

# General Conditions of Contract for Construction

## National Capital Works: NCW4

modified version

for use in the Australian Capital Territory

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**Contract No:**

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Version 1.1 includes:

- Clause 2: correction in the definition of a *selected subcontractor*
- Clause 16(a)(iv): revised text for clarification
- Clause 47.1(a): additional text to address the situation if the Superintendent fails deliver its decision on time.

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## Preface

These General Conditions of Contract for Construction NCW4 have been developed in consultation with Australian state government building and road transport agencies. NCW4 is only intended for use on contracts where the principal is an Australian government or semi-government agency.

This version has been amended by the Australian Capital Territory for use in the Australian Capital Territory. Any Special Conditions further modify the ACT modified General Conditions of Contract for Construction NCW4.

Readers should note the following:

- Apart for minor and incidental design, NCW4 is intended for construct only and is not considered suitable for a major design and construct contract.
- NCW4 should not be used as a contract for services or professional services.
- It does not include any provisions regarding the limitation of liability.
- There are no provisions for the Principal to provide security.

Most government agencies using NCW4 will have their own policies and procedures in regard to commercial matters, the use of subcontracts and dispute resolution. To allow agencies to have flexibility, NCW4 uses frameworks (which are included in the Annexures) to address these issues. The frameworks do not have a fixed format and may be tailored to suit a principal's policies and the risk profile of the contract. Additional clauses or Special Conditions of Contract to address each agency's policies and procedures and state legislation will also be required.

The Australian Procurement and Construction Council (APCC) and Austroads make no warranty or representation as to the suitability of NCW4 for use by a non-government principal and do not assume a duty of care in this regard.

APCC and Austroads acknowledge the following documents as reference sources to NCW4:

- National Public Works Contract, General Condition of Contract 3 (a publication of Australian Procurement and Construction Council Limited);
- AS 4000-1997 General Conditions of Contract (a publication of Standards Australia Limited);
- AS 2124-1992 General Conditions of Contract (a publication of Standards Australia Limited); and
- DR AS 11000 General Conditions of Contract (a draft publication of Standards Australia Limited).

### Revision History

Version	Date	Details
1.1	18 July 2022	Contract modified for use in the ACT.

1.2	16 May 2023	References to compliance with the <i>Code for the Tendering and Performance of Building Work 2016</i> removed. Minor tidy ups.
1.3	20 June 2023	Clause 47.1 amended. Updates to template provisions in Annexure E. Minor tidy ups.
1.4	June 2024	Updates to contract including: - Clause 2.3 Acknowledgement Clause - revised drafting note for confidential text - amendments to align with updates to the <i>Building and Construction Industry (Security of Payments) Act 2009</i> - minor tidy ups
1.5	September 2024	Deletion of Clause 2.3 Acknowledgement Clause
1.6	August 2025	Minor Update – MPC to iCBR rebranding in alignment with restructure

EXAMPLE ONLY

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## 1 CONSTRUCTION OF CONTRACT

- a) The *Contractor* must:
- i) carry out and complete the *work under the Contract* in accordance with the *Contract*; and
  - ii) perform and observe all its other obligations under the *Contract*.
- b) The *Principal* must:
- i) pay the *Contractor* the *contract sum* for its performance, in accordance with, and subject to, the *Contract*; and
  - ii) perform and observe all its other obligations under the *Contract*.

## 2 DEFINED TERMS AND INTERPRETATION

### 2.1 Defined terms

- a) In the *Contract*, except where the context otherwise requires, the following words and expressions have the meanings set out in this clause 2.1. Defined terms are identified in the *Contract* by the use of italics.

***business day*** means:

for the purposes of clause 42, a day defined as a *business day* in any *SOP Act* applicable to the *work under the Contract*; or

for the purpose of clauses other than clause 42, a day that is not:

- a) a Saturday or a Sunday;
- b) 27, 28, 29, 30 or 31 December; or
- c) a day that is wholly or partly observed as a public or statutory holiday in the state or territory specified in clause 2.2 a).

***certificate of practical completion*** means a certificate issued by the *Superintendent* stating the *date of practical completion*.

***claim*** means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:

- a) under or arising in connection with this *Contract*; or
- b) under any law,

but excluding the following:

- a) a claim made under an insurance policy;
- b) a demand against *security*; or
- c) a claim under clause 42.9.

***Confidential Text*** means any text of this *Contract* specified as such in *item 34*.

***construction plant*** means the plant and equipment used in carrying out and completing the *work under the Contract*, but not forming part of the *Works*.

***Contract*** means the agreement between the *Principal* and the *Contractor* constituted by the *Contract documents*.

***Contract documents*** means all of the documents listed or referred to in clause 6.

***Contract program*** means a program complying with clause 33.1.

**contract sum** means the amount determined and described as such in the Commercial Framework included as Annexure B, subject to adjustment in accordance with the *Contract*.

**Contractor** means the person bound to carry out and complete the *work under the Contract*; stated in *Item 2*.

**Contractor's default** means a substantial breach of the *Contract* by the *Contractor*, including any of the following:

- a) abandoning the carrying out of the *work under the Contract*;
- b) suspending the carrying out of the *work under the Contract* in whole or part without the written approval or *direction* from the *Superintendent*, except for suspension under clause 34;
- c) failing to carry out the *work under the Contract* as required under clause 33.2;
- d) significantly failing to achieve *Scheduled Progress*;
- e) failing to comply with a *direction* in writing or confirmed in writing by the *Superintendent*;
- f) failing to maintain any registration or licence required by law to carry on activities required under the *Contract*;
- g) failing to provide *security* as required under clause 5;
- h) failing to effect and maintain insurance policies as required under the *Contract*;
- i) in respect of clause 42, knowingly providing documentary evidence containing an untrue statement; or
- j) the *Contractor* becoming liable to pay, or having paid, liquidated damages in the aggregate equal to the amount or percentage specified in *Item 25* (if any).

**date of contract** means the earlier of:

- a) the date of execution of the formal instrument of agreement (if any) by the last of the parties to execute that document; or
- b) the date specified in the *Letter of Award* or if no date is specified, the date of the *Letter of Award* (if any).

**date for practical completion** means:

- a) where *Item 5* provides a *date for practical completion*, the date;
- b) where *Item 5* provides a period of time for *practical completion*, the last day of the period,

as adjusted under the *Contract*.

**date of practical completion** means:

- a) the date stated in a *certificate of practical completion* as the date upon which *practical completion* was reached; or

- b) where another date is determined in any *dispute* resolution procedure as the date upon which *practical completion* was reached, that other date.
- daywork** means 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 clause 41.
- defect** means work that does not comply with a requirement specified in the *Contract* and includes omissions.
- defects liability period** means the period specified in *Item 26* or the extended period referred to in clause 37 f).
- delay costs** means the payment made to the *Contractor* in respect of costs incurred as a result of a delay and not included in any other payment in connection with the cause of the delay.
- direction** includes authorisation, decision, demand, determination, instruction, notice, order, permission, rejection or requirement.
- dispute** means a disagreement between the parties arising out of, or in connection with, the *Contract*, including one concerning any aspect of a *Superintendent's direction*.
- Environmental Management Plan** means a plan relating to environmental management prepared by the *Contractor* in accordance with this *Contract*.
- frustration** means frustration at law or where the parties agree that the *Contract* is frustrated.
- GST** has the meaning given to it in the *GST Act*.
- GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).
- insolvency event** means any of the following applying to the *Contractor*:
- a) the *Contractor* is insolvent;
  - b) the *Contractor* indicates it does not have the resources to perform the *Contract*;
  - c) an application for winding up is made which is not stayed within 14 days;
  - d) a winding-up order is made;
  - e) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
  - f) a mortgagee enters into possession of any property of the *Contractor*;
  - g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
  - h) any actions having a similar effect are taken.
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right. Subsisting anywhere in the world.
- item** means an item specified in Annexure A – Contract Particulars.
- latent condition** means physical conditions on or below the *site* and its near surrounds, including artificial things (but excluding weather conditions or physical conditions which are a consequence of weather conditions), which differ materially from the physical

conditions which should reasonably have been anticipated by a competent contractor (having regard to the warranty in clause 3), at the time of the *Contractor's* tender had a competent contractor inspected:

- a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- c) the *site* and its near surrounds, made available prior to, or at, the time of tender.

**Letter of Award** a letter from the *Principal* to the *Contractor* awarding the *Contract* to the *Contractor*.

**Material** drawings, designs, sketches, specifications, digital records, materials, documents, methods of working and computer software and all other data and information relating to the *Contract*.

**non-reliance information** means the documents listed in *Item 10*.

**payment schedule** means a schedule setting out the amounts valued or assessed by the *Superintendent* as being due from one party to the other.

**Personal Information** means personal information as defined in section 8 of the *Information Privacy Act 2014* (ACT).

**practical completion** means that stage in the carrying out and completion of the *work under the Contract* when the *Superintendent* (acting as a certifier) determines that:

- a) the *Works* are complete except for minor *defects*:
  - (i) which do not prevent the *Works* from being reasonably capable of being used for their stated purpose;
  - (ii) the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of the *Works*;
- b) those *tests* which are required by the *Contract* to be conducted and passed before the *Works* reach *practical completion*, have been conducted and passed;
- c) documents and other information required under the *Contract* which are essential for the use, operation and maintenance of the *Works* have been supplied; and
- d) any other condition precedent for *practical completion* specified in the *Contract* has been satisfied.

**prescribed notice** means a notice with respect to a *claim* which is identified as a prescribed notice under clause 46 and includes particulars of:

- a) the event, act or omission on which the *claim* is or will be based;
- b) the date(s) of occurrence of the event, act or omission;
- c) the provision of the *Contract* or other legal right that the *claim* is based upon;

- d) detailed quantification of the *claim* and the effect of the *claim* on the *contract sum*; and
- e) the effect of the *claim* on the *date for practical completion*.

**Principal** means the entity stated in *Item 1*, including its successors and assignees.

**Principal's Documents** means the design and other documents prepared by the *Principal* for the *Contract* and provided to the *Contractor* at the *date of contract*, and any modified or further such documents later provided by the *Principal* to the *Contractor* for the *Contract*, including (without limitation) the documents in *Annexure F*.

**Principal's risk** means any of the following:

- a) a breach of the *Contract* by the *Principal*;
- b) any risk specifically allocated to the *Principal* elsewhere in the *Contract*;
- c) use or occupation of any part of the *work under the Contract* by the *Principal*, its agents, or other contractors of the *Principal*; and
- d) an error, ambiguity or discrepancy in a design provided by the *Principal*.

**Procurement Act** means the *Government Procurement Act 2001* (ACT);

**Project IR Plan** means a plan relating to industrial relations management prepared by the *Contractor* in accordance with this *Contract*.

**provisional quantity** means a quantity of work specified in the *Contract* for which at the *date of contract* it is not known whether such work will be required or what the quantity will be.

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

**reliance information** means the documents listed in *Item 9*.

**Scheduled Progress** means the rate of progress to be achieved by the *Contractor* in performing the *Works*, such that the *Contractor* is proceeding with due expedition and without undue delay (other than a delay for which the *date for practical completion* is adjusted under the *Contract*), so that it will (or is likely to) complete the *Works* and all *separable portions* by their respective *date for practical completion*.

**security** means:

- a) cash;
- b) retention money;
- c) an interest bearing deposit in a bank (which has a consent under section 66 of the *Banking Act 1959* (Cwlth)) and is carrying on business at the place stated in *Item 4*;
- d) an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or insurance company; or
- e) other form approved by the *Principal*.

**security interest** has the meaning given to it in the *Personal Property Securities Act 2009* (Cwlth) as amended.

**selected subcontractor** means a contractor included on a list (provided by the *Principal*) of one or more contractors that the *Principal* has approved to undertake a specified part of the *work under the Contract* pursuant to clause 10.

**separable portions** means portions of the *Works* which are:

- a) identified as such in the *Contract*, including *item 39*; or
- b) created pursuant to clause 22.

**Schedule** means a schedule to this *Contract*.

**site** means the lands and other places to be made available by the *Principal* to the *Contractor* for the purpose of executing the *Works*.

**SOP Act** means the security of payment legislation, applicable in the jurisdiction where the *work under the Contract* is being carried out.

**Special Condition** any provision set out in *Annexure E*.

**statutory requirement** includes:

- a) acts, ordinances, regulations, by-laws, orders, awards and proclamations which apply in the jurisdiction where the *work under the Contract* is being carried out;
- b) certificates, licences, consents, permits, approvals, *directions* and requirements of organisations having jurisdiction in connection with the carrying out of the *work under the Contract*; and
- c) fees and charges payable in connection with the foregoing.

**subcontractor** includes the *Contractor's* suppliers and consultants.

**Superintendent** means the person appointed by the *Principal* to be the *Superintendent* pursuant to clause 23.

**Superintendent's Representative** means the natural person appointed in writing by the *Superintendent* under clause 24.

- survey mark** means anything provided by the *Principal* to be used by the *Contractor* for setting out, verifying or measuring the *work under the Contract*.
- temporary works** means temporary structures, amenities, physical services, materials, plant, machinery, equipment and other work used in carrying out and completing the *work under the Contract*, but not forming part of the *Works*.
- Territory** means:
- .1 when used in a geographical sense, the Australian Capital Territory;
  - .2 when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).
- Territory Information** means the kind of information that:
- .1 is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the *Principal* or *Territory* which are by their nature confidential;
  - .2 is notified (whether in writing or not) by the *Principal* to the *Contractor* as being confidential, but does not include information which:
  - .3 is or becomes public knowledge other than by breach of this *Contract*;
  - .4 has been independently developed or acquired by the *Contractor*; or
  - .5 has been notified in writing by the *Principal* to the *Contractor* as being not confidential.
- test** includes examination, inspection, observation, surveillance, audit, measurement, test, prove and trial.
- variation** means a change to the *work under the Contract*, including:
- a) additions, increases, omissions and reductions to and from the *Works*;
  - b) changes to the character, quality, positions or dimensions of the *Works*; and
  - c) changes in the method, timing and/or sequence of construction.
- work under the Contract** means the work which the *Contractor* is, or may be, required to carry out and complete under the *Contract* and includes *variations*, *construction plant*, *temporary works*, remedial work, subcontract work and supply of materials (including plant and equipment) and labour.
- working day** means:
- a) a working day specified in *Item 21* or elsewhere in the *Contract* (if any); otherwise
  - b) if not specified in the *Contract*, as notified by the *Contractor* to the *Superintendent* before the commencement of work on the *site*.
- WHS Codes of Practice** means any code of practice approved in accordance with *WHS Legislation*.

