



# **New South Wales Government**

## **GC21 (Edition 2)**

### **General Conditions of Contract**

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**Preface**

**GC21 (Edition 2) General Conditions of Contract**

**Contract framework**

**Carrying out the Works**

**Claim and Issue resolution**

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**Meanings**

**Contract Information**

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## **GC21 (Edition 2) General Conditions of Contract**

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## Acknowledgments

The NSW Government GC21 (Edition 2) General Conditions of Contract was developed in 2012 by the NSW Construction Consultative Committee based on experience in the use of Edition 1. It was developed in consultation with representatives of: Department of Finance & Services, Land and Housing Corporation, Roads and Maritime Services, Health Infrastructure, and Sydney Water Corporation.

This update of New South Wales Government GC21 (Edition 2) General Conditions of Contract was developed by the Department of Regional NSW - Public Works with support from the NSW Construction Leadership Group (CLG) based on experience in the use of previous versions of GC21. Refer to the GC21 edition 2 amendments log in the GC21 (Edition) 2 documents section of the buy.nsw website listed below for details. It includes changes agreed upon following consultation with a number of New South Wales Government agencies.

## Government Codes and Guidelines

Unless noted otherwise, copies of the Codes and Guidelines referred to in the GC21 (Edition 2) General Conditions of Contract may be obtained from Categories/Construction on the buy.nsw.gov.au website with address:

<https://buy.nsw.gov.au/categories/construction>

These are:

- Work Health & Safety management guidelines (for Construction Procurement) (Edition 6)
- Quality management guidelines (Construction Procurement) (Edition 4)
- Environmental management guidelines (Construction Procurement) (Edition 4)
- Skills, training and diversity in construction, incorporating the Infrastructure Skills Legacy program  
[https://www.training.nsw.gov.au/programs\\_services/funded\\_other/islp/index.html](https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html)
- Aboriginal Procurement Policy  
<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>
- NSW Government *Supplier Code of Conduct*  
<https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>
- NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013, updated September 2017)  
<https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/>

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# Preface

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## The GC21 (Edition 2) General Conditions of Contract

The GC21 (Edition 2) General Conditions of Contract is the major component of the GC21 Standard Form documents, which also include the Conditions of Tendering, Tender Schedules and Preliminaries.

The GC21 suite of documents available on the buy.nsw website provides a holistic approach to construction procurement, in line with the NSW Government's 10-point Action Plan. In particular, the documents have been designed to:

### Standardised Contract

- provide an easily understood standardised form of contract for building and civil construction over \$2m in value, incorporating explanations of key requirements and terms as well as in-built documenter guidance;
- suit a broad range of design from a minimal concept design to full design. The GC21 suite of documents accommodates fully documented; developed design; design and construct; design, development and construct; design, construct & maintain, and other similar types of contract without amendment,
- incorporate Lump Sum and *Schedule of Rates* forms of pricing as well as the pricing of options and alternatives;
- be readily adapted to Managing *Contractor*, Alliance Agreements, Cost Plus, Target Cost and Guaranteed Maximum Price procurement arrangements;

### Collaboration and cooperation

- continue the highly effective emphasis on co-operative contracting and enhanced communication, including early warning procedures, joint workshops and regular joint evaluation and monitoring;
- provide equitable risk sharing between the parties, streamline operational processes such as delay and overhead cost assessments and include mechanisms for early agreement on changes, the resolution of ambiguities and inconsistencies and the use of independent valuers; and
- incorporate NSW Government initiatives including requirements to improve skills and training, fair dealing with employees and subcontractors as well as Aboriginal Participation and industry diversity.

The GC21 (Edition 2) General Conditions of Contract built on the experience and project success delivered with Edition 1. Edition 2 focused on streamlining, updating and improving the operation of the contract to reflect experience and practice. The requirement for contractors to use the GC21 subcontract was discontinued in Edition 2 and replaced with a short list of mandatory requirements to give the contractor and subcontractors flexibility in their commercial arrangements.

## Using this document

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- Valuer
- Works



The first part of the above Preface with heading; 'The GC21 (Edition 2) General Conditions of Contract' explains the GC21 contract philosophy and features in general terms and is not part of the Contract.

Within related documents and correspondence, this document may also be referred to as the 'GC21 General Conditions of Contract' or the 'General Conditions of Contract' unless the context requires another interpretation.

Refer to clauses 78 & 79 for the interpretation and definition of words and phrases including notes (in dark red text) and headings.

Attachments 1, 2A, 2B and 3 do not form part of the Contract.

# Contract framework

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## Roles and relationships

### 1 General responsibilities

- .1 The Contractor must:
  - .1 design and construct the Works in accordance with the Contract; and
  - .2 perform and observe all its other obligations under the Contract.
- .2 The Principal must:
  - .1 pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract; and
  - .2 perform and observe all its other obligations under the Contract.
- .3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

### 2 Authorised persons

#### Contractor's Authorised Person

- .1 The Contractor must ensure that, at all times, there is a person appointed to act as the *Contractor's Authorised Person*. The *Contractor's Authorised Person* acts with the Contractor's full authority in all matters relating to the Contract. The Contractor must promptly notify the Principal of the name and contact details of the *Contractor's Authorised Person* and of any change in those details. If the Principal reasonably objects to the *Contractor's Authorised Person* at any time, the Contractor must replace that person.

#### Principal's Authorised Person

- .2 The Principal must ensure that, at all times, there is a person appointed to act as the *Principal's Authorised Person*. The Principal must promptly notify the Contractor of the name and contact details of the *Principal's Authorised Person* and of any change in those details.
- .3 The *Principal's Authorised Person* does not act as an independent certifier, assessor or Valuer. The *Principal's Authorised Person* acts only as an agent of the Principal.
- .4 The *Principal's Authorised Person* may delegate any of its contractual functions and powers to others by written notice to the Contractor.

### 3 Co-operation

- .1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

### 4 Duty not to hinder performance

- .1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

### 5 Early warning

- .1 Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for *Completion*, or the cost or quality of the Works. The parties must then investigate how to avoid or minimise any adverse effect on the Works and *Scheduled Progress*.
- .2 Information provided by a party under clause 5.1 must not be used against that party in any *Claim* or *Issue* resolution proceedings.

### 6 Evaluation and monitoring

- .1 The parties must meet regularly to evaluate and monitor performance of the Contract.

- .2 The parties must decide jointly who will participate in the meetings. Participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.
- .3 Nothing concerning or in connection with completed evaluation forms changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
- .4 Participants in the evaluation and monitoring meetings must meet their own costs for attendance, and the parties must share equally the other costs.

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## The Contract

### 7 The Contract

- .1 The Contract is made up solely of the *Contract Documents*, which supersede all understandings, representations and communications made between the parties before the Date of Contract in relation to the subject matter of the Contract. The *Contract Documents* are:
  - .1 these GC21 General Conditions of Contract;
  - .2 the Contract Information;
  - .3 the annexed Schedules;
  - .4 the *Principal's Documents* as at the Date of Contract; and
  - .5 the other *Contract Documents* listed in Contract Information item 26.
- .2 The *Contract Documents* must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents must be read as included in all other documents, unless the context requires otherwise.
- .3 The terms of the Contract cannot be amended or waived unless both parties agree in writing.
- .4 The Principal must give the Contractor the number of copies of the *Principal's Documents* stated in Contract Information item 27.
- .5 Even where a *Letter of Award* has been used to form the Contract, the Principal may require the Contractor to execute a formal agreement or deed on terms no different from those contained in the existing *Contract Documents*. If required, the Contractor must execute and return to the Principal two copies of the agreement or deed within 14 days after the Principal's written request for their execution. The Principal will return an executed copy to the Contractor. Unless the Principal instructs otherwise:
  - .1 execution may be by electronic means using an appropriate electronic signing platform; and
  - .2 the parties agree to execute electronically and intend to be bound by the terms or agreement in writing.

### 8 Scope of the Works, Temporary Work and work methods

- .1 The Works are described in brief in Contract Information item 3 and in more detail in the *Contract Documents*, and include:
  - .1 all work specifically referred to in or contemplated by the Contract;
  - .2 all work and items necessary to achieve the effective and efficient use and operation of the Works; and
  - .3 all work and items necessary for the Works to be fit for the purposes required by the Contract.
- .2 Other work required in connection with the Contract includes:
  - .1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
  - .2 all work and items necessary to carry out and complete the Works properly; and
  - .3 all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract.

- .3 The Contractor acknowledges that:
  - .1 it is both experienced and expert in work of the type, complexity and scale of the Works;
  - .2 it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and
  - .3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.
- .4 The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works.
- .5 Unless the Contract specifies, or the Principal instructs, that the Contractor use a particular work method or perform particular *Temporary Work*, the Contractor is solely responsible for determining the work methods and the requirements for all *Temporary Work*.
- .6 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
  - .1 its price (excluding all costs of delay or disruption) for any proposal by the Principal to use a particular work method or perform particular *Temporary Work* proposed by the Principal or to change a work method or *Temporary Work* specified in the Contract;
  - .2 the anticipated effect of the Principal's proposal on achieving *Completion*; and
  - .3 the effect of the Principal's proposal on any other matter specified by the Principal.
- .7 If the parties agree in writing on the effects of the Principal's proposal and the Principal instructs the Contractor to carry out the proposal, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
- .8 Subject to clause 8.9, if the Principal instructs the Contractor to use a particular work method or perform particular *Temporary Work* or to change a specified work method or *Temporary Work* without first agreeing in writing with the Contractor the effects of the instruction, the Contractor may make a *Claim*, that complies with clause 68.3, for:
  - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, subject to the requirements of those clauses; and
  - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.
- .9 If the need for the instruction given under clause 8.8 arises from the Contractor's own act or omission, the Contractor is not entitled to any extension of time or adjustment to the *Contract Price*.

## **9 Assignment**

- .1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's written consent.

## **10 Governing law of the Contract**

- .1 The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

## **11 Notices and instructions**

- .1 Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11 or 52, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable and, in any event, within 3 *Business Days* of being given.

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## Statutory and Government Requirements

### 12 Statutory Requirements

- .1 The Principal must ensure that the licences, authorisations, approvals and consents listed in Contract Information item 14 are obtained and paid for.
- .2 The Contractor is responsible for:
  - .1 compliance with all *Statutory Requirements*, subject to clause 49, except if, because of the nature of the requirement, only the Principal can comply;
  - .2 giving all notices necessary to comply with *Statutory Requirements*;
  - .3 obtaining all licences, authorisations, certifications, approvals and consents necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and
  - .4 the payment of all necessary fees and charges, other than those listed in Contract Information item 14.
- .3 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all licences, authorisations, approvals, consents and other documents issued by authorities or providers of services in connection with the Works or the Site.

### 13 Procurement Policy Framework, Supplier Code, Industrial Relations Guidelines and Modern Slavery

- .1 The NSW Government Procurement Policy Framework (Procurement Framework) provides a consolidated view of government procurement objectives and requirements as they apply to each step of the procurement process.
- .2 The NSW Government Supplier Code of Conduct (the 'Code') outlines the ethical standards and behaviours expected from the Principal and the Contractor.
- .3 The New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) aims to implement the NSW Government's commitment to greater flexibility and productivity within the State's building and construction industry.
- .4 The Contractor must comply with the Procurement Framework, the Code and the NSW Guidelines and Schedule 12 (Compliance with NSW Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines) applies.
- .5 If required by Contract Information item 15B, the Contractor must comply with the requirements of Schedule 16 (Modern Slavery) and implement processes and procedures to identify and manage the risks of Modern Slavery.

### 14 No collusive arrangements

- .1 The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract.
- .2 Without limiting any other right or remedy, the Principal may recover from the Contractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association in breach of the warranty in clause 14.1.

### 15 Compliance with NSW Government Requirements

- .1 The Contractor must implement and maintain the systems, strategies and plans required to comply with the following NSW Government Policies and Guidelines (as applicable), and meet other obligations as specified in Contract Information item 15:
  - .1 Industrial Relations Guidelines: Building and Construction Procurement;
  - .2 Work Health and Safety Management Guidelines (for Construction Procurement);
  - .3 Quality Management Guidelines (Construction Procurement);
  - .4 Environmental Management Guidelines (Construction Procurement);
  - .5 Skills, training and diversity in Construction, incorporating the Infrastructure Skills Legacy Program; and
  - .6 Aboriginal Procurement Policy.

- .2 The requirements of relevant NSW Government Guidelines are additional to any other requirements of the Contract and *Statutory Requirements*.
- .3 The Contractor must submit the plans and reports identified in Contract Information item 15 by the times specified. The plans and reports must comply with all the requirements of the relevant NSW Government Guidelines and the Contract.
- .4 The Contractor must:
  - .1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, plans and procedures required under clauses 15.1 and 15.3;
  - .2 review and update its systems, plans and procedures to ensure ongoing compliance with the Contract;
  - .3 control non-conformances and undertake corrective and preventive action as and when necessary; and
  - .4 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow the Principal to carry out reviews and audit of the Contractor's plans and procedures and confirm compliance with the Contract.

## **16 Appointment of principal contractor for WHS**

- .1 Unless otherwise stated in the Contract, the Contractor:
  - .1 is engaged as principal contractor for the construction project in accordance with Clause 293 of the *Work Health and Safety (WHS) Regulation 2017 (NSW)*;
  - .2 is authorised to have management and control of the workplace as necessary to enable it to discharge the duties of a principal contractor and of a person having management or control of a workplace;
  - .3 must perform the duties of:
    - .1 a principal contractor, as specified in the *WHS Regulation 2017 (NSW)*, and
    - .2 a person with management or control of a workplace as specified in the *Work Health and Safety Act 2011 (NSW)* and the *WHS Regulation 2017 (NSW)*; and
  - .4 must notify the Principal promptly of any matter affecting WHS where consultation with the Principal is necessary.

## **17 Commonwealth WHS Accreditation**

- .1 If required by Contract Information item 16, the Contractor must maintain accreditation under the Australian Government WHS Accreditation Scheme (Scheme) established under the *Federal Safety Commissioner Act 2022 (FSC Act)* and specified in the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* while building work (as defined in section 6 of the FSC Act) is carried out. The Contractor must comply with all conditions of Scheme accreditation.

## **18 Working hours and working days**

- .1 The Contractor must observe:
  - .1 *Statutory Requirements* which regulate working hours and working days; and
  - .2 any requirements in Contract Information item 18.

## **19 Authorisation to release and use information**

- .1 The Contractor authorises the Principal to:
  - .1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor's performance, to other Commonwealth, State or local government agencies at any time or for any reason; and
  - .2 take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.

- .2 The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in making information available to others as contemplated by clause 19.1.1.
- .3 The Contractor releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.

## 20 Long service levy

- .1 If Contract Information item 14A states that this clause 20 applies, the Contractor must, before starting construction work:
  - .1 pay to the Long Service Corporation or the Corporation's agent the amount of the long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) in respect of the building and/or construction work; and
  - .2 give the Principal documentary evidence of payment of the levy.

## 21 Registration and licences

- .1 All vehicles and plant used in carrying out work in connection with the Contract must be registered as required by law.
- .2 All drivers who operate vehicles or plant in carrying out work in connection with the Contract must be licensed to operate those vehicles or plant as required by law.
- .3 Whenever requested, the Contractor must promptly provide documentary evidence of compliance with clause 21.

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# Management duties

## 22 Time management

### Contract Program

- .1 The Contractor must submit a *Contract Program* to the Principal within 14 days after the Date of Contract. If the Principal so instructs, the program submitted by the Contractor with its tender is the *Contract Program* until the Contractor submits a *Contract Program*.
- .2 The *Contract Program*, including any updated *Contract Program*, must:
  - .1 reflect *Scheduled Progress* and show the *Contractual Completion Dates* for the whole of the Works and all *Milestones*;
  - .2 show, and be consistent with, all constraints on access, performance and coordination;
  - .3 show the start and finish dates and the percentage complete or, in the case of future activities, the intended start and finish dates, of all design and construction activities including any work specified against *Provisional Sums* and other significant events;
  - .4 identify and show the logical relationship between activities and events, the sequence of activities which constitute the current critical path or paths, time leads and lags, and resource and other constraints;
  - .5 show the dates when the Contractor:
    - .1 will require information, documents, or *materials* from the Principal;
    - .2 will require instructions from the Principal, including an instruction to carry out work specified against a *Provisional Sum* where a delay in issuing such an instruction will result in a delay to *Completion*; and
    - .3 will provide information or documents to the Principal.
 These dates must be consistent with dates which the Principal could reasonably have anticipated at the Date of Contract;
  - .6 be accurate, comprehensive and complete;
  - .7 comply with any reasonable requirements of the Principal.
- .3 The Contractor must update the *Contract Program* at the following times:
  - .1 at least once every month;

- .2 whenever there is a significant change in scheduling;
  - .3 within 7 days after receiving an instruction from the Principal to do so;
  - .4 when required to comply with the notification requirements of clause 50.1.3;
  - .5 when required to comply with the *Claim* requirements of clause 50.4; and
  - .6 following the granting of an extension of time under clause 50.
- .4 Updated *Contract Programs*:
- .1 must take account of the Contractor's actual progress to the date of the update, unless clause 22.4.3 applies;
  - .2 must be submitted promptly to the Principal;
  - .3 where submitted in accordance with clause 22.3.4, must comply with the specific requirements of clause 50.1.3; and
  - .4 where submitted in accordance with clause 22.3.1, must be submitted by the last *Business Day* of the month, unless an updated *Contract Program* has been submitted within the preceding 14 days.
- .5 The Principal need not respond to the Contractor about a *Contract Program*, but if the Principal advises the Contractor that the *Contract Program* submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the *Contract Program* so that it complies with the requirements of the Contract and the instructions of the Principal, and must submit the revised *Contract Program* to the Principal within 7 days after receiving the Principal's advice or instructions.

#### **Scheduled Progress**

- .6 The Contractor must carry out all work in connection with the Contract so as to achieve *Scheduled Progress*.
- .7 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.
- .8 If the Contractor does not demonstrate to the Principal that it is achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress* at its own cost. An instruction under this clause is not an *Acceleration Notice*.

#### **Minimisation of delay**

- .9 When there is any change in work in connection with the Contract, or the program or sequence of the work, the Contractor must take all reasonable steps to:
  - .1 carry out any additional work concurrently with other work; and
  - .2 otherwise minimise any effects on the time for *Completion*.

### **23 Intellectual property**

- .1 The Contractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Contract, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal.
- .2 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract are assigned or otherwise transferred to the Principal upon their creation.
- .3 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Data* for the purposes of the Contract.
- .4 For *Data* not created specifically for the Contract but required to use, operate, maintain, modify and decommission the Works, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use that *Data* for those purposes, including a right to sub-licence.
- .5 Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Data* has not then been created) from the date the *Data* is created.
- .6 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.



