Personnel involved in the performance of any WUC:

- (A) are provided with all information, instruction, training and supervision needed to protect them from risks to health and safety;
- (B) comply with the Site Access Rules, all relevant Policies and Procedures and all Directions of the Superintendent whenever they are on the Site or any Existing Operations; and
- (C) at all times comply with this clause 13.1,

and, if Directed to do so by the Principal or Superintendent or required by Law, produce to the satisfaction of the Directing party evidence of all Approvals, prescribed qualifications and experience and all other information relevant to work health and safety, before the Contractor or anyone on its behalf commences performing WUC.

- (c) If the Superintendent considers there is a risk to the health and safety of any person or damage to property as a result of the performance of any WUC, it may Direct the Contractor to change its manner of working or to cease working and the Contractor must comply with such Direction.
- (d) Where this Contract states that any aspect of the Works is the subject of a fitness for purpose warranty, a reference to the 'intended purpose' requires, amongst other things, that the Works, when completed, will comply with all WHS Legislation.
- (e) The Contractor acknowledges and agrees that it is not entitled to make, the Principal will not be liable upon, and the Contractor releases the Principal from, all Claims by or on behalf of the Contractor arising out of, or in any way in connection with, its compliance with this clause 13.

13.2 Principal Contractor

- (a) The Principal:
 - (i) appoints the Contractor as Principal Contractor:
 - (A) for the WUC until the earlier of the:
 - (I) Date of Practical Completion;
 - (II) termination of this Contract; or
 - (III) date on which the Principal appoints another entity as Principal Contractor for the WUC; and
 - (B) in respect of Defect rectification work undertaken by the Contractor that is 'construction work' under the WHS Legislation, during the period during which any such work is carried out; and
 - (ii) 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 under the WHS Regulations,

and the Contractor accepts this engagement and agrees to discharge the duties imposed on it as Principal Contractor by the WHS Legislation.

- (b) Without limiting or restricting any other provision of this Contract, the Contractor must:
 - (i) ensure that in carrying out the Works, it:
 - (A) complies with all obligations imposed on it as Principal Contractor;
 - (B) does not do anything or omit to do anything which might put the Principal in breach of any obligation under the WHS Legislation; and
 - (C) complies with all WHS Legislation and other requirements of this Contract in respect of work health and safety management;
 - (ii) keep the Principal fully informed of all work health and safety matters arising out of, or in any way connected with, the Site or WUC as soon as they occur;
 - (iii) ensure that its Personnel and all other persons for whom it is responsible or over whom it is capable of exercising control, comply with and implement all:
 - (A) work, health and safety requirements included in this Contract or required by Law; and
 - (B) safety requirements notified to the Contractor by the Principal or Superintendent or included in the Policies and Procedures; and
 - (iv) if Directed by the Superintendent, conduct an audit of work health and safety in the manner and within the time Directed by the Superintendent.
- (c) If the engagement of the Contractor as Principal Contractor under this clause 13.2 is not effective for any reason, the Contractor must exercise and fulfil the functions and obligations of a Principal Contractor under the WHS Legislation in respect of the Works as if it had been validly engaged under clause 13.2(a).

13.3 Risk Assessment, Training and Supervision

- (a) The Contractor must, before it commences performing any WUC:
 - (i) conduct a JSEA; and
 - (ii) prepare and provide to the Superintendent all SWMSs required by the WHS Legislation,

in respect of the WUC and in accordance with all relevant Policies and Procedures.
- (b) The Contractor must ensure that each of its Subcontractors provide it with a JSEA and all necessary SWMSs in respect of the work they will perform before they commences performing it.

- (c) The Contractor must ensure that all of its Personnel (including their respective employees, servants, agents and contractors):
 - (i) successfully complete all inductions required by the Principal prior to commencing any activities on the Site;
 - (ii) are promptly provided with accurate and up-to-date information about new hazards or risks related to WUC and relevant to their performance on the Site;
 - (iii) are adequately supervised whilst on the Site;
 - (iv) comply with all relevant JSEAs and SWMSs; and
 - (v) immediately cease performing WUC where it is not being performed in accordance with all relevant JSEAs and SWMSs and only resume its performance where it is satisfied that the relevant WUC will be performed in accordance with all relevant JSEAs and SWMSs.
- (d) The Contractor must ensure that its Subcontractors immediately notify it in writing of any:
 - (i) change to a JSEA or SWMS submitted by the relevant Subcontractor;
 - (ii) SWMS (whether documented or not) adopted by the relevant Subcontractor;
 - (iii) additional risk or hazard identified by the relevant Subcontractor; and
 - (iv) measures adopted by the relevant Subcontractor to control or eliminate risks or hazards identified by the relevant Subcontractor.
- (e) The Contractor must:
 - (i) ensure that each SWMS prepared by or on its behalf is reviewed and, as necessary, revised and updated if relevant control measures are revised under the WHS Regulation; and
 - (ii) keep a copy of each SWMS as required by the WHS Regulation.

13.4 Licensing, Approvals and other Laws

- (a) The Contractor must:
 - (i) ensure that in carrying out the WUC:
 - (A) it complies with all Laws and other requirements of this Contract concerning work health and safety;
 - (B) all of its Personnel comply with clause 13.4(a)(i)(A); and

- (C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate its activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) notify the Superintendent immediately of all work health and safety matters arising out of, or in any way in connection with, the WUC;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation;
 - (iv) provide the written assurances obtained pursuant to clause 13.4(a)(iii), together with written assurance(s) from the Contractor about its ongoing compliance with the WHS Legislation, to the Superintendent whenever Directed to do so;
 - (v) provide the Superintendent with a written report on all work health and safety matters whenever Directed to do so by the Superintendent;
 - (vi) cooperate with all other contractors and the Principal to ensure that all parties are able to comply with their obligations under the WHS Legislation;
 - (vii) exercise a duty of utmost good faith to the Principal in performing the Works to enable the Principal to discharge its duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that could cause the Principal to breach any WHS Legislation; and
 - (ix) ensure that all subcontracts include provisions equivalent to this clause 13.4(a).
- (b) Without limiting the remainder of this Contract, insofar as the Contractor, in performing the WUC, is a person conducting a business or undertaking that:
- (i) designs plant, substances or structures to which section 22 of the WHS Act applies;
 - (ii) manufactures plant, substances or structures to which section 23 of the WHS Act applies;
 - (iii) imports plant, substances or structures to which section 24 of the WHS Act applies;
 - (iv) supplies plant, substances or structures to which section 25 of the WHS Act applies; or
 - (v) installs, constructs or commissions plant or structures to which section 26 of the WHS Act applies,

the Contractor must comply with all applicable obligations under the WHS Legislation.

13.5 Standard Operating Procedures and Safe Work Method Statements

The Contractor must:

- (a) prepare and submit:
 - (i) safe work method statements (**SWMS**) for all relevant high risk construction activities; and
 - (ii) standard operating procedures for all other work activities with a material risk,to the Superintendent for his or her review that:
 - (iii) identify the respective work activity;
 - (iv) identify the potential risks associated with that work activity; and
 - (v) describe the control methods to be employed by the Contractor to address them; and
- (b) not commence performing relevant WUC until all relevant SWMSs and standard operating procedures are approved by the Superintendent in writing.

13.6 Notification of safety incidents

- (a) The Contractor must immediately advise the Superintendent in writing of any:
 - (i) accident involving the death of or injury to any person;
 - (ii) occurrence (whether or not injury or illness is sustained) requiring the completion of a SafeWork NSW Incident Report;
 - (iii) accident involving loss of time or incident with accident potential ('near misses');
 - (iv) safety breach notice issued by SafeWork NSW; or
 - (v) safety dispute between the Contractor and any of its Personnel,relevant to this Contract and take all measures Directed by the Superintendent to remedy such event.
- (b) If Directed by the Superintendent, the Contractor must furnish a comprehensive written report to the Superintendent in the form and by the time Directed in respect of:
 - (i) any event referred to in clause 13.6(a), including the results of investigations into its cause and any recommendations or strategies for preventing a recurrence; and
 - (ii) its and its Subcontractor's compliance with:

- (A) the Site Access Rules;
- (B) the Policies and Procedures;
- (C) the WHS Legislation, including insofar as it applies to the Principal;
and
- (D) all Directions of the Principal or Superintendent.

13.7 Induction

Where a person is engaged by the Contractor to perform WUC on the Site, prior to that person commencing any such WUC, the Contractor must ensure that the person has completed all:

- (a) induction training required by the WHS Legislation; and
- (b) relevant Site-specific induction training,

and submit written evidence to this effect to the Superintendent which includes the names of all relevant people and the nature of the WUC they are to perform.

13.8 Cooperation

- (a) The Contractor must consult and cooperate with and coordinate the performance of the WUC with any person who accesses the Site (including all Separate Contractors) so as to:
 - (i) achieve coordination of activities to ensure effective work health and safety risk management; and
 - (ii) enable all parties to comply with their obligations under the WHS Legislation.
- (b) The Contractor must promptly notify the Superintendent of any matter affecting work health and safety where consultation with the Principal is necessary or appropriate.

13.9 Inspections

- (a) The Principal and its nominees may at any time conduct safety inspections and audits at all locations relevant to the performance of the WUC.
- (b) Where the Principal exercises its right under clause 13.9(a), the Contractor must provide all access and assistance required by the Principal.

13.10 Indemnity

To the fullest extent permitted by Law, the Contractor must indemnify and keep indemnified the Indemnified Persons from and against all Losses arising out of or in connection with:

- (a) any injury, accident or safety related incident on the Site or adjacent to it;
- (b) any breach by the Contractor or its Personnel of this clause 13; or

- (c) the Contractor's failure to comply with the WHS Plan.

14. ENVIRONMENT

- (a) The Contractor must:
 - (i) comply with all relevant Environmental Laws in performing this Contract;
 - (ii) without limiting clause 14(a)(i), ensure that:
 - (A) it does not, other than to the extent permitted by Law, pollute, contaminate or damage the Environment;
 - (B) all vehicles arriving and leaving the Site:
 - (I) with earth, material or loose debris are loaded in a manner that prevents windblown or other emissions; and
 - (II) are free of mud;
 - (C) all relevant Construction Plant is fitted with noise suppressors and used so noise is minimised;
 - (D) all relevant Hazardous Materials are identified and disposed of in accordance with all Laws;
 - (E) it immediately reports to the Superintendent in writing on all matters relevant to the non-performance of the Contractor's Environmental obligations under this Contract;
 - (F) appropriate receptacles are in place for the disposal of all unwanted waste and they are in turn disposed of at approved locations;
 - (G) no waste is dumped into any water or left on the Site; and
 - (H) it complies with all Principal's Direction and Policies and Procedures concerning the protection of the Environment; and
 - (iii) have in place at all times and comply with:
 - (A) appropriate systems and resources to immediately report and remediate any pollution, contamination or damage to the Environment arising out of, or in any way in connection with, the performance of this Contract; and
 - (B) an environmental management system (**EMS**) that:
 - (I) establishes the procedures to be used by the Contractor to ensure that all relevant environmental issues are identified and managed;

- (II) includes an agreed audit (including by or on behalf of the Principal) and corrective action procedure; and
 - (III) conforms to AS/NZ ISO 14001;
- (C) if required by Item 30(a), prepare and submit to the Superintendent for his or her review a Site specific Environmental Management Plan (**EMP**) that clearly identifies:
 - (I) all relevant environmental consent conditions, approvals and statutory obligations;
 - (II) the environmental risks associated with the WUC;
 - (III) how these risks will be controlled (including how responsibilities will be allocated);
 - (IV) who is responsible for ensuring that the EMP is followed;
 - (V) how it intends to address the environmental issues and the steps it will employ to safe guard the environment on and around the Site;
 - (VI) emergency response procedures;
 - (VII) an agreed audit (including by or on behalf of the Principal) and corrective action procedure; and
 - (VIII) the matters required by Item 30(b); and
- (D) ensure that the EMP:
 - (I) assigns corporate and individual responsibility for implementing, maintaining and monitoring each environmental requirement;
 - (II) includes procedures and instructions for implementing, maintaining and monitoring each environmental requirement; and
 - (III) includes appropriate administrative and supervisory arrangements, responsibilities and accountabilities (including supervisory protocols; provision of a Site environmental manager; management of subcontractors, training of Site staff; submission of regular reports on the implementation of the EMP; compliance bonds and penalties for non-compliance); and
 - (IV) ensure that its Subcontractors comply with this clause 14.

- (b) The Contractor must not commence performing any WUC on the Site until its EMS and EMP are approved by the Superintendent in writing.
- (c) Unless otherwise expressly stated in this Contract, the Contractor is responsible for and will bear all costs associated with:
 - (i) removing and disposing of Hazardous Material encountered in performing this Contract; and
 - (ii) cleaning up and remediating the effects of associated pollution or damage to the Environment.
- (d) To the fullest extent permitted by Law, the Contractor is liable for and must indemnify and keep indemnified the Indemnified Persons from and against all Losses they suffer or incur arising out of or in connection with:
 - (i) a breach by the Contractor of this clause 14 or any Environmental Law; or
 - (ii) the discharge, release or emission of any Hazardous Material, odour or noise into the Environment.

15. PROTECTION OF PEOPLE AND PROPERTY

- (a) Insofar as compliance with this Contract permits, the Contractor must:
 - (i) take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (b) If the Contractor or any of its Personnel damage any property, the Contractor must promptly rectify such damage and pay all compensation the Law requires the Contractor to pay.

16. URGENT PROTECTION

If:

- (a) the Contractor fails to comply with clause 15; or
- (b) urgent action is otherwise necessary to protect or prevent damage to WUC, other property or people and the Contractor fails to take such action,

the:

- (c) Principal may have some or all relevant obligations performed by others or do so itself; and

- (d) Contractor must indemnify the Principal from and against all Losses suffered or incurred by the Principal as a result of such failure.

17. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

17.1 Care of WUC

- (a) Except as provided in clause 17.3, the Contractor is responsible for the care of:
 - (i) the whole of the WUC from and including the date of commencement of the WUC to 4:00pm on the Date of Practical Completion, at which time responsibility for the Works (except as provided in clause 17.1(a)(ii)) will pass to the Principal; and
 - (ii) outstanding WUC and items to be removed from the Site by the Contractor after 4:00pm on the Date of Practical Completion until completion of the outstanding WUC or compliance with clauses 30, 31 and 37.
- (b) Without limiting the generality of clause 17.1(a), the Contractor is responsible for the care of all:
 - (i) unfixed items accounted for in a Payment Schedule; and
 - (ii) things entrusted to the Contractor by the Principal or Superintendent or brought onto the Site by the Contractor or its Personnel for carrying out WUC.

17.2 Reinstatement

- (a) If loss or damage, other than that caused by an Excepted Risk, occurs to WUC during the period of the Contractor's care, the Contractor must:
 - (i) at its cost, rectify all such loss and damage and pay all compensation the Law requires it to pay; and
 - (ii) indemnify the Principal from and against all Losses suffered or incurred by the Principal arising out of or in connection with such loss and damage.
- (b) In the event of loss or damage being caused by an Excepted Risk, the Contractor must, to the extent Directed by the Superintendent, rectify such loss or damage and such Direction will be a deemed Variation.
- (c) If loss or damage is caused by a combination of Excepted Risks and other risks, the Superintendent must assess the proportional responsibility of the parties.
- (d) If the Contractor fails to comply with clause 17.2(a)(i), the Principal may, in addition to its other rights and remedies under this Contract and at law, have the obligation performed by others or do so itself and the Contractor must indemnify the Principal from and against all associated Losses.