**WHS Legislation** means the *Work Health and Safety Act 2011* (ACT) and the associated regulations and the WHS Codes of Practice together with all other legislation applicable in the Territory dealing with work, health and safety matters from time to time.

**WHS Management Plan** means a plan for the management of work health and safety matters, containing the requirements set out in *Schedule 1*.

**Works** means the whole of the work to be carried out and completed in accordance with the *Contract*, including *variations*, which is to be handed over to the *Principal*, but excluding *temporary work*.

## 2.2 Interpretation

- a) The law governing the *Contract*, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law applicable in the state or territory stated in *Item 4*, or if nothing is stated, the state or territory where the *site* is located.
- b) Unless otherwise provided, prices are in Australian currency.
- c) Where provisions in Annexure A are expressed to be alternatives and the *Contract* fails to state which alternative applies, the first alternative applies.
- d) Reference to:
  - i) the singular includes the plural and the plural includes the singular;
  - ii) a person includes an individual, a firm, a body corporate or an unincorporated body;
  - iii) a party includes the party's executors, administrators, successors and permitted assigns; and
  - iv) a *statutory requirement* includes that *statutory requirement* as amended or re-enacted from time to time and a *statutory requirement* enacted in replacement of that *statutory requirement*.
- e) Measurements of physical quantities must be in legal units of measurement of Australia within the meaning of the *National Measurement Act 1960* (Cwlth).
- f) Communications between the *Principal*, the *Superintendent* and the *Contractor* must be in the English language.
- g) 'Including' and similar expressions are not words of limitation.
- h) 'Shall' and 'must' denote a mandatory requirement.
- i) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- j) Headings are for convenience only and do not form part of the *Contract* or affect its interpretation.
- k) A provision of the *Contract* must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the *Contract* or the inclusion of the provision in the *Contract*.
- l) If an act must be done on a specified day which is not a *business day*, it must be done instead on the next *business day*, except as otherwise expressly contemplated by the *Contract*.
- m) All indemnities and warranties given by the *Contractor* in the *Contract* survive the termination or otherwise merging of the *Contract*.
- n) Without limiting clause 2.2 m), the provisions of the *Contract* which, by their nature, are intended to survive the termination, cancellation, completion or expiration of the *Contract* must continue as

valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completing or expiration.

### **3 CONTRACTOR'S WARRANTIES**

#### **3.1 General**

- a) The *Contractor* warrants that it:
- i) is both experienced and skilled in work of the type, complexity and scale of the *work under the Contract*;
  - ii) has satisfied itself as to the correctness and sufficiency of the *contract sum* and that the *contract sum* covers the cost of complying with all its obligations under the *Contract* and of all matters and things necessary for the due and proper performance and completion of the *work under the Contract*;
  - iii) has examined carefully and has acquired actual knowledge of the contents of the documents and any other information made available in writing by the *Principal* or any other person on the *Principal's* behalf to the *Contractor* for the purpose of preparing and submitting the *Contractor's* tender;
  - iv) examined all information relevant to the risks, contingencies and other circumstances which could affect the *Contractor's* tender and which was obtainable by the making of detailed enquiries;
  - v) informed itself of the nature of the work and materials necessary for the execution of the *work under the Contract* and the means of access to, and facilities at, the *site* and transport facilities for deliveries to or from the *site*; and
  - vi) has visited and examined the *site* and its surroundings.

#### **3.2 Joint and several liability**

- a) The obligations of the *Contractor*, if more than one person, under the *Contract*, are joint and several and each person constituting the *Contractor* acknowledges and agrees that it will be responsible for the acts and omissions (including breach of the *Contract*) of the other as if those acts or omissions were its own.

#### **3.3 Collusive arrangements**

- a) If the *Principal* had called or invited tenders for the construction of the *Works*, the *Contractor* warrants and represents to the *Principal* that:
- i) it had no knowledge of the tender price of any other tenderer for the *Contract* at the time of submission of its tender; and
  - ii) except as disclosed in its tender, it has not entered into any contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to, or on behalf of, any other tenderer in relation to its tender or the *Contract*, nor paid nor allowed to be paid any money on that account.

### **4 COOPERATION**

- a) The parties must do all they reasonably can to cooperate 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.
- b) Each party must do all it reasonably can to avoid hindering the performance of the other under the *Contract*.

## 5 SECURITY

### 5.1 Provision of security

- a) The *Contractor* must provide the amount of *security* specified in *Item 6* (if any) within 10 *business days* of the *date of contract*.
- b) The *security* must be in a form approved by the *Principal*. The form specified in *Item 6* is approved by the *Principal*.
- c) The *Principal* may, in its sole and absolute discretion, approve or disapprove of the financial institution or insurance company giving the unconditional undertaking.
- d) Any unconditional undertaking must not include an expiry date and must be irrevocable.
- e) The *Contractor* bears the costs of, and incidental to, providing *security*.
- f) Any interest earned on *security* belongs to the *Principal*.
- g) The *Contractor* may request the *Principal* to approve the substitution of another form of *security* to that specified in *Item 6*. The *Principal* is under no obligation to approve another form of *security*.
- h) The *Contractor* must not take any steps to prevent the *Principal* making a demand against the *security*, or to prevent the provider of a *security* from complying with the *security* or any demand by the *Principal*.
- i) The *Principal* may have recourse to the *security*, and convert into money *security* that does not consist of money, at any time.

### 5.2 Reduction and release of security

- a) Unless the *Principal* has made, or intends to make, a demand against the *security*, the *Principal* must return the percentage or amount specified in *Item 6* (or, if applicable, the balance remaining after a demand on the *security*) to the *Contractor* within 10 *business days* after the *date of practical completion* or, if *practical completion* is achieved subject to minor *defects*, once all *defects* have been rectified.
- b) The *Principal* must return the remaining *security* (or, if applicable, the balance remaining after a demand on the *security*) by the latest of:
  - i) the end of the period(s) stated in *Item 6* after the *date of practical completion* for the whole of the *Works*;
  - ii) the resolution of any outstanding *defects* or unresolved *claims*; and
  - iii) the payment of any moneys due and payable by the *Contractor* to the *Principal*, including debts, damages and indemnity claims.
- c) Notwithstanding clause 5.2a) and b) the *Principal* may (in its absolute discretion) agree to a proportionate reduction in the amount held as *security*, based on the proportion of the *Works* that have reached completion.

### 5.3 Deed of guarantee, undertaking and substitution

- a) The definitions in the *Corporations Act 2001* (Cwlth) apply to this clause 5.3.
- b) Where:
  - i) the *Contractor* is a *subsidiary*; and
  - ii) the *Principal* has specified in the tender documents or *Contract documents* that the *Contractor* must provide a deed of guarantee, undertaking and substitution,

the *Contractor* must, within 10 *business days* after receiving a written request from the *Principal*, provide a deed of guarantee, undertaking and substitution which is duly executed and enforceable against a *holding company* for the *Contractor*.

- c) The *Principal* may approve or disapprove of the *holding company* in its sole and absolute discretion.
- d) The deed of guarantee, undertaking and substitution must be in the form specified by the *Principal*.

## 6 THE CONTRACT

### 6.1 Evidence of contract

- a) 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*.
- b) The *Contract documents* are:
  - i) these General Conditions of Contract NCW4 and (unless otherwise specified) all attached *Schedules* and *Annexures*;
  - ii) the *Principal's Documents*; and
  - iii) the other documents listed in *Item 7*.
- c) The several documents forming the *Contract* are to be taken as mutually explanatory of one another 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.
- d) Except to the extent otherwise expressly provided for in the *Contract*, the *Contract* can only be amended or varied with the prior written agreement of the parties.

### 6.2 Formal instrument of agreement

- a) If:
  - i) *Item 7* specifies that a formal instrument of agreement is required, or
  - ii) the parties agree to execute a formal instrument of agreement, or
  - iii) where a *Letter of Award* is used to form the *Contract* and the *Principal* requests in writing that the *Contractor* also execute a formal instrument of agreement, then:
    - iv) the *Contractor* must execute all copies of the formal instrument of agreement and return them to the *Principal* no later than within 10 *business days* of receipt of the formal instrument of agreement; and
    - v) the *Principal* must return at least one executed copy to the *Contractor*.
- b) The times specified in this clause 6.2 may be increased by the *Superintendent*.

### 6.3 No waiver

- a) Unless both parties agree in writing, the terms of the *Contract* cannot be waived, amended, released at law or in equity.

## 7 SERVICE OF NOTICES

### 7.1 Notice requirements

- a) Subject to clause 7.1 b) and 7.1 c), a notice, document transmittal, request, consent, approval, *direction* or other communication under or for the purposes of the *Contract* must be:
- i) in writing and addressed to the receiving entity; and
  - ii) either:
    - A) sent by post to, or left at the postal address for, the receiving entity specified in *Items 1, 2 or 3* (as the case may be);
    - B) handed to the receiving entity;
    - C) sent by email to the email address for the receiving entity specified in *Items 1, 2 or 3* (as the case may be); or
    - D) if the *Contract* requires, or if the parties have agreed in writing, that a proprietary document management system may be used for the purpose of giving a notice under the *Contract*, sent via that system.
- b) Service of a notice under clauses 44 or 47 will only be valid if:
- i) sent by registered post to, or left at the postal address for, the receiving entity specified in *Items 1, 2 or 3* (as the case may be); or
  - ii) handed to the receiving entity.
- c) The Superintendent may give a *direction* orally, but the *Superintendent* must confirm it in writing as soon as practicable.

### 7.2 Time of receipt

- a) A notice is deemed to have been received:
- i) if sent by post, 5 *business days* (or 10 *business days* if posted to or from a place outside Australia) after posting;
  - ii) if delivered personally, upon delivery;
  - iii) if sent by email:
    - A) on a *business day*, on dispatch of the transmission; or
    - B) on a day other than a *business day*, on the next *business day*,unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission; or
  - iv) if sent via any proprietary document management system, upon notification from that system to the recipient of the notice having been delivered on the proprietary document management system.

### 7.3 Notice details

- a) A party may specify other address details for the purposes of this clause 7, by notice to the other party.

### 7.4 Service of claims under a SOP Act

- a) The *Contractor* must ensure that within 24 hours after any notice under the *SOP Act* (other than a payment *claim* or *payment schedule*) is given or received by the *Contractor* or any *subcontractor* (for example, notices regarding an adjudication), a copy of that notice is given to both the *Principal* and the *Superintendent*.

## 8 CONTRACT DOCUMENTATION AND INFORMATION

### 8.1 General

- a) Subject to clause 7.1 b), if the *Contract* requires the use of a proprietary document management system for the transmission of documents, the parties must transmit all documents in connection with the *Contract* by the proprietary document management system.

### 8.2 Errors, ambiguities and discrepancies

- a) If either party discovers or is made aware of any error, ambiguity or discrepancy in a *Contract document* that party must notify the *Superintendent* and the other party of the error, ambiguity or discrepancy as soon as possible and in any case not later than the earlier of:
  - i) the commencement or continuation of any *work under the Contract* affected by the error, ambiguity or discrepancy; and
  - ii) 5 *business days* of first becoming aware of the error, ambiguity or discrepancy.
- b) If the *Superintendent* becomes aware of an error, ambiguity or discrepancy in a *Contract document*, the *Superintendent* must notify the *Contractor* of the interpretation to be followed within 5 *business days* (or such other time reasonably determined by the *Superintendent*).
- c) If:
  - i) the *Superintendent* issues a direction pursuant to clause 8.2 b) as a consequence of an error, ambiguity or discrepancy in a *Principal*-supplied document, and
  - ii) the *Contractor* incurs costs which are less or more than it would have incurred if the direction was not given,  
the change in costs must be valued pursuant to clause 40.5.
- d) Figured dimensions take precedence over scaled dimensions in the event of a discrepancy.

### 8.3 Principal's documents

- a) Unless the *Contract* specifies otherwise, the *Principal* must supply the *Contractor* with one electronic copy of the *Principal's Documents*.
- b) The *Principal's Documents* must not, without the prior written approval of the *Principal*, be used, copied or reproduced for any purpose other than the execution of the *work under the Contract*.

### 8.4 Contractor's documents

- a) Unless the *Contract* specifies otherwise, the *Contractor* must supply the *Principal* and *Superintendent* with one electronic copy of the documents required to be supplied to the *Principal*. Electronic documents must be in a format acceptable to the *Principal*.
- b) Unless specified otherwise, all documents supplied by the *Contractor* to the *Principal* or *Superintendent* must be in the English language.
- c) Copies of documents supplied by the *Contractor* are the property of the *Principal*.
- d) If the *Contract* requires the *Contractor* to submit documents to the *Superintendent* for comment, determination of suitability, endorsement, review or approval, the *Superintendent* must respond within 10 *business days* (or such other time specified in the *Contract*) after receipt of the documents. The *Superintendent* must not reject documents which are in accordance with the requirements of the *Contract*.

### 8.5 Availability

- a) If *directed* by the *Superintendent*, the *Contractor* must ensure that the *Superintendent* has access to:

- i) one complete set of the *Contract documents* and the documents referred to in clauses 8.3 and 8.4 on the *site*; and
- ii) for any part of the *Works* being manufactured off-site, a set of documents in respect of that part at the place of manufacture of the part.