- .7 The Contractor indemnifies the Principal against any claims (including *Claims*), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to *Data* created or provided by the Contractor in connection with the Contract, including any related design, *materials*, documents or methods of working, or otherwise in the course of the Contractor's performance of the Contract.
- .8 The Contractor warrants that the *Data* created or provided by the Contractor under the Contract, including any related design, *materials*, documents and methods of working, will not infringe any *Intellectual Property Rights*.
- .9 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract.
- .10 The Principal may grant the Contractor a royalty-free licence to use innovations developed during the course of the Contract for purposes agreed by the Principal.

## **24 Confidentiality**

- .1 The Contractor must maintain all *Data* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Data* which is generally available to the public or which is required to be disclosed by law.

## **25 Media releases and enquiries**

- .1 The Contractor must obtain the Principal's prior written consent to:
  - .1 any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
  - .2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media enquiry without the Principal's prior written consent.
- .3 The Contractor must ensure that all Consultants, Subcontractors and Suppliers comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- .4 The Principal may give or refuse its consent, in its absolute discretion.

## **26 Care of people, property and the environment, indemnities and limitations**

### **Obligations of care**

- .1 The Contractor is responsible for all of the following:
  - .1 preventing personal injury or death;
  - .2 preventing loss or damage to the Site and the Works;
  - .3 preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
  - .4 locating and caring for existing services;
  - .5 repairing or making good loss or damage to the Works and the Site; and
  - .6 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works.
- .2 If, in the opinion of the Principal, urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Contractor's cost, and the Principal's costs of doing so will be recoverable as a deduction from the *Contract Price*.

### **Indemnities for property, personal injury or death**

- .3 The Contractor indemnifies the Principal against loss or damage to:

- .1 the Works, from the date the Contractor begins carrying out the Works; and
- .2 the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site, until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases when that part is occupied or taken into use and the indemnity in clause 26.4 then applies as if the *Actual Completion Date* had been achieved with respect to that part.
- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the Principal against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
  - .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
  - .2 which occurred while the Contractor indemnified the Principal under clause 26.3.
- .5 The Contractor's liability for loss or damage under clauses 26.3 and 26.4 is reduced to the extent that the loss or damage is contributed to or caused by:
  - .1 any act or omission of the Principal;
  - .2 any risk specifically excepted in the Contract;
  - .3 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
  - .4 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 Subcontractors, Consultants or Suppliers.
- .6 The Contractor indemnifies the Principal against the following where they arise in connection with carrying out the Works:
  - .1 all damage to property other than property covered under clause 26.3;
  - .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3; and
  - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, or death.
- .7 The Contractor's liability to indemnify the Principal under clause 26.6 is reduced to the extent that the loss, damage, injury or death is contributed to or caused by an act or omission by the Principal.

#### **Limitation of liability**

- .8 Subject to clause 26.9, the Contractor's liability to the Principal in connection with loss or liability other than for personal injury or death, in respect of any one occurrence arising in connection with the Contract is limited to the amount stated in Contract Information item 19.
- .9 Clause 26.8 does not limit or affect any liability of the Contractor in respect of claims, actions, costs, losses, damages or liability in connection with:
  - .1 liability which cannot be limited at law;
  - .2 intellectual property and indemnities given by the Contractor in connection with intellectual property;
  - .3 conduct of the Contractor which is negligent or is carried out with wilful or reckless disregard for the consequences to the Principal, the public or the environment;
  - .4 fraudulent or criminal conduct;
  - .5 the Contractor's abandonment of its obligations under the Contract; or
  - .6 the Contractor's obligation to pay liquidated damages under the Contract.
- .10 The Contractor's liability may be further limited to the extent that the *Professional Standards Act 1994* (NSW), or any equivalent statutory provision in any other state or territory, applies.

### **Consequential loss**

- .11 The Contractor is not liable to the Principal for any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any indirect or consequential losses or damages not in the reasonable contemplation of the parties at the Date of Contract, arising in connection with the Contract, other than:
  - .1 loss in connection with any of the matters referred to in clause 26.9; or
  - .2 loss that is or should be covered by insurance required under the Contract to be held by the Principal or the Contractor, or which would have been covered but for an act or omission of the Contractor or any of its employees, agents, Subcontractors, Suppliers or Consultants.

### **Exclusion of proportionate liability**

- .12 If Contract Information item 20 states that proportionate liability is excluded from the Contract then, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

## **27 Insurance**

- .1 If Contract Information item 21 or 22 states that the Principal is responsible to effect insurance covering the Works or public liability, the Principal must, not later than the Date of Contract, effect that insurance in accordance with the Contract Information item, on terms not less beneficial to the Contractor than those described in the insurance policy or policies or other details of insurance provided or made available to the Contractor by the Principal before the Date of Contract. The Principal must provide or make available to the Contractor a copy of the relevant insurance policy.
- .2 If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
  - .1 a Works policy of insurance to cover loss or damage to the Works; and
  - .2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.
- .3 Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 23, 24, 25 and 25A as follows:
  - .1 workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;
  - .2 if stated in Contract Information item 24, a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;
  - .3 if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 25: and
  - .4 if any work in connection with the Contract includes the use of motor vehicles of any kind, third party property damage policies of insurance, or policies of insurance that include cover for third party property damage, to cover the use of such vehicles by the Contractor as specified in Contract Information item 25A.

- .4 The party that is required to effect insurance must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
- .5 The Contractor must ensure that every Subcontractor, Supplier and Consultant is insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) at all times.
- .6 Unless otherwise instructed by the Principal, the Contractor must make and manage all insurance claims.
- .7 The Contractor must meet the costs of all excesses or deductibles.
- .8 All policies must:
  - .1 require the insurer to notify the Principal (other than in relation to workers compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
  - .2 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
- .9 Each policy referred to in clauses 27.2 and 27.3.3 must:
  - .1 name or otherwise identify the Principal and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends; and
  - .2 include a cross-liability clause under which the insurer agrees that the term “insured” applies to each of the persons covered as if a separate policy of insurance had been issued to each of them, and a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action against any of the persons covered.
- .10 The Contractor must:
  - .1 ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 27 by the Contractor or any Subcontractor, Supplier or Consultant, it:
    - .1 does not do anything which prejudices any insurance;
    - .2 if necessary, rectifies anything which might prejudice any insurance;
    - .3 reinstates an insurance policy if it lapses;
    - .4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
    - .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
    - .6 gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
  - .2 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
  - .3 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.
- .11 The Contractor must give the Principal proof that all insurance policies required to be effected by the Contractor under the Contract are current:
  - .1 before starting work in connection with the Contract; and
  - .2 whenever requested in writing by the Principal.
- .12 The Contractor must give the Principal copies of all insurance policies it is required to effect and maintain whenever requested in writing by the Principal, (other than in respect of workers compensation and professional indemnity, where the Contractor must provide a certificate of currency instead).
- .13 If the Principal has a reasonable objection to an insurer or to any conditions of an insurance policy, and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five *Business Days* after receiving the notification,

either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.

- .14 If the Contractor fails to comply with clauses 27.11, 27.12 or 27.13, the Principal may effect and maintain the relevant insurance policy and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due from the Contractor to the Principal.
- .15 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- .16 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
  - .1 all settlement amounts must be paid by the insurer directly to the Principal;
  - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
  - .3 the Contractor must reinstate the Works if instructed to by the Principal and, except as otherwise provided in the Contract, may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement.

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## **Subcontractors, Suppliers and Consultants**

### **28 Subcontractor relationships**

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must include in every Subcontract:
  - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
  - .2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
  - .3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.6.3; and
  - .4 when possible, a right of termination for convenience.
- .4 In addition, the Contractor must include:
  - .1 in each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 29, written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements); and
  - .2 in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.

### **29 Engaging Subcontractors**

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with an unpriced copy of the Subcontract and the name and address of the proposed or engaged Subcontractor (as applicable). The Contractor is to provide the requested information within 7 days of the Principal's request. The Principal

may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.

- .3 If Contract Information item 31 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.
- .4 If instructed by the Principal, the Contractor must accept novations of the contracts of specified Principal's consultants, contractors or suppliers, on the terms specified in the Contract.
- .5 Where a *Preferred Subcontractor* has been engaged or a contract (including an agreement) has been novated:
  - .1 the Contractor must not terminate the Subcontract or Novated Contract (or Novated Agreement) without reasonable cause and must give a minimum of 14 days notice to the Principal of its intention to terminate with reasons justifying the intended termination; and
  - .2 where the work under a terminated Subcontract or Novated Contract (or Novated Agreement) is not complete, the Principal may require the Contractor to subcontract the remaining work to another Contractor or Consultant nominated by the Principal.

### **30 Subcontractor warranties**

- .1 For each trade, item or area of work listed in Contract Information item 32, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).
- .2 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

### **31 Consultant and Supplier relationships**

- .1 Clauses 28.1, 28.2, 28.3 and 29 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.

# Carrying out the Works

## Starting

### 32 Start-up workshop

- .1 The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.
- .2 The parties must attend the start-up workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.
- .3 The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

### 33 Security

- .1 Within 14 days after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 If the Contractor does not comply with clause 33.1 the Principal may withhold from any payment to the Contractor an amount up to the total amount of *Unconditional Undertakings* that the Contractor has not given to the Principal in accordance with clause 33.1 until the Contractor gives the *Unconditional Undertakings* to the Principal or the Principal is required to return the *Unconditional Undertakings*, whichever is earlier.
- .3 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
  - .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
  - .2 the *Post-Completion Undertaking* at the end of the period stated in Contract Information item 35 after the *Actual Completion Date* of the whole of the Works provided that at that time:
    - .1 there are no outstanding *Defects* or unresolved *Issues*; and
    - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal.
- .4 When any of the circumstances in clause 33.3.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.
- .5 When *Completion* of a *Milestone* is achieved, the Principal may (in its absolute discretion) agree to a proportionate reduction in the amount held as *Undertakings*, based on the proportion of the Works included in the *Milestone*.
- .6 *Undertakings* must be provided by a bank, building society, credit union or insurance company acceptable to the Principal. Refer to Schedule 2 (Undertaking) for acceptable financial institutions.
- .7 The Contractor must not take any steps to prevent the Principal making a demand against the *Undertakings*, or to prevent the provider of an *Undertaking* from complying with the *Undertaking* or any demand by the Principal.

#### Cash Security - Subcontracts

- .8 If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.
- .9 If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.

- .10 The Contractor must deposit all money it receives in trust, as described in clauses 33.8 and 33.9, into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:
  - .1 the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;
  - .2 the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and
  - .3 any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.
- .11 If the *Contract Price* is \$20 million or more at the Date of Contract, clauses 33.8 and 33.10 do not apply to security of the type referred to in clause 33.8 ('Security') and Part 2 of the *Building and Construction Industry Security of Payment Regulation 2020* (NSW) ('the Regulation') applies instead. Where after the Date of Contract, the *Contract Price* reaches \$20 million as a result of adjustments and/or re-calculations made under the Contract:
  - .1 clauses 33.8 and 33.10 will apply to Subcontracts entered into before the *Contract Price* reached \$20 million; and
  - .2 Part 2 of the Regulation will apply to Subcontracts entered into after the *Contract Price* reached \$20 million.
- .12 Schedule 13 sets out the general effect of Part 2 of 'the Regulation'. The Contractor acknowledges that the summary is general in nature and cannot be relied on as legal advice concerning the Contractor's obligations under the Regulation.

### **34 Site access**

- .1 The Principal must give the Contractor sufficient access to the Site to allow the Contractor to start work by the later of:
  - .1 when the Contractor has complied with relevant requirements of the Contract; and
  - .2 the time stated in Contract Information item 13.
- .2 If the Principal does not give the Contractor access to the Site as required by clause 34.1, the Contractor has no remedy or entitlement other than:
  - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51; and
  - .2 when an entitlement arises under clause 75, to terminate the Contract.
- .3 The Contractor must permit the Principal, including its authorised employees and agents, to have access to the Site and to the premises of the Contractor at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. The Principal may require access to the Site for any purpose and access to the premises of the Contractor, Subcontractors and Consultants (as applicable) for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.

### **35 Engagement and role of Valuer**

- .1 If Contract Information item 50A states that a Valuer must be engaged or if the parties agree to engage a Valuer, then:
  - .1 the parties, acting reasonably, must endeavour to agree in writing on the identity of the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 50B to select the Valuer;
  - .2 within a further 21 days after the date of selection of the Valuer, the Principal and the Contractor must jointly engage the Valuer using the form in Schedule 4 (Agreement with Valuer); and
  - .3 a Valuer's certificate will be final and binding unless the net amount of the Valuer's determination (excluding any amount for interest) exceeds the amount stated in Contract Information item 50C, in which case either party may commence litigation in respect of the matters referred to the Valuer, but only within 56 days after receiving the determination.



- .2 The parties may agree at any time to engage a Valuer in accordance with this clause, either for a single valuation or on an ongoing basis. When the parties agree to engage a Valuer after the Date of Contract, “Date of Contract” for the purposes of clause 35.1.1 refers to the date the parties agree to appoint the Valuer.

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## The Site

### 36 Site information

- .1 The parties acknowledge that:
  - .1 at the Date of Contract, the Principal has provided in good faith the information concerning the Site identified in Contract Information items 36A and 36B;
  - .2 the information identified in Contract Information items 36A and 36B does not form part of the Contract;
  - .3 the Principal does not guarantee the completeness of the information identified in Contract Information item 36A;
  - .4 the Principal does not guarantee the accuracy, quality or completeness of the information identified in Contract Information item 36B; and
  - .5 the Principal has no duty of care in connection with information identified in Contract Information item 36B, or with having provided it.
- .2 The Contractor warrants that it:
  - .1 has made its own inquiries concerning the Site, including checking information provided by the Principal;
  - .2 has examined the Site and surrounds and satisfied itself through its own investigation as to the *Site Conditions* which might reasonably be expected;
  - .3 has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the *Contract Price* (subject to clause 37);
  - .4 did not in any way rely on the completeness of the information identified in Contract Information item 36A other than as a guide for ascertaining what further Site information the Contractor considers it needs to obtain;
  - .5 did not rely on the accuracy, quality or completeness of information identified in Contract Information item 36B; and
  - .6 has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

### 37 Site Conditions

- .1 The Contractor is solely responsible for dealing with any adverse *Site Conditions*:
  - .1 so as to minimise delay;
  - .2 so as to minimise increased costs; and
  - .3 without awaiting any instruction from the Principal,but must comply with any instruction given by the Principal.

Additionally, where clause 37.3 applies to the adverse *Site Conditions*, the Contractor must notify the Principal, prior to dealing with the *Site Conditions*, of any work it intends to carry out to deal with the adverse *Site Conditions* and when that work will commence.
- .2 Clauses 37.3 to 37.8 do not apply if it is stated in Contract Information item 37 that the Contractor is to bear the risk of adverse *Site Conditions*.
- .3 If the Contractor becomes aware of adverse *Site Conditions* that differ materially from those it should reasonably have expected at close of tenders, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of those *Site Conditions*. Where practicable, the notification is to be given before the *Site Conditions* are disturbed. The notification must include details of:
  - .1 the *Site Conditions* the Contractor claims are adverse;
  - .2 the reasons why the Contractor considers that the *Site Conditions* differ materially from the *Site Conditions* the Contractor should reasonably have expected at close of

- tenders (having regard to the warranty in clause 36.2), including any information supporting this contention;
- .3 the effect on the Works;
  - .4 the effect on achieving *Completion*;
  - .5 the additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
  - .6 any other matters the Contractor considers relevant.
- .4 The Principal may request the Contractor to provide further information about the matters notified under clause 37.3.
  - .5 After considering the Contractor's notification under clause 37.3, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 37.3.1. and 37.3.2 as to the nature of the conditions encountered and whether or not the Contractor should reasonably have expected them.
  - .6 If the Principal agrees that there are adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders and the Contractor has given the notice required by clause 37.3 then:
    - .1 the parties may agree in writing on the effects of the unexpected adverse *Site Conditions* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; or
    - .2 if the parties have not agreed as to the effects of the unexpected adverse *Site Conditions*:
      - .1 if the Principal instructs a *Variation* in connection with the adverse *Site Condition*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim*, that complies with clause 68.3, for:
        - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, for any delay incurred by it as a result of the unexpected adverse *Site Conditions* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
        - .2 an increase in the *Contract Price* to be valued in accordance with clause 47, for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*, but excluding any costs included in the valuation of the *Variation*; or
      - .2 if no *Variation* in connection with the adverse *Site Condition* is instructed, the Contractor may make a *Claim* that complies with clause 68.3, for:
        - .1 an extension of time in accordance with clause 50 and under clause 51, subject to the requirements of those clauses; and
        - .2 an increase in the *Contract Price*, to be valued in accordance with clause 47, for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*.
  - .7 If the Principal does not agree with the Contractor's contentions under clauses 37.3.1 and 37.3.2, the Contractor may notify an *Issue* under clause 69.
  - .8 Costs and delay incurred by the Contractor as a result of unexpected adverse *Site Conditions* before it gave the notice required by clause 37.3 must not be counted in any valuation or extension of time.

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## Design

### 38 Faults in Contract Documents

- .1 The Contractor must check the *Contract Documents*. At least 21 days before the Contractor proposes to use a *Contract Document*, the Contractor must notify the Principal of any *Fault* in that *Contract Document* and any related *Contract Documents*.
- .2 The Principal must resolve any *Fault* notified under clause 38.1.
- .3 If the Principal resolves a *Fault* in the *Contract Documents*, then, subject to clause 38.4:

- .1 to the extent that the Principal resolves the *Fault* by instructing a *Variation*, clause 48 applies; and
- .2 to the extent that the Principal resolves the *Fault* other than by instructing a *Variation*:
  - .1 if the resolution has an effect on the time to achieve *Completion*, the Contractor may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, or the Principal may assess a reduction of time in accordance with clause 50; and
  - .2 if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders, the parties may agree in writing on an adjustment to the *Contract Price* or if not agreed the Contractor may make a *Claim* for an adjustment to the *Contract Price* to be valued in accordance with clause 47.
- .4 If the Principal resolves a *Fault* in the *Contract Documents* that was not notified in accordance with clause 38.1, the Contractor is not entitled to any costs for delay or the cost of any aborted work.