17.3 Excepted Risks

The excepted risks causing loss or damage for which the Principal is liable (**Excepted Risks**), are:

- (a) any breach of this Contract by or negligent act or omission of the Principal;
- (b) war, terrorism, invasion, acts of foreign enemies, hostilities, civil war, insurrection or military or usurped power, martial law or confiscation by order of any Authority; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Personnel.

18. DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

- (a) Insofar as this clause 18 applies to property, it applies to property other than WUC.
- (b) The Contractor must indemnify the Principal from and against all:
 - (i) loss of or damage to the Principal's property; and
 - (ii) Claims in respect of personal injury, sickness or death, or loss of, or damage to, any other property,arising out of or as a consequence of the carrying out of the WUC.
- (c) This clause 18 does not apply to exclude any other right of the Principal to be indemnified by the Contractor.

19. INSURANCE

19.1 Insurance of the Works

- (a) Before commencing any WUC, the Contractor must insure (with a responsible, solvent and reputable insurer represented in Australia and otherwise approved in writing by the Superintendent) all of the things referred to in clause 17.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.
- (b) Without limiting the generality of clause 19.1(a), such insurance must:
 - (i) cover the Contractor's liability under clause 17 and things in storage off Site and in transit to the Site;
 - (ii) be for an amount not less than the amount equal to 130% of the Contract Sum;
 - (iii) cover any existing structures in or on which WUC is to be carried out and all plant and equipment to be incorporated into the Works;

- (iv) be in the joint names of the parties and cover them and all Contractor's and Principal's Personnel whenever they are on Site for their respective rights, interests and liabilities; and
- (v) be maintained until the Contractor ceases to be responsible under clause 17.1 for the care of anything referred to in that clause.

19.2 Public liability insurance

Before commencing any WUC, the Contractor must effect and maintain (with a responsible, solvent and reputable insurer represented in Australia) until the expiry of the last Defects Liability Period, a public liability insurance policy that:

- (a) is in the joint names of the parties;
- (b) covers the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,
 of the parties and the Superintendent whenever they are on Site;
- (c) covers the parties' respective liability to each other for loss of or damage to property, including loss of use, whether such property is damaged or not, and the death of or injury to any person (other than liability the Law requires to be covered under a workers compensation insurance policy);
- (d) is endorsed to cover the use of any Construction Plant not covered by another policy of insurance required by this Contract; and
- (e) is for an amount in respect of any one occurrence of not less than the amount in Item 31.

The Contractor must ensure that all Subcontractors are equally insured before they commence performing any WUC on the Site.

19.3 Insurance of employees

- (a) Before commencing any WUC, the Contractor must insure against statutory and common law liability for death of or injury to persons employed by the Contractor and maintain such cover until the expiry of the last Defects Liability Period.
- (b) Where permitted by Law, the policy required by clause 19.3(a) must be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.
- (c) The Contractor must ensure that all Subcontractors are equally insured before they commence performing any WUC on the Site.

19.4 Motor vehicle insurance

- (a) Before commencing any WUC and until the expiry of the last Defects Liability Period, the Contractor must effect and maintain comprehensive motor vehicle insurance:
 - (i) for at least \$20 million for each and every claim; and
 - (ii) which covers the Contractor in respect of all motor vehicles belonging to or under the physical or legal care, custody or control of the Contractor or any of its Personnel and that are used in the performance of the WUC.
- (b) The Contractor must ensure that all Subcontractors are equally insured before they commence performing any Works on the Site.

19.5 Insurance of Construction Plant

- (a) Before commencing any WUC and until the expiry of the last Defects Liability Period, the Contractor must ensure that all Construction Plant that is material to the Contractor's ability to perform the WUC is insured against loss, theft, damage or destruction for its full replacement or reinstatement value.
- (b) The Contractor must ensure that all Subcontractors are equally insured before they commence performing any Works on the Site.

19.6 Other insurances

Unless the relevant risk is covered by a policy of insurance required by any of clauses 19.1 - 19.5, the Contractor must effect, before commencing any WUC and with a responsible, solvent and reputable insurer represented in Australia:

- (a) compulsory third party motor vehicle insurance:
 - (i) for at least \$20 million for each and every claim;
 - (ii) that covers all motor vehicles used in the performance of WUC; and
 - (iii) that is effective until the expiry of the last Defects Liability Period;
- (b) transit cover and cover for materials and goods stored off Site:
 - (i) for their full replacement value; and
 - (ii) against the risk of their loss, damage or destruction prior to their delivery to the Site; and
- (c) if Item 32 states that asbestos liability insurance is required, such insurance:
 - (i) which covers liability (on an occurrence basis) in respect of or in connection with the presence of asbestos on, under or near the Site and associated decontamination activities;

- (ii) for an amount of at least \$5 million for each and every claim;
- (iii) in the joint names of the parties; and
- (iv) that is effective until the date that is 7 years after the expiry of the last Defects Liability Period.

20. INSPECTION AND PROVISION OF INSURANCE POLICIES

20.1 Proof and effect of insurance

- (a) Before the Contractor commences performing any WUC and within 24 hours after being so Directed by the Principal or Superintendent, the Contractor must provide evidence, satisfactory to the Superintendent or Principal (as appropriate), confirming that all insurances required by this Contract have been effected and maintained.
- (b) The effecting of insurance does not limit the Contractor's liability under this Contract.

20.2 Failure to produce proof of insurance

If, after being so Directed, the Contractor fails comply with clause 20.1, then without prejudice to its other rights and remedies under this Contract or at law, the Principal may:

- (a) take out all relevant insurances and the cost thereof will be a debt due and payable from the Contractor to the Principal; and/or
- (b) refuse to make further payment to the Contractor until such evidence is produced.

20.3 Notices to or from insurer

The Contractor must ensure that the policies required by clauses 19.1, 19.2 and 19.6(c) each contain provisions acceptable to the Principal which:

- (a) require the insurer to inform both parties whenever the insurer gives a party or a Subcontractor a notice in connection with the relevant policy;
- (b) provide that a notice of claim given to the insurer by either party, the Superintendent or a Subcontractor will be accepted by the insurer as a notice of claim under the policy;
- (c) require the insurer, whenever the Contractor fails to maintain the relevant policy, to promptly give written notice thereof to both parties and prior to cancellation of the policy;
- (d) require the insurer to give the Principal at least 30 days' prior written notice of the lapsing of the policy; and
- (e) provide that any breach of the policy by a party comprising the insured will not prejudice the rights of any other party comprising the insured under the policy.

20.4 Notices of potential claims

The Contractor must and must ensure that all Subcontractors, as soon as practicable, inform the Superintendent in writing of any occurrence that may give rise to a claim under an insurance policy required to be maintained by this Contract and keep the Superintendent informed of subsequent developments concerning the claim.

20.5 Cross liability

Any insurance policy required to be effected in joint names under this Contract must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy had been issued to each of them.

20.6 Settlement of claims

Upon the settlement of a claim under the insurance policy required by clause 19.1, to the extent that reinstatement has:

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

20.7 Prosecution of insurances

The Contractor must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any of the insurances required to be held under clause 19;
- (b) rectify anything which may prejudice any insurance required to be held under clause 19;
- (c) reinstate any insurance required to be held under clause 19 should it lapse;
- (d) give full and particular information to its insurer(s) of all matters the non-disclosure of which might prejudice or affect any such policy or the payment of all or any benefit under any insurance required to be held under clause 19;
- (e) notify the Principal of any fact or circumstance which may prejudice any such policy;
- (f) comply with each insurance policy required to be held under clause 19; and

- (g) to the extent it is able to recover under any insurance policy required to be held under clause 19, use its best efforts to recover under the policy.

21. SUPERINTENDENT

- (a) The Principal must ensure that at all times there is a Superintendent and that such person fulfils all aspects of its role and functions at all times.
- (b) The Superintendent will give Directions and carry out its other functions under this Contract as agent of the Principal (and not as an independent certifier, assessor or valuer) and the Contractor agrees that the Superintendent may be an employee of the Principal.
- (c) The Contractor must comply with all Directions given by the Superintendent.
- (d) Except where this Contract otherwise provides, the Superintendent may give a Direction orally but must as soon as practicable thereafter confirm it in writing.
- (e) The Contractor must provide the Superintendent with access to:
 - (i) the Site, WUC and Works; and
 - (ii) all other places where WUC is being carried out or materials are being prepared or stored,for the purposes of discharging its functions under this Contract.
- (f) The Principal may change the identity of the Superintendent at any time by written notice to the Contractor.

22. SUPERINTENDENT'S REPRESENTATIVE

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

- (a) no aspect of any function will at any one time be the subject of delegation to more than one Superintendent's Representative;
- (b) delegation will not prevent the Superintendent exercising any function; and
- (c) the Superintendent forthwith gives the Contractor written notice of respectively the:
 - (i) appointment, including the Superintendent's Representative's name and delegated functions; and
 - (ii) termination of each appointment.

23. CONTRACTOR'S REPRESENTATIVE

- (a) The Contractor must at all times superintend the performance of the WUC by a competent representative.
- (b) Matters within a Contractor's Representative's knowledge (including Directions received) are deemed to be within the Contractor's knowledge.
- (c) Subject to clause 23(d), the Contractor may change the identity of the Contractor's Representative at any time by written notice to the Superintendent.
- (d) If the Superintendent makes a reasonable objection to a replacement Contractor's Representative, the Contractor must nominate an alternative.

24. CONTRACTOR'S PERSONNEL

24.1 Removal of Personnel

- (a) The Contractor must ensure that all Contractor's Personnel who perform WUC:
 - (i) are at all times appropriately trained, qualified, skilled and experienced; and
 - (ii) carry out and complete such WUC exercising the highest level of skill, care and diligence, in a proper and workmanlike manner, under competent supervision and in accordance with all Laws, Policies and Procedures and Applicable Codes and Standards.
- (b) The Principal or Superintendent may Direct the Contractor to remove, by the Directed time, from the Site or the performance of the WUC, any person who, in the Principal's or Superintendent's opinion:
 - (i) is incompetent, negligent or guilty of misconduct or otherwise breached this Contract; or
 - (ii) fails to comply with a Direction, Site Access Rule, Policy and Procedure, Access Permit or Law,and the Contractor must:
 - (iii) comply with such Direction; and
 - (iv) ensure that such person is not permitted to perform WUC or access the Site in the future without the prior written consent of the Superintendent.

24.2 Key Personnel

The Contractor must:

- (a) employ those people named in Item 33:

- (i) in the positions specified in that Item;
 - (ii) until the end of the period stated in that Item; and
 - (iii) on the basis set out in the Item;
- (b) subject to clause 24.2(c), not replace any person named in Item 33 without the prior written approval of the Superintendent; and
- (c) if any person named in Item 33 dies, becomes seriously ill or resigns from the employment of the Contractor during a relevant period, replace them with a person:
 - (i) of at least equivalent experience, ability and skill; and
 - (ii) approved by the Superintendent in writing.

25. SITE

25.1 Access for Contractor

- (a) Provided the Contractor has:
 - (i) complied with clauses 5.1, 11.1 and 20.1;
 - (ii) met the requirements of the Principal's then current "Work, Health and Safety Registration and Approval Questionnaire";
 - (iii) agreed to comply with the Principal's then current "Contractor Management Framework" document;
 - (iv) agreed not to bring any Hazardous Material onto any of the Principal's premises;
 - (v) completed the Principal's then current safety induction and visitor's site orientation programs;
 - (vi) obtained either a Permit to Work or Long Term Permit to Work (as appropriate);
 - (vii) obtained appropriate identification from the Principal's security or procurement team; and
 - (viii) complied with all other obligations stated in this Contract to be conditions precedent to the Principal's obligation to provide the Contractor with access to the Site,

and subject to the Principal's other rights under this Contract, the Principal must, before the date stated in Item 34, give the Contractor access to sufficient of the Site for it to commence performing WUC on the Site. If the Principal has not given the Contractor access to the whole Site, the Principal must give the Contractor access to

such further portions of the Site as may, from time-to-time, be necessary for carrying out WUC. A delay by the Principal in giving access to the Site does not constitute a breach of this Contract.

- (b) Access to the Site confers on the Contractor a right to only such use and control of the Site as is necessary to enable it to perform the WUC in accordance with this Contract and the Contractor must:
 - (i) only access the Site during the times permitted by this Contract;
 - (ii) coordinate access to the Site with the Superintendent so that all approvals required by this Contract are obtained;
 - (iii) not use the Site for camping, residential purposes or any purpose not directly connected with the WUC;
 - (iv) ensure that at all times all WUC is left in a safe and secure condition that prevents trespass, theft, vandalism, injury, property damage and related activities;
 - (v) ensure that all Contractor's Personnel cause as little inconvenience as possible to occupiers and users of the Site and its surrounds when accessing and performing WUC at the Site;
 - (vi) only permit vehicles and persons to access the Site who are directly involved in the performance of WUC;
 - (vii) maintain a detailed and accurate log of all people who access any part of the Site or Existing Operations on behalf of the Contractor (including their full name, employer and the purpose of their visit) and, if Directed by the Superintendent, provide the Superintendent with immediate access to such log;
 - (viii) not enter any place, or permit any person or vehicle to enter any place, notified by the Superintendent or Principal to the Contractor as a place to which the Contractor is not to have access; and
 - (ix) ensure that all of its Personnel:
 - (A) successfully complete all induction activities required by the Principal prior to commencing any activities on the Site; and
 - (B) comply with all relevant Policies and Procedures, Laws, Directions and Site Access Rules whenever they are on or near the Site.

25.2 Access for the Principal and others

- (a) The Superintendent and Principal and their respective nominees may at any time have access to the Site for any purpose.

- (b) The Superintendent may, at any time, Direct the Contractor or any of its Personnel to vacate the Site, or part thereof:
 - (i) if the Superintendent determines that such vacation is necessary to enable the Principal to carry out Existing Operations; or
 - (ii) in the event of an emergency,and the Contractor must immediately:
 - (iii) comply with such Direction;
 - (iv) remove all relevant equipment, materials and Personnel; and
 - (v) ensure that all relevant areas are left in a condition that is suitable for the Principal and its nominees to efficiently use the Existing Operation and otherwise in accordance with this Contract.
- (c) Where access of the type contemplated in clause 25.2(a) is required, the Contractor must:
 - (i) allow all relevant persons all relevant and safe access;
 - (ii) make available all facilities needed by them for access and inspection, including use of the Contractor's scaffolding, lifts, swing stages, safety harnesses and like equipment, services and facilities;
 - (iii) make available all relevant protective equipment for the exclusive use of such persons;
 - (iv) cooperate with such persons and co-ordinate and interface WUC with the work or other activities being carried out by such other persons; and
 - (v) carry out the WUC so as to avoid interfering with, disrupting or delaying such persons or the work or activities they are carrying out.