## 8.6 Confidential information

- a) The *Principal* may make information concerning the *Contractor* available to other ACT Government authorities. This information may include, but is not limited to, any information provided by the *Contractor* to the *Principal* and any information relating to the *Contractor's* performance under the *Contract*.
- b) Information about the *Contractor* from any source, including substantiated reports of unsatisfactory performance, may be taken into account by ACT Government authorities in considering whether to offer the *Contractor* future opportunities for ACT Government work.
- c) In making available any information under clause 8.6 a), the *Contractor* acknowledges that the *Principal* will be entitled to rely on the defence of qualified privilege for the purposes of section 101A of the *Civil Law (Wrongs) Act 2002* (ACT) and section 35 of the *Public Interest Disclosure Act 1994* (ACT).
- d) The *Contractor* releases and indemnifies the *Principal* from and against any *claim* in respect of any matter arising out of:
  - i) information being made available under clause 8.6 a); and
  - ii) the use of such information by a recipient of the information.
- e) The *Contractor* must:
  - i) take all reasonable measures to ensure that *Territory Information* and *Personal Information* accessed or held by the *Contractor* in connection with the *Contract* is protected against loss and against unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose notified by the *Principal* to the *Contractor* in writing from time to time;
  - ii) take all reasonable measures to ensure that only authorised personnel of the *Contractor* approved by the *Principal* have access to *Territory Information* and *Personal Information*;
  - iii) not disclose *Territory Information* or *Personal Information* without the prior written consent of the *Principal* except as required by law;
  - iv) immediately notify the *Principal* if the disclosure of *Territory Information* or *Personal Information* is required by law;
  - v) only use *Territory Information* and *Personal Information* for the purposes of fulfilling the *Contractor's* obligations under the *Contract*;
  - vi) not transfer *Territory Information* or *Personal Information* outside the *Territory*, or allow any person (other than an authorised person approved by the *Principal*) outside the *Territory* to have access to it, without the prior written approval of the *Principal*;
  - vii) ensure that any employee of the *Contractor* or any *subcontractor* requiring access to any *Territory Information* or *Personal Information* makes an undertaking in writing in a form prescribed by the *Principal* to not access, use, disclose or retain any *Territory Information* or *Personal Information* except in performing their duties of employment or obligation under the contract with the *Contractor* and is informed that failure to comply with the undertaking may be a criminal offence and may lead the *Contractor* to take action against the employee or *subcontractor*;
  - viii) comply with the "Territory Privacy Principles" set out in the *Information Privacy Act 2014* (ACT) as if they were provisions of this *Contract*;
  - ix) in respect of any *Personal Information* co-operate with any reasonable request or direction of the *Principal* arising from or in connection with the exercise of the functions of the

- Information Privacy Commissioner under the *Information Privacy Act 2014* (ACT) or otherwise, including the issuing of any guides concerning the handling of personal information;
- x) immediately notify the *Principal* in writing if the *Contractor* becomes aware of a breach of this clause 8.6 e); and
  - xi) indemnify the *Principal* from and against any claim in respect of any matter arising from a breach of the *Contractor's* obligations under this clause 8.6 e).
- f) The *Contractor* acknowledges that the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this *Contract* (other than to a person to whom the *Contractor* is authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1900* (ACT).
- g) A complaint received alleging an interference with the privacy of an individual by the *Contractor*, or a *subcontractor* will be handled in accordance with the following procedures unless otherwise provided for in a "Territory Privacy Principles Policy" made under Territory Privacy Principle 1.3 which applies to the relevant directorate:
- i) if the complaint is received by the *Principal*, the *Principal* will notify the *Contractor* of only those details of the complaint necessary to minimise any breach or prevent further breaches;
  - ii) if the complaint is received by the *Contractor*, the *Contractor* must immediately notify the *Principal* of the nature of the complaint but must only release to the *Principal Personal Information* concerning the complainant with the complainant's consent; and
  - iii) after the *Principal* has given or received notice in accordance with clause 8.6 g) i) or 8.6 g) ii), the *Principal* will keep the *Contractor* informed of the progress with the complaint as it relates to the actions of the *Contractor* in connection with the allegation of an interference with the privacy of an individual.
- h) In giving effect to the principles of open and accountable government, the *Principal* may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this *Contract* may be a notifiable contract under the *Procurement Act* and, if so, the *Principal* will be required to make the text of this *Contract* available to the public, including by publication on a public contracts register.
- i) If this *Contract* is a notifiable contract under the *Procurement Act* and there is *Confidential Text*:
- i) the grounds on which the text is confidential are set out in *item 34*; and
  - ii) clause 8.6 j) will apply.
- j) Except as provided in this *Contract*, the *Principal* must not disclose *Confidential Text* to any person without the prior written consent of the *Contractor* (which consent will not be unreasonably withheld) except to the extent that *Confidential Text*:
- i) is required or authorised to be disclosed under law;
  - ii) is reasonably necessary for the enforcement of the criminal law;
  - iii) is disclosed to the *Principal's* solicitors, auditors, insurers or advisers;
  - iv) is generally available to the public;
  - v) is in the possession of the *Principal* without restriction in relation to disclosure before the date of receipt from the *Contractor*;
  - vi) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;
  - vii) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or
  - viii) is disclosed to the integrity commissioner.

## 8.7 Contractor's obligations unaffected

- a) Where the *Contractor* submits a document to the *Principal* or *Superintendent*, the following applies:
  - i) the *Principal* or *Superintendent* owes no duty to the *Contractor* to review or check the documents for errors, omissions or compliance with the requirements of the *Contract*;
  - ii) the *Superintendent's* approval or *direction* as to suitability does not relieve the *Contractor* from responsibility for the *Contractor's* errors or omissions or compliance with the requirements of the *Contract*; and
  - iii) no comment, review, representation, vetting, inspection, *testing* or approval by the *Principal* or the *Superintendent* in respect of the *Contractor's* obligations under the *Contract* will lessen or otherwise affect the *Contractor's* obligations under the *Contract*.

## 8.8 Design by Contractor

- a) The *Contractor* acknowledges that the documents provided by the *Principal* for construction of the *Works* may not be fully complete in every respect. The *Contractor* must complete any minor or incidental design and detailing, including the preparation of shop drawings and the design of *temporary works*, which is necessary to enable the *work under the Contract* to be executed, notwithstanding any description of the *Contract* which may imply that it is limited to construction only.

## 9 ASSIGNMENT AND SUBCONTRACTING

### 9.1 General

- a) The *Contractor* must not, without the *Principal's* prior written approval, assign the *Contract* or any part of it, including any payment or any other right, benefit or interest under the *Contract*.
- b) The *Contractor* must not subcontract the whole of the *work under the Contract*, but may subcontract parts of the *work under the Contract* in accordance with this clause 9.
- c) When requested, before engaging any *subcontractors* and at any other time, the *Contractor*, must provide to the *Principal* the names and addresses of proposed *subcontractors*. 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 at its own cost propose another *subcontractor*. The *Principal* is deemed not to have objected to a *subcontractor* if no response is provided in writing by the *Principal* within 10 *business days* of notification of a proposed *subcontractor*.
- d) The *Contractor* is liable for the acts and omissions of *subcontractors* (including *subcontractors* engaged in accordance with clause 10 as if such acts or omissions were those of the *Contractor*).
- e) Subcontracting of any obligation under the *Contract* or any approval to subcontract does not affect the *Contractor's* obligations or liability under the *Contract*.
- f) The *Contractor* must comply with the requirements specified in the Subcontracting Framework (if any), included in the *Contract* as Annexure C.
- g) The *Contractor* indemnifies the *Principal* against:
  - i) all *claims*, actions, loss or damage and all other liability arising out of any acts or omissions of *subcontractors*; and
  - ii) any claim by a *subcontractor* against the *Principal* in respect of a breach of this clause 9 by the *Contractor*.

## 9.2 Novation

- a) If stated in *Item 8*, the *Contractor* must execute a deed of novation between the *Principal*, *Subcontractor* and *Contractor* for the work specified in *Item 8*.
- b) The deed of novation must be in the form required by the *Principal*.
- c) The *Contractor* is not entitled to any adjustment to the *contract sum* as a consequence of the novation.

## 10 SELECTED SUBCONTRACTORS

- a) This clause 10 applies if the *Principal* has specified in the invitation to tender or in the *Contract* that part of the *work under the Contract* must be undertaken by a *selected subcontractor*.
- b) Before commencing the *work under the Contract* referred to in clause 10 a), the *Contractor* must advise the *Superintendent* of the names of those *selected subcontractors* that the *Contractor* proposes to use and provide any other information concerning the *selected subcontractors* reasonably requested by the *Superintendent*.
- c) In respect of the *work under the Contract* referred to in clause 10 a), if:
  - i) no *selected subcontractor* is willing to undertake that *work under the Contract*;
  - ii) a *selected subcontractor* is unable to complete that *work under the Contract*;
  - iii) a *selected subcontractor* repudiates the subcontract; or
  - iv) that subcontract is terminated,the *Contractor* must provide the *Superintendent* with a list of one or more subcontractors that it proposes to use for that *work under the Contract* and obtain the *Superintendent's* approval of the subcontractor prior to engaging the subcontractor.

## 11 PROVISIONAL SUMS AND PROVISIONAL QUANTITIES

- a) If the *Contract* includes a *provisional sum* or *provisional quantity*, the *Contractor* must not carry out the work to which a *provisional sum* or *provisional quantity* relates unless *directed* to do so by the *Superintendent*.
- b) The *Superintendent* is under no obligation to *direct* that any work is carried out in relation to a *provisional sum* or *provisional quantity*.
- c) If the *Contract* includes a *provisional sum*, the *contract sum* must be adjusted as follows:
  - i) the *provisional sum* for that work is deducted from the *contract sum*; and
  - ii) the cost of the work actually carried out (if any) is calculated pursuant to clause 40.5 and added to the *contract sum*.
- d) The *Contractor* is entitled to payment for profit and overheads for work carried out in respect of a *provisional sum*.
- e) If the *Contract* includes a *provisional quantity*, the *contract sum* must be adjusted by the amount calculated by multiplying the rate applicable to the *provisional quantity* work by the difference between the *provisional quantity* and the quantity of work actually carried out.

## 12 SITE CONDITIONS

### 12.1 General

- a) *Reliance information* and *non-reliance information* comprise of those documents listed in *Items 9* and *10* respectively.
- b) With respect to *reliance information*:
  - i) the *Contractor* may rely on the factual accuracy of *reliance information*, but
  - ii) the *Principal* does not warrant or make any representation with respect to the completeness of the *reliance information*.
- c) With respect to *non-reliance information*:
  - i) if the *Contractor* relies on *non-reliance information*, it does so at its own risk;
  - ii) the *Principal* does not warrant or make any representation with respect to the accuracy, quality or completeness of the *non-reliance information*; and
  - iii) the *Principal* is not liable to the *Contractor* for any *claim* arising out of, or in relation to, *non-reliance information*.
- d) Notwithstanding clause 12.1 a), any interpretations, deductions, opinions or conclusions set out in any document provided by the *Principal* in connection with *site* conditions are deemed to be *non-reliance information* and the use of such information is entirely at the *Contractor's* risk.
- e) The *Contractor* is solely responsible for dealing with any *latent condition* so as to minimise delay and to minimise increased costs.

### 12.2 Notification of a latent condition

- a) If the *Contractor*:
  - i) becomes aware of a possible *latent condition*; and
  - ii) either intends to make a *claim* or believes that it has an entitlement to make a *claim* for an extension of time or additional costs,the *Contractor* must notify the *Superintendent* of the existence of the possible *latent condition*.
- b) The notice of the possible *latent condition* must:
  - i) be identified as 'Early Warning Under clause 12.2';
  - ii) be given as soon as possible (and in any event not more than 1 *business day* of the *Contractor* becoming aware of the potential *latent condition*); and
  - iii) where possible, be given before the *latent condition* is disturbed.
- c) If required by the *Superintendent* (acting as a certifier), the *Contractor* must promptly provide to the *Superintendent* a statement specifying:
  - i) the conditions on the *site* that the *Contractor* claims to be *latent conditions*;
  - ii) the manner in which the *Contractor* contends they differ materially from the conditions on the *site* the *Contractor* should reasonably have expected at close of tenders, including any information supporting this contention;
  - iii) the effect on the *work under the Contract*;
  - iv) the effect on the then current *Contract program*;
  - v) the additional work and resources involved and the *Contractor's* estimate of its entitlement to any adjustment to the *contract sum*;
  - vi) any other matters the *Contractor* considers relevant; and

vii) any other details reasonably requested by the *Superintendent*.

### 12.3 Valuation of additional costs

- a) Subject to clauses 12.3 b) and 12.3 c), if a *latent condition* causes the *Contractor* to incur extra costs, which would not have been incurred if the *latent condition* did not exist, a valuation of those extra costs must be made pursuant to clause 40.5.
- b) The *Contractor* has no entitlement to adjustment to the *contract sum* as a consequence of *latent conditions* from any cause which:
  - i) the *Contract* expressly states is at the *Contractor's* risk; or
  - ii) is specified in *Item 11*.
- c) The valuation of extra costs in clause 12.3 a) must not include any costs incurred more than 5 *business days* before the date on which the *Contractor* gives the written notice required by clause 12.2 a).

### 12.4 Extension of time for latent condition

- a) The *Contractor's* entitlement to an extension of time from a *latent condition* is subject to clause 35.3.

## 13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

- a) The *Principal* warrants that, unless specified otherwise in the *Contract*, the *Principal's Documents* do not infringe any *intellectual property right* if used in accordance with the *Contract*.
- b) The *Contractor* warrants that any *Materials* provided by the *Contractor* to the *Principal* for the purposes of this *Contract*, do not infringe any *intellectual property right* if used in accordance with the *Contract*.
- c) The *Contractor* indemnifies the *Principal* against any liability arising from an infringement of any *intellectual property right* contrary to a warranty provided under this clause 13.
- d) The *Contractor* assigns or otherwise transfers *intellectual property rights* in all *Material* 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*.
- e) The *Contractor* must include provisions in all subcontracts and agreements with *subcontractors* to ensure that *intellectual property rights* in all *Material* created specifically for the *Contract* is assigned or otherwise transferred to the *Principal* upon its creation.
- f) The *Principal* grants to the *Contractor* an irrevocable royalty-free licence to use the *Principal's Documents*, but only for the purpose of construction of the *Works*.
- g) Where the *Material* is provided by or for the *Contractor*, but not created specifically for the *Contract*, the *Contractor* must take all steps reasonably necessary to ensure that the holder of the *intellectual property rights* grants to the *Principal* an irrevocable royalty-free licence to use those things for the occupation, use, operation, repair, maintenance, addition, alteration, demolition, decommissioning or extension of the *Works*.