### **39 Design by Contractor and Contractor's Documents**

#### **Design responsibilities**

- .1 The Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works. The Contractor's design obligations include, but are not limited to:
  - .1 completion of design, documentation and workshop detailing for design provided by the Principal, including coordination of design activities and the interaction of the various disciplines;
  - .2 development of the design provided by the Principal for elements referred to in Contract Information item 38A.1; and
  - .3 full design by the Contractor of elements referred to in Contract Information item 38A.2.
- .2 The Contractor must carry out its design responsibilities so that the Works are fit for the purposes required by the Contract and comply with the other requirements of the Contract.
- .3 The Contractor's design responsibilities are reduced to the extent that the Works are not fit for a purpose required by the Contract because of the design provided by the Principal.
- .4 Subject to clause 39.6, design or design development does not cause a *Variation* or reduce the Contractor's design responsibilities under clause 39.

#### **Departures from the design provided by the Principal**

- .5 Subject to clause 39.7, the Contractor must not depart from the design provided by the Principal unless instructed in writing by the Principal.
- .6 If the Contractor considers that some departure from the design provided by the Principal is desirable to ensure the effectiveness and efficiency of the Works, then the Contractor may propose a *Variation* under clause 48. Where a departure is necessary for the Works to be fit for the purposes required by the Contract, the Contractor must notify the Principal in accordance with clause 48.7.
- .7 In carrying out the design and design development of the elements referred to in Contract Information item 38A.3, the Contractor may depart from the design provided by the Principal, but only:
  - .1 to the extent that any such departure does not adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract; and
  - .2 provided that the Contractor has notified the Principal in writing of the proposed departures and the Principal has not notified the Contractor of any objection within 7 days after receiving the notification.

**Design review**

- .8 To the extent specified in the Contract, the Contractor must review its design in consultation with persons nominated by the Principal, and develop the design and the *Contractor's Documents* allowing for any matters identified in the review.

**Contractor's Documents**

- .9 The Contractor must produce *Contractor's Documents* which:
  - .1 will ensure that the Works are fit for the purposes required by the Contract; and
  - .2 meet the requirements of all of the following:
    - .1 the Contract;
    - .2 *Statutory Requirements*;
    - .3 the Principal's instructions;
    - .4 the National Construction Code (if stated in Contract Information item 38B) and relevant Australian Standards; and
    - .5 if no other standard is specified in the Contract, good industry standards applicable to the Works.
- .10 The requirements of clause 39.9 are not affected by any *Variation*.

**40 Submitting Contractor's Documents**

- .1 Unless the Contract provides otherwise, the Contractor must submit *Contractor's Documents* to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. *Contractor's Documents* must be submitted progressively with sufficient detail to demonstrate what is proposed. The number of copies must be as stated in Contract Information item 28.
- .2 The Principal need not respond to the Contractor about the *Contractor's Documents*.
- .3 If the Principal objects to the *Contractor's Documents*, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any *Fault*, error or omission in the *Contractor's Documents*.
- .4 If, after submitting the *Contractor's Documents*, the Contractor considers a change is required to its design or design development, not including a correction as per clause 40.3, it must resubmit the relevant Contractor's Documents and clauses 40.1 to 40.3 apply. If the Contractor cannot comply with the 21 day (review) period for the proposed changes, it must comply with the other requirements of clause 40.1 and promptly notify the Principal with reasons for the non-compliance and follow the Principal's instructions.
- .5 Nothing the Principal does or omits to do in connection with the *Contractor's Documents* makes the Principal responsible for the *Contractor's Documents*, or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.

**41 Innovation**

- .1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:
  - .1 the proposed change to the Works and the proposed change in the *Contract Price*;
  - .2 potential risks to the Principal and the Contractor if the proposal is accepted;
  - .3 any changes required to Contractual *Completion Dates*;
  - .4 projected changes in operating and maintenance costs;
  - .5 projected changes in whole-of-life costs;
  - .6 any other benefit the Principal will receive; and
  - .7 any benefit the Contractor will receive.
- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.

- .3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
- .4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the Proposal, subject to any conditions imposed by the Principal, in writing.
- .5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in Contract Information item 39 unless the parties otherwise agree.

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## Construction

### 42 Setting out the Works and survey

- .1 The Contractor must set out the Works in accordance with the Contract.
- .2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 14 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
  - .1 the Contractor must notify the Principal; and
  - .2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.
- .4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.
- .5 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

### 43 Construction

- .1 The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
  - .1 the Contract;
  - .2 the *Contractor's Documents*;
  - .3 Statutory Requirements;
  - .4 the Principal's instructions;
  - .5 the National Construction Code (if stated in Contract Information item 38B) and relevant Australian Standards; and
  - .6 if no other standard is specified in the Contract, good industry standards applicable to the Works.

### 44 Testing

- .1 The Contractor must *Test* all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
- .3 If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim*, that complies with clause 68.3, for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test*. Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.

- .4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

#### **45 Defects**

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
  - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
  - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
- .5 If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:
  - .1 promptly notify the Principal; and
  - .2 carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.

#### **46 Acceptance with Defects not made good**

- .1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
- .2 Before the Principal does so, the Principal may propose deductions from the *Contract Price* and any terms it requires.
- .3 If the Contractor agrees with the proposed deductions and terms, the *Contract Price* must be adjusted as agreed.
- .4 If the Contractor agrees with the proposed terms but not with the proposed deductions:
  - .1 if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation;
  - .2 if a Valuer is engaged, the Principal may request the Valuer to determine the value of the deductions in accordance with clause 47.7, taking into account any increased future costs, loss of income or reduction in asset life, and the *Contract Price* will be adjusted accordingly; or
  - .3 if no Valuer is engaged and the parties do not agree to engage a Valuer then the Principal is to assess the value of the adjustment in accordance with clause 47.7 and advise the Contractor in writing. The Contractor may dispute the assessment of the Principal in accordance with clause 69.
- .5 If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the specified *Defects*.
- .6 The Contractor remains liable for all *Defects* (whether known or not known) other than the specific *Defects* identified in a written agreement made under clause 46 as not to be made good.

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## **Changes to work and time**

#### **47 Valuation of changes**

- .1 If the Contractor submits a *Claim* complying with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price* or *Contractual*

*Completion Date(s)*, then the parties must endeavour to reach agreement on the adjustments. If agreement cannot be reached then:

- .1 if a Valuer is engaged, either party may by giving notice to the other party and to the Valuer, request the Valuer to determine the adjustment;
  - .2 if no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purpose of making this single valuation; or
  - .3 if no Valuer is engaged and the parties do not agree to engage a Valuer then, within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and clause 50 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.
- .2 The Principal is not required to assess a *Claim* nor is a *Claim* to be referred to the Valuer until the Contractor provides all the information specified in clause 68.3.
  - .3 If an event entitles the Contractor to adjustments to both the *Contract Price* and any *Contractual Completion Date*, these adjustments are to be dealt with together.
  - .4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

### **Valuation principles**

- .5 When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the principles set out below apply.
- .6 Subject to clause 47.8, if the Contractor is entitled to an increase in the *Contract Price* for additional work or for unavoidable additional costs, the value of the increase is to be assessed or determined as the sum of:
  - .1 the additional reasonable direct cost to the Contractor including labour, *Materials* and plant (not including the *Contractor's Margin*);
  - .2 the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional work or in responding to the unavoidable circumstances (not including the *Contractor's Margin*);
  - .3 an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 of the total of the costs under clauses 47.6.1 and 47.6.2; and
  - .4 any *Delay Costs* due under clause 51, subject to the requirements of clause 50.
- .7 The value of decreased or omitted work or of any reduction in costs under clause 38, is to be assessed or determined on the basis of rates and lump sums in the Contract or, if there are no applicable rates or lump sums in the Contract, based on reasonable rates and prices applying at the close of tenders. The deduction must include a reasonable amount for any time-dependent costs which will not be incurred by the Contractor and any profit on the decreased or omitted work.
- .8 A valuation under clause 47.6 must not include:
  - .1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
  - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
  - .3 any amount that the Contractor is not entitled to claim under clause 37.8, 38.4, 49.6 or 68.2.
- .9 A valuation under clause 46 must take into account the specific matters required by that clause.

### **Application of adjustments**

- .10 The *Contract Price* and any relevant *Contractual Completion Date(s)* must be adjusted as agreed, assessed or determined under clause 47.

## 48 Variations

### Instructing and commencing Variations

- .1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) and the Contractor must comply.
- .2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of the effects of the proposed *Variation* on:
  - .1 achieving *Completion*;
  - .2 the *Contract Price*, to be provided as:
    - .1 the price of the proposed *Variation* excluding all costs of delay or disruption; plus
    - .2 *Delay Costs* as per clause 51 for the number of days by which the time for achieving *Completion*, as advised in clause 48.2.1, is affected; and
  - .3 any other matter specified by the Principal.
- .3 If the parties have agreed in writing on the effects of a proposed *Variation*, and the Principal instructs the Contractor to carry out the *Variation*, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
- .4 If the parties have not agreed in writing on the effects of a proposed *Variation* or the Principal has not made a request under clause 48.2, the Principal may:
  - .1 instruct the Contractor to carry out the *Variation*, in which case the Contractor may make a *Claim*, that complies with clause 68.3, for:
    - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, or the Principal may assess a reduction in time in accordance with clause 50; and
    - .2 an adjustment to the *Contract Price* to be valued in accordance with clause 47, or the Principal may assess a deduction from the *Contract Price* to be valued in accordance with clause 47; or
  - .2 alternatively, instruct the Contractor to carry out any additional work as *Daywork*, in which case the requirements of Schedule 8 (Daywork) apply.

### Variations proposed by the Contractor

- .5 The Contractor may make a written proposal for a *Variation* for the Contractor's convenience.
- .6 The Principal may accept the Contractor's proposal but is not obliged to do so. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the Contractor's proposal, the Principal must instruct a *Variation*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
- .7 If the Contractor considers that a *Variation* is necessary but the Principal has not instructed a *Variation*, the Contractor must notify the Principal within 7 days after the Contractor should reasonably have known that a *Variation* was necessary.
- .8 If the Principal does not agree that a *Variation* is necessary, all issues relating to the claimed *Variation* must be dealt with under clauses 68 to 71.
- .9 The Contractor acknowledges that development of the design by the Contractor does not constitute a *Variation*.

## 49 Changes to Statutory Requirements

- .1 If the Contractor becomes aware of changes in *Statutory Requirements* that require a change to work in connection with the Contract (not including changes that the Contractor should reasonably have expected at close of tenders), the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the changes in *Statutory Requirements*. The notification must include details of:
  - .1 the changes to Statutory Requirements;



- .2 why the changes to *Statutory Requirements* should not reasonably have been expected by the Contractor at close of tenders;
  - .3 the changes to work in connection with the Contract that the Contractor considers necessary;
  - .4 any delays in achieving *Completion*;
  - .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
  - .6 any other matters the Contractor considers relevant.
- .2 The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.
  - .3 After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 49.1.1 and 49.1.2 as to the change in *Statutory Requirements* and whether or not the Contractor should reasonably have expected them.
  - .4 If the Principal agrees that there are changes in *Statutory Requirements* that require changes to the work in connection with the Contract (that the Contractor should not reasonably have expected at the close of tenders) and if the Contractor has given the notice required by clause 49.1 then:
    - .1 the parties may agree in writing on the effects of the change in *Statutory Requirements* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and
    - .2 if the parties have not agreed in writing as to the effects of the unexpected change in *Statutory Requirements*:
      - .1 if the Principal instructs a *Variation*, in connection with the change in *Statutory Requirements*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim*, that complies with clause 68.3, for:
        - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, for any delay incurred by it as a result of the unexpected change in *Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
        - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the unexpected change in *Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or
      - .2 if no *Variation* in connection with the change in *Statutory Requirements* is instructed, the Contractor may make a *Claim*, that complies with clause 68.3, for:
        - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, subject to the requirements of those clauses; and
        - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the unexpected change in *Statutory Requirements*.
  - .5 If the Principal does not agree with the Contractor's contentions under clauses 49.1.1 and 49.1.2, the Contractor may notify an *Issue* under clause 69.
  - .6 Costs and delay incurred by the Contractor as a result of changes in *Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

## **50 Changes to Contractual Completion Dates**

### **Extensions of time**

- .1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Dates* if:
  - .1 the Contractor is or will be delayed in achieving *Completion* by a cause beyond the control of the Contractor, including an act, default or omission of the Principal, but

- not including any cause which the Contract expressly states is at the Contractor's risk or for which the Contract expressly precludes an entitlement for extension of time;
- .2 the delay is to an activity or activities on the critical path of the then current *Contract Program* and work is proceeding in accordance with this program;
  - .3 the Contractor has given the Principal an initial notice in writing within 7 days after the start of the delay which:
    - .1 sets out the cause of the delay and the steps taken or to be taken to minimise the delay;
    - .2 sets out any relevant facts; and
    - .3 includes a copy of the *Contract Program*, verified as current at the start of the delay which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and
  - .4 the Contractor has given the Principal the *Claim* and other information required by clauses 50.3 and 50.4.
- .2 The Contractor must take all reasonable steps to avoid delay and its effects.
  - .3 If the Contractor is delayed, it may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50. The *Claim* must:
    - .1 identify the cause of the delay and the extension of time claimed and include other information sufficient for the Principal to assess the *Claim*; and
    - .2 be submitted within 28 days after the start of the delay; and
    - .3 be updated every subsequent 28 days while the delay continues.
  - .4 With every *Claim* made under clause 50.3 the Contractor must submit a copy of the then current *Contract Program* which shows the effects of the delay on the critical path and to the time required to achieve *Completion*.
  - .5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.
  - .6 When concurrent events cause a delay in achieving *Completion* and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for *Completion* notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.
  - .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 37.8 or 49.6.
  - .8 The Principal may, in its absolute discretion but without any obligation to do so, extend any *Contractual Completion Date* at any time and for any reason, whether or not the Contractor has claimed an extension of time.
  - .9 If the initial notice, complying with clause 50.1.3, is given to the Principal later than 7 days after the start of the delay, then the Contractor's entitlement to an extension of time is reduced by one day for each day the notice is provided late.

#### **Reductions in time**

- .10 If a *Variation* or resolution of a *Fault* under clause 38 leads to less time being required for *Completion*, the Principal may assess a reasonable adjustment to the affected *Contractual Completion Date*.

#### **Adjustment to Contractual Completion Dates**

- .11 The relevant *Contractual Completion Dates* must be adjusted in accordance with clause 47 to account for any extension or reduction of time assessed under clause 50.

## **51 Delay Costs and liquidated damages**

### **Delay Costs**

- .1 The Contractor is entitled to *Delay Costs* only for delay or disruption caused by:
  - .1 a *Variation* (other than a *Variation* for the Contractor's convenience or a *Variation* carried out as Daywork)

- .2 failure to give the Contractor access to the Site within the time stated in Contract Information item 13;
  - .3 subject to clause 8.9, an instruction under clause 8.8;
  - .4 adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders (subject to clause 37.8 and Contract Information item 37);
  - .5 resolution of a *Fault* notified in accordance with clause 38.1;
  - .6 changes in *Statutory Requirements* that the Contractor should not reasonably have expected at the close of tenders and that require changes to work in connection with the Contract (subject to clause 49.6);
  - .7 a suspension instruction under clause 53 if the need for the suspension arises from the Principal's act or omission; or
  - .8 a breach of the Contract by the Principal.
- .2 *Delay Costs* are calculated at the applicable rate in Contract Information item 49A (A1 or A2 as appropriate) for the number of days by which the time for achieving *Completion* is extended because of a cause listed in clause 51.1, subject to the limitations in the other provisions of this clause 51 and clauses 37.8, 38.4 and 49.6.
  - .3 The rate or rates stated in Contract Information item 49A1 apply where the delay is caused by the Principal's failure to give the Contractor access to sufficient of the Site to allow the Contractor to start work, in accordance with clause 34.
  - .4 The rate or rates stated in Contract Information Item 49A2 apply for any other delays for which the Contractor is entitled to *Delay Costs*. Where a rate for *Delay Costs* is stated for the whole of the Works, it does not apply to delays to any individual *Milestone*. If rates for *Delay Costs* are stated for *Milestones*, no separate rate for *Delay Costs* applies for delays to the whole of the Works.
  - .5 Notwithstanding clause 51.2, the Contractor is not entitled to *Delay Costs* for any days on which it would have been delayed anyway by a cause for which it has no entitlement to *Delay Costs*.
  - .6 The applicable rate for *Delay Costs* will be reduced where any part of the Works is being used or occupied prior to *Completion* under clause 64. The reduced rate (for *Delay Costs*) will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
  - .7 Notwithstanding any other provision of the Contract, the Contractor has no remedy or entitlement in connection with delay or disruption other than:
    - .1 *Delay Costs* to be paid in accordance with clause 51; and
    - .2 an extension of time to any *Contractual Completion Date* to which it is entitled under clauses 48 or 50.

### **Liquidated damages**

- .8 If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works or any *Milestone* by its *Contractual Completion Date*.
- .9 If Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve *Completion* of the Works or any *Milestone* by a *Contractual Completion Date* to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 49B, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*.
- .10 If however:
  - .1 the Contract is terminated before the Contractor achieves *Completion*; or
  - .2 the Principal exercises its right to *Step-In*;
 then any liquidated damages will apply only up to the date of:
  - .3 the termination of the Contract; or
  - .4 the date that the Principal exercises its right to *Step-In*,
 as applicable.

- .11 A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.
- .12 If any *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.
- .13 The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied prior to *Completion*, under clause 64. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
- .14 The Contractor acknowledges that the rates for liquidated damages in Contract Information item 49B are a genuine pre-estimate of the Principal's loss and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty. If the Contractor's obligation to pay liquidated damages is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages for the Contractor's failure to achieve *Completion* of the Works or any *Milestone* by its *Contractual Completion Date* and such general damages will not exceed the rate of liquidated damages in Contract Information item 49B.