25.3 Separate Contractors

- (a) Without limiting clause 25.2, the Contractor:
 - (i) acknowledges that the Principal has entered into or may enter into contracts with Separate Contractors to carry out work, perform services or supply goods on or near the Site;
 - (ii) must complete the WUC in accordance with this Contract notwithstanding the presence of Separate Contractors on and near the Site;
 - (iii) must permit, and the Principal will be entitled to arrange for, Separate Contractors to carry out work, provide services and supply other things on or near the Site in parallel with the performance of the WUC by the Contractor;

- (iv) must fully cooperate, liaise and coordinate the performance of the WUC with the activities of all Separate Contractors;
 - (v) must, if Directed by the Superintendent:
 - (A) meet with the Principal, the Superintendent and all relevant Separate Contractors to agree programming, site access, coordination and interface protocols necessary to avoid or minimise disruptions to the activities of all such persons; and
 - (B) provide the Superintendent with written minutes detailing the protocols agreed at meetings held pursuant to clause 25.3(a)(v)(A) and all other information Directed by the Superintendent; and
 - (vi) must do all other things Directed by the Superintendent in order to facilitate cooperation, liaison and coordination between the Contractor, Principal and Superintendent and all relevant Separate Contractors.
- (b) If the execution of any WUC is dependent upon the quality and completeness of work performed by Separate Contractors, the Contractor must inspect such work immediately upon its completion and within two Business Days thereafter notify the Superintendent in writing of any Defects in such work.
- (c) The Contractor is responsible for the rectification of any damage to the:
- (i) WUC caused by the Contractor failing to protect the WUC from the activities of Separate Contractors; and
 - (ii) work of Separate Contractors caused by the Contractor or any of its Personnel.
- (d) The Contractor:
- (i) acknowledges and agrees that the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any act or omission of a Separate Contractor or any of its Personnel; and
 - (ii) warrants that the Contract Sum and Construction Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks contemplated in this clause 25.3.

25.4 Nuisance

- (a) The Contractor must perform the WUC so as to avoid unreasonable disturbance, nuisance or inconvenience to others.
- (b) The Contractor must:
 - (i) comply with all Directions of the Superintendent in complying with clause 25.4(a); and

- (ii) indemnify the Principal from and against all Losses it suffers or incurs as a result of the Contractor's breach of this clause 25.4.

25.5 Dilapidation Surveys

- (a) The Contractor must, before commencing any WUC on the Site:
 - (i) arrange for a suitably qualified person to inspect all Existing Operations, land, footpaths, roads, drainage, buildings and other structures, which may be affected by the undertaking of the WUC and in the company of the Superintendent;
 - (ii) make a written and photographic record of existing visible Defects in all such things; and
 - (iii) lodge with the Superintendent a copy of each record of inspection, showing the date of the inspection and signed on behalf of the Contractor as acknowledgment that the record of inspection is true and correct.
- (b) The Contractor must, whenever Directed to do so by the Superintendent, undertake a further dilapidation survey in accordance with clause 25.5(a):
 - (i) within the period Directed by the Superintendent; and
 - (ii) to assess the impact the performance of the WUC is having on the Site and its surrounds,and provide the Superintendent with a written record of that inspection.
- (c) As a condition precedent to Practical Completion, the Contractor must:
 - (i) undertake a final dilapidation survey in accordance with clause 25.5(a); and
 - (ii) rectify all material discrepancies between the dilapidation survey required by clause 25.5(a) and the dilapidation survey required by clause 25.5(c)(i).
- (d) All costs associated with preparing the dilapidation surveys required by this clause 25.5 and complying with clause 25.5(c)(i) are deemed to be included in the Contract Sum.
- (e) Except where a discrepancy is proven by the Contractor to have been caused by the Principal, the Contractor is responsible for any discrepancy between the conditions:
 - (i) described in the survey conducted in accordance with clause 25.5(a); and
 - (ii) described in the survey conducted in accordance with clause 25.5(c)(i).

25.6 Archaeological Remains

If the Contractor discovers any valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins or articles of value (*Archaeological Remains*) on the Site, then:

- (a) such things are, as between the parties, the property of the Principal; and
- (b) immediately upon their discovery, the Contractor must:
 - (i) take precautions to prevent their loss, removal or damage;
 - (ii) give the Superintendent written notice of the discovery, including suggestions as to how to deal with the Archaeological Remains; and
 - (iii) continue to carry out the WUC around the Archaeological Remains, but so as to avoid all detrimental effects.

26. LATENT CONDITIONS

26.1 Scope

Latent Conditions are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the Date of Contract if it had:

- (a) inspected:
 - (i) all information made available to the Contractor by or on behalf of the Principal prior to the Date of Contract;
 - (ii) all information obtainable by the making of reasonable enquiries; and
 - (iii) the Site and its surrounds;
- (b) made inquiries of all relevant Authorities; and
- (c) reviewed all information influencing the risk allocation in this Contract.

26.2 Examination performed by the Contractor

The Contractor acknowledges and agrees that:

- (a) the Principal makes no representations, warranties or guarantees as to the sufficiency or accuracy of the Site Information;
- (b) it has had an adequate opportunity to inspect the site and perform its own tests and make its own assessment of the risks associated with any Latent Conditions;

- (c) it has reviewed the Site Information and been allowed to consult with the authors of it and has not relied on and will not rely on the Site Information for any purpose unless it has independently checked and verified the Site Information;
- (d) the provision of the Site Information and anything contained in the Site Information, will not affect the assumption by the Contractor of the risk of Latent Conditions under this clause 26; and
- (e) the provision of the Site Information does not give rise to any Claim (even if the Site Information is or proves to be inaccurate, incomplete or inadequate).

26.3 Assumption of risk of Latent Conditions

The Contractor:

- (a) is responsible for, and assumes the risk of, all Loss caused by Latent Conditions encountered in its performance of this Contract;
- (b) agrees to perform all work and provide all materials necessary to overcome any Latent Condition at its own cost so that the Works are completed for the Contract Sum and without an extension of time; and
- (c) agrees that the Contractor has no Claim arising from the existence of any Latent Condition, whether or not the relevant Latent Condition could have been reasonably anticipated at the Date of Contract.

26.4 Notification

The Contractor, upon becoming aware of a Latent Condition, must:

- (a) immediately protect everyone and everything surrounding the Site from exposure to the Latent Condition where it is dangerous; and
- (b) promptly:
 - (i) give the Superintendent written notice of the general nature thereof and before the Latent Condition is materially disturbed; and
 - (ii) do all things necessary to contain, remediate and overcome the effects of the Latent Condition in accordance with this Contract and all relevant Laws unless Directed otherwise by the Superintendent.

27. SETTING OUT THE WORKS

27.1 Setting out and surveys

With the exception of the Survey Marks identified in Item 35, which must be provided to the Contractor by or on behalf of the Principal, the Contractor must procure all data, Survey Marks and like information necessary for it to set out the Works and must set out the Works within the Site in accordance with this Contract.

27.2 Errors in setting out

The Contractor must, at its cost, rectify all errors in the position, levels, dimensions or alignment of any WUC after promptly notifying the Superintendent in writing and unless it Directs otherwise.

27.3 Care of Survey Marks

The Contractor must:

- (a) keep in their true positions all Survey Marks; and
- (b) reinstate any Survey Mark disturbed, after promptly notifying the Superintendent in writing and unless it Directs otherwise.

If the disturbance was caused by the Principal or any of its Personnel, the reasonable cost directly incurred by the Contractor in reinstating the Survey Mark will be assessed by the Superintendent and added to the Contract Sum.

28. CLEANING UP

The Contractor must keep the Site and all WUC clean and tidy and regularly remove all rubbish and surplus material. If the Contractor fails to do so, the Superintendent may:

- (a) Direct the Contractor to rectify the non-compliance and a time for doing so; or
- (b) have such activities carried out by others, or do so itself, and all Losses incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal.

29. MATERIAL, LABOUR AND CONSTRUCTION PLANT

29.1 General

- (a) Except where this Contract expressly provides otherwise, the Contractor must supply, at its own cost, everything needed for the proper performance of this Contract.
- (b) In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with this Contract, the Superintendent may Direct the Contractor to:
 - (i) supply particulars of the mode and place of manufacture, source of supply, performance capacities and other related information; and
 - (ii) arrange for an inspection by the Superintendent or Principal or a nominee,and the Contractor must comply with such Direction.
- (c) The Superintendent may give the Contractor a written Direction not to remove materials or Construction Plant from the Site and the Contractor must comply with such Direction.

- (d) The Contractor:
 - (i) must ensure that all Construction Plant used on the Site complies with all relevant Laws and is fit for its intended purpose;
 - (ii) is responsible for the transportation, unloading and storage of all materials, machinery and Construction Plant used in connection with the WUC; and
 - (iii) must give adequate notice in writing to the Superintendent of any special provisions required for the installation of any Contractor's equipment.

29.2 Free Issue Items

The Contractor acknowledges and agrees that:

- (a) the Principal will supply to the Contractor at the Site, within the period stated in Item 36 and at no cost to the Contractor, the items listed in Item 36 (**Free Issue Items**);
- (b) if the Contractor fails to notify the Superintendent in writing of any Defect in any Free Issue Item within 3 Business Days after the date on which such item is delivered to the Site, the relevant item will:
 - (i) be deemed to be accepted by the Contractor; and
 - (ii) form part of the Works for the purposes of this Contract;
- (c) it is responsible for:
 - (i) coordinating the delivery of the Free Issue Items;
 - (ii) checking that all components have been delivered;
 - (iii) safely and securely storing all Free Issue Items in an area designated solely for such storage; and
 - (iv) the use of all Free Issue Items in the performance of this Contract;
- (d) upon the Free Issue Items being made available for the Contractor to unload at the Site, such things will be at the Contractor's risk;
- (e) Free Issue Items may only be used for the purpose of performing the WUC;
- (f) the use of Free Issue Items by or on behalf of the Contractor will not:
 - (i) limit or relieve the Contractor of any obligation or liability it has under or arising out of this Contract;
 - (ii) limit any right the Principal has under or arising out of this Contract;
 - (iii) constitute acceptance by the Principal of the performance of any of the Contractor's obligations under this Contract; or

- (iv) give rise to any Claim on the part of the Contractor;
- (g) title in all Free Issue Items remains with the Principal at all times;
- (h) the Free Issue Items must at all times be kept free of any Security Interest sought to be imposed by the Contractor or anyone on its behalf and clearly labelled the property of the Principal; and
- (i) it is a condition precedent to Practical Completion that all unused Free Issue Items are returned to the Principal as Directed by the Superintendent.

30. QUALITY

30.1 Quality of material and Work

- (a) In performing or procuring the performance of the WUC, the Contractor must and must ensure that all Contractor's Personnel:
 - (i) use materials, goods and equipment that are suitable, new, Defect free, fit for purpose and of merchantable quality;
 - (ii) perform the WUC using proper and tradesmanlike workmanship;
 - (iii) act with the degree of skill, care and diligence expected of a qualified, thorough, skilful and professional contractor highly experienced in performing works of a similar complexity, quality and scope to the WUC;
 - (iv) comply with all quality requirements included in this Contract; and
 - (v) upon Direction by the Superintendent, demonstrate its compliance with this clause 30.1(a).
- (b) A description in this Contract of any materials, plant, equipment or other items by a proprietary, trade or brand name, supplier's or manufacturer's name, model number or other specific means does not:
 - (i) relieve, limit or exclude any of the Contractor's obligations or liabilities under this Contract; or
 - (ii) limit or otherwise prejudice any of the warranties or other requirements in this Contract.
- (c) If this Contract provides for differing standards of quality, the highest standard applies, unless otherwise Directed by the Superintendent.

30.2 Quality assurance

- (a) The Contractor must, and must ensure that all Subcontractors:

- (i) plan, establish and maintain a quality assurance system which conforms to AS/NZ ISO9001; and
 - (ii) provide the Superintendent and its nominees with access to the quality assurance systems of the Contractor and its Subcontractors to enable quality auditing.
- (b) Any quality assurance system maintained by the Contractor or a Subcontractor:
 - (i) will only be used as an aid to achieve compliance with this Contract and to document such compliance;
 - (ii) does not relieve the Contractor of the responsibility to comply with this Contract; and
 - (iii) does not discharge the Contractor's other obligations under this Contract.

30.3 Defective Work

- (a) If the Superintendent becomes aware of WUC done (including material provided) by or on behalf of the Contractor which does not comply with this Contract, it may give the Contractor written details thereof and Direct it to do any one or more of the following at its own cost (including times for commencement and completion):
 - (i) remove the relevant WUC or material from the Site;
 - (ii) demolish the relevant WUC;
 - (iii) reconstruct, replace or correct the relevant WUC; and/or
 - (iv) not deliver the relevant material to the Site.
- (b) If the Contractor fails to comply with a Direction under clause 30.3(a) within the required period, the Principal may have that work so rectified and all associated Loss suffered or incurred by the Principal will be a debt due and payable by the Contractor to the Principal.

30.4 Acceptance of Defective Work

Instead of a Direction under clause 30.3, the Superintendent may Direct that the Principal accepts the subject WUC and there will be a deemed Variation.

30.5 Variations due to non-conforming materials, plant, equipment or Work

Instead of a Direction under clause 30.3 or 30.4, the Superintendent may Direct a Variation under clause 38.2 and if the Variation causes a decrease in the value to the Principal of the Works, regard must be had to such decrease.

30.6 General

- (a) Except to the extent that to do so would be inconsistent with a Direction given under clause 30.4 or 30.5, and notwithstanding that the Superintendent has not given a Direction under clause 30.3, the Contractor must promptly remove, demolish, reconstruct, replace or correct any material, plant, equipment, other item or WUC that does not comply with this Contract.
- (b) A payment or Test or a failure by the Superintendent or anyone else to disapprove any material, plant, equipment, other item or WUC, does not prejudice the power of the Superintendent to subsequently give a Direction under clause 30.3, 30.4 or 30.5.
- (c) Nothing in clause 30 prejudices any right, power or remedy of the Principal or Superintendent under this Contract or any Law arising out of a failure by the Contractor to provide material, plant, equipment, other items or WUC in accordance with this Contract.
- (d) The Superintendent is not obliged to give a Direction under clause 30.4 or 30.5 to assist the Contractor.

31. EXAMINATION AND TESTING

31.1 Tests

At any time before the expiry of the last Defects Liability Period, the Superintendent may Direct that Works be tested (each a **Test**) and the Contractor must give such assistance and things and make accessible such parts of Works as are Directed by the Superintendent.

31.2 Covering up

The Superintendent may Direct that any part of the WUC is not covered up or made inaccessible without the Superintendent's prior Direction and the Contractor must comply with such Direction.

31.3 Who conducts

Tests must be conducted as provided in this Contract or by the person Directed by the Superintendent where this Contract does not specify. Where this Contract provides that WUC is to be tested in the presence of or surveyed by a particular person, such testing or survey must not be undertaken without such person present.

31.4 Notice

The party who is to conduct a Test must give reasonable written notice to the other of the date, time and place of the Test. If the other does not attend, the Test may nevertheless proceed.

31.5 Delay

Without prejudice to any other right, if the Contractor delays in conducting a Test, the Principal may conduct the Test or have it conducted by others.

31.6 Completion and results

- (a) On completion of a Test, the Contractor must make good the WUC so it fully complies with this Contract.
- (b) Results of Tests must be promptly made available to the other party and to the Superintendent in writing.

31.7 Costs

Costs in connection with Testing pursuant to this clause 31 (including making good the WUC) are to be borne by the Contractor.