## 14 STATUTORY REQUIREMENTS

### 14.1 Complying with statutory requirements

- a) The *Contractor* must comply with all *statutory requirements* except those stated in *Item 12* or those notified by the *Superintendent* to be satisfied by or on behalf of the *Principal*.
- b) The *Contractor* must immediately notify the *Superintendent* if it becomes aware of a *statutory requirement* which is at variance with the *Contract*.

### 14.2 Changes in statutory requirements

- a) If there is a change to a *statutory requirement* that:
  - i) is enacted after the date of submission of tenders;
  - ii) could not have been reasonably anticipated by a competent contractor prior to the submission of tenders; and
  - iii) requires the *Contractor* to change the *work under the Contract*,  
the difference in costs must be valued pursuant to clause 40.5.
- b) The *Contractor* must immediately notify the *Superintendent* if it becomes aware of a change to a *statutory requirement* that was enacted after the date of submission of tenders that requires the *Contractor* to change the *work under the Contract*.

### 14.3 Licences, registrations, permits, approvals and certificates

- a) The *Contractor* must obtain and hold, and ensure that its *subcontractors*, agents and employees obtain and hold, all of the licences, registrations, permits, approvals and certificates that they are required to obtain and hold under all *statutory requirements* in order to carry out the *work under the Contract* and in respect of the use and occupation of the *Works*.
- b) The *Contractor* must pay all necessary fees and charges in connection with the *work under the Contract*, other than those listed in *Item 12*.
- c) The *Contractor* must provide the *Principal* with a copy of any licences, authorisations, notices, approvals, consents and other documents issued to the *Contractor* by any authority in respect of the *work under the Contract*.

## 15 SAFETY

- a) The *Contractor* must:
  - i) carry out the *work under the Contract* safely and in a manner that does not put the health and safety of persons at risk;
  - ii) comply with all *statutory requirements* and other requirements of the *Contract* in respect of work health and safety;
  - iii) comply with its duty under any applicable *statutory requirements* to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
  - iv) comply with *Schedule 1*.
- b) If, pursuant to a *statutory requirement* of the state or territory where the *work under the Contract* is being carried out, workplace health and safety on the *site* must be managed by a principal contractor, the *Principal*:
  - i) appoints the *Contractor* to be the principal contractor;

- ii) authorises the *Contractor* to have management and control of the workplace and to discharge the duties of a principal contractor imposed by the *Work Health and Safety Regulation 2011 (ACT)*; and
- iii) where the *Contractor* has been appointed as principal contractor the *Principal* also authorises the *Contractor* to have management and control of the *site* and to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011 (ACT)*,

unless specified in *Item 13* that another person will be the principal contractor.

- c) Where applicable, as indicated in *item 36*, at least 14 days before starting design and construction the *Contractor* must document, submit and implement a work health and safety management plan which complies with the *WHS Legislation* and any *Territory* policy relating to work health and safety.
- d) The *Contractor* must systematically manage its work health and safety management processes in accordance with the systems, plans, standards and codes specified in the *Contract*.
- e) The *Contractor* must demonstrate to the *Principal*, whenever requested, that it has met and is meeting at all times its obligations under clause 15.

#### 15A INDUSTRIAL RELATIONS MANAGEMENT

- a) The *Contractor* must manage all aspects of industrial relations on the *site* and otherwise in connection with the *Contract*, and keep the *Principal* informed of industrial relations issues which affect or are likely to affect the carrying out of the *Works*.
- b) Where applicable, as indicated in *item 35*, at least 14 days before starting work on the *site*, the *Contractor* must document, submit and implement a *Project IR Plan* which complies with the *Principal's* requirements specified in this *Contract*. The *Project IR Plan* must be consistent with any industrial relations strategy submitted with or in conjunction with the *Contractor's* tender and any amendments to that industrial relations strategy.
- c) The *Contractor* must comply with *Schedule 2* and otherwise systematically manage its industrial relations management processes in accordance with the strategies, plans, standards and codes specified in the *Contract*.
- d) The *Contractor* must demonstrate to the *Principal*, whenever requested, that it has met and is meeting at all times its obligations under clause 15A.

#### 15B QUALITY MANAGEMENT

- a) The *Contractor* must systematically manage its processes in accordance with the quality management systems, plans, standards and codes specified in the *Contract*.
- b) The *Contractor* must:
  - i) submit documentation required by the *Contract* by the time or times specified in the *Contract*;
  - ii) review and update the *Contractor's* quality management procedures and documentation so they remain adequate at all times to manage and ensure the quality of the *Works* complies with the requirements of the *Contract*;
  - iii) control non-conforming services and/or products and undertake corrective and preventative action as and when necessary;
  - iv) establish, maintain and keep records of all activities related to the management of quality; and
  - v) 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, surveillance and audit of the *Contractor's* procedures and conformance with the contractual quality management requirements.

- c) The *Contractor* must demonstrate to the *Principal*, whenever requested, that it has met and is meeting at all times its obligations under clause 15B.

#### 15C ENVIRONMENTAL MANAGEMENT

- a) Subject to the provisions of any relevant *statutory requirements* and the express provisions of the *Contract*, the *Contractor* must comply with any ACT Government codes, policies, standards, guidelines, plans or systems relating to environmental management.
- b) Where applicable, as indicated in *item 37*, at least 14 days before starting design and construction, the *Contractor* must document, submit and implement an *Environmental Management Plan* which complies with the *Principal's* requirements set out in this *Contract*.
- c) The *Contractor* must systematically manage its environmental management processes in accordance with the systems, plans, standards and codes specified in the *Contract*.
- d) The *Contractor* must demonstrate to the *Principal*, whenever requested, that it has met and is meeting at all times its obligations under clause 15C.

#### 15D LONG SERVICE LEVY

- a) Before commencing design or construction work, the *Contractor* must:
  - i) pay to the ACT Long Service Leave Authority or the Authority's agent the amount of the long service levy payable in respect of the building and/or construction work under the *Long Service Leave (Portable Schemes) Act 2009 (ACT)*; and
  - ii) produce to the *Principal* the documentary evidence of payment of that amount.

#### 15E LOCAL INDUSTRY PARTICIPATION

- a) This clause applies unless *item 38* states that it does not apply.
- b) The *Contractor* must implement its commitments set out in its local industry participation plan ("**LIP Plan**") submitted as part of its tender for the *Works* (subject to any amendments agreed in writing by the *Principal*).
- c) The *Contractor* must provide a local industry participation report ("**LIP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the *Principal* within 6 months of the *date of contract* and on or before the first, and each subsequent, anniversary of this *Contract*.
- d) Before or concurrently with the *Contractor's* submission to the *Principal* of its final payment *claim* under this *Contract*, the *Contractor* must provide to the *Principal* a final LIP Report ("**Final LIP Report**") that sets out its level of compliance with the commitments provided for in the LIP Plan throughout the term and which is accompanied by a statutory declaration stating the information provided in the Final LIP Report is true and correct.
- e) The *Principal* may withhold payment of the final payment *claim* until submission of a satisfactory Final LIP Report by the *Contractor*.
- f) The *Contractor* must attend any meeting scheduled by the *Principal* to review how its LIP Plan is being implemented and advanced, and for this purpose, the *Contractor* must provide all information reasonably requested by the *Principal*.
- g) The *Contractor's* failure to comply, in whole or in part, with the commitments contained within the LIP Plan may be a factor taken into account in the award of future contracts for the *Principal*.

## 16 PREVENTION AND REINSTATEMENT OF DAMAGE

- a) The *Contractor* is responsible for the prevention of damage to, and for the care of:
  - i) the whole of the *work under the Contract* from and including the date of commencement of the *work under the Contract* to 4:00 pm on the *date of practical completion*;
  - ii) unfixed materials, plant or equipment accounted for in a *payment schedule*;
  - iii) materials, plant or equipment entrusted to the *Contractor* by the *Principal*; and
  - iv) after 4:00 pm on the *date of practical completion*, those parts of the *work under the Contract* affected during the repair of a *defect* or the cleaning up of the *site*.
- b) If loss or damage (including loss or damage caused by inclement weather), other than that caused by a *Principal's risk*, occurs to the *work under the Contract* while under the *Contractor's* care pursuant to clause 16 a), the *Contractor* must rectify such loss or damage at its own cost so that the *Works* comply with the requirements specified in the *Contract*.
- c) In the event of loss or damage being caused by a *Principal's risk*, even though the *Contractor* has implemented reasonable measures to protect the *Works* in accordance with clause 16 a):
  - i) to the extent *directed* by the *Superintendent*, the *Contractor* must rectify the loss or damage; and
  - ii) the cost of rectification is to be valued pursuant to clause 40.5.
- d) If the loss or damage is caused by a combination of *Principal's risk* and other risks, the valuation pursuant to clause 16 c ii) of the rectification work is to be reduced in proportion to the contribution made by risks that are not the *Principal's risk*.
- e) If the *Contractor* damages property other than the *Works*, the *Contractor* must:
  - i) immediately notify the *Superintendent*;
  - ii) rectify the damage as soon as possible; and
  - iii) pay any compensation required by the law.
- f) Without affecting the *Principal's* other rights and remedies, the *Principal* may have an obligation under clause 16 e) carried out by others if:
  - i) the *Contractor* fails to comply with an obligation under clause 16 e); and
  - ii) the *Superintendent* has given reasonable written notice to the *Contractor* that it intends to have the obligation carried out by others.
- g) The cost incurred by the *Principal* pursuant to clause 16 f) must be assessed by the *Superintendent* and is a debt due and payable by the *Contractor* to the *Principal*.

## 17 INDEMNITIES

### 17.1 Contractor's indemnity

- a) The *Contractor* indemnifies the *Principal* against:
  - i) *claims* in respect of personal injury or death;
  - ii) loss of, or damage to, the *Principal's* property; and
  - iii) loss of, or damage to, any other property,arising out of, or as a consequence of carrying out, the *work under the Contract*.

- b) The indemnity provided under clause 17.1 a) is to be reduced proportionally to the extent that any act or omission of the *Principal*, its consultants, agents, employees, other contractors engaged by the *Principal* or the *Superintendent*, has contributed to the injury, death, loss or damage.
- c) Clause 17.1 a) does not apply to:
  - i) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
  - ii) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
  - iii) materials, plant or equipment entrusted to the *Contractor* by the *Principal* under clause 16 a);
  - iv) damage which is the unavoidable result of the construction of the *Works* in accordance with a construction methodology specified by the *Principal*;
  - v) 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; and
  - vi) 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*.

## 17.2 Principal's indemnity

- a) The *Principal* indemnifies the *Contractor* against any claim in connection with the *Principal's* right to have the *work under the Contract* carried out on the *site*.

## 18 PRINCIPAL ARRANGED INSURANCE

- a) This clause 18 applies if the *Principal* is responsible to effect insurance.
- b) Not later than the *date of contract*, the *Principal* must:
  - i) if specified in *Item 14*, effect a Works policy of insurance to cover physical loss or damage to the *temporary works and Works*; and
  - ii) if specified in *Item 15*, effect a public liability policy of insurance to cover physical loss or damage to property or injury or death to persons arising out of, or in connection with, carrying out the *work under the Contract*.
- c) The insurance must be on terms not less beneficial to the *Contractor* than those described in the insurance policy or proposed insurance policy referenced in *Item 16*.
- d) The *Principal* must:
  - i) pay all necessary premiums;
  - ii) maintain the insurance until the expiry of the *defects liability period* or any other period specified in the *Contract*; and
  - iii) provide or make available to the *Contractor* a copy of the relevant insurance policy.
- e) The *Contractor*:
  - i) acknowledges that it has considered the extent of insurance cover provided by the *Principal* and made its own determination whether it needs further insurance to cover difference in conditions;
  - ii) warrants that it has read the terms of the policies prior to entering the *Contract*;
  - iii) must, by the earlier of 10 *business days* after the *date of contract* and the *Contractor* commencing to carry out any part of the *Works*, contact the insurance broker nominated in writing to the *Contractor* as the *Principal's* insurance broker and provide to that person all details reasonably required for the purposes of the insurances referred to in this clause; and

- iv) bears the cost of taking out any such insurances or any difference in conditions insurance that it considers to be necessary.

## 19 CONTRACTOR ARRANGED INSURANCE

- a) This clause 19 applies if the *Contractor* is responsible to effect insurance.
- b) Before starting the *work under the Contract*, the *Contractor* must:
  - i) if specified in *Item 14*, effect a Works policy of insurance to cover physical loss or damage to the *temporary works and Works*; and
  - ii) if specified in *Item 15*, effect a public liability policy of insurance to cover physical loss or damage to property or injury or death to persons arising out of, or in connection with, carrying out the *work under the Contract* and covers the *Contractor, Principal, Superintendent* and *subcontractors*.
- c) Unless another amount is specified in the *Contract*, the Works insurance must be for an amount which is not less than the *contract sum* (at the *date of contract*) plus 15%, and the public liability insurance must not be less than the amount specified in *Item 17*.
- d) The *Contractor* must:
  - i) pay all necessary premiums and maintain the insurance in accordance with the requirements of the *Contract*;
  - ii) unless specified otherwise in the *Contract*, maintain the insurance until expiry of the *defects liability period*;
  - iii) give the *Principal* proof that all insurance policies required to be effected by the *Contractor* under the *Contract* are current:
    - A) before starting the *work under the Contract*; and
    - B) whenever requested by the *Principal*; and
  - iv) give the *Principal* a copy of all insurance policies it is required to effect and maintain whenever requested by the *Principal*.
- e) All policies arranged by the *Contractor* must:
  - i) be in the joint names of the *Principal* and *Contractor*;
  - ii) require the insurer to notify the *Principal* 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
  - iii) provide that a notice of claim given to the insurer by the *Principal*, the *Contractor*, or a *subcontractor* will be accepted by the insurer as a notice of claim given by all of the insured.
- f) If the *Contractor* is not the only insured under a policy of insurance, the *Contractor* must ensure, where legally possible, that the policy:
  - i) includes a cross-liability clause providing that all insuring agreements and endorsements operate in the same manner as if there were a separate policy of insurance covering each insured;
  - ii) provides that the insurer waives all rights, remedies or relief which it might become entitled to by subrogation against any of the insureds, and that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured; and
  - iii) contains a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of a term or condition of the policy, or any fraud or other act, omission or default by one insured, will not affect another insured, unless

those acts or omissions were made with the connivance or actual knowledge of the other insured.