## 52 Acceleration

- .1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
- .2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
  - .1 its price (excluding all costs of delay or disruption) for a proposed acceleration; and
  - .2 the effect of a proposed acceleration on any other matter specified by the Principal.
- .3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.
- .4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, the Contractor may make a *Claim*, that complies with clause 68.3, for an adjustment to the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

## 53 Principal's suspension

- .1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
- .2 The Contractor must resume carrying out the Works when instructed by the Principal.
- .3 If the need for the suspension arises from the Principal's act or omission, and causes the Contractor delay, or unavoidable costs, additional to what the Contractor would have incurred had the suspension not been instructed, the Contractor may make a *Claim*, that complies with clause 68.3, for:
  - .1 an extension of time in accordance with clause 50, without the Contractor meeting the preconditions required by clause 50 other than provision of an updated *Contract Program* demonstrating the delays caused by the suspension;
  - .2 *Delay Costs* under clause 51; and
  - .3 an increase in the *Contract Price*, to be valued in accordance with clause 47.
- .4 The Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

## 54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW) and subject to clause 54.2, it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption. If the Contractor is delayed, it may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50.
- .2 Where clause 56.5 is applicable and where the Contractor has not complied with clause 56.5.3, the Contractor will not be entitled to any extension of time or to any payment for delay or disruption if it suspends work in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- .3 Clause 54 is not intended to limit any rights of the Contractor under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

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## Payment

### 55 The Contract Price

- .1 The *Contract Price* (at the Date of Contract) and the basis for payment are stated in Contract Information item 40.
- .2 If stated in Contract Information item 41, the *Contract Price* (and the rates and/or lump sums it includes) will be adjusted for rise or fall in costs, on the terms set out in Schedule 7 (Costs Adjustment Formula).
- .3 If the Contract includes *Rate Items* then, without limiting clause 8:
  - .1 the *Contract Price* is determined by adding:
    - .1 any lump sums in the *Schedule of Rates* or Schedule of Prices – Lump Sum, including *Provisional Sums*; and
    - .2 the products of the quantity and the relevant rate for each *Rate Item*;
  - .2 at the Date of Contract, all quantities for *Rate Items* are estimated, and none are guaranteed;
  - .3 some of the *Rate Items* may be provisional (that is, they may not be required at all);
  - .4 before a *Rate Item* is completed, the estimated quantity is used in calculating the *Contract Price* and after it is completed, the actual quantity measured in accordance with the Contract is used;
  - .5 for each *Rate Item*, the Contractor will be paid for the measured quantity of work actually carried out in accordance with the Contract; and
  - .6 the Contractor will not be entitled to *Delay Costs* where the measured quantity of work for any *Rate Item* exceeds the estimated quantity.

#### Provisional Sums

- .4 If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:
  - .1 the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
  - .2 if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*; and
  - .3 if the Principal instructs the Contractor to carry out the work:
    - .1 the Contractor must comply with the instruction; and
    - .2 the *Contract Price* must be adjusted by deducting the *Provisional Sum* and adding:
      - .1 the additional reasonable cost to the Contractor of the work specified against the *Provisional Sum*, being the direct costs of labour, *Materials* and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of

- the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the *Provisional Sum* margin; and
- .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 43 to the cost calculated in accordance with clause 55.4.3.2.1.
- .4 where the Principal instructs the Contractor to carry out work specified against a Provisional Sum, the Contractor will not be entitled to an extension of time for that work. However, clause 50 applies where, following notification under clause 22.2.5.2, there is an unreasonable delay in the issue of an instruction to proceed with the work. Clause 50 only applies to any additional delay caused by the late instruction.

## 56 Goods and Services Tax (GST)

- .1 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
- .2 Unless otherwise specified, the Principal will issue a tax invoice for each taxable supply it makes to the Contractor.
- .3 The parties may agree in writing from time to time which supplies are excluded supplies. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a *Payment Claim* or otherwise invoices the Principal for that supply.
- .4 If Contract Information item 46 states that the Principal is responsible for issuing the tax invoice, then:
  - .1 the Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply made by the Contractor to the Principal and will issue an adjustment note for any adjustment event;
  - .2 the Contractor must not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
  - .3 each party must notify the other party if it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- .5 If Contract Information item 46 states that the Contractor is responsible for issuing the tax invoice, then:
  - .1 following the provision by the Principal of the *Payment Schedule*, the Contractor must issue a tax invoice to the Principal for each taxable supply made by the Contractor to the Principal, and must issue an adjustment note for any adjustment event;
  - .2 the Contractor must not issue a tax invoice in respect of any taxable supply it makes to the Principal, other than under this clause; and
  - .3 The tax invoice must:
    - .1 be issued within 2 Business Days after the provision by the Principal of the relevant *Payment Schedule*; and
    - .2 be for the *Scheduled Amount* identified in the *Payment Schedule*.
    - .3 show the Scheduled Amount excluding GST, the GST component and the total Scheduled Amount including the GST component.
- .6 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST.

### Reimbursable expenses

- .7 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
  - .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
  - .2 to the extent that the other party’s recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

## 57 Prepayment

- .1 The Contractor may claim *Prepayment*, as an advance payment against the *Contract Price* (but not as a *Payment Claim*), at any time before achieving *Completion* of the whole of the Works if all the following apply:
  - .1 the total amount claimed for *Prepayment* is no more than the amount stated in Contract Information item 45;
  - .2 the *Prepayment* does not exceed the remaining balance of the *Contract Price* less any amount that the Principal considers payable by the Contractor to the Principal;
  - .3 no more than one-third of the stated amount for *Prepayment* is retained by the Contractor and the balance is assigned directly to Subcontractors, Suppliers and Consultants in the proportions notified to the Principal;
  - .4 the Contractor has established to the Principal's satisfaction that the *Prepayment* will be utilised for a purpose related to the Contract;
  - .5 the Contractor has provided *Undertakings* to the Principal for the amounts of the *Prepayment*; and
  - .6 the Contractor has assigned to Subcontractors, Suppliers and Consultants their respective shares of the *Prepayment* by effective written assignments, and has notified the Principal of the assignments, including the amounts assigned to each Subcontractor.
- .2 The Principal must pay the amount claimed within 14 days after the Contractor provides evidence that all the conditions in clause 57.1 have been met.
- .3 The Contractor must repay the *Prepayment* by way of progressive deductions from payments otherwise due under the Contract.
- .4 The Principal must return *Undertakings* provided for *Prepayment* when the amount of the *Prepayment* has been fully repaid.
- .5 The Principal may have recourse to the *Undertakings* provided for *Prepayment* if the *Prepayment* has not been fully repaid and:
  - .1 the unpaid balance of the *Contract Price* is insufficient to cover the outstanding balance of the *Prepayment*;
  - .2 the Contract is terminated;
  - .3 the Contractor's employment under the Contract is terminated; or
  - .4 the Principal exercises its right to *Step-In*.

## 58 Payment Claims

- .1 As specified in Contract Information item 46 and subject to clause 58.2, the Contractor must submit a *Payment Claim* each month:
  - .1 on and from the specified date in the month, for work carried out up to that date;
  - .2 to the person authorised to deal with Payment Claims; and
  - .3 at the address shown for the submission of Payment Claims.
- .2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .3 Unless otherwise specified or instructed, the Contractor must not issue a tax invoice with, or as part of, its *Payment Claim*.
- .4 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.
- .5 Every *Payment Claim* must:
  - .1 identify the work and *Materials* to which the *Payment Claim* relates;
  - .2 state the value of that work and those *Materials*;
  - .3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
  - .4 state the amount of interest, if any, that the Contractor claims under clause 62; and

- .5 state the *Claimed Amount*, after allowing for retention of the *Completion Amount* specified in clause 60 and for payments already made.
- .6 Every *Payment Claim* must be accompanied by:
  - .1 a completed and true Supporting Statement and a completed and true Subcontractor's Statement in the form of Schedule 6 – (Supporting Statement and Subcontractor's Statement), executed on the date of the *Payment Claim*;
  - .2 all relevant calculations;
  - .3 all relevant *Conformance Records*; and
  - .4 any other information specified in the Contract.

### **Unfixed Materials**

- .7 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
  - .1 the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
  - .2 where the value of the unincorporated *Materials* is greater than \$100,000, the Contractor provides before or with the *Payment Claim*:
    - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
    - .2 a statement in the terms in Schedule 11 (Statement regarding *Materials*);
  - .3 the Contractor provides evidence before or with the *Payment Claim* that:
    - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
    - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
  - .4 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on-board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
- .8 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
- .9 Upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.
- .10 If:
  - .1 the Contract or the Contractor's employment under the Contract is terminated by the Principal; or
  - .2 the Principal exercises its right to *Step-In*,
 the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

### **Personal Property Securities**

- .11 Schedule 15 (Personal Property Securities) applies to the Contract.

## **59 Payments**

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:
  - .1 identifies the *Payment Claim* to which it relates;
  - .2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and
  - .3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld. Reasons why the *Scheduled Amount* is less than the *Claimed Amount* may include failure by the Contractor to comply with any outstanding obligations under:



- .1 clause 33 (Security);
  - .2 clause 27 (Insurance);
  - .3 clause 58.6.1 (Schedule 6 - Supporting Statement and Subcontractor's Statement);
  - .4 clauses 58.6.2 to 58.6.4 (other items to accompany a *Payment Claim*); and
  - .5 clause 58.7 (*Unfixed Materials*).
- .2 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
  - .3 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
  - .4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement.

## 60 Completion Amount

- .1 If Contract Information item 47 specifies a *Completion Amount*, the Contractor may claim it in the next *Payment Claim* after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*, subject to the Principal's right to set-off under clause 63.
- .2 The Principal will retain the *Completion Amount* from payments when the amount paid to the Contractor exceeds 75% of the *Contract Price* at the Date of Contract. Until the *Completion Amount* has been retained in full, the amount retained against each payment must not exceed 50% of the value of the payment. Thereafter, the *Completion Amount* will be held until the Contractor claims it in accordance with clause 60.1.
- .3 The Principal will own any interest earned on the monies retained for the *Completion Amount*.

## 61 Final payment

- .1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. To the extent permitted by law, any *Claim* not submitted before or with the *Final Payment Claim* is barred.
- .2 Within 10 *Business Days* after receiving the *Final Payment Claim* or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after the whole of the Works reaches *Completion*, the Principal must provide a *Final Payment Schedule* to the Contractor.
- .3 If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.
- .4 Payments identified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 14 days after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 59.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *Contract Price* have been made and all entitlements of the Contractor have been met, except for those required by:
  - .1 arithmetical error; or
  - .2 resolution of:
    - .1 any *Claim* made in accordance with clause 61.1;
    - .2 any *Issue* properly notified under clause 69 prior to the *Final Payment Claim*; or
    - .3 any *Issue* arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.

- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

## 62 Interest on late payments

- .1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

## 63 Set-off

- .1 If the Principal claims a sum, including a debt due, in connection with the Contract or any other contract between the Principal and the Contractor, the Principal may:
  - .1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and
  - .2 make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

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# Completion

## 64 Early use

- .1 Before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete and then:
  - .1 the Contractor's responsibilities are not affected, except if they are reduced under clauses 26.3 or 26.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
  - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves *Completion*, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify the date on which use or occupation is required and those parts to be used or occupied.
- .3 The Contractor must assist and cooperate with those using or occupying the Works.
- .4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of *Completion* that are relevant to the parts of the Works to be used or occupied.

## 65 Completion

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 When the parties, each acting reasonably, agree that *Completion* has been achieved, the Principal must give the Contractor a notice stating the *Actual Completion Date*.

## 66 Close-out workshop

- .1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works or such other period as the parties agree.
- .2 The parties must attend the close-out workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.

## 67 Defects after Completion

- .1 At any time after *Completion*:
  - .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
  - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
  - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.

- .2 Clause 67 does not reduce the Contractor's liability, whether arising under the Contract or otherwise. The Contractor's liability continues until any limitation period under statute expires.
- .3 Clause 67 does not affect the Principal's rights under clause 46.

## Claim and Issue resolution

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### Claim resolution

#### 68 Contractor's Claims

- .1 If the Contractor makes:
  - .1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
  - .2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,  
the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.
- .2 If the Contractor fails to make a *Claim* within the applicable specified time, the Contractor will not be entitled to interest on any amount paid in relation to the *Claim* for the period before the Contractor made the *Claim*.
- .3 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The *Claim* must also include the effect of the event giving rise to the *Claim* on both the *Contract Price* and *Contractual Completion Date(s)*.
- .4 The Contractor must ensure its *Claim* complies with clause 68.3 and in that regard, the Contractor's attention is directed to the provisions of clause 47.2. As well, the period of 28 days specified in clause 68.7 will not commence until the Contractor has provided the information specified in clause 68.3. The Principal may, but is not obliged to, notify the Contractor of any non-compliance in the Contractor's *Claim*.
- .5 If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price* or an adjustment to *Contractual Completion Date(s)*:
  - .1 any claimed adjustment to *Contractual Completion Date(s)* is to be valued in accordance with clause 50;
  - .2 any claimed adjustment to the *Contract Price*, including any applicable *Delay Costs*, is to be valued in accordance with clause 47; and
  - .3 the parties are to follow the process in clause 47.1 to resolve the adjustments claimed.
- .6 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .7 If, within 28 days after the Contractor has provided the information specified in clause 68.3, a *Claim* is rejected, not agreed or has not been referred to a Valuer, it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.
- .8 The provisions of clauses 68.2 to 68.7 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

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### Issue resolution

#### 69 Notification of Issue

- .1 The Contractor may dispute an assessment or instruction of the Principal, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the Principal's senior executive named in Contract Information item 7) of an *Issue* within 28 days after notification of the assessment or instruction, or within 28 days after it becomes an *Unresolved Claim*.

- .2 Either party may give notice to the other (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1 but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the *Issue*.
- .3 Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.
- .4 If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.
- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.
- .6 The *Issue* resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

## 70 Resolution by senior executives

- .1 If a party gives notice of an *Issue* under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the *Issue*.
- .2 A party is not entitled to refer an *Issue* to *Expert Determination* until 28 days after giving notice of an *Issue*.
- .3 A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's senior executive) within the time stated in Contract Information item 51.
- .4 Subject to clause 69.6, an *Issue* for which notice has not been given in accordance with clause 70.3 is barred from *Expert Determination* or litigation or similar action.

## 71 Expert Determination

- .1 The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
- .2 If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
  - .1 an employee of the Principal or the Contractor;
  - .2 a person who has been connected with the Works or the Contract; or
  - .3 a person who the Principal and the Contractor have already considered and not been able to agree on.
- .3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
  - .1 the *Issues* referred to the *Expert* for determination;
  - .2 the *Expert's* fees;
  - .3 the procedure for *Expert Determination* in Schedule 5 (*Expert Determination Procedure*); and
  - .4 any other matters which are relevant to the engagement.
- .4 The Principal and the Contractor must share equally the *Expert's* fees and out-of-pocket expenses for the determination, and bear their own costs.
- .5 The procedure for *Expert Determination* is set out in Schedule 5 (*Expert Determination Procedure*).
- .6 In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim, whether or not related to the *Issue*.
- .7 Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the

determination must pay that amount to the other party within 28 days after receiving the determination.

- .8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
  - .1 does not involve paying a sum of money; or
  - .2 requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
    - .1 any interest that may be payable; and
    - .2 any amount that has been paid pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- .9 Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

## **72 Parties to perform the Contract**

- .1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.

## Termination and Step-In

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### 73 Termination or Step-In for Contractor's Default or Insolvency

- .1 The Principal may:
  - .1 terminate the Contractor's employment under the Contract, or
  - .2 exercise its right to *Step-In*,  
for *Contractor's Default* or *Contractor's Insolvency* by giving notice in accordance with clause 73.
- .2 Nothing in clause 73 affects or negates the Principal's common law rights to terminate or for damages.
- .3 In the case of *Contractor's Default*, the Principal must first give the Contractor notice that it has 7 days after receipt of that notice to remedy the *Contractor's Default*.
- .4 If the Contractor fails to:
  - .1 give the Principal a notice containing clear evidence that it has remedied a *Contractor's Default*; or
  - .2 propose steps reasonably acceptable to the Principal to remedy the *Contractor's Default*,the Principal may give the Contractor a notice:
  - .3 terminating its employment under the Contract; or
  - .4 exercise its right to *Step-In*.
- .5 In the case of *Contractor's Insolvency* and subject to applicable law, the Principal may give the Contractor a notice:
  - .1 terminating its employment under the Contract; or
  - .2 exercising its right to *Step-In*.
- .6 If the Principal acts under clause 73 to:
  - .1 terminate the Contractor's employment; or
  - .2 exercise its right to *Step-In* and take all remaining work in connection with the Contract out of the Contractor's hands,it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
  - .3 the Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* and *Materials* it has brought onto the Site, apart from any *Temporary Work* and *Materials* identified by the Principal as being necessary to have the Works completed;
  - .4 the Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional *undertakings*, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract;
  - .5 the Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any *Undertakings* given on the Contractor's behalf;
  - .6 the Contractor must do everything and sign all documents necessary to give effect to clause 73, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so; and
  - .7 if, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete the Works, then the difference will be a debt due from the Contractor to the Principal.

- .7 If the Principal exercises its right to *Step-In* and takes part (and not all) of the work in connection with the Contract out of the Contractor's hands under clause 73, it may, at its sole discretion, employ others to complete the relevant work taken out of the Contractor's hands (the relevant work) and the following will apply:
- .1 clause 73.6.5, as it applies to the Subcontracts and its other contracts for works taken out of the Contractor's hands, and clause 73.6.6; and
  - .2 if, on completion of the relevant work, the cost to the Principal of completing the relevant work exceeds the amount that would have been paid to the Contractor to complete the relevant work, then the difference will be a debt due from the Contractor to the Principal.
- .8 The Principal may make provisional assessments of the amounts payable to the Principal under clause 73.6.7 or 73.7.2, as applicable, and may, without limiting any other right of recourse, demand them against the *Undertakings*.

#### 74 Termination for Principal's convenience

- .1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.
- .2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
- .3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work, Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 74.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:
  - .1 the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any *Prepayments* and any deductions, retentions or set-offs under clauses 59, 60 and 63;
  - .2 the cost of *Materials* reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated *Materials* become the property of the Principal, free of any *Encumbrance*;
  - .3 the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;
  - .4 an amount, as determined in accordance with the following table, calculated as a percentage of the unpaid portion of the *Contract Price* at the date stated in the termination notice less the amounts payable under clauses 74.4.1 and 74.4.2, i.e. the Net Unpaid Portion of the *Contract Price* (NUPCP):

NUPCP	Amount
90% of the <i>Contract Price</i> or greater	0% of the NUPCP
10% of the <i>Contract Price</i> or less	4% of the NUPCP
less than 90% of the <i>Contract Price</i> and greater than 10% of the <i>Contract Price</i>	a pro-rata amount between 0% & 4% of the NUPCP with 0% applying to a NUPCP equal to 90% of the <i>Contract Price</i> and 4% applying to a NUPCP equal to 10% of the <i>Contract Price</i> .

- .5 The Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 The payments referred to in clause 74.4 are full compensation for termination under clause 74 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

#### 75 Termination for Principal's default

- .1 If the Principal:



- .1 fails to pay the Contractor any amount in accordance with the Contract which is not in dispute;
- .2 commits any fundamental breach of the Contract; or
- .3 fails to give the Contractor access to the Site sufficient to start work required by the Contract within 3 months after the Date of Contract (or longer period specified in the Contract or agreed by the parties),

the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.

- .2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4.

## 76 Termination notices

- .1 Notices under clauses 73, 74 and 75 must be in writing and be delivered by hand, registered post or equivalent. A copy of the notice is to be emailed to the *Principal's Authorised Person* or the *Contractor's Authorised Person* (as applicable) at the same time as it is issued.