31.8 Access for inspection and Testing

The Contractor must ensure that the Principal and Superintendent and their respective nominees are allowed access to any place where any part of the Works is situated or any WUC is being carried out, for the purposes of inspection and Testing.

31.9 General

A satisfactory inspection or Test does not constitute evidence of the Contractor having complied with this Contract and does not prejudice the Principal's rights or relieve the Contractor from any obligation or liability under or in connection with this Contract.

32. WORKING HOURS

- (a) Subject to clause 32(b), the working hours on the Site:
 - (i) are set out in Item 37; and
 - (ii) must not be varied without the Superintendent's prior written approval.
- (b) The Contractor may only access a Restricted Area within the hours specified in the relevant Access Permit.
- (c) Subject to clause 32(a)(ii), if the Superintendent approves the variation of the hours set out in Item 37, all associated costs are to be met by the Contractor.

33. PROGRAMMING

33.1 General

The Contractor must give the Superintendent at least the number of days stated in Item 38 prior notice of when it needs information, materials, documents or instructions from the

Superintendent or Principal in order to perform the WUC in accordance with this Contract and the Principal, Superintendent and Principal's Personnel are not obliged to provide any such things any earlier.

33.2 Sequencing

- (a) The Superintendent may Direct in what order and at what times the stages or portions of the WUC are to be carried out. If the Contractor:
 - (i) can reasonably comply with such Direction, it must do so; or
 - (ii) cannot reasonably comply with such Direction, it must give the Superintendent written notice of its reasons why within three days after the date of the Direction.
- (b) No Direction by the Superintendent will be a Direction under this clause 33.2 unless it:
 - (i) is in writing and signed by the Superintendent; and
 - (ii) expressly states that it is a Direction under this clause 33.2.

33.3 Acceleration by Contractor

The time for performance of the Principal's or Superintendent's obligations under this Contract is not affected by the Contractor's desire or attempts to reach Practical Completion before the Date for Practical Completion.

33.4 Acceleration at the discretion of the Principal

- (a) The Superintendent may, at any time and in its absolute discretion, Direct the Contractor in writing to accelerate the performance of some or all of the WUC (**Acceleration Direction**).
- (b) Where the Contractor is entitled to claim an EOT under clause 35.3, the Superintendent may, instead of granting an EOT, issue an Acceleration Direction to overcome all or part of the delay which gave rise to the entitlement to claim an EOT, in which case clause 33.4(c) will apply.
- (c) Within 3 Business Days after the Superintendent issues an Acceleration Direction, the parties must meet to attempt to agree the:
 - (i) extent of any acceleration of the relevant WUC;
 - (ii) adjustment (if any) to the Contract Sum to effect the acceleration;
 - (iii) changes in resources or working hours to comply with the Acceleration Direction; and
 - (iv) effect carrying out the acceleration will have on the Construction Program.

- (d) If the parties:
 - (i) agree each issue included in clause 33.4(c) within 5 Business Days after they first meet under that clause, the Contractor must accelerate as agreed; or
 - (ii) do not agree each issue included in clause 33.4(c) within 5 Business Days after they first meet under that clause, the Superintendent must either:
 - (A) withdraw the relevant Acceleration Direction, in which case the Contractor is not obliged to comply with such Direction; or
 - (B) confirm to the Contractor in writing:
 - (I) that the relevant Acceleration Direction remains on foot; and
 - (II) the:
 - (1) required level of acceleration; and
 - (2) adjustment (if any) to the:
 - (aa) Contract Sum;
 - (bb) Construction Program; and
 - (cc) Date for Practical Completion,

in which case the:

 - (III) Contractor must accelerate as Directed; and
 - (IV) Contract Sum, must be increased as determined by the Superintendent in accordance with clause 33.4(d)(ii)(B)(II)(2)(aa) where the Contractor achieves the acceleration Directed by the Superintendent.
 - (e) The adjustment (if any) determined in accordance with clause 33.4(d) is in full satisfaction of all Claims the Contractor has in respect of such acceleration.
 - (f) The Principal's right to liquidated damages under this Contract is not prejudiced by the issuing of an Acceleration Direction.

33.5 Construction Program

- (a) A Construction Program is a written statement showing the dates by which, or the periods within which, the various stages of the WUC are to be carried out or completed, including:
 - (i) the critical path;
 - (ii) the float for activities not on the critical path;

- (iii) the interrelationship between all activities required to achieve Practical Completion; and
- (iv) all material milestone dates for the WUC, including:
 - (A) performance of key on-Site trade activities;
 - (B) procurement and fabrication of key elements of the WUC;
 - (C) provision and approval of samples of key elements of the WUC;
 - (D) inspection and Testing as required by this Contract or any Authority or Law;
 - (E) appointment of Subcontractors;
 - (F) performance of key activities by Subcontractors;
 - (G) obtaining relevant Approvals;
 - (H) delay allowances (together with detailed explanations); and
 - (I) provision of manuals, survey records, certificates, warranties, quality records and such other items as are required by this Contract to be provided prior to the Date of Practical Completion; and
- (v) all other information Directed by the Principal or Superintendent,

and which is in a form and contains such other details as this Contract requires or the Superintendent Directs, including in electronic format (**Construction Program**).

- (b) The Contractor must give the Superintendent an accurate Construction Program within 3 Business Days after the Date of Contract and, unless otherwise agreed by the Superintendent in writing, such Construction Program must be consistent with the most recent Construction Program approved by the Principal prior to the Date of Contract.
- (c) The Contractor must not depart from an approved Construction Program.

33.6 Revision of the Construction Program

- (a) If the Superintendent rejects a Construction Program or revised program submitted by the Contractor, the Contractor must promptly amend such document to address all issues raised by the Superintendent and resubmit it to the Superintendent.
- (b) If actual progress of the WUC departs from that shown in the latest approved Construction Program or, if otherwise Directed to do so by the Superintendent, the Contractor must promptly submit to the Superintendent a revised Construction Program that complies with clause 33.5(a).

- (c) No review, acceptance or rejection by the Superintendent of, nor any comment or Direction by the Superintendent on or in connection with, a Construction Program or draft program will:
 - (i) relieve the Contractor from any of its obligations or liabilities under this Contract;
 - (ii) evidence or constitute a Direction by the Superintendent to accelerate, suspend, disrupt, prolong or vary any or all of the WUC or grant an EOT; or
 - (iii) affect the time for the performance of the Principal's or Superintendent's obligations or functions under this Contract.
- (d) No changes are to be made to an approved Construction Program by the Contractor without the prior written approval of the Superintendent.

33.7 Corrective action

- (a) If at any time the progress of WUC falls behind that shown in an approved Construction Program or is otherwise not in accordance with this Contract, the Contractor must, at its own cost:
 - (i) take all action necessary to ensure that progress is restored to full compliance with this Contract; and
 - (ii) provide full details of such action as Directed by the Superintendent.
- (b) If the Contractor fails to take corrective action in accordance with clause 33.7(a), the Superintendent may Direct the Contractor as to the corrective action it is to take and the Contractor must comply with such Direction at its own cost.

34. SUSPENSION

34.1 Superintendent's suspension

The Superintendent may Direct the Contractor to suspend the carrying out of some or all of the WUC for such time as the Superintendent thinks fit:

- (a) because of an act, default or omission of the:
 - (i) Principal, Superintendent or any of the Principal's Personnel; or
 - (ii) Contractor or any of the Contractor's Personnel;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order; or
- (d) for any other reason the Superintendent determines.

34.2 Contractor's suspension

If the Contractor wishes to suspend the performance of any WUC other than pursuant to the SOPA, it must obtain the Superintendent's prior written approval to do so.

34.3 Recommencement

- (a) As soon as possible after the Superintendent becomes aware that the reason for any suspension no longer exists, it must Direct the Contractor to recommence performing the suspended WUC and the Contractor must do so.
- (b) The Contractor must recommence performing WUC suspended under clause 34.2 at any time after reasonable notice to the Superintendent.

34.4 Cost

- (a) The Contractor must bear the cost of suspension under:
 - (i) clause 34.1(a)(ii) or 34.2; or
 - (ii) clause 34.1(b), 34.1(c) or 34.1(d) if the Contractor's or any of its Personnel made the protection, safety or court order or suspension necessary.
- (b) If the Contractor otherwise directly incurs more or less cost than would have been incurred had the WUC not been suspended, the reasonable difference will be assessed by the Superintendent and added to or deducted from the Contract Sum (as appropriate).

35. TIME AND PROGRESS

35.1 Progress

The Contractor must:

- (a) proceed with the WUC with due expedition and without undue delay;
- (b) progress the WUC in accordance with the Construction Program most recently approved by the Superintendent in writing; and
- (c) ensure that the WUC reaches Practical Completion by the Date for Practical Completion.

35.2 Notice of delay

Upon becoming aware of anything which may or will delay the WUC, the Contractor must promptly give the Superintendent written notice of the:

- (a) cause of the delay;
- (b) estimated duration of the delay; and

- (c) actions the Contractor proposes to take to mitigate the delay and its effects,
- and the Contractor must use reasonable endeavours to mitigate the delay.

35.3 Claim

- (a) The Contractor is entitled to such reasonable extension of time to the Date for Practical Completion as the Superintendent assesses (**EOT**), if the Contractor:
 - (i) has complied with clause 35.2;
 - (ii) is or will be delayed in reaching Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay; and
 - (iii) gives the Superintendent:
 - (A) within 3 days after the first occurrence of the relevant Qualifying Cause of Delay, a written claim for an EOT evidencing the:
 - (I) relevant Qualifying Cause of Delay;
 - (II) facts of causation and the delay;
 - (III) EOT claimed by the Contractor; and
 - (IV) measures taken by the Contractor to overcome the delay; and
 - (B) a program that shows the Contractor's actual progress up to the date on which the relevant Qualifying Cause of Delay commenced, together with all relevant supporting documentation.
- (b) If:
 - (i) further delay of the nature contemplated in clause 35.3(a)(ii) results from a Qualifying Cause of Delay; and
 - (ii) the Contractor:
 - (A) has submitted an initial claim in respect of such delay in accordance with this clause 35.3; and
 - (B) wishes to submit a further claim for an EOT,

it must do so in accordance with clause 35.3(a)(iii) every 10 Business Days during the period of the delay and then on its conclusion.
- (c) The Contractor:
 - (i) acknowledges and agrees that:

- (A) compliance with clause 35.3(a) is a condition precedent to its entitlement to claim an EOT to the Date for Practical Completion;
 - (B) this Contract codifies the Contractor's entitlement to claim EOTs; and
 - (C) it is not entitled to an EOT for an occurrence other than a Qualifying Cause of Delay; and
- (ii) waives all rights it has to bring and is barred from bringing any Claim for an EOT other than in strict accordance with this clause 35.3.

35.4 Assessment

- (a) Where a non-qualifying cause of delay and a Qualifying Causes of Delay overlap, the Contractor is not entitled to an EOT to the extent of the concurrence.
- (b) In assessing each claim for an EOT to the Date for Practical Completion, the Superintendent must have regard to:
 - (i) what prevention and mitigation measures were not affected by the Contractor;
 - (ii) whether the Contractor caused or contributed to the relevant delay; and
 - (iii) whether the effects of the Qualifying Cause of Delay could have been prevented or overcome by the Contractor if it had exercised the standard of care and diligence required by this Contract.

35.5 Extension of time

- (a) Subject to the Contractor's compliance with clause 35.3, within 14 days after receiving a claim for an EOT, the Superintendent must give the parties a written Direction evidencing the EOT so assessed. If the Superintendent does not do so, the Contractor's claim will be deemed to have been rejected on the expiry of this period.
- (b) Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time Direct an EOT for any reason, but is not obliged to exercise this discretion fairly, reasonably or for the benefit of the Contractor.
- (c) The exercise or failure of the Superintendent to exercise its discretion under clause 35.5(b) is not a Direction capable of review in any dispute resolution proceedings.

35.6 Time not at large

No delay nor any failure by the Superintendent to grant an EOT or a reasonable EOT under clause 35.5 or to do so within the time stated in that clause will set the Date for Practical Completion or any other time at large or render clause 35.8 unenforceable.

35.7 Practical Completion

- (a) The Contractor must give the Superintendent 14 days' prior written notice of the date upon which the Contractor anticipates that Practical Completion will be achieved.
- (b) When the Contractor is of the opinion that Practical Completion has been reached, it must in writing request that the Superintendent issue a certificate of Practical Completion (***Certificate of Practical Completion***).
- (c) Within 14 days after receiving a request under clause 35.7(b), the Superintendent must give the parties either a Certificate of Practical Completion evidencing the Date of Practical Completion or written reasons for not doing so.
- (d) If the Superintendent is of the opinion that Practical Completion has been reached, it may issue a Certificate of Practical Completion even though no request has been made by the Contractor.
- (e) If the Contractor is required to carry out further works pursuant to a notice issued by the Superintendent under clause 35.7(b), then on completion of those works:
 - (i) the Contractor must in writing request that the Superintendent issue a Certificate of Practical Completion; and
 - (ii) this clause 35.7 will reapply.

35.8 Liquidated damages

If the Works do not reach Practical Completion by the Date for Practical Completion, the Contractor will be indebted to the Principal for liquidated damages at the rate in Item 39 for every day after the Date for Practical Completion to and including the earliest of the:

- (a) Date of Practical Completion;
- (b) termination of this Contract;
- (c) Principal taking the WUC out of the hands of the Contractor; or
- (d) date on which the Contractor's aggregate liability to the Principal for liquidated damages under this clause 35.8 reaches the amount equal to 10% of the Contract Sum.

35.9 If clause 35.8 void, invalid or inoperative

- (a) The parties acknowledge and agree that the rate in Item 39 is an agreed genuine pre-estimate of the Principal's damages if the Date of Practical Completion does not occur by the Date for Practical Completion.
- (b) If clause 35.8 or the rate in Item 39 is found to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages for the Contractor's failure to achieve Practical Completion by the Date for Practical

Completion, the Principal will be entitled to recover damages from the Contractor for such failure at law.

35.10 Delay damages

- (a) For every day the subject of an EOT for a Compensable Cause and for which the Contractor gives the Superintendent a claim for delay damages pursuant to clause 45, the Principal must pay the Contractor (up to the daily cap set out in Item 40 which is a limitation on the Principal's liability in respect of any Claim by the Contractor for Loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay it suffers in performing this Contract) the additional costs reasonably incurred by the Contractor as a direct result of the relevant Compensable Cause (including an amount for overheads, but excluding profit or loss of profit) and certified by the Superintendent under clause 45.2.
- (b) The Contractor must use reasonable endeavours to minimise the delay damages payable by the Principal pursuant to clause 35.10(a) and the Principal is not obliged to pay any costs under this clause 35.10 which have already been included in the value of a Variation or any other payment under this Contract.