- g) The *Contractor* must ensure that, in respect of each policy of insurance required to be effected or taken out as required by this clause 19 by the *Contractor*, it:
- i) does not do anything which prejudices any insurance;
  - ii) if necessary, rectifies anything which might prejudice any insurance;
  - iii) reinstates an insurance policy if it lapses;
  - iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the *Principal*;
  - v) immediately notifies the *Principal* of any event which may result in an insurance policy lapsing or being cancelled; and
  - vi) 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.
- h) 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 5 *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.
- i) If the *Contractor* fails to comply with clauses 19 c), 19 d) or 19 h), 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*.

## 20 OTHER INSURANCE

- a) Unless clause 20 b) applies, before the *Contractor* commences work, the *Contractor* must:
- i) insure against liability for death of, or injury to, persons employed by the *Contractor* including liability by statute and at common law;
  - ii) maintain the insurance cover until all *work under the Contract* is completed;
  - iii) where permitted by law, extend the insurance to indemnify the *Principal* for the *Principal's* statutory liability to persons employed by the *Contractor*; and
  - iv) ensure that every *subcontractor* working on the *site* is similarly insured.
- b) If, in the jurisdiction where the *work under the Contract* is being carried out, insurance of employees is covered by a statutory scheme of insurance, the *Contractor* must comply with its obligations under that scheme and if requested by the *Superintendent*, provide evidence demonstrating compliance with this clause 20 b).
- c) If stated in *Item 18*, the *Contractor* must ensure that a professional indemnity insurance policy is in place which covers all design responsibilities of the *Contractor*. The policy must be in place prior to the commencement of design responsibilities and maintained until the expiry of the *defects liability period*. The amount of cover must not be less than the amount specified in *Item 18*, or if no amount is specified, an amount which is sufficient to cover the costs of demolition, removal of debris and reconstruction of that part of the *Works* which is dependent upon the *Contractor's* design (including any part of the *Works* which is dependent upon *temporary works*).

## 21 INSURANCE CLAIMS

### 21.1 Management of insurance claims

- a) The *Contractor* must:
  - i) make and manage all insurance claims;
  - ii) as soon as practicable, notify the *Principal* in writing of any occurrence that may give rise to an insurance claim under a policy of insurance required by clause 18, 19 or 20 and keep the *Principal* informed of subsequent developments concerning the insurance claim;
  - iii) ensure that *subcontractors* in respect of their operations similarly inform the *Principal*; and
  - iv) where directed by the *Principal*, contact and keep informed the *Principal's* insurance broker of any insurance claims.

### 21.2 Settlement of insurance claims

- a) Where a settlement has been made under the *Works* insurance:
  - i) unless the parties agree otherwise, the proceeds of the settlement must be paid to the *Principal*;
  - ii) the *Superintendent* (acting as a certifier) must assess the amount due to the *Contractor* for reimbursement of the cost reasonably and necessarily incurred by the *Contractor* to rectify the loss or damage; and
  - iii) the *Principal* must pay the *Contractor* the lesser of the amount assessed under clause 21.2 a) ii) and the amount of insurance settlement.

### 21.3 Excesses or deductibles

- a) To the extent that an insurance claim under a policy of insurance effected under clauses 18, 19 or 20 is not a direct consequence of a *Principal's* risk (without fault or omission on the part of the *Contractor*), the *Contractor* is responsible for the payment of any excesses or deductibles.

## 22 SEPARABLE PORTIONS

- a) The *Superintendent* may direct that the respective parts of the *Works* are to be *separable portions*, if:
  - i) a part of the *Works* has reached, or will reach, a stage equivalent to that of *practical completion*, but another part of the *Works* has not reached such a stage, or
  - ii) the parties agree for the *Works* be divided into *separable portions*.
- b) If new *separable portions* have been created, for each *separable portion*, the *Superintendent* (acting as a certifier) must notify each party of the following:
  - i) the portion of the *Works*;
  - ii) the *date for practical completion*; and
  - iii) the respective amounts for *security* and liquidated damages.
- c) The respective amounts for *security* and liquidated damages may be calculated, at the discretion of the *Principal*, pro-rata according to the ratio of the *Superintendent's* valuation of the separable portion to the *contract sum*.
- d) A provision of this *Contract* in respect of *defects liability period*, *site*, *work under the Contract*, *Works*, *date for practical completion*, *date of practical completion*, *security* and liquidated damages applies separately to each *separable portion*.

- e) In using a separable portion that has reached *practical completion*, the *Principal* must not impede the *Contractor* in the performance of the *work under the Contract*.

## 23 SUPERINTENDENT

- a) The *Principal* must ensure that, at all times, there is a person appointed to act as the *Superintendent*.
- b) The *Superintendent* is the person stated in *Item 3* or other person that the *Principal* appoints from time to time. The *Principal* must notify the *Contractor* of any change in the person appointed to be *Superintendent*.
- c) Where it is stated in the *Contract* that the *Superintendent* is acting as a certifier, the *Principal* must ensure that the *Superintendent*:
  - i) acts honestly and impartially;
  - ii) acts within the time prescribed under the *Contract* or where no time is prescribed, within a reasonable time; and
  - iii) arrives at a reasonable measure or value of work, quantities or time.
- d) In the exercise of all other functions of the *Superintendent* under the *Contract*, the *Superintendent* acts as the agent of the *Principal* and does not act as an independent certifier.
- e) If pursuant to a provision of the *Contract* enabling the *Superintendent* to give a *direction*, the *Superintendent* gives a *direction*, the *Contractor* must comply with the *direction*.
- f) The *Principal* may authorise the *Superintendent* to act on its behalf in respect of matters relating to the *Contract*.

## 24 SUPERINTENDENT'S REPRESENTATIVE

- a) The *Superintendent* may:
  - i) appoint other persons to be a *Superintendent's Representative*; and
  - ii) delegate any of its functions under the *Contract* to a *Superintendent's Representative*.
- b) Not more than one *Superintendent's Representative* may exercise the same function at the same time.
- c) Notwithstanding the appointment of a *Superintendent's Representative*, the *Superintendent* may continue to exercise any of its functions under the *Contract*.
- d) The *Superintendent* must ensure that, at all times, the *Contractor* and the *Principal* is provided with the names of any *Superintendent's Representative* and the functions delegated to the *Superintendent's Representative*. This notification must be in writing and be made within 2 *business days* of the appointment of a *Superintendent's Representative* occurring.

## 25 CONTRACTOR'S REPRESENTATIVE

- a) Whenever any activity in connection with the *work under the Contract* is taking place, the *Contractor* must ensure that a competent representative is present.
- b) Prior to the commencement of the *work under the Contract*, the *Contractor* must notify the *Superintendent* and the *Principal*, of the name of the representative(s) and their responsibilities.
- c) The *Contractor* must notify the *Superintendent* in writing if there is a change of representative(s) within 2 *business days* of any change occurring.

- d) Any *direction* which is given to the representative of the *Contractor* is deemed to have been given to the *Contractor*.
- e) The *Contractor* is deemed to have knowledge of any matter which is known to a representative of the *Contractor*.
- f) If a representative does not possess the skills, experience or qualifications required in the *Contract* (if specified) or in the reasonable opinion of the *Superintendent* is not competent to undertake the role, the *Superintendent* may object to the appointment of that representative, in which case the *Contractor* must appoint another representative.

## 26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

- a) If an employee of the *Contractor* or a *subcontractor* or a sole trader engaged by the *Contractor* or a *subcontractor*:
  - i) does not possess the skills, experience or qualifications reasonably necessary for the role which is being undertaken by that person; or
  - ii) in the reasonable opinion of the *Superintendent*, is guilty of misconduct or is incompetent or negligent,

the *Superintendent* may *direct* the *Contractor* to ensure that the person is not present at any place where the *work under the Contract* is being undertaken.

## 27 SITE

### 27.1 Possession of site

- a) The *Principal* must give the *Contractor* sufficient possession of the *site* to allow the *Contractor* to start the *work under the Contract* by the date which is the latest of:
  - i) the date the *Contractor* provides *security* (other than retention money) if required pursuant to clause 5;
  - ii) the date the *Contractor* provides proof of insurance (if required) pursuant to clause 21;
  - iii) the date the *Contractor* satisfies any other condition precedent for possession of the *site* specified in the *Contract*; and
  - iv) the last *business day* of the period, stated in *Item 19*, after the *date of contract*.
- b) If the *Principal* is unable to provide the *Contractor* with possession of the *site* (or part thereof) in accordance with the *Contract*, the *Principal* must notify the *Contractor* of the date upon which the *site* or any part thereof will be available to the *Contractor*.
- c) Possession of the *site*:
  - i) confers on the *Contractor* a right only to such use and control as is necessary to enable the *Contractor* to carry out and complete the *work under the Contract*; and
  - ii) unless permitted in the *Contract* or approved otherwise by the *Superintendent*, excludes any purpose not connected with the performance of the *work under the Contract*.
- d) Subject to the *Contractor* satisfying any applicable requirements in clause 27.1 a), unless the delay in giving the *Contractor* sufficient possession of the *site* continues for longer than the time stated in *Item 19*, delay by the *Principal* in giving possession is not a breach of the *Contract*.

### 27.2 Access to the site for the Principal and others

- a) At any time, the *Superintendent*, *Principal* and their consultants, agents and employees may have access to any place where the *work under the Contract* is being undertaken for *testing* or any other reasonable purpose in connection with the *Contract*.

- b) When accessing any place where the *work under the Contract* is being undertaken, the *Superintendent, Principal* and their consultants, employees and agents must:
  - i) comply with the *Contractor's* reasonable workplace health and safety requirements; and
  - ii) except to the extent reasonably necessary to conduct the *test* or otherwise permitted in the *Contract*, not impede the *Contractor*.
- c) The *Contractor*:
  - i) must permit the execution of work on the *site* by other contractors or employees of the *Principal*;
  - ii) must cooperate with them and coordinate the *work under the Contract* with the work of the other contractors or employees of the *Principal*; and
  - iii) if specified in the *Contract*, must not impede other contractors or employees of the *Principal* undertaking work on the *site*.

### 27.3 Delivery of materials

- a) Unless the *Superintendent* gives prior written approval otherwise, the *Contractor* must not deliver materials to, or perform work on, the *site* until possession of the *site* (or part thereof) is given to the *Contractor* pursuant to clause 27.1.

### 27.4 Discovery of items of value

- a) The *Contractor* does not own any items of value found on the *site*, such as minerals, fossils, objects of antiquity or of anthropological / archaeological interest and coins. If any such item is discovered, the *Contractor* must immediately:
  - i) take precautions to prevent its removal or damage; and
  - ii) notify the *Superintendent* of the discovery.

## 28 CARRYING OUT THE WORKS

### 28.1 Setting out the works

- a) The *Contractor* must set out the *Works* in accordance with the *Contract*.
- b) The *Principal* must:
  - i) supply the information reasonably necessary to enable the *Contractor* to set out the *Works*; and
  - ii) provide the *Contractor* with any *survey marks* that are specified in the *Contract*.
- c) The *Contractor* must keep in their true positions any *survey marks* specified in the *Contract* or as supplied by the *Principal*.
- d) If a *survey mark* is disturbed, the *Contractor* must:
  - i) immediately notify the *Superintendent*; and,
  - ii) reinstate the *survey mark*, unless *directed* otherwise by the *Superintendent*.

### 28.2 Interference, nuisance and disturbance

- a) Unless the *Contract* permits otherwise, the *Contractor* must not:
  - i) unnecessarily interfere with the passage of people and vehicles;
  - ii) create unnecessary nuisance; or
  - iii) create unreasonable noise and disturbance.

### 28.3 Publicity

- a) Unless approved otherwise by the *Superintendent*, the *Contractor* must:
  - i) refer any enquiries from external parties regarding the *Contract* to the *Superintendent*;
  - ii) not publicise the *Contract*; or
  - iii) not release any information in connection with the *Contract* for publication in any media.

## 29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

- a) Unless specified otherwise in the *Contract*, the *Contractor* must supply everything necessary to meet its obligations under the *Contract*.
- b) Payment of the rates, items and lump sums included in the Commercial Framework is deemed to be full and complete payment for all materials, labour, *construction plant* and incidentals (including fees, charges, minor items and *testing*) necessary for the *Contractor* to fulfil its obligations under the *Contract*, notwithstanding that the description of the rate or lump sum may not fully describe all of the *work under the Contract*.
- c) The *Superintendent* may *direct* the *Contractor* to:
  - i) supply reasonable particulars; and
  - ii) provide reasonable access for an inspection by the *Superintendent*,  
in respect of any anything supplied by the *Contractor* which is to be included in the *Works*.
- d) The *Superintendent* may *direct* the *Contractor* to not remove any of the following from the *site*:
  - i) *construction plant* necessary to complete the *Works*;
  - ii) *temporary works*; or
  - iii) equipment or materials intended to be incorporated in to the *Works*.
- e) If compliance with a *direction* given under clause 29 d) causes the *Contractor* to incur additional cost, the cost is to be valued pursuant to clause 40.5.

## 30 MATERIALS AND WORK

### 30.1 Quality of materials and work

- a) Unless otherwise stated in the *Contract*, the *Contractor* must:
  - i) use suitable new materials; and
  - ii) carry out and complete the *work under the Contract* in accordance with accepted trade practices.