## 77 Survival

- .1 Without limiting the survival of any clause by operation of law or where otherwise specified, clauses 23, 24, 25, 69, 70 and 71 and all indemnities in the Contract survive termination.

# Meanings

## 78 Interpretation

- .1 Words in the singular include the plural, and vice versa.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.
- .3 "Including" and similar words are not words of limitation.
- .4 The word "day", unless qualified, for example as "working day" or "*Business Day*", has its common English meaning according to context, namely a period of 24 hours or a calendar day. A calendar day commences at twelve o'clock midnight and ends at twelve o'clock on the following midnight.

When counting days, the first day of any stated time frame is the first day after a contract event occurs. For instance, where the Contractor is required to submit a *Contract Program* within 14 days after the Date of Contract and the Date of Contract is Friday 9 October 2020, then the Contractor must provide the *Contract Program* before midnight on Friday 23 October 2020 to avoid being in breach of Contract.

Note that 'from' has the same meaning as 'after' when referring to issues relating to time or dates.

- .5 Headings and **notes** are provided to guide the parties and form part of the Contract.
- .6 Refer to the Preface for general information.

## 79 Definitions

- |                        |                 |
|------------------------|-----------------|
| • Contract             | • Site          |
| • Contract Information | • Subcontract   |
| • Contractor           | • Subcontractor |
| • Consultant           | • Supplier      |
| • Date of Contract     | • Valuer        |
| • Principal            | • Works         |

Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 79.

**Acceleration Notice**

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an “*Acceleration Notice*”.

**Actual Completion Date**

The date on which *Completion* of the Works or a *Milestone* (as applicable) is achieved by the Contractor.

**Business Day**

Any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December. Refer to clause 78.4 for interpretation of ‘day’.

**Claim**

A claimed entitlement of the Contractor in connection with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of contract by the Principal.

**Claimed Amount**

The amount claimed by the Contractor in a *Payment Claim*.

**Completion**

The state of the Works or a *Milestone* being complete, with no *Defects* or omissions, except for *Defects* not known.

This includes:

- .1 the supply to the Principal of:
  - .1 all Subcontractor’s Warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
  - .2 certificates, authorisations, approvals and consents from statutory authorities and service providers;
  - .3 those certificates required for the occupation, use and maintenance of the Works; and
  - .4 all other documents required by the Contract;
- .2 *Testing* required by the Contract;
- .3 the provision of all training required by the Contract; and
- .4 all other requirements specified in the Contract.

**Completion Amount**

An amount stated in Contract Information item 47 and included in the *Contract Price*, which becomes payable only after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*.

**Completion Undertaking**

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 33.

**Conformance Records**

Records which show conformance by the Contractor with particular requirements of the Contract.

**Consultant**

A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to the Contractor.

**Contract**

The agreement between the Contractor and the Principal constituted by the *Contract Documents*.

**Contract Documents**

All the documents listed or referred to in clause 7.1.

**Contract Information**

The document described as such in the *Contract Documents*, which sets out information for the purposes of the Contract.

**Contract Price**

The amount stated as such in Contract Information item 40, subject to adjustment in accordance with the Contract and re-calculation where the Contract includes *Rate Items*).

**Contract Program**

The program described in clause 22.

**Contractor**

The party named in Contract Information item 8, including its successors and permitted assignees.

**Contractor's Authorised Person**

The person appointed to act on behalf of the Contractor under clause 2, named in Contract Information item 9 or as subsequently notified to the Principal.

**Contractor's Default**

A substantial breach of the Contract by the Contractor, including any of the following:

- .1 abandoning the carrying out of the Works;
- .2 suspending progress of the carrying out of the Works in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
- .3 significantly failing to achieve *Scheduled Progress*;
- .4 failing to comply with an instruction in writing or confirmed in writing by the Principal;
- .5 failing to carry out the Works with professional skill, care and competence;
- .6 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
- .7 failing to provide *Undertakings* as required under clause 33; or
- .8 failing to effect and maintain insurance policies as required under the Contract; and
- .9 any of the grounds listed in clause 10 (Termination on ground of Modern Slavery) of Schedule 16 (Modern Slavery), where the Contract requires compliance with Schedule 16.

**Contractor's Documents**

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to design and construct the Works in accordance with the Contract.

**Contractor's Insolvency**

Any of the following applying to the Contractor:

- .1 the Contractor is insolvent;
- .2 the Contractor indicates it does not have the resources to perform the Contract;
- .3 an application for winding up is made which is not stayed within 14 days;
- .4 a winding-up order is made;
- .5 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- .6 a mortgagee enters into possession of any property of the Contractor;

- .7 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- .8 any actions having a similar effect are taken.

### **Contractor's Margin**

An amount added to the costs calculated under clauses 47.6.1 and 47.6.2 to allow for profit and overhead costs, but not overhead costs relating to delay or disruption.

The amount is calculated as per clause 47.6.3 based on the percentage stated in Contract Information item 44.

The *Contractor's Margin* includes allowances for:

- the cost of supervision and administration services required for the extra work (or where applicable unavoidable additional costs are incurred) including any additional required supervision and administration services; and
- the utilisation of personnel, plant and services, either on-Site or off-Site, that are normally engaged in the Works.

The *Contractor's Margin* applies irrespective of whether the applicable additional work or unavoidable circumstances causes a delay.

### **Contractual Completion Date**

The last day of the period stated in Contract Information item 13, by which the Contractor must achieve *Completion* of the Works or of a *Milestone* (as applicable), as adjusted under the Contract.

### **Data**

The *Contractor's Documents* and all other drawings, sketches, specifications, digital records, computer software, *data* and information relating to the Contract.

### **Date of Contract**

- .1 If a specific date is nominated in Contract Information item 12, Date of Contract means that date.
- .2 If no specific date is nominated in Contract Information item 12, the Date of Contract is to be determined as follows:
  - .1 Unless the Principal expressly states, in the *Letter of Award* or any other document given to the Contractor before the *Letter of Award*, that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date of the *Letter of Award*, irrespective of whether the *Letter of Award* is conditional or unconditional and irrespective of whether the Principal also requires execution of a formal agreement or deed; or
  - .2 If the Principal has expressly stated that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date the formal agreement or deed is signed by the Principal after the Contractor has executed it.

### **Daywork**

Work carried out by the Contractor for which payment is made on the basis of daily time and cost records for labour, plant, *Materials*, services and other items as provided in Schedule 8 (Daywork).

### **Defect**

An error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, resulting from a failure of the Contractor to comply with the Contract.

### **Defect Notice**

A notice issued by the Principal under clause 45.2 or 67.1.

### **Delay Costs**

An amount payable by the Principal for delay or disruption caused by one of the events listed in clause 51.1.

The amount is deemed to include any cost, loss, damage, expense or liability that the Contractor may suffer, sustain or incur arising out of, or in connection with, any delay or disruption, including loss of productivity and the additional time-related costs associated with delay or disruption, caused by one of the events listed in clause 51.1.

Entitlement to Delay Costs is subject to the conditions of clause 51. The amount payable is calculated in accordance with clauses 51.2 and 51.6.

**Encumbrance**

A mortgage, charge, lien, title retention, trust, power or other security interest.

**Expert**

A person engaged to determine *Issues* under clause 71.

**Expert Determination**

The process of determination of an *Issue* by an *Expert*, under clause 71 and the procedure in Schedule 5 (Expert Determination Procedure).

**Fault**

Ambiguity, inconsistency or discrepancy.

**Final Payment Claim**

A *Payment Claim* given by the Contractor to the Principal under clause 61.1.

**Final Payment Schedule**

A *Payment Schedule* given by the Principal to the Contractor under clause 61.2.

**Intellectual Property Rights**

Any copyright, patent right, registered design or other protected right.

**Issue**

Any issue, dispute or difference raised by either party under clause 69.

**Letter of Award**

A letter from the Principal to the Contractor awarding the Contract to the Contractor.

**Materials**

Includes materials, plant, equipment and other goods.

**Milestone**

A part of the Works specified as such in Contract Information item 13.

**Payment Claim**

A claim for payment made by the Contractor to the Principal under clauses 58 or 61.

**Payment Schedule**

A schedule containing the Principal's assessment of a *Payment Claim* and stating the amount the Principal proposes to pay, as referred to in clauses 59 and 61.

**Post-Completion Undertaking**

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 34.

**PPS Law**

The PPS law comprises:

- .1 the Personal Property Securities Act 2009 (Cth) (PPS Act);
- .2 any regulations made at any time under the PPS Act; and
- .3 any relevant amendment made to other legislation as a consequence of the PPS Act and regulations made under the PPS Act.

**Preferred Subcontractor**

A Subcontractor, Supplier or Consultant listed in Contract Information item 31 for a specified trade or class of work.

**Prepayment**

The amount to be advanced by the Principal in accordance with clause 57 and Contract Information item 45.

**Principal**

The entity named in Contract Information item 4, including its successors and assignees.

**Principal's Authorised Person**

The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.

**Principal's Documents**

The drawings, specifications and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works. The *Principal's Documents* include the Preliminaries, any Special Conditions and associated documents that further describe the requirements of the Contract.

Novation may affect the documents included in the *Principal's Documents*. Refer to the applicable Deed of Novation.

**Provisional Sum**

A sum included in the *Contract Price* and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

**Rate Item**

An item of work for which payment will be calculated by multiplying the measured quantity of work, carried out in accordance with the Contract, by the rate accepted for that work. A *Rate Item* may appear in the *Schedule of Rates* or be identified in the Schedule of Prices – Lump Sum.

**Schedule of Rates**

Any document included in the Contract identified as a *Schedule of Rates*, or which shows rates payable for carrying out items of work described in that document.

**Scheduled Amount**

The amount of payment (if any) stated in a *Payment Schedule*, that the Principal proposes to make in relation to a *Payment Claim*, as referred to in clause 59.1.2.

**Scheduled Progress**

The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works and all *Milestones* will be completed by their respective *Contractual Completion Dates*.

**Site**

The lands and other places to be made available by the Principal to the Contractor for the purpose of executing the Works, including any existing buildings, services or other improvements, as briefly described in Contract Information item 2.

**Site Conditions**

Any physical conditions of the Site (including sub-surface conditions but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in carrying out work in connection with the Contract.

**Statutory Requirements**

The laws relating to the Works or the Site, or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, the environment or the Contract, or anyone or anything connected with the Works or the Site or the Contract.

**Step-In**

The Principal's right to step in and take out of the Contractor's hands the whole or any part of the work in connection with the Contract remaining to be completed. The right

applies in the case of the *Contractor's Default* or *Contractor's Insolvency* under clause 73.

**Subcontract**

An agreement between the Contractor and a Subcontractor or a Supplier.

**Subcontractor**

An entity (including one engaged in accordance with clause 29.3) engaged by the Contractor to carry out part of the Works or the *Temporary Work*, or both, other than a Consultant or a Supplier.

**Supplier**

An entity engaged by the Contractor to supply *Materials* in connection with the Works.

**Temporary Work**

Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used to carry out the Works but not forming part of the Works.

**Test**

Examine, inspect, measure, prove and trial, including uncovering any part covered up, if necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

**Undertaking**

An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking).

**Unresolved Claim**

A *Claim* rejected or not agreed under clause 68.7.

**Value Completed**

The value of work (including design work) carried out by the Contractor and included in a *Payment Claim*, as referred to in Schedule 3 (Payment Claim Worksheet).

**Valuer**

The entity engaged to determine time and value matters under clause 35.

**Variation**

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including such changes in respect of the development by the Contractor of the design for the Works (including development of shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract.

**Works**

The works to be designed, constructed and handed over to the Principal on *Completion* by the Contractor, including all work and items of the types referred to in clause 8.1 and *Variations*, but excluding *Temporary Work*. The term applies to the Works as a whole and also to any part of the Works unless the context requires otherwise. Contract Information item 3 briefly describes the Works.

# Contract Information

## Contract

Item

### 1 Contract name

The Contract name is:

Design and Construction of Peak-Hill  
Baldry Road Upgrade

The Contract number is:

Contract No.1548795

### 2 Site

The Site is:

As nominated within the provided  
documents and As per Henlons Drawing  
Number 22104-001 from CH 0.00 - CH  
16.300

### 3 Description of the Works

The Works are:

The Design and Construction of the  
Peak-Hill Baldry Road upgrade as  
further described in the Contract  
Documents.

## Principal's details

### 4 Principal

The Principal is:

Cabonne Shire Council  
ABN: 41 992 919 200

### 5 Principal's Authorised Person

The *Principal's Authorised Person*  
is:

Simon Isbester – Upright Management  
Pty Ltd.

### 6 Notices to the Principal

Office address:  
(for delivery by hand)

101 Bank Street, Molong NSW 2866

Postal address:  
(for delivery by post)

101 Bank Street, Molong NSW 2866

e-mail address:

sisbester@uprightmanagement.com.au



## 7 Principal's Senior executive

The Principal's senior executive is: Matthew Christensen

Office address:  
(for delivery by hand) Administration Building  
101 Bank St, Molong NSW 2866

Postal address:  
(for delivery by post) 101 Bank St, Molong NSW 2866

e-mail address: matthew.christensen@cabonne.nsw.gov.au

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## Contractor's details

### 8 Contractor

The Contractor is: »

The Contractor's ABN/ ACN »

### 9 Contractor's Authorised Person

*The Contractor's Authorised Person is:* »

### 10 Notices to the Contractor

Office address:  
(for delivery by hand) »

Postal address:  
(for delivery by post) »

e-mail address: »

**11 Contractor's senior executive**

The Contractor's senior executive is:

»

Office address:  
(for delivery by hand)

»

Postal address:  
(for delivery by post)

»

e-mail address:

»

**Dates and times****12 Date of Contract**

The Date of Contract is:

the date of the *Letter of Award*.

**13 Times for Site access and Completion**

Description	Time Period for giving Site access	Time Period for Completion
The whole of the Works:	14 days after the Date of Contract	Insert weeks after the Date of Contract Based on Tendered Program

**Statutory and Government requirements****14 Fees, charges, consents and approvals**

Approvals that have been obtained or will be obtained, and fees and charges that have been paid or will be paid, by the Principal are:

Land Acquisition  
REF  
Part 5 Approval.

**14A Long service levy**

Does Clause 20 (Long service levy) apply requiring the Contractor to pay the long service levy?:

Yes

## 15 Compliance with NSW Government guidelines

### A - Work Health and Safety (WHS)

Is the Contractor required to implement a Corporate WHS Management System acceptable to the Principal? (Yes/No)

Yes

Is the Contractor required to submit a WHS Management Plan in accordance with the *WHS Regulation 2017* (NSW)? (Yes/No)

Yes

If required, the WHS Management Plan must be provided:

Not less than 14 days before starting work on the Site.

### B - Dealing with Modern Slavery

Is the Contractor required to comply with the requirements of Schedule 16 (Modern Slavery)?

Yes

### C - Quality Management

Is the Contractor required to implement a certified Quality Management System? (Yes/No)

No

Is the Contractor required to submit a Quality Management Plan? (Yes/No)

Yes

If required, the Quality Management Plan must be provided:

Before starting design or construction work in connection with the Contract.

### D - Environmental Management

Is the Contractor required to implement an accredited Environmental Management System? (Yes/No)

No

Is the Contractor required to submit an Environmental Management Plan? (Yes/No)

Yes

If required, the Environmental Management Plan must be provided:

At least 14 days before starting work on the Site.

### E – Skills, Training and Diversity in Construction

Is the Contractor required to meet and report on its commitment with regard to Apprenticeship Targets and report on the number of women employed?  
(Yes/ Not applicable)

No

Is the Contractor required to meet and report on its additional commitments under the Infrastructure Skills Legacy Program Targets?  
(Yes/ Not applicable)

Yes

## F - Aboriginal Participation

The requirements of the Aboriginal Procurement Policy apply to the Contract (Yes/No):

Yes

The APP Contract Value for Aboriginal Participation in this Contract is:

This will be a minimum of 1.5% of the project value or project workforce.

An Aboriginal Participation Plan must be provided:

Within 21 days after the Date of Contract.

A final Aboriginal Participation Report must be provided:

Prior to *Completion* of the whole of the Works.

## 16 Requirements for Commonwealth funded projects

### Australian Government Work Health and Safety Accreditation Scheme

Is the Contractor required to maintain accreditation under the Australian Government Work Health and Safety Accreditation Scheme?

No

## 17 Principal contractor

Is the Contractor appointed as principal contractor? (Yes/No)

Yes

## 18 Working hours and working days

Working hours and working days are:

To comply with *Statutory Requirements*.  
Monday – Friday 7.00 am – 6.00pm  
Saturday – 8.00 am – 01.00 pm  
Sundays & Public holiday – no work

## Liability

### 19 Limitation of liability

Subject to clause 26.9, the limit of the Contractor's liability to the Principal in respect of any one occurrence in connection with loss or liability other than personal injury or death is:

The Contractor's liability is unlimited.

### 20 Proportionate liability

Is proportionate liability excluded from the Contract? (Yes/No)

Yes

## Insurance

### 21 Works insurance

The party responsible for effecting Works insurance is:

The Contractor

Minimum cover is:

The *Contract Price* plus 15%

Period of cover is:

From the *Date of Contract* until 12 months after *Completion* of all the *Works*.

### 22 Public liability insurance

The party responsible for effecting public liability insurance is:

The Contractor

Minimum cover is:

\$20M

Period of cover is:

From the *Date of Contract* until 12 months after *Completion* of all the *Works*.

### 23 Workers compensation insurance

Minimum cover is:

as required by law.

Period of cover is:

until issue of the *Final Payment Schedule*.

### 24 Professional indemnity insurance

Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No)	Yes
Minimum cover is:	\$500,000 or 20% of the <i>Contract Price</i> , whichever is the greater, to a maximum of \$5 million.
Period of cover is:	From the <i>Date of Contract</i> until 12 months after <i>Completion</i> of all the <i>Works</i>

## 25 Marine liability insurance

Is a Marine Liability insurance policy to be held by the Contractor? (Yes/No)	Not Required
Minimum cover is:	Not Required
Period of cover is:	Not Required

## 25A Motor vehicle 3rd party property damage insurance

Is motor vehicle 3rd party property damage insurance to be held by the Contractor?? (Yes/No)	Yes
Minimum cover is:	\$20 million for any one occurrence.
Period of cover is:	the whole of the period of use of motor vehicles on work in connection with the Contract.