36. RESTRICTED AREAS

36.1 Work in Restricted Areas

- (a) The Contractor must not access or perform WUC in a Restricted Area, unless it:
 - (i) possesses a current Access Permit in respect of the relevant Restricted Area;
 - (ii) gives the Superintendent no less than the number of days set out in Item 41 prior notice of its intention to access the relevant Restricted Area, including full details of:
 - (A) the purpose of the access;
 - (B) who will access the Restricted Area;
 - (C) the duration of the access;
 - (D) any impact on any Existing Operations; and
 - (E) all other information required by the Superintendent;
 - (iii) receives written approval in the form of an Access Permit from the Superintendent that the Contractor is permitted to access the Restricted Area in accordance with its notice under clause 36.1(a)(ii); and
 - (iv) accesses the Restricted Area in accordance with its notice under clause 36.1(a)(ii) and at all times complies with the Access Permit.
- (b) The Contractor acknowledges and agrees that:

- (i) notwithstanding any approval from the Superintendent under clause 36.1(a):
 - (A) the Principal may at any time delay, cancel or otherwise restrict the Contractor's access to a Restricted Area;
 - (B) the Principal will, where reasonably practicable, provide the Contractor with at least 24 hours' prior notice of its intention to exercise its right under clause 36.1(b)(i)(A), but is not obliged to do so;
 - (C) if the Principal exercises its right under clause 36.1(b)(i)(A), the Contractor's only entitlement is to claim an EOT under clause 35.3 and it is barred from bringing any other Claim in connection with the exercise of such right; and
 - (D) if the Contractor wishes to delay or cancel any approved access to a Restricted Area, it must notify the Superintendent in writing no less than the number of days stated in Item 42 prior to the scheduled access date; and
- (ii) if the Superintendent delays, cancels or otherwise restricts the Contractor's access to a Restricted Area pursuant to clause 36.1(b)(i)(A), the Contractor must immediately, as relevant:
 - (A) stop performing all relevant WUC as Directed;
 - (B) remove all relevant equipment, materials and Personnel; and
 - (C) ensure that all relevant areas are left in a condition that is suitable for the Principal and its nominees to efficiently use the Existing Operations and otherwise in accordance with this Contract.

36.2 Contractor's liability

- (a) If the Contractor:
 - (i) accesses, occupies or otherwise uses a Restricted Area other than in accordance with an Access Permit;
 - (ii) leaves a Restricted Area in a state that is unsuitable for the Principal and its nominees to efficiently use it for all relevant purposes;
 - (iii) fails to comply with clause 36.1(b)(ii); or
 - (iv) otherwise prevents, hinders or obstructs Existing Operations,

the Contractor will be indebted to the Principal for liquidated damages at the rate in Item 43 until such time as, in the case of:

- (v) clause 36.2(a)(i), the Contractor ceases accessing, occupying or otherwise using the Restricted Area;
 - (vi) clause 36.2(a)(ii), the Contractor restores the Restricted Area to a state that allows it to be used for all relevant purposes;
 - (vii) clause 36.2(a)(iii), the Contractor complies in full with the relevant Direction; or
 - (viii) clause 36.2(a)(iv), the Contractor ceases preventing, hindering or obstructing any Existing Operations.
- (b) The parties acknowledge and agree that the rate in Item 43:
- (i) is an agreed genuine pre-estimate of the Principal's damages in the circumstances detailed in clause 36.2(a); and
 - (ii) does not include any amount on account of the Contractor's liability under clause 35.8.
- (c) If clause 36.2 or the rate in Item 43 is found to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages as contemplated in that clause, the Principal will be entitled to recover damages from the Contractor at law.

36.3 Existing Operations generally

The Contractor acknowledges and agrees that:

- (a) the Site forms part of and is critical to the functioning of the Existing Operations;
- (b) at all relevant times, the Existing Operations will be occupied, used and operated by Users and such occupation, use and operation must not be interfered with or interrupted other than in accordance with an Access Permit;
- (c) access ways to the Site may be used by others and will not be available exclusively to the Contractor;
- (d) all signage, line markings, flagmen, barriers and other traffic devices needed to comply with this clause 36.3 must be provided and maintained by the Contractor;
- (e) it must repair and make good all damage to the Existing Operations to the extent caused or contributed to by its performance of this Contract unless otherwise Directed by the Superintendent;
- (f) it must program and coordinate the WUC so as to minimise its impact on the Existing Operations;
- (g) it must maintain safe access to the Existing Operations for the Principal, Users and the Principal's Personnel and nominees;

- (h) it must, and must ensure that all Contractor's Personnel:
 - (i) do not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Site or any Existing Operations or block or impair access to any premise, carpark, roadway, pedestrian way, public space, cycle path or other facility associated with the Existing Operations and comply with all Directions of the Superintendent in relation to them;
 - (ii) take all steps necessary to protect Users occupying, using and operating Existing Operations from risks to safety caused by the performance of this Contract;
 - (iii) comply with all Policies and Procedures relevant to the occupation, use and operation of the Existing Operations;
 - (iv) keep the Superintendent informed of all matters that may adversely affect any Existing Operations;
 - (v) attend all meetings Directed by the Superintendent in relation to the interface between the performance of the WUC and the Existing Operations; and
 - (vi) when on the Site or in a Restricted Area, conduct itself or themselves appropriately, including by dressing appropriately, refraining from using offensive language and not smoking or consuming alcohol; and
- (i) nothing in this clause 36.3 limits or otherwise affects the Contractor's other obligations under this Contract.

37. DEFECTS LIABILITY

37.1 Defects Liability Period

The Defects Liability Period commences at 4.00pm on the Date of Practical Completion and operates thereafter for the period stated in Item 44.

37.2 Remedy of Defects

- (a) As soon as possible after the Date of Practical Completion, the Contractor must rectify all Defects existing at the Date of Practical Completion.
- (b) The Contractor must, at its own cost:
 - (i) comply with all Directions of the Superintendent when rectifying Defects; and
 - (ii) rectify Defects at the times and in a manner causing as little inconvenience to Users as is possible.
- (c) During the Defects Liability Period, the Superintendent may give the Contractor a Direction to rectify a Defect which:

- (i) identifies the Defect and the date for completion of its rectification; and
 - (ii) may state a date for commencement of the rectification works.
- (d) If Defect rectification work is not commenced or completed by the Directed dates, the Principal may have such work carried out by others or do so itself without prejudice to any other right or remedy it may have and all Losses thereby incurred will be a debt due and payable to the Principal by the Contractor.
- (e) Once a Defect is rectified, there will be a separate Defects Liability Period of the period stated in Item 44 in respect of all work undertaken to rectify the Defect, commencing at 4:00pm on the date such work is completed.

38. VARIATIONS

38.1 General

The Contractor must not vary any WUC except as Directed in writing by the Superintendent or Principal, unless the Superintendent is of the opinion that the matter is of such urgency that the Contractor should proceed without waiting for a written Direction, in which case the Contractor must proceed with the Variation and the Superintendent must confirm the Direction in writing as soon as possible thereafter.

38.2 Directing Variations

- (a) At any time prior to the last Date of Practical Completion, the Principal or Superintendent may Direct the Contractor to vary the WUC by any one or more of the following (each a **Variation**):
- (i) increase, decrease or omit any part;
 - (ii) change the character or quality;
 - (iii) change the levels, lines, positions or dimensions;
 - (iv) carry out additional work; or
 - (v) demolish or remove material or work no longer required by the Principal,
- and the Contractor must comply with such Direction.
- (b) The cost of any Variation Directed in accordance with clause 38.2(a) must be determined by the Superintendent in accordance with clause 38.4 and the Contract Sum adjusted accordingly.
- (c) No Variation will invalidate or amount to a repudiation of this Contract.
- (d) In addition to the right of the Principal to decrease or omit any WUC, the Principal has the right in respect of decreased or omitted WUC to thereafter have some or all such WUC carried out by others or do so itself.

38.3 Proposed Variations

- (a) The Superintendent may at any time prior to the Date of Practical Completion give the Contractor written notice of a proposed Variation (**Variation Proposal**).
- (b) Within 5 Business Days after receiving a Variation Proposal, the Contractor must notify the Superintendent in writing of:
 - (i) whether the Contractor can comply with the Variation Proposal; and
 - (ii) if it can comply with the Variation Proposal, details of:
 - (A) the effect on the Construction Program of the proposed Variation;
 - (B) all costs of complying with the Variation Proposal and how these costs have been determined (which must be consistent with clause 38.4), including all relevant supporting Documentation;
 - (C) any changes in labour, plant, activities or hours of work required to comply with the Variation Proposal; and
 - (D) all other matters Directed by the Superintendent,(**Variation Offer**).
- (c) Thereafter the Principal or Superintendent may:
 - (i) Direct the Contractor to give a detailed quotation in respect of the proposed Variation supported by measurements and other evidence Directed by the Superintendent;
 - (ii) reject the Variation Offer; or
 - (iii) accept the Variation Offer, in which case the:
 - (A) Contractor must give effect to the relevant Variation; and
 - (B) Date for Practical Completion and Contract Sum will be adjusted as agreed.

38.4 Pricing

The Superintendent must price each Variation using the following order of precedence:

- (a) prior agreement between the parties;
- (b) relevant rates or prices in this Contract, including the Schedule of Rates;
- (c) rates or prices in a schedule of prices, even though not included in this Contract, to the extent it is reasonable to use them; and

- (d) reasonable rates or prices determined by the Superintendent,
- and all deductions must include a reasonable amount for profit, but not overheads.

38.5 Contractor's entitlements

The Contractor is not entitled to bring and expressly waives any Claim against the Principal on the basis that a Direction of the Superintendent constitutes a Variation unless the:

- (a) Contractor notifies the Superintendent of such belief within 3 days after its receipt of the relevant Direction and before giving effect to it; and
- (b) Superintendent expressly confirms to the Contractor in writing that the Direction constitutes a Variation.

39. PAYMENT

39.1 Payment claims

- (a) The Contractor must claim payment of the Contract Sum progressively in accordance with Item 45 and this clause 39.
- (b) Each payment claim must be submitted in writing to the Superintendent and must include:
 - (i) details of the value of WUC completed;
 - (ii) details of other moneys then due to the Contractor pursuant to this Contract;
 - (iii) a duly signed Subcontractor Statement and Statutory Declaration in respect of monies due and payable to its Subcontractors, dated no earlier than the date of the relevant payment claim;
 - (iv) such other details as may be required by the Principal or Superintendent; and
 - (v) a waiver of all rights to any lien in relation to any WUC performed or materials or equipment furnished with effect from the date on which payment has been made to the Contractor in respect of the relevant payment claim.

39.2 Payment Schedule

- (a) The Superintendent must, within 10 Business Days after receiving a payment claim, issue to the parties a progress certificate (**Payment Schedule**) which details:
 - (i) the value of the WUC completed in accordance with this Contract;
 - (ii) the amount already paid to the Contractor pursuant to this Contract;
 - (iii) any amount the Principal is entitled to deduct, withhold or set-off; and

- (iv) the amount (if any) the Superintendent believes is payable by the Principal to the Contractor and which the Principal proposes to pay to the Contractor and its reasons for any difference.
- (b) A failure by the Superintendent to set out in a Payment Schedule an amount the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (c) If the Contractor does not submit a payment claim in accordance with clause 39.1, the Superintendent may nevertheless issue a Payment Schedule.
- (d) Subject to clause 39.3 (compliance with which is a condition precedent to payment), the Principal must pay the Contractor the amount set out as payable by the Principal to the Contractor (if any) in the relevant Payment Schedule after exercising any set-off under clause 39.6, by the later of the date:
 - (i) that is 15 Business Days after receipt by the Superintendent of the Contractor's payment claim; and
 - (ii) on which the Contractor provides the Superintendent with a duly signed Subcontractor Statement and Statutory Declaration in respect of monies due and payable to its Subcontractors and claimed in the relevant payment claim, dated no earlier than the date of the relevant payment claim,

however, if the result of any setting off is a negative balance, the Contractor must pay that balance to the Principal within 5 Business Days after receiving a tax invoice for the relevant amount from the Principal.
- (e) Neither a Payment Schedule nor a payment will be evidence that the subject WUC has been carried out satisfactorily as payment, other than final payment, is on account only.
- (f) The Superintendent may, in any Payment Schedule correct any error in, or otherwise modify, any previous Payment Schedule.

39.3 Conditions precedent

The Contractor must not make a payment claim (including a Final Payment Claim) and the Principal is not obliged to make a payment under clause 39.2 or 39.5, unless the Contractor has:

- (a) complied with clause 5.1;
- (b) effected the insurances required by this Contract and complied with clause 20;
- (c) complied with clause 39.1; and

- (d) provided the Superintendent with, in respect of the relevant payment claim, a duly signed Subcontractor Statement and Statutory Declaration in respect of monies due and payable to its Subcontractors.

39.4 Unfixed plant and materials

- (a) The Principal is not liable to pay the Contractor for unfixed plant and materials, unless the:
 - (i) relevant item is listed in Item 46; and
 - (ii) Contractor:
 - (A) provides the additional security in Item 18(d);
 - (B) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the Principal; and
 - (C) provides such evidence as the Superintendent may require that upon any payment by the Principal to the Contractor of any amount claimed by the Contractor in respect of the subject plant and materials, title in them will vest in the Principal free of any Security Interest.
- (b) Upon any payment to the Contractor that includes an amount which is attributable to unfixed plant and materials, such things become the unencumbered property of the Principal.
- (c) Nothing in this clause 39.4 limits or affects clause 17.1 and notwithstanding that title in any plant and materials may have passed to the Principal, the Contractor must ensure that all such plant and materials are properly stored, labelled the property of the Principal and adequately protected and insured.

39.5 Final Payment Claim and Final Certificate

- (a) Within 28 days after the later of the:
 - (i) expiry of the last Defects Liability Period, and
 - (ii) rectification of all Defects notified to the Contractor prior to the expiry of the last Defects Liability Period,

the Contractor must give the Superintendent a written final payment claim endorsed 'Final Payment Claim' being a payment claim together with all other Claims connected with or arising out of this Contract.
- (b) Within 10 Business Days after its receipt of the Final Payment Claim, the Superintendent must issue to the parties a final Payment Schedule evidencing the moneys finally due and payable between the parties on any account in connection with or arising out of this Contract (***Final Certificate***).

- (c) Subject to clause 39.3 (compliance with which is a condition precedent to payment), the Principal must pay the Contractor the amount set out as payable by the Principal to the Contractor (if any) in the Final Certificate after exercising any set off under clause 39.6, by the later of the date:
 - (i) that is 15 Business Days after receipt by the Superintendent of the Final Payment Claim; and
 - (ii) on which the Contractor provides the Superintendent with a duly signed Subcontractor Statement and Statutory Declaration in respect of monies due and payable to its Subcontractors and claimed in the Final Payment Claim, dated no earlier than the date of the Final Payment Claim,

however, if the result of any setting off is a negative balance, the Contractor must pay that balance to the Principal within five Business Days after receiving a tax invoice for the relevant amount from the Principal.

- (d) After the date for submitting the Final Payment Claim under clause 39.5(a) has passed, the Contractor releases the Principal from all Claims in respect of any fact, matter or thing arising out of, or in any way in connection with, this Contract or the WUC or Works, except for any Claim included in the Final Payment Claim given to the Superintendent within the time required by, and in accordance with, clause 39.5(a).

39.6 Set off

- (a) The Principal may at any time withhold, set-off or deduct from any moneys otherwise due to the Contractor any:
 - (i) debt or other moneys due or claimed to be due from the Contractor to the Principal;
 - (ii) amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to the SOPA; or
 - (iii) bona fide claim to money the Principal may have against the Contractor,

whether under this Contract or otherwise at Law.
- (b) The Principal's rights under this clause 39.6 are in addition to and do not limit or affect any other right of the Principal under this Contract or at law and nothing in this clause 39.6 affects the right of the Principal to recover from the Contractor the whole of the debt or claim in question or any balance that remains owing.
- (c) A failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 39.6 will not prejudice the Principal's right to subsequently exercise its rights under this clause 39.6 or otherwise.