### 30.2 Defective work

- a) If any work carried out by the *Contractor* (including the provision of materials, plant, or equipment and the compliance with specified processes) is *defective*, the *Contractor* must rectify (including repair, rework, reconstruct or replace) the work so that it complies with the specified requirement.
- b) The rectification must:
  - i) be carried out at the *Contractor's* own expense;
  - ii) be carried out as soon as practicable after the *Contractor* becomes aware of the *defect*;
  - iii) not adversely affect the durability, integrity or performance of the *Works*; and
  - iv) be carried out to minimise disruption and inconvenience to the *Principal*.

- c) If requested by the *Superintendent*, the *Contractor* must provide full details of the proposed method of rectification and the time by which the work will be rectified.
- d) The *Principal* may have *defective* work rectified by others if:
  - i) the *Contractor* is aware of the *defective* work;
  - ii) the *Contractor* fails to rectify the work as soon as practicable;
  - iii) the *Superintendent* has provided written notice to the *Contractor* that the *Principal* intends to have the subject work rectified by others if the work is not rectified within 10 *business days* of receipt of the written notice or such longer time as the *Superintendent* reasonably directs; and
  - iv) the *Contractor* does not rectify the *defective* work within the time specified in the written notice referred to in clause 30.2 d) iii).
- e) The cost incurred by the *Principal* in having *defective* work rectified pursuant to clause 30.2 d) must be assessed by the *Superintendent* and is a debt due and payable by the *Contractor* to the *Principal*.

### 30.3 Acceptance of defective work

- a) At any time prior to the issue of a final payment *claim*, the *Contractor* may request the *Principal* to accept the *defective* work, but the *Principal* is under no obligation to accept such a proposal.
- b) If the *Principal* elects to accept the *defective* work, the *Superintendent* (acting as certifier) must adjust the *contract sum* by an amount which is commensurate with the increase or decrease in the value of the *Works* to the *Principal* and includes any other loss suffered by the *Principal* consequent upon such acceptance.

### 30.4 Other rights of the Principal

- a) This clause 30 survives the issue of the *certificate of practical completion*.
- b) Nothing in clause 30 prejudices any other right which the *Principal* may have against the *Contractor* arising out of the failure of the *Contractor* to comply with a requirement specified in the *Contract*.

### 30.5 Suppliers' and manufacturers' warranties

- a) The *Contractor* must ensure that the *Principal* is assigned the benefit of any manufacturer's warranty that is provided by the manufacturer or supplier of any goods or materials incorporated into the *Works*.
- b) The provision of a warranty pursuant to this clause 30.5 does not relieve, limit or exclude any of the *Contractor's* liabilities or obligations under the *Contract*.

### 30.6 Quality assurance

- a) If specified in *Item 20*, the *Contractor* must:
  - i) plan, establish, implement and maintain a quality system which conforms to the requirements of the *Contract*; and
  - ii) provide the *Superintendent* with reasonable access to the quality systems of the *Contractor* and its *subcontractors* to enable monitoring and quality auditing.
- b) The quality system:
  - i) is to be used as an aid to achieving compliance with the *Contract* and to document such compliance; and
  - ii) will not relieve the *Contractor* of any responsibilities or obligations in respect of the *work under the Contract*.

## 31 TESTING

### 31.1 Responsibility for testing

- a) Unless specified otherwise, the *Contractor* is responsible for undertaking all *testing* necessary to demonstrate that the *work under the Contract* complies with the requirements specified in the *Contract*.
- b) Before the *Contractor* conducts a *test*, reasonable notice must be given to the *Superintendent* of the time, date and place of the *test*.
- c) The *Superintendent* may *direct* that any part of the *work under the Contract* is not covered up or made inaccessible for *testing*.
- d) At any time prior to the expiry of the *defects liability period*, the *Superintendent* may undertake *testing* of the *work under the Contract* or *direct* that any material or *work under the Contract* be *tested*. The *Contractor* must provide reasonable access for the *testing* if required by the *Superintendent*. On completion of the *tests*, the *Contractor* must make good the *work under the Contract* so that it fully complies with the *Contract*.

### 31.2 Results of tests

- a) As soon as practical, the other party and the *Superintendent* must be provided with the results of the *tests*.

### 31.3 Costs of testing

- a) Unless specified otherwise, where the *Contract* specifies that a *test* must be undertaken, the *Contractor* bears the cost of, and incidental to, that *test*.
- b) If further *testing* is carried out by the *Superintendent* or as a result of a *direction* by the *Superintendent*, costs of and incidental to that *testing* must be borne by the *Principal* or be valued pursuant to clause 40.5 unless:
  - i) the *test* shows that the material or *work under the Contract* is not in accordance with the *Contract*;
  - ii) the *test* is in respect of *work under the Contract* covered up or made inaccessible without the *Superintendent's* prior approval where such was required; or
  - iii) the *test* is consequent upon a failure of the *Contractor* to comply with a requirement of the *Contract*.

### 31.4 Testing during the defects liability period

- a) If, during the *defects liability period*, the *Principal* or the *Superintendent* asserts that part of the *Works* does not comply with the *Contract*, the *Contractor* must be given reasonable access to *test* that part of the *Works*.
- b) The costs of, and incidental to, *testing* under this clause 31.4 must be borne by the *Contractor* unless the *test* shows that the material or work is in accordance with the *Contract*.

## 32 WORKING DAYS AND WORKING HOURS

- a) The *Contractor* is only permitted to perform *work under the Contract* on the *site* in accordance with the following:
  - i) at times permitted by law;
  - ii) on *working days*; and

- iii) during the working hours specified in *Item 21* or elsewhere in the *Contract* (if any) or if not specified in the *Contract*, as notified by the *Contractor* to the *Superintendent* before the commencement of work on the *site*.
- b) The *Contractor* may carry out work at other times if it is necessary for safety or for the protection of property. The *Contractor* must, as soon as practicable, give the *Superintendent* written notice of such circumstances.
- c) The *working days* and working hours must not subsequently be varied by the *Contractor* without the *Superintendent's* prior written approval, which may be conditional.
- d) The cost of administration of the *Contract* incurred by the *Principal* will be borne by the *Principal*, except for any additional administration cost reasonably incurred if the *Contractor* carries out work under the *Contract* outside of the *working days* and working hours specified in the *Contract*, which are to be borne by the *Contractor*.

### 33 PROGRESS AND PROGRAMMING OF THE WORKS

#### 33.1 Contract program

- a) If the *Contractor* has submitted a program complying with clause 33.1 c) with its tender, this program is the *Contract program* until the *Contractor* submits a further *Contract program* in accordance with this clause 33.1.
- b) If the *Contractor* has not submitted a *Contract program* with its tender, the *Contractor* must submit a *Contract program* to the *Superintendent* within the timeframe specified in the *Contract* or, if no timeframe is specified, within 10 *business days* of the *date of contract*.
- c) The *Contract program* must:
  - i) demonstrate how the *Contractor* will achieve *practical completion*;
  - ii) show, and be consistent with, *Scheduled Progress* and all constraints on access, performance and coordination;
  - iii) show the start and finish dates or, in the case of future activities, the intended start and finish dates, of all activities and other significant events;
  - iv) show the activities of the *work under the Contract*;
  - v) show *separable portions* (if applicable);
  - vi) show the logical relationship between activities and events, the sequence of activities which constitute the critical path or paths, time leads and lags, and resource and other constraints;
  - vii) show the dates when the *Contractor* will require information, documents, instructions or materials from the *Principal* and the dates when the *Contractor* will provide information or documents to the *Principal*; and
  - viii) comply with any other specific requirements of the *Contract*, including any specified format or software.
- d) During the execution of the *work under the Contract*, the *Contractor* must:
  - i) revise the *Contract program* monthly to account for actual progress or whenever there is any material change to the scope of work, sequence of activities, resources allocated, methodology employed or completion dates, including following the agreement between the parties of any extensions of time to the *date for practical completion*;
  - ii) promptly provide a copy of each revised *Contract program* to the *Superintendent*; and
  - iii) provide revised *Contract programs* to the *Superintendent* at the times or stages stated in *Item 22* (if specified);

- iv) provide a copy of the then current *Contract program* with any request for an extension of time, and otherwise when requested by the *Superintendent* or *Territory*.
- e) The *Superintendent* may request the *Contractor* to provide further information, details or explanation of a *Contract program* and the *Contractor* must comply with that request within 5 *business days* or such other time reasonably determined by the *Superintendent*.
- f) If the *Contractor* has not received a response from the *Superintendent* within 10 *business days* from the date the *Contractor* provided the *Superintendent* with the *Contract program* under clause 33.1 d), the *Contract program* is deemed to be accepted.
- g) The *Contractor* bears all costs associated with complying with the provision of *Contract programs* pursuant to this clause 33.
- h) Unless provided for elsewhere under the *Contract*, the *Contractor* is not entitled to any adjustment of the *contract sum* in the event that the actual time or resources vary from those stated in the *Contract program*.
- i) The *Contractor* must carry out the *works* in accordance with *Scheduled Progress* and, whenever requested, the *Contractor* must demonstrate to the *Principal* that it is achieving *Schedule Progress*.
- j) If the *Contractor* is not achieving *Scheduled Progress*, the *Principal* may instruct the *Contractor* to take all reasonable steps to achieve *Scheduled Progress* at the *Contractor's* cost.

### 33.2 Progress of the work

- a) The *Contractor* must carry out all work in connection with the *Contract* expeditiously and without undue delay, so that the *Works* will achieve *practical completion* by the *date for practical completion*.
- b) If the *Contractor* is unable to demonstrate that it will achieve *practical completion* by the *date for practical completion*, the *Superintendent* may *direct* the *Contractor* to take all reasonable steps to achieve the necessary progress. A *direction* under this clause is not an acceleration notice pursuant to clause 33.3.

### 33.3 Acceleration

- a) The *Superintendent* may notify the *Contractor* of a proposal to accelerate the *work under the Contract*. Unless the *Contractor* notifies the *Superintendent* that the acceleration cannot be effected, as soon as practicable after receipt of the notice, the *Contractor* must provide the *Superintendent* with the information specified in clause 40.2 a) in regard to the proposal.
- b) The *Superintendent* may *direct* that the *work under the Contract* is accelerated:
  - i) in order to bring forward the *date for practical completion*; or
  - ii) as an alternative to the *Contractor* being granted an extension of time, in which case the *Contractor's* entitlement to the extension of time is reduced by a time commensurate with the acceleration.
- c) If compliance with a *direction* to accelerate (except those required to address the *Contractor's* default) causes the *Contractor* to incur costs which are less or more than it would have incurred if the *direction* was not given, the difference must be valued pursuant to clause 40.5.
- d) Notwithstanding clause 7.1 c), A *direction* to accelerate must be in writing and expressly identified as a *direction* pursuant to this clause 33.3.

## 34 SUSPENSION OF THE WORKS

### 34.1 Superintendent's suspension

- a) The *Superintendent* may *direct* the *Contractor* to suspend the carrying out of the whole or part of the *work under the Contract*.
- b) The *Contractor* must resume carrying out the *work under the Contract* when *directed* by the *Superintendent*.

### 34.2 Contractor's suspension

- a) If the *Contractor* wishes to suspend the whole or part of the *work under the Contract*, the *Contractor* must obtain the prior written approval of the *Superintendent*. The *Superintendent* may approve of the suspension and may impose conditions of approval or reject the suspension in its absolute discretion.
- b) Clause 34.2 does not apply if the *Contractor* suspends work because of a cause listed in clause 44.3 a).

### 34.3 Cost of suspension

- a) If:
  - i) the suspension is due to an act or omission of the *Principal*, the *Superintendent* or an employee, consultant or agent of the *Principal*; and
  - ii) the *Contractor* incurs more or less cost than it would have if the suspension was not *directed*,the difference in costs is to be valued pursuant to clause 40.5. Otherwise the *Contractor* bears the cost of suspension.

## 35 TIME

### 35.1 Commencement of work

- a) The *Contractor* must:
  - i) advise the *Superintendent* of the date upon which the *Contractor* proposes to commence work on the *site* at least 5 *business days* (or such reduced time advised by the *Superintendent*) before work commences; and
  - ii) commence work on the *site* within 10 *business days* (or such extended time advised by the *Superintendent*) after the *Principal* has given the *Contractor* possession of the *site* pursuant to clause 27.1 a).

### 35.2 Practical completion

- a) The *Contractor* must carry out all *work under the Contract* to achieve *practical completion* by the *date for practical completion*.
- b) Upon the *date of practical completion*, the *Contractor* must give possession of the *site* and the *Works* to the *Principal*.

### 35.3 Extension of time

- a) The *Contractor* is entitled to an extension of time for *practical completion* only if:
  - i) the *Contractor* is, or will be, delayed in achieving *practical completion* by a cause reasonably beyond the control of the *Contractor*, but not including:
    - A) any cause which the *Contract* expressly states is at the *Contractor's* risk;

- B) any cause, specified in *Item 23*, which expressly precludes an entitlement for extension of time; and
  - C) inclement weather or industrial conditions after the *date for practical completion*;
  - ii) the *Contractor* has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay;
  - iii) 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 *Contract program*; and
  - iv) the *Contractor* has notified the *Superintendent* of the delay in accordance with clause 35.3 b) and submitted a *claim* in accordance with the requirements of the *Contract*.
- b) If it becomes evident to a party that:
- i) a cause may delay the *work under the Contract*; and
  - ii) the *Contractor* may have an entitlement to an extension of time in clause 35.3 a) i) from that cause,
- the party must notify the *Superintendent* and the other party as soon as possible (and in no case more than 1 *business day* of becoming aware of the cause).
- c) Unless notification is provided under another provision of the *Contract*, the notice must be endorsed 'Early Warning of Possible Delay Under clause 35.3'. The party must also provide any additional information in regard to the delay reasonably requested by the *Superintendent*.
- d) If the *Contractor* wishes to make a *claim* for an extension of time, it must submit a *claim* which:
- i) identifies the extension of time *claimed*;
  - ii) includes information sufficient for the *Superintendent* to assess the *claim*, including all relevant facts, a copy of the *Contract program*, current at the start of the delay, which demonstrates how the delay affects the critical path and shows the expected effects of the delay;
  - iii) is submitted within 20 *business days* after the first day that the *Contractor* could reasonably have been aware of the start of the delay; and
  - iv) is updated every subsequent 20 *business days* if the delay continues.
- e) Within 10 *business days* after receiving the *Contractor's claim* for an extension of time, the *Superintendent* (acting as a certifier) must give the *Contractor* and the *Principal*, either:
- i) a written statement advising of the extension of time so assessed; or
  - ii) a written *direction* that the *Contractor* and/or *Principal* provide, within 20 *business days*, further information which is reasonably necessary to assess the *claim*.
- f) If the *Superintendent* has requested further information to assess the *claim* under clause 35.3 e):
- i) within 20 *business days* of the receipt of the information from the *Contractor* and / or *Principal*; or
  - ii) if the *Contractor* or *Principal* fails to provide further information, within 40 *business days* of the request for the information,
- the *Superintendent* (acting as a certifier) must provide a written statement advising of the extension of time so assessed, including reasons if the assessment is less than the amount *claimed*.
- g) The *Contractor* is only entitled to an extension of time for delays occurring on *working days*.
- h) If:
- i) two or more events are causing delay simultaneously; and

- ii) the cause of at least one of those events is not a cause which entitles the *Contractor* to an extension of time,

then to the extent that the delays are concurrent, the *Contractor* is not entitled to an extension of time for *practical completion*.