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# Contract Documents

## 26 Other Contract Documents

Other *Contract Documents* (not listed in clause 7) are:

1. **General Conditions of Contract (GC21)**
2. **Tender Submission Forms**
3. **Peak Hill Road Upgrade (Part 5) - REF Rev C Iss01**
  - 3.1 **Append B – BAR**
  - 3.2 **Append C – ADDA**
  - 3.3 **Append D - Stormwater Asset Report**
  - 3.4 **Append E - Hydrological Assessment**
  - 3.5 **Append F - Enviro Database Search**

- 3.6 Append G – Consultation Request 2**
- 4. Engineering Documentation (*title only*)**
- 4.1 22104 Peak Hill Road Upgrade Design\_Sht 01 to 26**
- 4.2 22104 Peak Hill Road Upgrade Design\_Sht 27 to 46**
- 4.3 22104 Peak Hill Road Upgrade Design\_Sht 47 to 71**
- 4.4 22104 Peak Hill Road Upgrade - Safety in Design Report\_Rev B**
- Iss01**
- 4.5 282775 - C01 to C69 Preliminary A**
- 4.6 22104 Peak Hill Road Upgrade – BOQ\_v02**
- 4.7 22104 Stormwater Management Report REV B**
- 5. Survey Documentation (*title only*)**
- 5.1 22104 Peak Hill Road Upgrade - Survey Report Rev A**
- 5.2 22104 Peak Hill Road Upgrade - Acquisition Plan\_Rev A**
- 5.3 22104 Peak Hill Road Upgrade - Goobang Park Road Plan\_Rev A**
- 6. 22104 Peak Hill Road Upgrade - Geotech Report**
- 7. Cabonne Council – WHS Contractor Requirements (*title only*)**
- 7.1 WHS 041-D Contractor HS Requirements – D High Risk Construction**
- 7.2 WHS 042-D Contractor HS Adequacy Assessment – D High Risk Construction**
- 7.3 Section 6 Contractor and Project Health and Safety Management V1.1 Jan 2024**
- 8. Aboriginal-SME-and-local-participation plan-template**
- 9. Transport for New South Wales Specifications**
- 10. Transport for New South Walse & Cabonne Council – QA Specifications (*title only*)**
- 10.1 CC-Peak Hill\_Baldry Rd Upgrade-B80 (Rev 0)**
- 10.2 CC-Peak Hill\_Baldry Rd Upgrade-G1 (Rev 0)**
- 10.3 CC-Peak Hill\_Baldry Rd Upgrade-G10 (Rev 0)**
- 10.4 CC-Peak Hill\_Baldry Rd Upgrade-G22 (Rev 0)**
- 10.5 CC-Peak Hill\_Baldry Rd Upgrade-G36 (Rev 0)**
- 10.6 CC-Peak Hill\_Baldry Rd Upgrade-G38 (Rev 0)**
- 10.7 CC-Peak Hill\_Baldry Rd Upgrade-G40 (Rev 0)**
- 10.8 CC-Peak Hill\_Baldry Rd Upgrade-G71 (Rev 0)**
- 10.9 CC-Peak Hill\_Baldry Rd Upgrade-3051 (Rev 0)**
- 10.10 CC-Peak Hill\_Baldry Rd Upgrade-3071 (Rev 0)**

- 10.11 CC-Peak Hill\_Baldry Rd Upgrade-3151 (Rev 0)
- 10.12 CC-Peak Hill\_Baldry Rd Upgrade-3253 (Rev 0)
- 10.13 CC-Peak Hill\_Baldry Rd Upgrade-3254 (Rev 0)
- 10.14 CC-Peak Hill\_Baldry Rd Upgrade-3258 (Rev 0)
- 10.15 CC-Peak Hill\_Baldry Rd Upgrade-3259 (Rev 0)
- 10.16 CC-Peak Hill\_Baldry Rd Upgrade-3261 (Rev 0)
- 10.17 CC-Peak Hill\_Baldry Rd Upgrade-3353 (Rev 0)
- 10.18 CC-Peak Hill\_Baldry Rd Upgrade-3356 (Rev 0)
- 10.19 CC-Peak Hill\_Baldry Rd Upgrade-3411 (Rev 0)
- 10.20 CC-Peak Hill\_Baldry Rd Upgrade-Q4 (Rev 0)
- 10.21 CC-Peak Hill\_Baldry Rd Upgrade-R11 (Rev 0)
- 10.22 CC-Peak Hill\_Baldry Rd Upgrade-R16 (Rev 0)
- 10.23 CC-Peak Hill\_Baldry Rd Upgrade-R44 (Rev 0)
- 10.24 CC-Peak Hill\_Baldry Rd Upgrade-R53 (Rev 0)
- 10.25 CC-Peak Hill\_Baldry Rd Upgrade-R55 (Rev 0)
- 10.26 CC-Peak Hill\_Baldry Rd Upgrade-R63 (Rev 0)
- 10.27 CC-Peak Hill\_Baldry Rd Upgrade-R71 (Rev 0)
- 10.28 CC-Peak Hill\_Baldry Rd Upgrade-R75 (Rev 0)
- 10.29 CC-Peak Hill\_Baldry Rd Upgrade-R106 (Rev 0)
- 10.30 CC-Peak Hill\_Baldry Rd Upgrade-R131 (Rev 0)
- 10.31 CC-Peak Hill\_Baldry Rd Upgrade-R132 (Rev 0)
- 10.32 CC-Peak Hill\_Baldry Rd Upgrade-R143 (Rev 0)
- 10.33 CC-Peak Hill\_Baldry Rd Upgrade-R145 (Rev 0)
- 10.34 CC-Peak Hill\_Baldry Rd Upgrade-R178 (Rev 0)

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## Principal's Documents

### 27 Copies of Principal's Documents

The number of copies of the *Principal's Documents* to be provided to the Contractor is:

1 electronic copy



## Contractor's Documents

### 28 Copies of Contractor's Documents

The number of copies of the *Contractor's Documents* to be provided to the Principal is:

1 electronic copy in a format acceptable to the Principal.

## Subcontract work

### 29 Inclusion of consistent requirements in Subcontracts

The Subcontract value requiring inclusion of the provisions set out in Schedule 9 (Subcontract requirements) is:

\$100,000.00.

### 30 Payment period for Subcontracts

The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 29, is:

20 *Business Days*.

### 31 Preferred Subcontractors

The *Preferred Subcontractors* referred to in clause 29 are:

Class of work	Subcontractors
None Stated	

### 32 Subcontractor's warranty

Trades or areas of work requiring a Subcontractor's warranty are:

Design and Construction

## Undertakings

### 33 Completion Undertaking

#### A - For Contractors with 'Best Practice Accreditation'

The amount of the *Completion Undertaking* is:

Not used

**B - For All Other Contractors**

The amount of the *Completion Undertaking* is:

4% of the *Contract Price* at the Date of Contract for the first \$9 million plus 2% of any amount over \$9 million

**34 Post-Completion Undertaking**

The Amount of *Post-Completion Undertaking* is:

1% of the *Contract Price* at the Date of Contract.

**35 Return of Post-Completion Undertaking**

The period at the end of which the *Post-Completion Undertaking* must be returned is:

12 months.

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## Site information

**36 Site information****A - Documents not guaranteed for completeness**

Documents which contain information that is not part of the Contract and are not guaranteed for completeness are:

- 22104 Peak Hill Road Upgrade - Geotech Report
- 22104 Peak Hill Road Upgrade - BOQ\_v02

**B - Documents not guaranteed for accuracy, quality or completeness**

Documents which contain information that is not part of the Contract and are not guaranteed for accuracy, quality or completeness are:

- 22104 Peak Hill Road Upgrade - Geotech Report
- 22104 Peak Hill Road Upgrade - BOQ\_v02

**37 Site Conditions**

Is the Contractor to bear the full risk, including cost and time implications, of encountering and dealing with materially adverse *Site Conditions* other than carrying out *Variations* instructed by the Principal? (Yes/No)

Yes

## Design and documentation

### 38 Scope of design activities

#### A - Design by the Contractor

.1 Without limiting the design obligations of the Contractor under clause 39.1, elements of the Works for which the Contractor is responsible for developing the design provided by the Principal are (clause 39.1.2):

All elements of the Works where design development is required to comply with clauses 39.1 and 39.2, including:

- The whole of the works

.2 Without limiting the design obligations of the Contractor under clause 39.1, elements of the Works for which the Contractor must fully design are (clause 39.1.3):

No specific elements have been listed, refer to clause 39.1.

.3 Elements of the Works in respect of which the Contractor may depart from the design provided by the Principal (clause 39.7):

No items identified.

#### B –National Construction Code

Does the National Construction Code apply? (Yes/No)

Yes

## Innovation

### 39 Innovation

The percentage of financial benefit to be allocated to the Contractor is:

50%

## Payments

### 40 Contract Price at the Date of Contract

The *Contract Price* at the Date of Contract is:

\$ .....

#### Basis of payment

The basis of payment is:

Lump Sum

(Lump sum / *Schedule of Rates* /  
Lump sum with *Rate Items*)

#### 41 Rise or fall adjustments

Are rise or fall adjustments  
applicable to the Contract  
(excluding *Daywork*)? (Yes/No)

No

#### 42 Provisional Sums

*Provisional Sum* items referred to  
in clause 55.4 are:

Not applicable

#### 43 Provisional Sum margin

The *Provisional Sum* margin  
includes profit and off site  
overheads:

Not applicable

The *Provisional Sum* margin is:

Not applicable

#### 44 Contractor's Margin

The *Contractor's Margin* includes  
profit and off-site overheads:

and on-site overheads including but not  
limited to all site supervision, project  
management, site preliminary items  
attendance and administration, LAHA,

The percentage for *Contractor's*  
*Margin* is:

10%.

#### 45 Amount of Prepayment

The amount of *Prepayment* is:

There is no prepayment.

#### 46 Payment Claims

The date in the month for making  
*Payment Claims* is:

The last *Business Day* prior to the end  
of each calendar month

The person authorised to deal with  
*Payment Claims* is:

The *Principal's Authorised Person*.

The address for submission of  
*Payment Claims* is:

An address shown in Contract  
Information item 6 for 'Notices to the  
Principal'.

The party responsible for issuing the tax invoice for a *Payment Claim* (after a *Payment Schedule* has been issued by the Principal) is:  
(the Principal / the Contractor)

The Contractor

#### 47 Completion Amount

The *Completion Amount* is:

NIL

The *Completion Amount* is payable after:  
(*Completion* of the whole of the Works/ *Completion of Milestone* »)

Not Applicable

#### 48 Interest on late payments

The rate of interest per annum is:

5%

### Delay Costs

#### 49 Delay Costs and liquidated damages

##### A – Delay Costs

##### A1 - Delay Costs for delay in access to the Site

The rate in item 49A1 applies only if the Principal fails to give initial access to the Site as required by clause 34. The rate does not apply where the Principal fails to give Site access for a *Milestone* by the required time, unless that *Milestone* is the first to proceed after the Contractor has established on the Site.

The rate per day for *Delay Costs* due to the Principal's failure to give the Contractor initial access to the Site in accordance with clause 34 is:

Nil

##### A2 - Delay Costs for delay other than in access to the Site

The rate or rates in item 49A2 apply when the rate in item 49A1 is not applicable, in accordance with clause 51.

The rate per day for *Delay Costs* payable when *Completion* of the whole of the Works is delayed is:

Nil

The rates per day for *Delay Costs* payable when there are delays to *Completion of Milestones\** are:

Not Applicable

##### B - Liquidated damages

Do liquidated damages apply to this Contract? (Yes/No)

Yes

The rate per day for liquidated damages for the whole of the Works only applies where there are no rates specified for *Milestones* and is:

\$ 800 per day

The rates per day for liquidated damages for *Milestones*\* are:

Not applicable

## Engagement of Valuer

### 50 Engagement of Valuer

#### A - Engagement of Valuer

Must a Valuer be engaged?  
(Yes/No)

No

#### B - Person to select the Valuer

The person is:

the President, (AIQS), Suite 303, Level 3, 70 Pitt Street, Sydney.

Telephone number:

(02) 8234 4000

Email/ website:

<https://www.aiqs.com.au/contact-us>

#### C - Litigation Threshold

The threshold amount for litigation following a Valuer's determination is:

\$100,000

## Expert Determination

### 51 Time to refer Issue to Expert Determination

The time within which either party may refer an *Issue* to *Expert Determination* is:

28 days after becoming entitled under clause 70.2.

### 52 Expert Determination representative

The representative of the Principal for all of the purposes in clause 71, and under Schedule 5 (Expert Determination Procedure) is:

the Principal's senior executive shown in Contract Information item 7 until the Principal notifies otherwise.

Office address:  
(for delivery by hand)

as shown in Contract Information item 7.

Postal address:  
(for delivery by post)

as shown in Contract Information item  
7.

e-mail address:

as shown in Contract Information item  
7.

### **53 Person to nominate an Expert**

The person is:

Chief Executive Officer  
Australian Disputes Centre  
Level 16, 1 Castlereagh Street  
Sydney, NSW 2000

Telephone number:

(02) 9239 0700

Email/ website:

<https://www.disputescentre.com.au/>

### **54 Threshold amount for litigation**

The threshold amount for litigation  
following an *Expert's*  
determination is:

\$500,000

## **Schedules**

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<b>Schedule 1</b>	<b>Subcontractor's Warranty</b>
<b>Schedule 2</b>	<b>Undertaking</b>
<b>Schedule 3</b>	<b>Payment Claim Worksheet</b>
<b>Schedule 4</b>	<b>Agreement with Valuer</b>
<b>Schedule 5</b>	<b>Expert Determination Procedure</b>
<b>Schedule 6</b>	<b>Supporting Statement and Subcontractor's Statement</b>
<b>Schedule 7</b>	<b>Costs Adjustment Formula</b>
<b>Schedule 8</b>	<b>Daywork</b>
<b>Schedule 9</b>	<b>Subcontract requirements</b>
<b>Schedule 10</b>	<b>Principal Arranged Insurances</b>
<b>Schedule 11</b>	<b>Statement regarding Materials</b>
<b>Schedule 12</b>	<b>Compliance with NSW Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines</b>
<b>Schedule 13</b>	<b>Retention Money Trust Account Obligations</b>
<b>Schedule 14</b>	<b>Deed of Contract Agreement</b>
<b>Schedule 15</b>	<b>Personal Property Securities</b>
<b>Schedule 16</b>	<b>Modern Slavery</b>



**Schedule 1****1. Subcontractor's Warranty****Definitions**

Deed dated:	The date of execution by the Subcontractor
	<b>between</b>
Subcontractor or Supplier:	.....
	.....
	ABN/ACN .....
	<b>and</b>
The Principal:	»
	<b>concerning</b>
The Contract:	The contract between the Principal and the Contractor
Contract Name:	Design and Construction of Peak-Hill Baldry Road Upgrade
Contract Number:	Contract No.1548795
Works:	The works to be designed (to the extent specified) and constructed by the Contractor, as described in the Contract.
The Contractor:	.....
	ACN .....
Subcontract Work or Products:	.....
Warranty Period:	.....years from the <i>Actual Completion Date</i> of the whole of the Works.

**Terms of Deed****1 Warranty**

- .1 The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
  - .1 comply in all respects with the requirements of the Contract;
  - .2 to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract, comply with the applicable industry standards, including (without limitation) the National Construction Code and any applicable Australian Standards; and
  - .3 be fit for the purposes for which they are required.
- .2 The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract Work or Products.

**2 Replacement or making good**

- .3 The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
  - .1 be of a lower standard or quality than referred to in clause 1 of this Deed; or

- .2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- .4 The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
  - .1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
  - .2 normal wear and tear;
  - .3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
  - .4 any other cause beyond the control of the Subcontractor.
- .5 Nothing in this Deed affects the Subcontractor's liability with respect to the Subcontract Work or Products.

### **3 Costs**

- .6 The Subcontractor promises to undertake, and meet the reasonable cost of, any work necessary to:
  - .1 carry out any part of the Works to enable the requirements of clause 2 of this Deed to be met; or
  - .2 restore or make good the Works after meeting those requirements, whichever the Principal requires.

### **4 Indemnity**

- .7 The Subcontractor indemnifies the Principal against claims (including *Claims*, actions and loss or damage) arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed.

### **5 Notice of Defects**

- .8 The Principal may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 1 of this Deed or if the Principal requires the Subcontractor to replace or make good any of the Subcontract Work or Products under clause 2 of this Deed.

### **6 Time to remedy**

- .9 The Subcontractor must do everything to remedy any breach notified to it, or to carry out any replacement or making good required under clause 5 of this Deed, within a reasonable time after receiving the Principal's notice.

### **7 Failure to remedy**

- .10 If the Subcontractor fails to complete the work specified in the Principal's notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- .11 If the Subcontractor fails to complete the work by the date specified in clause 7.1 of this Deed, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

### **8 Urgent action by Principal**

- .12 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.
- .13 The Subcontractor agrees that the Principal taking such action does not affect the warranty or any other obligation of the Subcontractor under this Deed.
- .14 The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

### **9 Assignment**

- .15 The Principal may assign its rights and benefits under this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

**10 Signing of Deed**

- .16 The Subcontractor and the Principal:
  - .1 accept that this Deed may be signed by electronic means by counterpart using an electronic signing platform or other agreed process that provides a suitable record identifying the person signing;
  - .2 agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically; and
  - .3 state that they may make use of the option to sign electronically and will be bound by their electronic signatures.

**11 Operation of Deed**

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

**Executed as a deed**

**Subcontractor** *(use for companies with more than one director)*

Executed by <i>(name)</i> .....	
ACN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Director	Signature of Director
.....	.....
Name of Director/ Secretary	Signature of Director/ Secretary
Date signed .....	

**Subcontractor** *(use for companies with a sole director. If the sole director is not also the company secretary, then delete or strike out the words “/Secretary” below)*

Executed by <i>(name)</i> .....	
ACN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Sole Director/ Secretary	Signature of Sole Director/ Secretary
Date signed .....	

**Subcontractor** *(use for a party that is not a company (eg a partnership or Sole Trader))*

Executed by <i>(name)</i> .....	
ABN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Authorised Representative	Signature of Authorised Representative
<b>in the physical presence of:</b>	
.....	.....
Name of Witness	Signature of Witness
Date signed .....	

*Include the following paragraph where the signing of the document is being witnessed over audio visual link, otherwise delete or strike out the text. Delete this user note.*

This deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

**Principal** (use for a Principal to execute the Deed without a Common Seal. Also see Guidance Note 2 below)

Signed, sealed and delivered for and on behalf of

(name of Principal) .....

ABN .....

by its duly authorised representative:

.....	.....
Name of Principal's Representative	Signature of Principal's Representative

**in the physical presence of:**

.....	.....
-------	-------

Name of Witness	Signature of Witness
-----------------	----------------------

*Include the following paragraph where the signing of the document is being witnessed over audio visual link, otherwise delete or strike out the text. Delete this user note.*

This deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

*Guidance Notes for the execution of this Deed:*

1. The Subcontractor should only complete and sign in the applicable execution block.
2. Where the Principal prefers this Deed to be signed using its 'Common Seal', refer to Schedule 14 for an alternative signing block.
3. Where this Deed is executed by electronic signing (i.e. not on a physical hard copy document) section 9 of the *Electronic Transactions Act 2000* (NSW) applies. This requires that identification, reliability and consent requirements are complied with.