40. DIRECT PAYMENT

- (a) The Principal, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001 (Cth)*), may:
 - (i) pay unpaid moneys directly to Contractor's Personnel where:
 - (A) permitted to do so by Law;
 - (B) given a court order in favour of the relevant person; or
 - (C) requested to do so in writing by the Contractor; or
 - (ii) in its absolute discretion, pay out of moneys due or to become due to the Contractor any moneys owing by the Contractor to any Contractor's Personnel in relation to the WUC.
- (b) The parties agree that:
 - (i) payment under this clause 40 and any payment made to Contractor's Personnel in compliance with any Law will be deemed to be part satisfaction of the Principal's obligation to pay the Contractor pursuant to clause 39.2 or 39.5 (as relevant); and
 - (ii) if an amount equal to or greater than the amount paid by the Principal on the Contractor's behalf is not or never becomes due by the Principal to the Contractor, such amount will be a debt due and payable from the Contractor to the Principal.

41. SECURITY OF PAYMENT ACT

41.1 General

- (a) Where an adjudication occurs under the SOPA and the Principal pays an adjudicated amount to the Contractor:
 - (i) such amount must be taken into account by the Superintendent in issuing a Payment Schedule under clause 39.2; and
 - (ii) if it is subsequently determined that the Contractor was not entitled to receive some or all of the adjudicated amount paid to it by the Principal, the overpayment will be a debt due and payable by the Contractor to the Principal.
- (b) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to the SOPA, then the:
 - (i) Principal may plead and rely on Division 2A of the SOPA as a defence to any Claim for the money by the Contractor from the Principal; and

- (ii) period during which the Principal retains money otherwise due to the Contractor pursuant to an obligation under Division 2A of the SOPA will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (c) The Contractor must not commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with the SOPA.
- (d) Any amount paid by the Principal pursuant to section 26C of the SOPA will be a debt due and payable from the Contractor to the Principal.

41.2 Notices under the Security of Payment Act

The Contractor must:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOPA (including, a payment claim), is provided to the Superintendent at the same time as it is provided to the Principal;
- (b) if the Contractor becomes aware that a Subcontractor is entitled to suspend WUC pursuant to the SOPA, promptly give the Superintendent a copy of any written communication in relation to the SOPA which the Contractor receives from the relevant Subcontractor;
- (c) as soon as practicable give the Superintendent a copy of any notice the Contractor issues to a Subcontractor under section 15(1) of the *Contractors Debts Act 1997* (NSW);
- (d) ensure that each Subcontractor gives, as soon as practicable, the Superintendent a copy of any notice it receives under section 15, 16, or 24 of the SOPA in relation to WUC; and
- (e) promptly notify the Superintendent if it becomes aware that a Subcontractor intends to exercise a statutory lien under the SOPA over unfixed plant and materials supplied by the Subcontractor for use in carrying out any WUC.

41.3 Role of Superintendent

In receiving payment claims and issuing Payment Schedule pursuant to the SOPA, the Superintendent acts as agent of the Principal.

41.4 Indemnity

To the fullest extent permitted by Law, the Contractor must indemnify the Principal from and against all Losses suffered or incurred by the Principal arising out of a:

- (a) suspension pursuant to the SOPA by a Subcontractor of work which forms part of the WUC;
- (b) notice of claim being served on the Principal under the *Contractors Debts Act 1997* (NSW);
- (c) Subcontractor exercising a statutory lien under the SOPA over unfixed plant or materials supplied by the Subcontractor for use in carrying out work forming part of the WUC; and
- (d) failure by the Contractor to comply with clause 41.2.

42. DEFAULT AND INSOLVENCY

42.1 Preservation of other rights

If a party breaches (including repudiates) this Contract, nothing in this clause 42 prejudices the right of the other party to recover damages or exercise any other right or remedy.

42.2 Contractor's default

- (a) If the Contractor commits a substantial breach of this Contract, the Principal may give the Contractor a written default notice.
- (b) Substantial breaches include, but are not limited to:
 - (i) failing to:
 - (A) provide Security in accordance with clause 5;
 - (B) provide satisfactory evidence of insurance in accordance with clause 20;
 - (C) comply with a Direction of the Superintendent;
 - (D) use the materials or standards of work required by this Contract;
 - (E) pay the Principal any amount due and payable under or arising out of this Contract; or
 - (F) comply with a Law; or
 - (ii) wrongful suspension of WUC;
 - (iii) substantial departure from the Construction Program without reasonable cause or the Superintendent's written approval;

- (iv) failing to proceed with due expedition and without undue delay;
- (v) failing to reach Practical Completion by the Date for Practical Completion;
- (vi) knowingly providing documentary evidence containing an untrue statement;
- (vii) abandoning all or a substantial part of this Contract, including intentionally reducing resourcing; and
- (viii) interrupting or interfering with the Existing Operations, other than as expressly permitted by this Contract.

42.3 Principal's default notice

A notice under clause 42.2 must state:

- (a) that it is a notice under clause 42.2;
- (b) the alleged substantial breach; and
- (c) that the Contractor is required to rectify the breach by the time and date stated in the notice.

42.4 Principal's rights

- (a) If the Contractor fails to rectify a breach as Directed in a notice under clause 42.3, the Principal may by written notice to the Contractor:
 - (i) take out of the Contractor's hands some or all of the WUC remaining to be completed and suspend payment until it becomes due and payable under clause 42.6; or
 - (ii) terminate this Contract.
- (b) Upon giving a notice under clause 42.2, the Principal may suspend payments to the Contractor until the date on which the relevant breach is rectified by the Contractor.

42.5 Take out

- (a) The Principal must complete WUC taken out of the Contractor's hands and may:
 - (i) use material, equipment and other things intended for the WUC; and
 - (ii) without payment of compensation to the Contractor:
 - (A) take possession of, and use such of the Construction Plant and other things on or in the vicinity of the Site as were used by the Contractor; and/or
 - (B) contract with the Contractor's Subcontractors,

as is required by the Principal to facilitate completion of the WUC taken out.

- (b) The Principal must keep records of the cost of completing the WUC taken out.

42.6 Adjustment on completion of work taken out

- (a) When WUC taken out of the Contractor's hands pursuant to clause 42.5 is completed, the Superintendent must:
 - (i) assess all Losses thereby incurred by the Principal arising out of or in connection with the Contractor's breach; and
 - (ii) certify the moneys due and payable from the Contractor to the Principal according to the difference between the:
 - (A) Loss assessed under 42.6(a)(i); and
 - (B) amount which would otherwise have been paid to the Contractor if the WUC had been completed by the Contractor in accordance with this Contract.
- (b) If the Contractor is indebted to the Principal, the Principal may retain Construction Plant or other things taken under clause 42.5 until the debt is satisfied however, if, after 3 Business Days' notice, the Contractor fails to pay such debt, the Principal may sell the Construction Plant and other things and apply the proceeds to the satisfaction of the debt and costs of sale. Any excess must be paid to the Contractor.

42.7 Termination

If this Contract is terminated pursuant to clause 42.4, the:

- (a) parties' rights, remedies and liabilities will be the same as they would have been had the Contractor repudiated this Contract and the Principal elected to treat this Contract as at an end and recover damages;
- (b) Principal will:
 - (i) be entitled to, without compensation to the Contractor:
 - (A) take possession of and use all Project Documents (whether complete or not), including in electronic form; and
 - (B) contract with such of the Subcontractors,

as are required by the Principal to facilitate completion of the Works; and
 - (ii) not be obliged to make any further payments to the Contractor; and
- (c) Contractor must immediately hand over to the Principal all:

- (i) unused Free Issue Items;
- (ii) Documentation provided to the Contractor by or on behalf of the Principal, including in electronic form; and
- (iii) Project Documents (whether complete or not), including in electronic form.

42.8 Insolvency Event

To the fullest extent permitted by Law:

- (a) if an Insolvency Event occurs in respect of the Contractor, the Principal may, without giving a notice under clause 42.2, terminate this Contract with immediate effect; and
- (b) the rights given by clause 42.8(a):
 - (i) are additional to any other rights and remedies the Principal may have; and
 - (ii) may be exercised notwithstanding that there has been no breach of this Contract.

43. TERMINATION BY FRUSTRATION

- (a) A party must promptly give notice to the other if it reasonably considers that this Contract is frustrated as a matter of law.
- (b) If the parties agree in writing or it is determined by a court that this Contract is frustrated as a matter of law:
 - (i) the Superintendent must issue a Payment Schedule for WUC carried out to the date of frustration, evidencing the amount which would have been payable had this Contract not been frustrated and the Contractor been entitled to and made a payment claim on the date of frustration;
 - (ii) subject to clause 39.6, the Principal must pay the Contractor within 10 Business Days after the date on which the Superintendent issues the Payment Schedule to the parties, the:
 - (A) amount determined in accordance with clause 43(b)(i);
 - (B) cost of goods, materials and equipment reasonably ordered by the Contractor for incorporation into the WUC and which the Contractor is liable to accept, but only if:
 - (I) they will become the Principal's property, free of any Security Interest, upon payment; and
 - (II) the value of the goods or materials is not included in the amount payable under clause 43(b)(i);

- (iii) subject to its rights under the remainder of this Contract, the Principal must promptly return all Security to the Contractor; and
- (iv) the Contractor must deliver to the Principal, without any further payment, all:
 - (A) Documentation provided to the Contractor by or on behalf of the Principal, including in electronic form; and
 - (B) Project Documents (whether complete or not), including in electronic form.
- (c) The Contractor must take all reasonable steps to mitigate the costs referred to in clause 43(b)(ii)(B).
- (d) The amount the Contractor is entitled to under this clause 43 is a limitation on the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Contractor must not make any other Claim against the Principal arising out of, or in any way in connection with, such frustration.

44. TERMINATION FOR CONVENIENCE

44.1 Right

Without prejudice to any of the Principal's other rights under or arising out of this Contract, the Principal may:

- (a) at any time, for its sole convenience and for any or no reason, terminate this Contract by written notice to the Contractor effective from the time stated in the Principal's notice, or if no time is stated, at the time the notice is received by the Contractor; and
- (b) thereafter, in its absolute discretion, complete some or all of the uncompleted WUC itself or engage others to do so.

44.2 Consequence of termination for convenience

If the Principal terminates this Contract under clause 44.1, the Contractor:

- (a) will, subject to clause 44.2(b), be entitled to payment of the following amounts by the Principal as determined by the Superintendent:
 - (i) for WUC carried out prior to the date of termination, the amount that would have been payable to the Contractor under this Contract if it had not been terminated and the Contractor submitted a payment claim; and
 - (ii) the cost of goods, materials and equipment reasonably ordered by the Contractor for incorporation into the WUC and for which the Contractor is legally bound to pay, provided that:
 - (A) the value of such goods and materials is not included in the amount payable under clause 44.2(a)(i); and

(B) title in such goods and materials vests in the Principal upon such payment free of any Security Interest; and

(b) must:

- (i) stop performing the WUC by the date stated in the notice from the Principal;
- (ii) properly secure the WUC and leave the Site in a safe condition;
- (iii) take reasonable steps to mitigate the costs referred to in clauses 44.2(a); and
- (iv) as a condition precedent to any entitlement to payment under clause 44.2(a), hand over to the Principal all:

(A) Documentation provided to the Contractor by or on behalf of the Principal, including in electronic form; and

(B) Project Documents (whether complete or not), including in electronic form,

and, subject to its rights under the remainder of this Contract, the Principal must promptly return all Security to the Contractor.

The amounts the Contractor is entitled to under this clause 44.2 are a limitation on the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Contract by the Principal under clause 44.1 and the Contractor must not make any Claim against the Principal arising out of, or in any way in connection with, such termination, other than for the amounts payable under this clause 44.2.

45. NOTIFICATION OF CLAIMS

45.1 Communication of claims

If the Contractor wishes to make a Claim against the Principal (other than a Claim for an EOT under clause 35.3 or for payment under clause 39) arising out of, or in any way in connection with any:

(a) act, default or omission of the Principal, Superintendent or the Principal's Personnel; or

(b) other fact, matter or thing arising out of, or in any way connected with this Contract,

it must give the Superintendent a notice:

(c) within 5 Business Days after the day on which the Contractor could reasonably have been aware of the particulars of the fact, matter or thing upon which the Claim is or will be based; and

(d) setting out:

- (i) the legal basis for the Claim and, if based on this Contract, identifying the specific clause;
- (ii) the facts relied on in support of the Claim in sufficient detail to permit verification; and
- (iii) details of the amount claimed and how it has been calculated.

45.2 Superintendent's decision

Within 21 days after its receipt of a notice under clause 45.1, the Superintendent must assess the Claim and notify the Contractor in writing of its decision. Unless a party within a further 21 days after such notification gives a Notice of Dispute which includes such decision, the Superintendent's decision is final and binding on the parties.

45.3 Liability for failure to communicate

- (a) If the Contractor fails to comply with clause 45.1, the:
 - (i) Principal is not liable upon any Claim by the Contractor; and
 - (ii) Contractor is absolutely barred from making any Claim, arising out of, or in any way in connection with, the relevant act, default, omission, direction, fact, matter or thing (as the case may be) to which clause 45.1 applies.
- (b) Nothing in this clause 45 limits the operation or effect of any other provision of this Contract which requires the Contractor to give notice to the Superintendent in order to preserve an entitlement to or make a Claim against the Principal.

46. DISPUTE RESOLUTION

46.1 Notice of Dispute

- (a) If a dispute arises between the parties in connection with the subject matter of this Contract (**Dispute**):
 - (i) either party may give the other a written notice of Dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**); and
 - (ii) subject to clause 46.3, the parties must comply with clauses 46.1 and 46.2 before initiating court proceedings.
- (b) Notwithstanding the existence of a Dispute, the parties must continue to perform this Contract.

46.2 Conferences

- (a) Within 10 Business Days after receiving a Notice of Dispute, the parties must confer to attempt to resolve the Dispute. At every such conference each party must be

represented by a person having authority to agree such resolution. All aspects of such conference, except the fact of its occurrence, will be privileged.

- (b) If a Dispute is not resolved within 15 days after the first conference contemplated in clause 46.2(a), executives of the parties must meet to attempt to resolve the Dispute.
- (c) If a Dispute is not resolved within 35 days after service of a Notice of Dispute, or such longer period agreed by the parties in writing, either party may commence litigation.

46.3 Summary relief

Nothing in clauses 46.1 and 46.2 prejudices the right of a party to institute proceedings to enforce payment due under this Contract or to seek injunctive or urgent declaratory relief.