- i) Whether the *Contractor* can:
  - i) reach *practical completion* by the *date for practical completion* without an extension of time; or
  - ii) make up the time lost by committing extra resources or incurring extra expenditure, must be disregarded in the assessment of a *claim* for an extension of time.
- j) At any time before the issue of the final *payment schedule*, the *Principal* may extend the time for *practical completion* in its absolute discretion and for any reason.

#### 35.4 Liquidated damages

- a) If:
  - i) *Item 24* states that liquidated damages apply; and
  - ii) the *Contractor* fails to achieve *practical completion* by the *date for practical completion*, the *Contractor* will be liable to pay the *Principal* liquidated damages at the rate stated in *Item 24*, (or if applicable, the rate notified by the *Superintendent* in accordance with clause 22) for every calendar day after the *date for practical completion*, up to and including the *date of practical completion*.
- b) However, if the *Contract* is terminated before the *Contractor* achieves *practical completion*, any liquidated damages will apply only up to the date of termination of the *Contract*.
- c) If *Item 24* states that liquidated damages do not apply, the *Principal* may *claim* general damages if the *Contractor* fails to reach *practical completion* by the *date for practical completion*.
- d) If any *date for practical completion* 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.
- e) The *Contractor* acknowledges that the rates for liquidated damages in *Item 24* 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.
- f) If a limiting amount or percentage of the *contract sum* is included in *Item 25*, the *Contractor's* liability under this clause 35.4 is limited to that amount or percentage.

#### 36 DELAY COSTS

- a) Subject to clause 36 b), the *Contractor* is entitled to the payment of *delay costs* only if the *Contractor* is granted an extension of time pursuant to clause 35.3 as a consequence of any of the following causes:
  - i) a *variation* (other than a *variation* for the *Contractor's* convenience or for the *Contractor's* non-compliance with the *Contract*);
  - ii) failure to give the *Contractor* possession of the *site* in breach of clause 27.1;
  - iii) a *latent condition* (unless the *latent condition* is at the *Contractor's* risk or the cause is specified in *Item 11*);
  - iv) resolution of an inconsistency, ambiguity or discrepancy in a *Principal*-supplied document in accordance with clause 8.2;

- v) a suspension under clause 34 unless the *Contractor* bears the cost of suspension under clause 34.4; or
  - vi) a *Principal's risk*.
- b) The *Contractor* is not entitled to *delay costs* for any day which it would have been delayed anyway by a cause for which it has no entitlement to *delay costs*.
  - c) *Delay costs* are determined in accordance with the Commercial Framework or, if not included in the Commercial Framework, an amount valued by the *Superintendent* to cover the reasonable additional costs (but not profit, loss of profit or loss of opportunity) which were necessarily incurred by the *Contractor* due to delay that have not been included in any other payment in connection with the cause of the delay.
  - d) The *Contractor* has no remedy or entitlement for additional payment in connection with delay other than *delay costs*.
  - e) Nothing in this clause 36 obliges the *Principal* to pay extra costs for delay which have already been included in the value of a *variation* or any other payment under the *Contract*.

### 37 DEFECTS LIABILITY

- a) The *Superintendent* acts as a certifier in this clause 37.
- b) The *defects liability period* commences at 4.00 pm on the *date of practical completion* and continues for the period stated in *Item 26*.
- c) During the *defects liability period*, if:
  - i) the *Principal* wishes to have a *defect* rectified, it must not unreasonably delay notifying the *Contractor* of the existence of the *defect*; and
  - ii) the *Contractor* becomes aware of a *defect*, it must rectify the *defect* as soon as possible.
- d) To the extent that is reasonably possible, rectification of a *defect* must be carried out so as to minimise any inconvenience to the users or occupants or of the *Works*.
- e) The *Superintendent* may direct the *Contractor* to commence and complete the rectification of a *defect* by specified dates.
- f) The *Superintendent* may extend the *defects liability period* applicable to the rectified part of the *Works*. The extended *defects liability period* commences at 4.00 pm on the date that the rectification is completed and must not exceed the period stated in *Item 26*.
- g) If the *Contractor* does not comply with a *direction* to rectify a *defect* within a timeframe specified in the *direction*, the *Principal* may have the rectification carried out by others. The cost of doing so will be assessed by the *Superintendent* and is a debt due and payable by the *Contractor* to the *Principal*.
- h) Nothing in this clause 37 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.

### 38 CLEANING UP

- a) The *Contractor* must:
  - i) keep the *site* and the *work under the Contract* clean and tidy;
  - i) regularly remove rubbish and surplus material; and

- ii) remove any *temporary works* and *construction plant* within 10 *business days* (or such extended time reasonably *directed* by the *Superintendent*) after the *date of practical completion*.
- b) If the *Contractor* fails to comply with an obligation in this clause 38, the *Superintendent* may take action pursuant to clause 30.2 d).

### 39 URGENT PROTECTION

- a) If, in the reasonable opinion of the *Superintendent*:
  - i) urgent action is required to avoid death, injury, loss or damage; and
  - ii) the *Contractor* does not take the necessary action immediately when the *Superintendent* requests it,the *Superintendent* may take the action (without relieving the *Contractor* of its obligations), and the *Principal's* costs of doing so is a debt due and payable from the *Contractor*.
- b) If time permits, the *Superintendent* must give the *Contractor* prior written notice of the *Principal's* intention to take action under this clause 39.

### 40 VARIATIONS AND VALUATION OF WORK

#### 40.1 Variations to the work under the Contract

- a) The *Superintendent* may *direct* the *Contractor* to undertake a *variation*:
  - i) at any time before the *date of practical completion*; and
  - ii) after the *date of practical completion* if the *variation* is in respect of rectification work referred to in clause 37.
- b) Subject to clause 40.1 f), the *Contractor* must comply with a *direction* to undertake a *variation*, unless the *variation* is outside the general scope of the *Contract*.
- c) If the *Contractor* considers that a *variation* applies (including that a *direction* by the *Superintendent* in whole or in part constitutes a *variation*), but the *Superintendent* has not *directed* a *variation*, then, within 5 *business days* of receipt of the *direction* or the occurrence of the event giving rise to the *variation* (as the case may be), and in any case before commencing work in response to that *direction* or event, it must notify the *Superintendent* giving reasons why it considers the *direction* or event to be a *variation*.
- d) The *Superintendent* (acting as a certifier), within 5 *business days* after receipt of the *Contractor's* notice, must notify the *Contractor* whether the *direction* or event constitutes a *variation*.
- e) If the *Superintendent* notifies the *Contractor* that the *direction* or event does not constitute a *variation*, the *Superintendent* must give reasons.
- f) Unless the *Superintendent* considers that urgent or special circumstances exist and instructs the *Contractor* to proceed, the *Contractor* must not begin to carry out a *variation* until a process under clause 40.5 d) has been undertaken.

#### 40.2 Proposed variations

- a) The *Superintendent* may notify the *Contractor* of a proposed *variation*. Unless the *Contractor* notifies the *Superintendent* that the *variation* cannot be effected, as soon as practicable after receipt of the notice, the *Contractor* must advise the *Superintendent* of:
  - i) the effect on the *contract sum* (including any detailed supporting calculations or other evidence of cost) or the basis upon which the *variation* will be valued;

- ii) any *delay costs*; and
  - iii) any effect on the *Contract program* (including the *date for practical completion*).
- b) If the *Contractor* reasonably incurs additional costs in complying with the requirements of this clause 40.2, a valuation must be made pursuant to clause 40.5.

#### 40.3 Valuation of variations

- a) If compliance with the *direction* to execute a *variation* (except a *direction* required to address the *Contractor's* non-compliance with the *Contract*) causes the *Contractor* to incur costs which are less or more than it would have incurred if the *direction* was not given, the change in costs must be valued pursuant to clause 40.5.
- b) The *Superintendent* may, in its absolute discretion, *direct* the *Contractor* to provide a detailed quotation for the work of a *variation* supported by measurements or other evidence of cost.
- c) The *Contractor* is entitled to the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

#### 40.4 Variations for the Contractor's convenience

- a) The *Contractor* may make a written proposal for a *variation* for the *Contractor's* convenience. The *Contractor* must provide the following with the proposal:
- i) a statement confirming that the proposed *variation* is for the convenience of the *Contractor*;
  - ii) the effect of the proposed *variation* on the *work under the Contract*;
  - iii) the effect of the proposed *variation* on the *Contract program*;
  - iv) the cost effect to the *Principal* of the proposed *variation*;
  - v) a statement confirming that the proposed *variation* will not adversely affect the functional integrity, performance standards or quality standards of the *Works*; and
  - vi) any other information that the *Superintendent* reasonably requests.
- b) The *Superintendent* may approve the *Contractor's* proposal but is not obliged to do so. The *Superintendent's* approval may be subject to conditions.
- c) Notwithstanding clause 40.3, unless the *Superintendent directs* otherwise, the *Contractor* is not entitled to:
- i) an extension of time; or
  - ii) extra payment,
- in respect of the *variation* for the convenience of the *Contractor* or anything arising out of that *variation* which would not have arisen had that *variation* not been approved.
- d) The *Contractor* bears all costs:
- i) associated with proposing a *variation* for its convenience;
  - ii) reasonably incurred by the *Principal* in assessing the proposal (such costs to be a debt due from the *Contractor* to the *Principal*); and
  - iii) associated with carrying out the *variation* if it is approved by the *Superintendent*.

#### 40.5 Valuation

- a) Where the *Contract* provides that a valuation must be made pursuant to clause 40.5 or the *Superintendent* has assessed a *claim* pursuant to clause 46, the change in work or additional costs must be valued by the *Superintendent* (acting as a certifier) in accordance with clause 40.5 d) and the *contract sum* must be adjusted by the amount of the valuation.

- b) The *Contractor* must use reasonable endeavours to minimise the additional costs of any change to the *work under the Contract*, which may include obtaining multiple quotations for subcontract work.
- c) A valuation under clause 40.5 d) must not include:
  - i) any costs, losses or expenses attributable to any default or negligence of the *Contractor*;
  - ii) costs incurred as a result of the failure of the *Contractor* to minimise its additional costs; and
  - iii) any amount for costs that the *Contractor* would have incurred anyway or should reasonably have allowed for at the *date of contract*.
- d) The valuation must be determined by application of the one of the following methods which is applicable to the work and has the highest order of precedence:
  - i) prior agreement between the *Contractor* and the *Principal*;
  - ii) any specific rates or prices included in the *Contract* which are applicable to the work;
  - iii) rates or prices to the extent that it is reasonable to use them, even if such rates or prices are not within the *Contract documents*;
  - iv) an amount determined as follows:
    - A) the reasonable direct cost to the *Contractor* including labour, materials and plant (not including profit and overheads);
    - B) the reasonable costs to the *Contractor* of subcontract work (not including profit and overheads); and
    - C) an additional amount for profit and overheads, calculated as the percentages stated in the Commercial Framework and applied to the direct costs and subcontract costs;
- e) The valuation of *delay costs* (if any) is determined in accordance with clause 36.
- f) If the valuation is in respect of work which is in addition to the *work under the Contract*, the valuation must include an amount for profit and overheads.
- g) If the valuation is in respect of work which is taken out of the *Contract*:
  - i) the *contract sum* must be reduced by the amount of profit that would have been payable if not for the deduction of work; but
  - ii) the *contract sum* will not be reduced by the amount for overheads applicable to the work which is taken out of the *Contract*, unless the *variation* is for the *Contractor's* convenience.
- h) The *Contractor* must provide all information reasonably requested by the *Superintendent* to assist the valuation.
  - i) Rates and prices are deemed to include an amount for profit and overheads unless specified otherwise.