*This Deed has been drafted to provide compliance with the:*

- **identification requirements** – signature & name of person signing and indication the person intends to be bound by the terms of the agreement;
- **reliability requirement** – an appropriate method being used to link the person signing to his/ her signature. The simplest option to satisfy the reliability requirement is included. Other options including the use of an electronic signing platform are provided in Schedule 14; and
- **consent requirement** – prior agreement by the parties to sign electronically and be bound by the terms of the agreement;

*Note that an electronic signature platform such as DocuSign, SecureSign or similar can be used to provide the necessary interface to satisfy reliability and identification requirements and produce the necessary records..*

**Schedule 2**

**2. Undertaking**

**On behalf of the Contractor**

Name of Financial Institution:	.....
The Principal:	»
The Contractor:	.....
	ABN .....
Security Amount:	\$ .....
The Contract:	The contract between the Principal and the Contractor
Contract Name:	Design and Construction of Peak-Hill Baldry Road Upgrade
Contract Number:	Contract No.1548795

**Undertaking**

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This *Undertaking* continues until one of the following occurs:
  - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - .2 this *Undertaking* is returned to the Financial Institution; or
  - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated ..... at .....

**Execution by the Financial Institution:**

**Schedule 3**

**3. Payment Claim Worksheet**

The Contractor: .....  
 ABN .....

The Contract: The contract between the Principal and the Contractor

Contract Name: Design and Construction of Peak-Hill Baldry Road Upgrade

Contract Number: Contract No.1548795

This is a *Payment Claim* under the Building and Construction Industry Security of Payment Act 1999 (NSW)

1	2	3	4	5
Activity (& Milestone reference where applicable) to suit schedule of prices and/or activities	activity number	Value of activity \$	Activity completed %	Activity completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet				\$
Amount carried forward to next sheet				\$

1	2	3	4	5
Item or activity to suit <i>Schedule of Rates</i>	Item or activity number	Price or rate for item or activity \$	Quantity completed	Item or activity completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet				\$
Amount carried forward to next sheet				\$

**Complete this section on the last sheet only**

Subtotal for any <i>Schedule of Rates</i> items	\$
Subtotal for any lump sum items	\$
	\$
	\$
<b><i>Value Completed</i></b>	<b>\$</b>
Less payments already made	\$
Less retention for the <i>Completion Amount</i> under clause 60, if applicable	\$
<b><i>Claimed Amount</i></b>	<b>\$</b>

**Schedule 4****4. Agreement with Valuer****Definitions**

Agreement dated:	.....
	<b>between:</b>
The Valuer:	.....
	ABN .....
	<b>and:</b>
	»
The Principal:	<b>and:</b>
	.....
	ABN .....
	<b>concerning:</b>
The Contract:	The contract between the Principal and the Contractor
Contract Name:	Design and Construction of Peak-Hill Baldry Road Upgrade
Contract Number:	Contract No.1548795
Dated:	.....
The Works:	The works to be designed and constructed by the Contractor, as described in the Contract.

**Terms of agreement****1 Request to determine and acceptance**

- .1 The parties request the Valuer to determine the value and time associated with *Variations* and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.

**2 Determination by Valuer**

- .2 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days (or another period agreed by the parties) after the matter is referred to the Valuer.
- .3 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

**3 Principles for valuation**

- .4 The Valuer must determine all matters referred to it in accordance with the principles and procedures set out in the Contract.

**4 Meeting**

- .5 The Valuer may meet with the parties together to discuss a matter referred under this agreement. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

**5 Documents**

- .6 The Valuer must take into consideration:

- .1 documents, information and other written material which has been exchanged by the parties before the request to the Valuer;
  - .2 any submission or submission in reply made by a party to the Valuer (which must be copied to the other party); and
  - .3 information or material provided under clause 6.1.2 of this agreement.
- .7 The Valuer must fix appropriate times for the provision of any submissions and submissions in reply.
- .8 The parties acknowledge that when a matter referred to the Valuer involves a claim from a Subcontractor, Supplier or Consultant's, the Valuer will give the relevant Subcontractor, Supplier or Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate details of the entitlement determined for each Subcontractor, Supplier or Consultant.

## **6 Role of Valuer**

- .9 The Valuer:
- .1 acts as an expert and not as an arbitrator;
  - .2 is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
  - .3 must issue a certificate in a form the Valuer considers appropriate, stating the Valuer's determination, with reasons.

## **7 Certificate final**

- .10 Subject to clause 35.1.3 of the GC 21 General Conditions of Contract , the parties agree to accept the determination in the Valuer's certificate as final and binding.

## **8 Liability of Valuer**

- .11 The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

## **9 Fees and expenses**

- .12 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any *Variation* which the Principal proposes but does not later instruct.

- .13 The fees payable to the Valuer under this agreement are:

- .1 An administration fee of \$» for reviewing the *Contract Documents*
- .2 An amount for the time involved in performing the Valuer's duties under this agreement based on these hourly rates:

Director	\$...../hour
Associate	\$...../hour
Senior Quantity Surveyor / Engineer	\$...../hour
Quantity Surveyor / Engineer	\$...../hour
Technician	\$...../hour

- .3 Substantiated out-of-pocket expenses.

## **10 Confidentiality**

- .14 The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the prior written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

## **11 Termination of agreement**

- .15 This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer's outstanding fees and expenses in accordance with clause 9 of this agreement.



**12 Payment**

- .16 The Principal and the Contractor must pay the Valuer within 15 *Business Days* after receiving an invoice which complies with this agreement.
- .17 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

**13 Period of engagement of Valuer**

- .18 Unless this agreement is terminated under clause 11 of this agreement, the Valuer is engaged until the time of issue of the *Final Payment Schedule*, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time the *Final Payment Schedule* is issued.

**Signed by the Contractor:**

Signature of Authorised Person: .....

Name of Authorised Person: .....

Date: .....

**Signed by the Principal:**

Signature of Authorised Person: .....

Name of Authorised Person: .....

Date: .....

**Signed by the Valuer:**

Signature of Valuer: .....

Name of Valuer: .....

Date: .....

**Schedule 5**

# 5. Expert Determination Procedure

---

**1 Questions to be determined by the Expert**

- .1 For each *Issue*, the *Expert* must determine the following questions, to the extent that they are applicable to the *Issue* and unless otherwise agreed by the parties:
  - .1 Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *Issue* if no compensation is claimed:
    - .1 under the Contract,
    - .2 for damages for breach of the Contract, or
    - .3 otherwise in law?
  - .2 If so:
    - .1 what is the event, act or omission?
    - .2 on what date did the event, act or omission occur?
    - .3 what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
    - .4 is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim or other legal right?
  - .3 In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
    - .1 what compensation, if any, is payable by one party to the other and when did it become payable?
    - .2 applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
    - .3 if compensation is not claimed, what otherwise is the resolution of the *Issue*?
- .2 The *Expert* must determine, for each *Issue*, any other questions identified or required by the parties, having regard to the nature of the *Issue*.

**2 Submissions**

- .3 The procedure for submissions to the *Expert* is as follows:
  - .1 The party to the Contract which referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
  - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
  - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.
  - .4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.

- .4 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- .5 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.
- .6 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 52.

### **3 Conference**

- .7 The *Expert* may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
- .8 The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

### **4 Role of Expert**

- .9 The Expert:
  - .1 acts as an *Expert* and not as an arbitrator;
  - .2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and
  - .3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
- .10 If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.

**Schedule 6**

# 6. Supporting Statement and Subcontractor's Statement

## Supporting Statement

**Construction Contracts**

Pursuant to section 13(7) of the *Building and Construction Industry Security of Payment Act 1999 (NSW)* (the Act) a supporting statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

This form should be used by a head contractor who has a construction contract that is not an owner occupier construction contract. If the contract is an owner occupier construction contract the 'Supporting Statement – Owner Occupier Construction Contracts' form should be used instead.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, “construction contract” and “owner occupier construction contract” have the meanings given in section 4 of the Act.

Head contractor (business name of head contractor):	
<input type="checkbox"/> 1. has entered into a contract with:(business name of subcontractor)	
ABN of subcontractor	
Contract number/identifier	
<b>or</b>	
<input type="checkbox"/> 2. has entered into a contract with the subcontractors listed in Schedule 1	
This statement applies to work between(start date)	and (end date)
<b>or</b>	
This statement applies to work completed in Stage (number) of the construction contract	
Subject of the payment claim dated (date)	

### Declaration for Supporting Statement

I, (full name) .....

being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work that is the subject of this payment claim.

These subcontractors and the amounts paid to them are identified in Schedule 1 on page 3 of this Supporting Statement.

**It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is \$110,000 for corporations, and \$22,000 for an individual.**

**It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is \$110,000 for corporations, and \$22,000 or 3 months imprisonment (or both) for individuals.**

Full Name of Individual	
Position/Title	
Signature	
Date	



# Subcontractor's Statement

## Main Contract

Contractor: ABN: (Note 2)

(Business name of the Contractor)

of

(Address of the Contractor)

has entered into a contract with ABN:

(Business name of the Principal)

Contract Number Contract No.1548795 (Note 3)

## Period

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 Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

(a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract.

Tick  if true and comply with (b) to (h) 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 (e) to (h) below. You must mark one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid. (Note 7)

The Certificate of Currency for that insurance is attached and is dated .....

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Contractor is required to be registered as an employer under the Payroll Tax Act 2007 (NSW), the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement. (Note 9)

(e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor 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) The Contractor is complying with the requirements of clauses 33.8 to 33.11 (as applicable) and has deposited all cash security and retention moneys held under Subcontracts into a trust account.

(g) Signature ..... Full name .....

(h) Position/Title .....Date .....

NOTE: Where required [in (b)] above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987 (NSW).

## Notes to the Subcontractor's Statement

**These notes have been prepared using the terms in the referenced Acts. Where this Statement is being completed for the purposes of this Contract, (unless the context otherwise requires) 'subcontractor' means the 'Contractor' and 'principal contractor' means the 'Principal'.**

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW), section 127 of the *Industrial Relations Act 1996* (NSW) and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999* (NSW). 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 of the *Industrial Relations Act 1996* (NSW), 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* (NSW) 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* (NSW) 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 \$7,500 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* (NSW), 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.

Maximum penalty: 100 penalty units.

In terms of s175B of the *Workers Compensation Act 1987* (NSW) and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) 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 SafeWork website <https://www.safework.nsw.gov.au/>, iCare (for Workers Compensation queries) via the [iCare website](http://www.icare.nsw.gov.au/) or NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>

Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).



**Schedule 7**

**7. Not Used**

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No

**Schedule 8****8. Daywork****1 Daywork procedure and determination**

- .1 If the Principal instructs that a *Variation* be carried out as *Daywork*, the Principal and Contractor must agree the amount, type and conditions of use of labour, plant and materials to be used in the *Variation*.
- .2 Contractor must record the particulars of all resources used by the Contractor each day in carrying out the *Variation*. The method of recording the resources and their hours must be agreed by the Contractor and Principal.
- .3 When submitting a claim for payment for the *Variation* in a *Payment Claim* under clause 58, the Contractor must submit records including all time sheets, wages sheets, invoices, receipts and other documents that are necessary to support this *Payment Claim*.
- .4 The Principal must assess the value of the *Variation* amount to be paid to the Contractor in respect of each *Payment Claim* and in making its assessment under clause 59 must have regard to the following:
  - .1 the amount of wages and allowances for labour paid or payable by the Contractor at the rates obtaining on the Site at the time, as approved by the Principal;
  - .2 the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under 1.4.1 of this *Daywork* procedure;
  - .3 the amount of hire charges for construction plant approved by the Principal for use on the work;
  - .4 the reasonable actual mobilisation and demobilisation costs of construction plant and vehicles (where brought for the sole purpose of the instructed *Daywork*);
  - .5 the reasonable amounts paid by the Contractor for Subcontracts and for Consultant work involved in carrying out the *Variation*;
  - .6 the reasonable actual cost to the Contractor at the Site of all materials supplied and required for the *Variation* work.
- .5 In addition to the amounts assessed for the items under clause 1.4 above, the value of the *Variation* will include an additional amount for overheads, administrative costs, site supervision, establishment costs, attendance and profit calculated as 22.5% of the total of the assessed costs under clause 1.4.
- .6 The amounts payable for *Daywork* will not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

**2 Amounts included in and excluded from Daywork**

- .7 Assessment by the Principal of the valuation of a *Variation* carried out as *Daywork* will include valuation of all reasonable and necessary costs incurred of personnel, plant, vehicles, Subcontractor, Consultant and *Materials* used by the Contractor in carrying out the *Variation* as instructed by the Principal, subject to:
  - .1 the valuation of the *Variation* will only include costs for actual time of any resources which are employed on the *Variation*; and
  - .2 the costs of supervisory, technical and administrative personnel that are normally engaged on the Works and continue to be so during the *Daywork* will not be included in the Principal's assessment of the valuation of the *Variation*.

**3 Principles for calculating time**

- .8 If the parties do not agree on the effect on the time for *Completion* of the *Variation* carried out as *Daywork*, the extension of time for *Completion* due if any, must be dealt with under clauses 68 to 71 based on the principles contained in clause 50.

**Schedule 9****9. Subcontract requirements**

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**General requirements for specified subcontracts**

In addition to its obligations under clause 28.3, for all Subcontracts valued at or over the amount stated in Contract Information item 29, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

- .1 clause 3 - Co-operation
- .2 clause 4 - Duty not to hinder performance
- .3 clause 5 - Early warning
- .4 clause 6 - Evaluation and monitoring
- .5 clause 10 - Governing law of the Contract
- .6 clause 13 - Procurement Policy Framework, Supplier Code, Industrial Relations Guidelines and Modern Slavery
- .7 clause 14 - No collusive arrangements
- .8 clause 15.1.2 -Work Health and Safety Management Guidelines (for Construction Procurement), except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the Contractor as principal contractor for work health and safety matters.
- .9 clause 15.1.6 - Aboriginal Procurement Policy
- .10 clause 23 - Intellectual Property
- .11 clause 24 - Confidentiality
- .12 clause 25 - Media releases and enquiries
- .13 clause 26 - Care of people, property and the environment, indemnities and limitations
- .14 clauses 27.5, 27.10.1.1, 27.10.1.2, 27.10.1.5 and 27.10.1.6 - Insurances
- .15 clause 28 - Subcontractor relationships
- .16 clause 58 - Payment Claims
- .17 clause 59 - Payments
- .18 Schedule 1 (Subcontractor's Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
- .19 Schedule 9 (Subcontract requirements)

**Schedule 10**

**10. Not Used**

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**Schedule 11**

**11. Statement regarding  
Materials**

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I am a representative of *[name of company/entity with custody of the Materials or on whose land the Materials are stored]* in the capacity of *[insert position]* and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other *encumbrance* over the *Materials* listed in the schedule to this statement (“Materials”). I acknowledge that the *Materials* are the property of the Principal named in the schedule to this statement (“Principal”) and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the *Materials* are stored at any reasonable hour to inspect or remove the *Materials*. I undertake to make no claim or charge against the Principal in respect of the storage of the *Materials*.

SCHEDULE

**Materials**

*[list the Materials]*

Principal

*[insert name of the Principal]*

SIGNED.....

DATE:.....

**Schedule 12**

# **12. Compliance with Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines**

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**Terminology**

- .1 In addition to terms defined in this document, terms used in this Schedule 12 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated September, 2017). The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

In particular, as stated in clause 3.1 of the NSW Guidelines; any relevant document or procedure referencing the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction - means a reference to these reissued Guidelines. Relevant documents may include but not are limited to: a Practice Direction, a workplace relations management plan or a model contract clause.

- .1 Note the NSW Government Supplier Code of Conduct (the 'Code') replaced the NSW Government Code of Practice for Procurement in February, 2020. The Code is available at [www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct](http://www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct).
- .2 The NSW Government Procurement Policy Framework (Procurement Framework) applies to the procurement of goods and services of any kind including construction. The framework identifies the requirements that apply to tendering, managing contracts and supplier relationships. The Procurement Framework is available at [www.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework](http://www.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework).
- .3 For clarity, if there is an inconsistency between the requirements of the above documents and the Contract, the Contract will take precedence to the extent of any inconsistency. Where the Contractor becomes aware of such an inconsistency it should notify the Principal accordingly.

**Primary Obligation**

- .5 The parties must comply with and meet any obligations imposed by the Procurement Framework, the Code and the NSW Guidelines.
- .6 The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .7 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the Code and the NSW Guidelines.
- .8 The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Code or NSW Guidelines

**Access and information**

- .9 The Contractor must maintain adequate records of compliance with the Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.

- .10 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
  - .2 inspect any work, material, machinery, appliance, article or facility;
  - .3 access information and documents;
  - .4 inspect and copy any record relevant to the project;
  - .5 have access to personnel; and
  - .6 interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.
- .11 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means

### **Sanctions**

- .12 The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the Code and NSW Guidelines apply.
- .13 If the Contractor does not comply with, or fails to meet any obligation imposed by, the Code or NSW Guidelines, a sanction may be imposed against it in connection with the Code or NSW Guidelines.
- .14 Where a sanction is imposed:
- .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
  - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - .1 record and disclose details of noncompliance with the Code or NSW Guidelines and the sanction; and
    - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the Code and NSW Guidelines apply.

### **Compliance**

- .15 The Contractor bears the cost of ensuring its compliance with the Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- .16 Compliance with the Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any *Defect* in the works or from any other legal liability, whether or not arising from its compliance with the Code and NSW Guidelines.
- .17 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- .1 the circumstances of the proposed change;
  - .2 the extent to which compliance with the Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - .3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety (WHS) Management Plan); and
- the Principal will endeavour to direct the Contractor as to the course it must adopt within 10 *Business Days* of receiving the notice

**Schedule 13**

# 13. Retention Money Trust Account Obligations

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The *Building and Construction Industry Security of Payment Regulation 2020* commenced on 1 September 2020, except for Schedule 2 (relating to an owner occupier construction contract) which commences on 1 March 2021.