47. INDEMNITIES AND LIABILITY

47.1 General

The Contractor must indemnify and keep indemnified on demand and by way of continuing indemnity, defend and save harmless, the Principal and each of its Personnel (the **Indemnified Persons**) from and against all Losses they suffer or incur in respect of or arising out of:

- (a) any breach of this Contract by the Contractor or any of its Personnel;
- (b) any wilful, unlawful or negligent act or omission of the Contractor or any of its Personnel;
- (c) any breach by the Contractor or any of its Personnel of the Intellectual Property Rights of a third party or any Claim by a third party against an Indemnified Person in respect of any Intellectual Property Rights assigned or licensed to the Principal by the Contractor under this Contract;
- (d) any breach by the Contractor or any of its Personnel of a duty of confidence owed under this Contract or at law;
- (e) any Hazardous Materials introduced onto the Site by the Contractor or any of its Personnel;
- (f) any act of abandonment of some or all of this Contract by the Contractor; or
- (g) any:
 - (i) damage to or loss of property; or
 - (ii) injury to or sickness or death of any person,caused or contributed to by the Contractor or any of its Personnel,

however, such liability will be reduced to the extent that a negligent act or omission of the Principal caused or contributed to the relevant Claim or Loss.

47.2 Other beneficiaries

- (a) Where an indemnity in this Contract is expressed to be given by the Contractor in favour of a person other than the Principal:
 - (i) this Contract operates as a deed poll by the Contractor for the benefit of that person; and
 - (ii) such person may rely on, and enforce, each indemnity as a deed made in its favour by the Contractor.
- (b) If, for any reason, a person is unable to rely on or enforce an indemnity in the manner contemplated in clause 47.2(a), the Contractor must execute such documents and do all other things as are necessary to give the full benefit of the indemnities to the Indemnified Persons.

48. PROPORTIONATE LIABILITY

- (a) To the fullest extent permitted by Law, the operation of Part 4 of the *Civil Liability Act* 2002 (NSW) and all equivalent legislation in other jurisdictions is excluded in relation to all rights, obligations and liabilities under this Contract.
- (b) Without limiting the generality of clause 48(a), the parties agree that the rights, obligations and liabilities of the parties are as specified in this Contract.

49. TAXES

- (a) Unless expressly provided otherwise in this Contract, the Contractor must pay all Taxes due in connection with the performance of the Works and indemnify the Principal from and against all liability for such Taxes which have arisen or may arise.
- (b) If the Principal is required in its opinion to withhold any amount in respect of a Tax from a payment to be made to the Contractor under this Contract, it is entitled to do so and such withholding and payment to the relevant Authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.

50. GST

50.1 Definitions

In this clause 50, terms which have a defined meaning in the GST Act have the same meaning as in the GST Act .

50.2 GST registration

Each party:

- (a) warrants to the other party that it is registered for GST; and
- (b) must notify the other in writing immediately if it ceases to be so registered.

50.3 GST payable

- (a) Despite the definition of 'consideration' in the GST Act , and unless otherwise expressly stated in this Contract, prices or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST.
- (b) If any payment made or other consideration given by a party (**Payer**) in connection with this Contract does not include GST and is the consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must, at the same time as the consideration is given, pay to the Supplier an additional amount, equal to the amount of the consideration multiplied by the rate of GST under the GST Act.

50.4 Adjustments

If an adjustment event arises in connection with a taxable supply made under this Contract, the Supplier must give the Payer an adjustment note in accordance with the GST Act and the amount payable to the Supplier under clause 39 will be adjusted to reflect the adjustment event and a payment will be made by the Payer to the Supplier or by the Supplier to the Payer (as relevant).

50.5 Reimbursement of GST

If this Contract requires one party to pay for, reimburse or contribute to any Loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of the input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

51. PERSONAL PROPERTY SECURITIES ACT

51.1 Definitions

In this clause 51, terms which have a defined meaning in the PPSA have the same meanings as in the PPSA.

51.2 Contractor's acknowledgements, consents and obligations

The Contractor:

- (a) acknowledges and agrees that this Contract:
 - (i) constitutes a Security Agreement; and
 - (ii) creates a Security Interest in favour of the Principal, including in relation to all:

- (A) goods, materials, components and other things (whether fixed or unfixed) intended for use in the performance of the WUC;
 - (B) Construction Plant, Temporary Works and other things as are used by the Contractor or any Subcontractor in the performance of any WUC; and
 - (C) Project Documents,

(together, ***Collateral***);
- (b) consents to the Principal registering its Security Interest over some or all Collateral and must ensure that all Subcontractors consent on equivalent terms; and
- (c) must, and must ensure that all Subcontractors:
 - (i) promptly execute all further documents and do all other things the Principal Directs the Contractor to do to register:
 - (A) a Financing Statement or Financing Change Statement on the PPS Register in relation to any Security Interest over the Collateral; and
 - (B) any other document on the PPS Register which is necessary to perfect the Principal's Security Interest over the Collateral;
 - (ii) not register, or permit to be registered by any third party, a Financing Statement or Financing Change Statement in respect of any Collateral, without the prior written consent of the Principal; and
 - (iii) keep full and complete records of all Collateral.

51.3 General

The parties agree that:

- (i) to the fullest extent permitted by Law, the following sections of the PPSA do not apply to this Contract: sections 95, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143;
- (ii) unless otherwise agreed by the Principal in writing, the Contractor waives its right to receive a Verification Statement in accordance with section 157 of the PPSA;
- (iii) neither party will disclose information of the kind contemplated in section 275(1) of the PPSA; and
- (iv) the Contractor will not authorise, and will ensure that no other person authorises, the disclosure of information of the type contemplated in clause 51.3(iii), except where required by section 275(7) of the PPSA.

52. FORCE MAJEURE EVENT

- (a) Where a party is unable, wholly or in part, by reason of a Force Majeure Event, to perform an obligation under this Contract and that party:
 - (i) provides the other party within 3 days after the commencement of the relevant Force Majeure Event with full details of the event, affected obligations and, to the extent known, likely extent to which it will be unable to perform or be delayed in performing such obligations;
 - (ii) uses reasonable endeavours to avoid and mitigate the effects of the Force Majeure Event; and
 - (iii) has not caused or contributed to the relevant Force Majeure Event,

all affected obligations are suspended to the extent they are adversely affected by the Force Majeure Event.
- (b) If a Force Majeure Event prevents the performance of a material part or all of the Contractor's obligations under this Contract for more than 30 days, the Principal may terminate this Contract by written notice to the Contractor, in which case neither party will have any liability to the other in respect of such termination.

53. MANAGEMENT OF COVID-19

- (a) If the Principal considers that it is necessary to do any of the following things to manage COVID-19 related issues, it may (in its absolute discretion) Direct that:
 - (i) all or part of the Site or any other asset or place owned or controlled by the Principal (**Principal Assets**) be placed into isolation or under quarantine;
 - (ii) the Contractor or anyone on its behalf not access some or all of the Site or any Principal Asset;
 - (iii) the Contractor only accesses the Site or any Principal Asset at the times and subject to the conditions specified by the Principal; and/or
 - (iv) all or part of the WUC is suspended,

and the Contractor must:

 - (v) comply with such Direction;
 - (vi) cooperate with the Principal to effectively manage all relevant COVID-19 related issues, including by providing access to documentation, information and Personnel; and
 - (vii) recommence performing the WUC in accordance with this Contract as soon as practicable after being Directed to do so by the Principal.

- (b) The Contractor and its Personnel must take all reasonable steps to prevent, overcome and mitigate all delays and other Claims related to COVID-19 and any Direction of the Principal under clause 53(a), including by promptly and diligently:
 - (i) complying with all relevant Laws, Policies and Procedures and Authority recommendations concerning public health and the management of infectious illness;
 - (ii) applying for any payment, benefit or other relief made available by any Authority in connection with COVID-19 or its effects; and
 - (iii) providing such assistance and information as the Principal Directs in connection with any payment, benefit or other relief made available by any Authority in connection with COVID-19 or its effects.

54. RECORDS

The Contractor must:

- (a) keep true and proper records of all matters relating to this Contract up until the date that is 6 years after the last Date of Practical Completion, including:
 - (i) information stored by computer and other devices;
 - (ii) records of inspections, testing and compliance;
 - (iii) records of accounts and time sheets in accordance with accounting principles applied in commercial practice in respect of its time charge billing; and
 - (iv) its expenditure and fees payable to others properly engaged in relation to this Contract; and
- (b) whenever Directed to do so by the Principal, provide the Principal and its nominees with access to such records to review and copy them.

55. GENERAL

55.1 Nature of indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination, rescission or expiration of this Contract.
- (b) It is not necessary for a party to incur any Loss before enforcing an indemnity under this Contract.
- (c) If a party is required to indemnify an Indemnified Person under this Contract, it must pay on demand the amount it is liable to pay.

55.2 No merger

The warranties, undertakings, indemnities, rights and obligations in this Contract do not merge on completion of the Works.

55.3 Waiver

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

55.4 Joint and several liability

If the Contractor is comprised of two or more persons:

- (a) its obligations and liabilities under this Contract bind those persons jointly and severally; and
- (b) any payment made under this Contract to any one or more persons constituting the Contractor is deemed to be payment to all persons constituting the Contractor.

55.5 No representation or reliance

The Contractor acknowledges and agrees that:

- (a) neither the Principal nor anyone acting on its behalf has made any representation or inducement to the Contractor to enter into this Contract, except for those included in this Contract; and
- (b) it does not enter into this Contract in reliance on any representation or inducement by or on behalf of any other person, except for those included in this Contract.

55.6 Entire agreement

The parties agree that, in relation to its subject matter, this Contract:

- (a) embodies their entire understanding; and
- (b) supersedes any prior written or other agreement of the parties.

55.7 Severability

If a provision of this Contract is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability:

- (a) in that jurisdiction of any other provision of this Contract; or
- (b) under the law of any other jurisdiction of that or any other provision of this Contract.

55.8 Amendments

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

55.9 Rights cumulative

Subject to any express provision in this Contract to the contrary, the rights of the Principal under this Contract are cumulative and in addition to any other rights it has at law.

55.10 Costs

Each Party must bear its own costs arising out of the negotiation and execution of this Contract.

55.11 Governing law and jurisdiction

This Contract is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.

55.12 Counterparts

This Contract may be executed in any number of counterparts which, when taken together, will constitute one agreement.

55.13 Survival

Clauses 1, 2.1(e), 2.2, 2.3, 5.3(b), 5.6, 7.1, 7.5, 7.6, 17.2, 30.1, 35.3(c), 35.6, 35.8, 35.9, 35.10, 36, 38.4, 39.3, 39.5, 39.6, 50, 19 (to the extent it applies to the professional indemnity insurance policy required by clause 9.4), 42.5 and 43 - 55.13 are of a continuing nature and survive the expiry or termination of this Contract.

ANNEXURE PART A

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Item		
1.	Principal (clause 1.1)	Tomago Aluminium Company Pty Limited acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, of 638 Tomago Road, Tomago NSW 2322 ABN: 68 001 862 228
2.	Principal's address	Address: 638 Tomago Road, Tomago NSW 2322 Email: [insert] Telephone: [insert]
3.	Contractor (clause 1.1)	[insert] ABN: [insert]
4.	Contractor's address	Address: [insert] Email: [insert] Telephone: [insert]
5.	Contractor's Representative (clause 1.1)	[insert]
6.	Superintendent (clause 1.1)	[insert]
7.	Superintendent's address	Address: [insert] Email: [insert] Telephone: [insert]
8.	a) Date for Practical Completion (clause 1.1) OR	[insert]
	b) Period of time for Practical Completion (clause 1.1)	[insert]
9.	Contract Sum (clause 1.1)	[insert lump sum, rates or a combination]
10.	Provisional Sums (clause 1.1 and 3)	Provisional sum work
		[insert]
10.	Provisional Sums (clause 1.1 and 3)	Provisional sum (ex GST)
		\$(insert)
11.	Applicable Codes and Standards (clause 1.1)	[insert]
12.	Principal's Policies and Procedures (clause 1.1)	[insert references to relevant policies not available at the link included in the definition of "Policies and Procedures"]

13.	Project Plans (clause 1.1 and 11.1)	Project Plan		Time for supply	
		WHS Plan		[insert]	
		[insert]		[insert]	
14.	Site (clause 1.1)	[insert]			
15.	Additional Practical Completion requirements (clause 1.1)	[insert]			
16.	Restricted Area (clause 1.1)	[insert]			
17.	Provisional Sum, percentage for profit and attendance (clause 3)	[7.5]%			
18.	Contractor's security				
	a) Form (clause 5)	2 unconditional undertakings each in the amount of 5% of the Contract Sum			
	b) Amount or maximum percentage of Contract Sum (clause 5)	10% of the Contract Sum			
	c) Time for provision (clause 5)	Date of Contract			
	d) Additional Security for unfixed plant and materials (clauses 5.4 and 39.4)	[insert]			
	e) Contractor's Security upon Certificate of Practical Completion is reduced by (clause 5.4)	50% of amount held			
	f) Is a deed of guarantee and indemnity required? (clause 5.6)	Yes/No			
	g) Guarantor (clause 5.6)	[insert]			
19.	Principal-supplied documents (clause 7.2)	Document		No. of copies	
		[insert]		1 electronic copy	
20.	Documents to be supplied by the Contractor (clause 7.3)	Document	No. of copies		Time for supply
		[insert]	[insert]		[insert]
21.	Time for Superintendent's direction (clauses 7.3 and 9.3)	[insert] days			

22.	Design Obligations (clause 9)	[Yes / No] [If Yes, insert description]	
23.	Professional Indemnity Insurance (clause 9.4)	[If the Contractor has Design Obligations, insert the required amount. For example "\$5 million per claim and in the annual aggregate, with provision for one event of automatic reinstatement".] [If the Contractor does not have Design Obligations insert "Not Applicable".]	
24.	WUC requiring approval to subcontract (clause 10.2(a))	[insert]	
25.	Selected Subcontractors (clause 10.3)	Work	Subcontractor
		[insert]	[insert]
26.	Novation (clause 10.4)	Subcontractor	WUC
		[insert]	[insert]
27.	Subcontractor Warranties (clause 10.6)	Work / Item	Term of Warranty
		[insert]	[insert]
28.	Issues to be addressed in reports (clause 11.2)	[This will depend upon the scope of the Works however, common examples include: a) All relevant safety, quality and environmental management statistics. b) All relevant work health and safety matters, including a summary of the Contractor's compliance with the WHS Legislation. c) The status of the WUC. d) Any requests for information, EOT or delay damages claims, Variations or other Claims made in the immediately preceding month or anticipated to be made in the following months. e) Progress against the Construction Program. f) All time and cost related issues. g) Any issues or anticipated delays and the Contractor's proposed mitigations.]	
29.	Excepted Laws (clause 12.1)	[insert]	
30.	Environmental Management Plan (clause 14)		
	a) Is an EMP needed?	[Yes/No]	
	b) Issues to be addressed in EMP	[insert]	
31.	Public liability insurance (clause 19.2)	\$20 million for each and every claim	
32.	Is asbestos liability insurance required? (clause 19.6(c))	[Yes/No]	

33.	Key Personnel (clause 24.2)	Position	Name	Period for Engagement	Allocation %
		[insert]	[insert]	[eg, Until the Date of Practical Completion]	[eg, 100%]
		[insert]	[insert]	[insert]	[insert]
34.	Time for giving access (clause 25.1)	[insert]			
35.	Survey Marks to be provided by the Principal (clause 27.1)	[insert]			
36.	Free Issue Items (clause 29.2)	Item		Deadline for Supply	
		[insert]		[insert]	
37.	Working hours (clause 32)	[insert]			
38.	Advance notice the Contractor must give when it needs information etc. (clause 33.1)	[insert] days			
39.	Liquidated damages – project delays (clause 35.8)	\$[insert] per day			
40.	Maximum amount payable for delay damages (clause 35.10)	\$[insert] per day			
41.	Notice required to access Restricted Area (clause 36.1(a)(ii))	[insert] days			
42.	Notice required from Contractor to delay or cancel an Access Permit (clause 36.1(b)(i)(D))	[insert] days			
43.	Liquidated damages – Restricted Area delays (clause 36.2)	\$[insert] per hour			
44.	Defects liability period (clause 37)	12 months			
45.	Progress claims (clause 39.1)				
	a) Times for payment claims	[insert]			
	OR				
	b) Stages of WUC for payment claims	[insert]			
46.	Unfixed plant and materials for which payment claims may be made (clause 39.4)	[insert]			

47.	Work Plan (clause 1.1)	<div>[insert reference to any work plan, which should detail, for example:</div> <div>- material interface issues; and</div> <div>- witness and hold points.]</div>
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ANNEXURE PART B

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Approved form of unconditional undertaking

(clause 1.1 – Security)

At the request of

ACN ABN (the Contractor) and in consideration of

ACN ABN (the Principal) accepting this undertaking

in respect of the Contract for

..... (the Project)

ACN ABN (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 PART C

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Subcontractor Statement and Statutory Declaration



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier
(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full name.....