Part 2 of the *Building and Construction Industry Security of Payment Regulation 2020* (“**the Regulation**”) in effect:

- .1 requires “retention money” (as defined in the Regulation) to be paid into and retained in a trust account with an approved authorised deposit-taking institution (“**ADI**”);
- .2 specifies requirements for establishing a trust account, including notifying the Commissioner for Fair Trading, Department of Customer Service (the Secretary) of the details of the trust account;
- .3 prohibits withdrawals from the trust account, except in the circumstances permitted by Part 2 of the Regulation;
- .4 generally requires interest earned on the trust account to be held on the same trust as the retention money;
- .5 makes retention money held by a head contractor unavailable for the payment of the head contractor’s debts; and
- .6 requires a head contractor:
  - .1 after becoming aware of the trust account becoming overdrawn, to notify the Secretary of details of the trust account, the amount by which it is overdrawn and the reason for it becoming overdrawn;
  - .2 after closing the trust account, to notify the Secretary;
  - .3 to keep records of deposits into and withdrawals from the trust account and retain those records for the prescribed period after the trust account is closed; and
  - .4 to provide trust account records to subcontractors if their money is held in trust every 3 months unless otherwise agreed with the subcontractor, but in any case, at least once every 6 months.

A copy of the Regulation is available from the NSW legislation website:

<http://www.legislation.nsw.gov.au>

Further general information on obligations under Part 2 of the Regulation is available from the NSW Fair Trading website: <http://www.fairtrading.nsw.gov.au/>.



**Schedule 14**

# 14. Deed of Contract Agreement & Formal Instrument of Agreement

## Deed of Contract Agreement

### Definition

<b>This Contract</b>	
Contract title:	Design and Construction of Peak-Hill Baldry Road Upgrade
Contract number:	Contract No.1548795
<i>Date of Contract:</i>	»
	<b>is made between</b>
The <i>Principal:</i>	».....
	<b>and</b>
The <i>Contractor:</i>	».....
ACN	» .....
Note: <ul style="list-style-type: none"> <li>• Words and terms with defined meanings are shown in <i>italics</i> in this Deed.</li> <li>• Guidance is shown in <i>dark red italics</i>.</li> </ul>	

### Agreement

#### The parties agree:

1. The *Contractor* must:
  1. *Design* and construct the *Works to Completion* in accordance with the *Contract*; and
  2. perform and observe all its other obligations under the *Contract*.
2. The *Principal* must:
  1. pay the *Contractor* the *Contract Price* (on the basis of a lump sum, schedule of rates or a combination of these as specified in the *Contract*) for its performance, in accordance with and subject to the *Contract*; and
  2. perform and observe all its other obligations under the *Contract*.
3. The *Contract* is defined in the attached GC21 General Conditions of Contract.
4. The attached *Contract Information*, as completed by the *Principal*, forms part of the *Contract*.
5. Words in this *Deed of Contract Agreement* have the meanings given in the GC21 General Conditions of Contract.
6. This *Contract* may be executed by counterparts. All counterparts when taken together are to be taken to constitute one instrument. Additionally, the parties:
  1. accept that this Deed may be signed by electronic means by counterpart using an electronic signing platform or other agreed process that provides a suitable record identifying the person signing;

2. agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically; and
3. state that they may make use of the option to sign electronically and will be bound by their electronic signatures.

**Executed as a Deed** *(only complete and sign the applicable execution block)*

**Contractor** *(use for companies with more than one director)*

Executed by <i>(name)</i> .....	
ACN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Director	Signature of Director
.....	.....
Name of Director/ Secretary	Signature of Director/ Secretary
Date signed:	.....

**Contractor** *(use for companies with a sole director. If the sole director is not also the company secretary, then delete or strike out the words “/Secretary” below)*

Executed by <i>(name)</i> .....	
ACN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Sole Director/ Secretary	Signature of Sole Director/ Secretary
Date signed:	.....

**Principal** *(use for a Principal to execute the Deed without a Common Seal)*

Signed, sealed and delivered for and on behalf of:	
<i>(name of Principal)</i> .....	
by its duly authorised representative:	
.....	.....
Name of Principal’s Representative	Signature of Principal’s Representative
Date signed	.....
<b>in the physical presence of:</b>	
.....	.....
Name of Witness	Signature of Witness
<i>Include the following paragraph where the signing of the document by the Principal is being witnessed over audio visual link, otherwise delete or strike out the text. Delete this user note.</i>	
This deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).	

**Principal** *(use for a Principal to execute the Deed with a Common Seal. Where a Council is Principal, clause 400 Local Government (General) Regulation 2005 applies to witnesses)*

The Common Seal of the <i>&lt;Agency/ Council name&gt;</i> was affixed on:
--

Date Seal stamped: .....	
in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) by the authority of the Board of Directors/ resolution of Council <i>&lt;delete option not applicable&gt;</i> and in the presence of:	
Witness 1:	
.....	.....
Name of Director/Secretary/Councillor	Signature of Director/Secretary/Councillor of
Capacity of Witness 1:	.....
Witness 2:	
.....	.....
Name of Director/Secretary/Councillor	Signature of Director/Secretary/Councillor
Capacity of Witness 2:	.....

## Formal Instrument of Agreement

### Definition

<b>This Contract</b>	
Contract title:	Design and Construction of Peak-Hill Baldry Road Upgrade
Contract number:	Contract No.1548795
<i>Date of Contract:</i>	»
<b>is made between</b>	
The <i>Principal</i> :	».....
<b>and</b>	
The <i>Contractor</i> :	».....
ACN	» .....

Note:

- this ‘Formal Instrument of Agreement’ may be referred to as a FIA.
- Words and terms with defined meanings are shown in *italics* in this FIA.
- Guidance is shown in *dark red italics*.

### Agreement

**The parties agree:**

1. The *Contractor* must:
  1. *Design* and construct the *Works to Completion* in accordance with the *Contract*; and
  2. perform and observe all its other obligations under the *Contract*.
2. The *Principal* must:
  1. pay the *Contractor* the *Contract Price* (on the basis of a lump sum, schedule of rates or a combination of these as specified in the *Contract*) for its performance, in accordance with and subject to the *Contract*; and

2. perform and observe all its other obligations under the *Contract*.
3. The *Contract* is defined in the attached GC21 General Conditions of Contract.
4. The attached *Contract Information*, as completed by the *Principal*, forms part of the *Contract*.
5. Words and terms in this FIA have the meanings given in the GC21 General Conditions of Contract.
  1. The *Principal* and the *Contractor* must carry out and complete their respective obligations in accordance with the following *Contract Documents* which comprise: the Formal Instrument of Agreement;
  2. the General Conditions of Contract;
  3. the *Contract Information*;
  4. the Schedules annexed to the General Conditions of Contract;
  5. the *Principal's Documents* as at the *Date of Contract*, including:
    1. the drawings, specifications and other documents provided to the *Contractor* and containing the *Principal's* requirements in respect of the *Works*; and
    2. the Preliminaries, any Special Conditions and associated documents that further describe the requirements of the *Contract*.
  6. the other *Contract Documents* listed in *Contract Information* item 26 including:
    1. the accepted Tender and Tender Schedules from the *Contractor*;
    2. the *Letter of Award*, and any formal agreement or deed constituting the *Contract*;
    3. any addenda issued during the tender period;
    4. the written communications between the parties listed in *Contract Information* item 26; and
6. The following are not included in the *Contract Documents*:
  1. information contained in the documents identified in *Contract Information* items 36A and 36B, unless expressly specified as forming part of the *Contract*;
  2. » *[insert additional documents where required or delete]*
  3. Attachments 1, 2A, 2B & 3 annexed to the General Conditions of Contract; and
  4. other documents and information stated as not forming part of the *Contract*.
7. » *[where it is intended to attach copies of some or all of the Contract Documents with this FIA, insert details of documents to be provided, otherwise delete]*
8. The *Contract Documents* are to be read as a whole and no 'Order of Precedence' applies. In the event of a *Fault* between or within the documents forming the *Contract Documents*, General Conditions of Contract clause 38; *Faults* in *Contract Documents* applies.
9. This *Contract* may be executed by counterparts. All counterparts when taken together are to be taken to constitute one instrument. Additionally, the parties:
  1. accept that this Deed may be signed by electronic means by counterpart using an electronic signing platform;
  2. agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically; and
  3. state that they may make use of the option to sign electronically and will be bound by their electronic signatures.
10. »

**Executed as an Agreement** *(only complete and sign the applicable execution block)*

**Contractor** *(use for companies with more than one director)*

Executed by <i>(name)</i> .....	
ACN .....	
in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
.....	.....
Name of Director	Signature of Director

..... Name of Director/ Secretary	..... Signature of Director/ Secretary
Date signed: .....	

**Contractor** *(use for companies with a sole director. If the sole director is not also the company secretary, then delete or strike out the words “/Secretary” below)*

Executed by <i>(name)</i> .....	
ACN ..... in accordance with section 127(1) of the Corporations Act 2001 (Cth):	
..... Name of Sole Director/ Secretary	..... Signature of Sole Director/ Secretary
Date signed: .....	

**Principal** *(use for a Principal to execute the FIA without a Common Seal)*

Signed, sealed and delivered for and on behalf of:  <i>(name of Principal)</i> ..... by its duly authorised representative:  .....	
Name of Principal’s Representative	Signature of Principal’s Representative
Date Signed .....	
<b>in the physical presence of:</b>  .....	
Name of Witness	Signature of Witness
<p><i>Include the following paragraph where the signing of the document by the Principal is being witnessed over audio visual link, otherwise delete or strike out the text. Delete this user note.</i></p> This FIA was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the <i>Electronic Transactions Act 2000</i> (NSW).	

**Principal** *(use for a Principal to execute the FIA with a Common Seal. Where a Council is Principal, clause 400 of Local Government (General) Regulation 2005 applies to witnesses)*

The Common Seal of the <i>&lt;Agency/ Council name&gt;</i> was affixed on:  Date Seal stamped: .....	
in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) by the authority of the Board of Directors/ resolution of Council <i>&lt;delete option not applicable&gt;</i> and in the presence of: Witness 1: .....	
Name of Director/Secretary/Councillor	Signature ..... of Director/Secretary/Councillor
Capacity of Witness 1: .....	

Witness 2:	
.....	.....
Name of Director/Secretary/Councillor	Signature of Director/Secretary/Councillor
Capacity of Witness 2:	.....

## Schedule 15

# 15. Personal Property Securities

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- .1 In these clauses:

<b>PPS Act</b>	means The <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Law</b>	has the meaning given in clause 79 <b>Definitions</b>
<b>Security Interest</b>	means a security interest for the purposes of the PPS Law
- .2 The Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a Security Interest, the Contractor must do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the *PPS Law* for the purposes of:
  - .1 ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;
  - .2 enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
  - .3 enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- .3 The Contractor acknowledges that the Principal may register one or more financing statement(s) on the Personal Property Securities Register established under s147 the PPS Act.
- .4 The Contractor:
  - .1 waives its rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPS Act;
  - .2 agrees that the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPS Act is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPS Act; and
  - .3 waives its right to receive notice of a verification statement under section 157 of the PPS Act.

## Schedule 16

# 16. Modern Slavery

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### Meanings

.1 In this Schedule:

<b>Anti-slavery Commissioner</b>	means the Anti-slavery Commissioner appointed under the <i>Modern Slavery Act 2018</i> (NSW).
<b>Information</b>	may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the Privacy and Personal Information Protection Act 1998 (NSW) or information which tends to identify individuals.
<b>Modern Slavery</b>	has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.
<b>Modern Slavery Laws</b>	means, as applicable, the <i>Modern Slavery Act 2018</i> (NSW) and the <i>Modern Slavery Act 2018</i> (Cth)
<b>Modern Slavery Offence</b>	has the same meaning as in the <i>Modern Slavery Act 2018</i> (NSW)
<b>Modern Slavery Statement</b>	means a modern slavery statement as required or volunteered under the <i>Modern Slavery Act 2018</i> (Cth)

### Compliance

.2 The Contractor warrants that, as at the Date of Contract, neither the Contractor, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Contractor, has been convicted of a Modern Slavery Offence.

### Information

.3 The Contractor must:

- .1 subject to any restrictions under any applicable laws by which it is bound, provide to the Principal, within 30 days of a request by the Principal, any Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's/Audit Office's auditors to interview the Contractor's staff and, so far as these matters are known to the Contractor, disclosing the source, place and country of origin of goods and services being supplied;
- .2 within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal; and
- .3 notify the Principal in writing as soon as it becomes aware of either or both of the following:
  - .1 a material change to any of the Information it has provided to the Principal in relation to Modern Slavery; and
  - .2 any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- .4 Prior to Completion, submit a report or statement that either:
  - .1 confirms, to the best of its knowledge, that Modern Slavery has not occurred in its operations and supply chains during the Contract; or



- .2 details the steps it undertook to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains during the Contract.
- .4 The Contractor may provide any Information or report requested by the Principal in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Principal to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Principal.
- .5 The Contractor must, during the term of this Contract and for a period of seven (7) years thereafter:
  - .1 maintain; and
  - .2 upon the Principal's reasonable request, give the Principal access to, and/or copies of, a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Principal to assess the Contractor's compliance with this Schedule 16 (Modern Slavery).

#### **Modern Slavery due diligence**

- .6 The Contractor must take reasonable steps to ensure that Modern Slavery is not occurring in the operations and supply chains of the Contractor and any entity that it owns or controls.

#### **Subcontractors**

- .7 The Contractor must take reasonable steps to ensure that all subcontracts of the whole or part of this Contract contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause Schedule 16 (Modern Slavery), having regard to the nature of the procurement.

#### **Response to Modern Slavery incident**

- .8 If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant Code of Practice/ Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Principal notifies the Contractor that it requires the Contractor to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.
- .9 Any action taken by the Contractor under clause 8 will not affect any rights of the Principal under this Contract, including its rights under clause 10 (Termination on ground of Modern Slavery).

#### **Termination on ground of Modern Slavery**

- .10 The Principal may terminate this Contract for *Contractor's Default* in accordance with clause 73 of the General Conditions of Contract, on any one or more of the following grounds:
  - .1 the Contractor has failed to disclose to the Principal, prior to the Date of Contract, that the Contractor, or any entity owned or controlled by the Contractor, has been convicted of a Modern Slavery Offence.
  - .2 The Contractor, or any entity owned or controlled by the Contractor, is convicted of a Modern Slavery Offence during the term of this Contract.
  - .3 In the Principal's reasonable view, the Contractor has failed to notify the Principal as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls).
  - .4 In the Principal's reasonable view, the Contractor has failed to take reasonable steps to respond to an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls).
  - .5 In the Principal's reasonable view, the Contractor has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 2 (Compliance) or clause 3 (Information) of this Schedule.

## **Attachments**

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- Attachment 1    GC21 Start-up Workshop**
- Attachment 2A    Performance Evaluation (Example)**
- Attachment 2B    Performance Evaluation**
- Attachment 3    Performance Evaluation Record**

**Attachment 1****1. The GC21 Start-up Workshop**

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**Participants**

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

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**Agenda**

The agenda should include:

- welcome by the facilitator who outlines the workshop purpose, agenda; and guidelines;
- overview of the Contract;
- introduction of all participants;
- opening statements by key participants;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- presentation by the Contractor of activities of interest including *Contract Program* and management plans;
- identification of key concerns and solutions;
- risk and issue management'
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the GC21 / Support Documents section at: <https://buy.nsw.gov.au/categories/construction>

**Attachment 2A**

**2A Performance Evaluation  
(example)**

<i>Contract name:</i>	Design and Construction of Peak-Hill Baldry Road Upgrade	<b>Rating system</b> 5 excellent 4 above expectation 3 meeting expectation 2 below expectation 1 unsatisfactory
<i>Contract number:</i>	Contract No.1548795	
<i>Date:</i>	.....	

<i>Topic</i>	<i>Objectives</i>	<i>Your rating (this period)</i>	<i>Team rating (this period)</i>	<i>Main Issue &amp; Agreed Action</i>
<i>Communication</i>	<ul style="list-style-type: none"> <li>• <i>co-operation between parties</i></li> <li>• <i>duty not to hinder performance</i></li> <li>• <i>early warning</i></li> <li>• <i>evaluation and monitoring</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Time</i>	<ul style="list-style-type: none"> <li>• <i>issues affecting time</i></li> <li>• <i>extensions of time</i></li> <li>• <i>expected completion dates</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Financial</i>	<ul style="list-style-type: none"> <li>• <i>issues affecting the budget</i></li> <li>• <i>extra work</i></li> <li>• <i>payments</i></li> <li>• <i>additional information required</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Quality</i>	<ul style="list-style-type: none"> <li>• <i>quality standards</i></li> <li>• <i>design requirements</i></li> <li>• <i>fitness for purpose, innovation</i></li> <li>• <i>Faults, Defects rectification</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Safety</i>	<ul style="list-style-type: none"> <li>• <i>issues affecting safety on the Site</i></li> <li>• <i>safety outside the Site.</i></li> <li>• <i>safety risks</i></li> <li>• <i>safety equipment</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Relationships</i>	<ul style="list-style-type: none"> <li>• <i>open discussion</i></li> <li>• <i>actions effective</i></li> <li>• <i>working together</i></li> <li>• <i>attendance</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Environment</i>	<ul style="list-style-type: none"> <li>• <i>issues affecting the environment</i></li> <li>• <i>noise and dust issues</i></li> <li>• <i>healthy environment</i></li> <li>• <i>waste management,</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Contract Relations</i>	<ul style="list-style-type: none"> <li>• <i>Subcontractor and Supplier issues</i></li> <li>• <i>workplace relations and Site amenities</i></li> <li>• <i>interaction of workers with others</i></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

**Attachment 2B**

**2B Performance Evaluation**

<p><i>Contract name:</i> Design and Construction of Peak-Hill Baldry Road</p> <p><i>Contract number:</i> Upgrade</p> <p><i>Date:</i> Contract No.1548795</p> <p>.....</p>	<p><b>Rating system</b></p> <p>5 excellent</p> <p>4 above expectation</p> <p>3 meeting expectation</p> <p>2 below expectation</p> <p>1 unsatisfactory</p>
---	---

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	

Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for topics needing improvement.



## Evaluation trends: scenarios

Contract name: .....*Design and Construction of Peak-Hill Baldry Road Upgrade*

Contract number: ...*Contract No.1548795*

Date: .....

**Rating system**

5 excellent

4 above expectation

3 meeting expectation

2 below expectation

1 unsatisfactory

<i>Meeting number</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>	<i>12</i>
<i>month</i>												
<i>year</i>												

**Deteriorating Performance**

<i>Communication</i>	<i>5</i>											
	<i>4</i>											
	<i>3</i>											
	<i>2</i>											
	<i>1</i>											

**Steady Performance**

<i>Communication</i>	<i>5</i>											
	<i>4</i>											
	<i>3</i>											
	<i>2</i>											
	<i>1</i>											

**Improving Performance**

<i>Communication</i>	<i>5</i>											
	<i>4</i>											
	<i>3</i>											
	<i>2</i>											
	<i>1</i>											