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

STATUTORY DECLARATION

STATUTORY DECLARATION

Statutory declaration in the matter of works contract dated [#] 2020 ("**Contract**")

BETWEEN

Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, of 638 Tomago Road, Tomago NSW 2322 (**Principal**)

AND

[*] (ABN [*]) of [*] (**Contractor**)

I, [name of declarant] of [address] in the state of New South Wales, [occupation], do solemnly and sincerely declare that, after having made enquiries:

- 1 I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf;
- 2 this statutory declaration is made under clause 39 of the Contract in relation to the payment of a payment schedule in respect of payment claim no. [#] submitted by the Contractor on [#];
- 3 all amounts properly payable by the Contractor to consultants, suppliers and subcontractors in respect of the Works have been paid;
- 4 there are no outstanding amounts due and payable by the Contractor or any security held by any person in relation to the Works.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act* 1900 (NSW).

DECLARED at place

on date

by
Signature of declarant

I, [name of authorised witness], a [qualification of authorised witness], certify the following matters concerned with the making of this statutory declaration by the declarant:

[Delete the relevant parts of Statement 1 and Statement 2]

- 1

I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2

I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity by reference to:

.....

document relied on

.....

Signature of authorised witness

.....

Name of authorised witness (block letters)

ANNEXURE PART D

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Schedule of Rates

(clause 1.1 – Schedule of Rates)

[To be agreed with any successful tenderer]

ANNEXURE PART E

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Scope of Works

(clause 1.1 – Scope of Works)

[Drafting Note: The documents which together detail the Works / WUC should be listed or included in this annexure.]

1. [insert]

ANNEXURE PART F

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Deed of Guarantee and Indemnity (clause 5.6)

Date	[insert]
Parties	
1.	[Insert] (ABN [*]) of [*] (Guarantor)
2.	Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, of 638 Tomago Road, Tomago NSW 2322 (Principal)
Recitals	
A	The Principal and [insert] (Contractor) have entered into a contract dated [*] (Contract) under which the Contractor agrees to carry out and complete the Works (as defined in the Contract, the Works).
B	The Principal has entered into the Contract conditionally upon the Guarantor signing this Deed of Guarantee and Indemnity.

It is agreed as follows

1. INTERPRETATION

Terms that are defined in the Contract and used in this Deed have the same meaning given to them in the Contract.

2. GUARANTOR'S OBLIGATIONS

2.1 Guarantee of Performance

The Guarantor guarantees to the Principal the due and punctual performance of every legal, equitable, contractual, statutory and other duty, undertaking, warranty, guarantee, indemnity, agreement or other obligation (together, the **Obligations**) on the part of the Contractor which at any time arises under or in connection with the Contract including without limitation:

- (a) any Obligation on the part of the Contractor to pay the Principal any Loss;

- (b) any Obligation arising from any variation to the Contract:
 - (i) agreed between the Contractor and Principal; or
 - (ii) made in accordance with the Contract;
 - (c) at any time, whether or not the Guarantor is aware of or consents to the variation; and
 - (d) the Unenforceable Contractor's Obligations referred to in clause 2.6,
- (together, the **Contractor's Obligations**).

2.2 Enforcement

If the Contractor defaults in the due and punctual performance of any of the Contractor's Obligations and at any time after that default the Principal gives written notice to the Guarantor of that default and the Principal's intention to exercise its rights under this Deed in respect of that default, the Guarantor must immediately remedy or cause to be remedied the default.

2.3 Indemnity For Loss

The Guarantor indemnifies the Principal and agrees at all times hereafter to keep the Principal indemnified from and against all Losses the Principal may suffer or incur consequent upon or arising out of the Contractor's Obligations not being performed, observed or fulfilled and the Guarantor agrees that the indemnity given by the Guarantor under this clause:

- (a) is a separate and additional Obligation of the Guarantor under this Deed;
- (b) is given by the Guarantor as a principal indemnifier and not as a surety; and
- (c) is given on the other terms of this Guarantee (with all necessary changes being made) so far as those other terms can apply.

2.4 Continuing Guarantee and Indemnity

- (a) This Guarantee is a continuing Obligation and security and will not be wholly or partially satisfied or discharged by the payment at any time hereafter of any money for the time being due to the Principal under the Contract or by any settlement, account, the performance of any other Obligation or any other matter or thing.
- (b) This Guarantee and all Obligations of the Contractor to the Principal extends to and are security for all money at any time due to the Principal despite any special payment, settlement of account, the performance of any other Obligation or other matter or thing in circumstances where the Contractor is unable (for whatever reason) to satisfy the relevant Obligation.

2.5 Liability Not Discharged By Other Events

The liability of the Guarantor and the Principal's rights under this Deed will not be avoided by:

- (a) the granting of time or other indulgence or concession to the Contractor;
- (b) the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Principal against the Contractor;
- (c) any neglect or omission to enforce such rights;
- (d) any Insolvency Event occurring in respect of the Contractor;
- (e) the variation, termination, cancellation, rescission, assignment or novation of the Contract in whole or in part;
- (f) the Contract being or becoming void or voidable in whole or in part; or
- (g) any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its Obligations under this Guarantee or any part of them.

2.6 Invalidity of Contractor's Obligations

Despite any other provisions of this Guarantee, the guarantee and indemnity given by the Guarantor under this Guarantee extends and applies to Obligations on the part of the Contractor which were void from the beginning, or have been subsequently avoided or are otherwise unenforceable by the Principal as a result of:

- (a) any legal limitation, disability or incapacity relating to the Contractor;
- (b) any delay, neglect or failure to register or perfect the Contract or obtain any consent or authorisation necessary to give legal effect to the Contract (other than by reason of an act or omission of the Principal);
- (c) the Contractor's failure to comply with any law; or
- (d) any death, mental incapacity, Insolvency Event or other incapacity or demise on the part of or entered into by the Contractor,

whether or not the Principal should have known about the same (together, the **Unenforceable Contractor's Obligations**).

2.7 Guarantor Not To Compete With Principal in Estate of Contractor

Until the Guarantor is entitled to a release of this Guarantee, the Guarantor will not be entitled on any grounds to and will not:

- (a) be subrogated to the Principal or claim the benefit of any security held by the Principal; or
- (b) claim or receive the benefit of any distribution, dividend or payment arising out of any assignment for the benefit of creditors, arrangement with creditors, winding up, reconstruction or other demise of the Contractor so as to diminish any distribution,

dividend or payment which (but for such claim or receipt) the Principal would be entitled to receive, even where such claim or receipt would arise in respect of a matter not connected with the Guarantor's rights as a surety.

2.8 Avoided Payments Disregarded and Principal Reinstated

- (a) If:
- (i) a claim is made that any payment or transaction affecting or relating to the Contractor's Obligations is void or voidable under any law relating to bankruptcy or the protection of creditors; and
 - (ii) that claim is upheld, conceded or compromised,
- the Principal will immediately become entitled against the Guarantor to all rights in respect of the Contractor's Obligations as it would have had if the payment or transaction (or so much of it as is held or conceded to be void or voidable or as is foregone on compromise) had not taken place.
- (b) The Guarantor must, on such claim being upheld, conceded or compromised, do all things required by the Principal to restore to the Principal the full benefit of this Guarantee immediately prior to such payment or transaction.

3. WARRANTIES

The Guarantor makes the following representations and warranties for the benefit of the Principal and repeats them on each day of the term of this Guarantee:

- (a) the Guarantor has the requisite power to execute and perform this Deed;
- (b) the execution and performance of the Deed have been duly authorised; and
- (c) the Guarantor is not executing this Deed in reliance upon any promise, representation or statement by the Principal.

4. ASSIGNMENT

The Guarantor may not assign or otherwise deal with its rights and obligations under this Deed without the written consent of the Principal.

5. GOVERNING LAW

This Deed and all matters arising in connection with it are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

6. COUNTERPARTS

This Guarantee may be executed by counterparts and all counterparts taken together constitute one instrument.

Executed as a deed on [insert]

Executed as a deed for and on behalf of
Tomago Aluminium Company Pty Limited
(ABN 68 001 862 228), acting on behalf of
and as agent for Alcan Primary Metal
Australia Pty Limited, Gove Aluminium
Finance Limited, Cathjoh Holdings Pty
Limited and Hydro Aluminium Australia Pty
Limited by its authorised representative in
the presence of:

Signature of witness

Signature

Print Name

Print Name

Executed as a deed by [insert name of
Guarantor] (ABN [*]) in accordance with
section 127 of the *Corporations Act* 2001:

Director Signature

Director/Secretary Signature

Print Name

Print Name

ANNEXURE PART G

Annexure to the
Australian Standard General Conditions of
Contract
AS 4900 – 1997

Form of Subcontractor Warranty (clause 10.6)

Subcontractor's Collateral Warranty Deed made on [insert]

BETWEEN

Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited, of 638 Tomago Road, Tomago NSW 2322 (**Principal**)

AND

[*] (ABN [*]) of **[*]** (**Subcontractor**)

Background

- A. The Contractor has entered into the Contract with the Principal for the performance of the Works.
- B. The Subcontractor has entered into an agreement with the Contractor for the performance of the Subcontract Work and/or the supply of the Products, which form a part of the Works.
- C. In return for the Principal allowing the Subcontract Work and Products to be used in the Works, the Subcontractor agrees to give the warranties and indemnities in this Deed.
- D. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor.

Operative provisions

1. DEFINITIONS

In this Deed:

Contract means the contract between the Principal and Contractor in respect of the Works.

Contractor means the person stated in the Schedule.

Subcontract Work and Products means the works and/or products stated in the Schedule.

Warranty Period means the period stated in the Schedule.

Works means the works described in the Schedule.

2. WARRANTY

The Subcontractor warrants that all work performed and all materials supplied by the Subcontractor as part of the Subcontract Work and Products will:

- (a) comply in all respects with the Contract; and
- (b) to the extent that the quality of materials or standard of workmanship is not specified in the Contract, be of merchantable quality and fit for the purposes for which they are required.

3. REPLACEMENT OR MAKING GOOD SUBCONTRACT WORKS AND PRODUCTS

The Subcontractor must at its cost make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work and Products which, within the Warranty Period, are found to:

- (a) be of a lower standard or quality than referred to in clause 2 of this Deed; or
- (b) have deteriorated to such an extent that they are no longer fit for the purposes for which they are required.

4. MAKING GOOD WORKS

The Subcontractor must at its cost carry out any work necessary to:

- (a) any part of the Works to satisfy its obligations under clause 3; and
- (b) restore or make good the Works after satisfying its obligations under clause 3.

5. INDEMNITY

The Subcontractor indemnifies the Principal and its employees, agents and contractors against all costs, losses and damages they suffer or incur arising out of or in connection with any breach by the Subcontractor of clauses 2 or 3.

6. NOTICE OF DEFECTS

The Principal may notify the Subcontractor in writing if it considers there has been a breach of this Deed.

7. TIME TO REMEDY

The Subcontractor must do everything necessary to remedy all breaches notified to it by the Principal under clause 6 within the period notified in the Principal's notice.

8. FAILURE TO REMEDY

- (a) If the Subcontractor fails to carry out and complete all work specified in a Principal's notice under clause 6 within the period notified in the Principal's notice, the Principal

may give written notice to the Subcontractor that the Principal intends to have that work carried out by others.

- (b) If the Subcontractor fails to complete the work by the date specified in the notice given under clause 8(a), the Principal may have the work carried out by others and the Subcontractor indemnifies the Principal against all costs, losses and damages suffered or incurred by the Principal in doing so.

9. URGENT ACTION BY PRINCIPAL

The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 2 and the Subcontractor indemnifies the Principal and its employees, agents and contractors against all costs, losses and damages they suffer or incur in the Principal taking that action.

10. OPERATION OF DEED

This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

11. NATURE AND SURVIVAL OF INDEMNITIES

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of a party, and survives the expiry or termination of this Deed. If a party is required to indemnify another under this Deed, it must pay on demand the amount it is liable to pay by the time required by the other party.

12. JOINT AND SEVERAL LIABILITY

If the Subcontractor comprises two or more persons, the obligations and liabilities of the Subcontractor under this Deed bind those persons jointly and severally.

13. SEVERABILITY

If a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability:

- (a) in that jurisdiction of any other provision of this Deed; or
- (b) under the law of any other jurisdiction of that or any other provision of this Deed.

14. RIGHTS CUMULATIVE

Subject to any express provision in the Contract to the contrary, the rights of the Principal under the Contract are cumulative and are in addition to any other rights of the Principal at law.

15. GOVERNING LAW AND JURISDICTION

This Deed and all matters arising in connection with it are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

16. WAIVER

- (a) No failure to exercise and no delay in exercising any right, remedy or power under this Deed will operate as a waiver of that right, remedy or power.
- (b) No single or partial exercise of any right, remedy or power under this Deed will preclude any other or further exercise of that or any other right, remedy or power.
- (c) No waiver of any right, remedy or power on any particular occasion will operate as a waiver by the waiving person of that right, remedy or power in relation to any other occasion or preclude any other or further exercise of that right, remedy or power in relation to any other occasion.

SCHEDULE

1. Contractor: [insert]

2. Subcontract Works and Products: [insert]

3. Warranty Period: [insert]

4. Works: [insert]

Executed as a **DEED**:

Executed for and on behalf of Tomago Aluminium Company Pty Limited (ABN 68 001 862 228), acting on behalf of and as agent for Alcan Primary Metal Australia Pty Limited, Gove Aluminium Finance Limited, Cathjoh Holdings Pty Limited and Hydro Aluminium Australia Pty Limited by its authorised representative in the presence of:	
Signature of Witness	Signature of Authorised Representative
Name of Witness (print)	Name of Authorised Representative (print)

Executed in accordance with section 127 of the <i>Corporations Act</i> 2001 (Cth) by [Insert name of Subcontractor] (ABN [*]):	
Signature of Director	Signature of Director / Secretary
Name of Director (print)	Name of Director / Secretary (print)