#### 41 DAYWORK

- a) The *Superintendent* (acting as a certifier in this clause 41) may, in its absolute discretion, *direct* that the following be carried out as *daywork*:
  - i) quantities greater than those determined by reference to the upper limit of accuracy (if any) referred to in the Commercial Framework; or
  - ii) a *variation*.
- b) For work that is carried out as *daywork*, the *Contractor* must:

- i) record details of all resources used by the *Contractor* for the execution of the *daywork*, including copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the *daywork*;
  - ii) provide the details and each day to the *Superintendent*; and
  - iii) comply with any direction from the *Superintendent* in regard to the details included in the records.
- c) The *Superintendent* must determine the value of *daywork* from:
  - i) the quantities of materials and the time that the *construction plant* and labour is reasonably and necessarily used on the *daywork*; and
  - ii) applicable rates and prices in the *daywork* schedules (if any) contained in the Commercial Framework.
- d) To the extent that the *daywork* schedules do not apply, the *Superintendent* must determine the value of *daywork* from:
  - i) the amount of wages and allowances (inclusive of direct wage overheads) payable by the *Contractor*;
  - ii) the amount of hire charges in respect of *constructional plant*;
  - iii) the amounts paid for services, subcontracts and professional fees; and
  - iv) the actual cost to the *Contractor* of materials supplied and required for the work.
- e) The *Contractor* is entitled to payment for overheads (including administrative costs, *site* supervision, establishment costs, attendance) and profit on *daywork*. If the rates and amounts used to determine payment for *daywork* are not inclusive of overheads and profit, the valuation must include an amount determined from:
  - i) the applicable percentage (if any) stated in the Commercial Framework applied to the costs determined under clause 41 c) and 41 d);
  - ii) if there is no applicable percentage included in the Commercial Framework, a percentage agreed between the *Superintendent* and the *Contractor*; or
  - iii) in the absence of agreement, a reasonable percentage determined by the *Superintendent*.
- f) The costs of supervisory, technical and administrative personnel who would be engaged on the *Works* regardless of the *daywork* are not to be included in the valuation of the *daywork*.

## 42 CERTIFICATES AND PAYMENTS

### 42.1 Payment claims and payment schedules

- a) If the *SOP Act* applies:
  - i) not used
  - ii) unless expressly stated otherwise, a *payment schedule* or final *payment schedule* which is:
    - A) issued and delivered pursuant to the *Contract*; and
    - B) is compliant with the *SOP Act*,
 is a *payment schedule* or notice of dispute (as the case may be) for the purposes of the *SOP Act*.
- b) Not used.
- c) The *Contractor* is to *claim* payment progressively at the date in the month or stages of *work under the Contract* stated in *Item 27*.

- d) Unless prohibited by the *SOP Act*, a payment *claim* is deemed to have been made on the due date for making that payment *claim*, even if it is submitted prior to that date.
- e) Each payment *claim*:
  - i) is to be delivered in writing to the *Principal* and the *Superintendent*;
  - ii) must include details (which may be specified elsewhere in the *Contract* or reasonably requested by the *Principal* or *Superintendent*) justifying the amount *claimed*;
  - iii) may include a request for payment for a matter which has been assessed by the *Superintendent* pursuant to clause 46;
  - iv) may include details of other amounts then due to the *Contractor* under the *Contract*; and
  - v) is to be delivered electronically as specified in *Item 27*.
- f) The *Principal* must, within 10 *business days* after receiving a payment *claim* which complies with this clause 42, issue and deliver to the *Superintendent* and the *Contractor*, a *payment schedule*:
  - i) stating the *Principal's* valuation of amounts due from the *Principal* to the *Contractor* pursuant to the payment *claim* with reasons for any difference; and
  - ii) including the *Principal's* assessment of retention money and amounts due (if any) from the *Contractor* to the *Principal* pursuant to the *Contract*.
- g) The *Principal* or the *Contractor* (as the case may be) must pay to the other party the amount of the *payment schedule* within the time specified in *Item 27*, which commences when the payment *claim* is served.
- h) If an amount of retention money is assessed under clause 42.1 f) ii), the *Principal* must hold that retention money pursuant to clause 5 until the *Contractor* is entitled to the return of the retention money (if any).
- i) The *Principal* may issue and deliver a *payment schedule* without the submission of a payment *claim* by the *Contractor*.
- j) If:
  - i) the *Principal* fails to deliver a payment schedule within 10 *business days* after receiving a payment *claim*; and
  - ii) that payment *claim* complies with this clause 42,
 the amount claimed in that payment *claim* is due and payable by the *Principal* to the *Contractor*.
- k) Payment by the *Principal*, or the issue of a *payment schedule*, is payment on account only. It is not evidence that the *Contractor* has complied with the *Contract* and is subject to clause 42.2.
- l) Unless stated otherwise in the *Contract*, all payments to the *Contractor* must be made in Australian currency 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*. If electronic funds transfer is not used, payments must be made at the *Principal's* address or another location advised by the *Principal*.
- m) If payment is not made in accordance with clause 42.1 g), interest, applied at the rate in *Item 27* is due and payable on the amount outstanding after the date of default in payment.

#### **42.2 Correction of payment schedules**

- a) At any time, the *Principal* may correct any error which has been discovered in a *payment schedule* by issue of a further *payment schedule*.
- b) Any correction must also correct the amount of *GST* in accordance with the *GST Act*.

- c) A *certificate of practical completion* cannot be reissued.

#### 42.3 Retention moneys

- a) The *Principal* may deduct retention moneys from moneys otherwise due to the *Contractor* up to the amount or percentage specified in *Item 6*.

#### 42.4 Unfixed plant and materials

- a) The alternative applying for payment for unfixed materials, plant or equipment is given in *Item 28*.

#### Alternative 1

- b) The *Contractor* is not entitled to payment for materials, plant or equipment not incorporated in the *Works*.

#### Alternative 2

- c) The *Contractor* may not *claim* payment for, and the *Principal* is not obliged to pay for, any unfixed materials, plant or equipment that have not been incorporated in the *Works* unless:
  - i) the materials, plant or equipment:
    - A) have been manufactured solely for the purpose of incorporation in the *Works* and have not been manufactured before the date required by the *Contract*;
    - B) are of the type stated in *Item 28*;
    - C) are properly stored, clearly marked the property of the *Principal* and adequately protected and insured;
    - D) are stored on the *site*; and
    - E) have been paid for in full by the *Contractor* and are the unencumbered property of the *Contractor*, free of any *security interest* upon the making of the payment *claimed*, and proof of such payment and ownership is provided to the satisfaction of the *Superintendent*;
  - ii) the *Contractor* provides additional *security* in a form approved by the *Principal* for an amount equal to the payment *claimed* for the materials, plant or equipment; and
- d) If pursuant to a *payment schedule*, the *Principal* pays the *Contractor* an amount which includes the value of any unfixed materials, plant or equipment that have not been incorporated in the *Works*, the materials, plant or equipment will become the property of the *Principal*, free of any lien, charge, *security interest* or any other encumbrance, at the time the payment is made.

#### 42.5 Certificate of practical completion

- a) The *Contractor* must:
  - i) give the *Superintendent* at least 10 *business days'* notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached; and
  - ii) request the *Superintendent* to issue a *certificate of practical completion* when the *Contractor* is of the opinion that *practical completion* has been reached.
- b) Within 10 *business days* of the receipt of the request, the *Superintendent* (acting as a certifier) must:
  - i) give to the *Contractor* and to the *Principal* a *certificate of practical completion* certifying the *date of practical completion*; or
  - ii) notify the *Contractor* of the reasons for not issuing the *certificate of practical completion*.

- c) Notwithstanding that the *Contractor* may not have requested the issue of a *certificate of practical completion*, if the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion*.
- d) The issue of a *certificate of practical completion* does not:
  - i) constitute approval of any work or other matter; or
  - ii) prejudice any *claim* by the *Principal* or the *Contractor*.

#### 42.6 Contractor's final payment claim

- a) Within the timeframe stated in *Item 40*, the *Contractor* must lodge with the *Principal* a final payment *claim* and endorse it 'Final Payment Claim'.
- b) The *Contractor* must include in that *claim* all moneys which the *Contractor* considers to be due from the *Principal* under, or arising out of, the *Contract* or any alleged breach thereof.
- c) After the expiration of the period for lodging a final payment *claim*, any *claim* which the *Contractor* could have made against the *Principal* and has not been made is barred.

#### 42.7 Final payment schedule

- a) The *Principal* must issue to the *Contractor* and to the *Superintendent* a final *payment schedule* endorsed 'Final Payment Schedule' within 10 *business days* after receiving the final payment *claim* or, if the *Contractor* has not submitted a final payment *claim* in accordance with clause 42.6 a), within the time specified in *Item 40*.
- b) In the final *payment schedule*, the *Principal* must state the amount which in the *Principal's* opinion is finally due from the *Principal* to the *Contractor* or from the *Contractor* to the *Principal* under, or arising out of, the *Contract* or any alleged breach thereof.
- c) The issue of the final *payment schedule* is conclusive evidence that all necessary adjustments to the *contract sum* have been made and all entitlements of the *Contractor* have been met, except for those required by:
  - i) arithmetical error; or
  - ii) resolution of:
    - A) any *claim* made in accordance with clause 46;
    - B) any *dispute* properly notified under clause 47 prior to the final payment *claim*; or
    - C) any *dispute* arising solely out of the final *payment schedule*, but only if it is notified to the *Superintendent* and *Principal* within 20 *business days* after the date of the final *payment schedule*.
- d) Final payment must be made in accordance with clause 42.1 g).
- e) The *Contractor's* liability under the *Contract* or otherwise is not affected by the issue of the final *payment schedule*.

#### 42.9 Set-off

- a) 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:
  - i) withhold, deduct or set-off the claimed sum against any amount to which the *Contractor* is otherwise entitled in connection with the *Contract*; and
  - ii) make a demand against the *security* provided under the *Contract* for any amount of the claimed sum in excess of the amount to which the *Contractor* is otherwise entitled.

## **43 PAYMENT OF WORKERS AND SUBCONTRACTORS**

### **43.1 Subcontractors and workers**

- a) With each payment *claim*, the *Contractor* must provide documentary evidence of the payment of any amount which is due and payable to:
  - i) *subcontractors*; and
  - ii) workers of the *Contractor* and workers of *subcontractors*,  
in respect of the *work under the Contract*.
- b) Documentary evidence must be as specified in *Item 29*.

### **43.2 Entitlement to payment**

- a) If the *Contractor* has not complied with clause 43.1 for any part of the *work under the Contract* which is the subject of the payment *claim* (whether or not included in a *payment schedule* issued by the *Principal*), the *Contractor* is not entitled to payment for that *work under the Contract*.

### **43.3 Direct payment**

- a) Notwithstanding clause 43.2, before issue of the final *payment schedule*, the *Principal* may pay amounts which are the subject of clause 43.1 and are unpaid directly to a *subcontractor* or a worker if:
  - i) permitted by law;
  - ii) given a court order in favour of the worker or *subcontractor*; or
  - iii) requested by the *Contractor*.
- b) Clause 43.3 a) does not apply if the *Principal* is aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cwth)).
- c) A payment made to a *subcontractor* or worker under clause 43.3 a) is deemed to be satisfaction of the *Principal's* obligation to the *Contractor* to pay pursuant to clause 42 for *work under the Contract* which is the subject of clause 43.3 a).

## **44 DEFAULT OR INSOLVENCY**

### **44.1 Preservation of other rights**

- a) If a party breaches the *Contract*, nothing in this clause 44 affects or negates the other party's common law rights to terminate or for damages.

### **44.2 Termination for Contractor's default or insolvency**

- a) The *Principal* may terminate the *Contract* for the *Contractor's default* or if the *Contractor* is the subject of an *insolvency event* by giving notice in accordance with this clause 44, but the rights given by this clause 44 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).
- b) Subject to clause 44.2 d), in the case of *Contractor's default*, the *Principal* must first give the *Contractor* notice that it has 5 *business days* (or such longer period specified by the *Principal*) after receipt of that notice to remedy the *Contractor's default*.
- c) If the *Contractor* fails to:
  - i) give the *Principal* a notice containing clear evidence that it has remedied a *Contractor's default*;
  - ii) propose steps reasonably acceptable to the *Principal* to remedy the *Contractor's default*; or

- iii) commence and complete the steps referred in clause 44.2 c ii) within the time proposed, the *Principal* may give the *Contractor* a notice terminating the *Contract*.
- d) If a right to terminate exists at common law, a notice to terminate may be given without first giving notice to remedy a *Contractor's default*.
- e) In the case of the *Contractor's insolvency*, the *Principal* may give the *Contractor* a notice terminating the *Contract*.
- f) If the *Principal* terminates the *Contract* under this clause 44, it may, at its sole discretion, engage others to complete the *Works* and all the following will then apply:
  - i) The *Contractor* must leave the *site* as soon as reasonably practicable and remove all *temporary works* and materials it has brought onto the *site*, apart from any *temporary works* and materials identified by the *Principal* as being necessary to have the *Works* completed.
  - ii) 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 engagement under the *Contract*.
  - iii) 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 *security* given on the *Contractor's* behalf.
  - iv) The *Contractor* must do everything and sign all documents necessary to give effect to this clause 44, and it irrevocably appoints the *Principal* as its attorney to do this in its name if it fails to do so.
  - v) If, on *practical 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 valued by the *Superintendent* and the amount certified as a debt due from the *Contractor* to the *Principal*.
  - vi) The *Superintendent* may make provisional assessments of the amounts payable to the *Principal* under clause 44.2 f) v) and without limiting any other right of recourse, the *Principal* may demand them against the *security*.

#### 44.3 Termination for Principal's default

- a) If the *Principal*:
  - i) fails to pay the *Contractor* any amount in accordance with the *Contract* which is not in *dispute*;
  - ii) commits any fundamental breach of the *Contract*; or
  - iii) 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 20 *business days* after receiving the notice.
- b) 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*.
- c) If the *Principal* is the subject of an *insolvency event*, the *Contractor* may, without giving a notice to show cause, issue a notice terminating the *Contract*

#### 44.4 Termination notices

- a) A notice issued under this clause 44 must comply with clause 7.

#### 44.5 Rights of the parties on termination

- a) If the *Contract* is terminated under this clause 44, the rights and liabilities of the parties are the same as they would have been at common law had the defaulting party repudiated the *Contract* and the other party had been entitled to, and elected to, treat the *Contract* as at an end and recover damages.

#### 44.6 Survival

- a) Without limiting the survival of any clause by operation of law, this clause 44 and all indemnities in the *Contract* survive termination.

### 45 TERMINATION BY FRUSTRATION

- a) This clause 45 only applies if the *Contract* is *frustrated*.
- b) Clause 42.1 will apply for the *work under the Contract* satisfactorily carried out up to the date of *frustration*.
- c) In addition to the payment for work satisfactorily carried out up to the date of *frustration*, the *Contractor* is entitled to additional payment for the costs reasonably and necessarily incurred for demobilising *temporary works, construction plant; subcontractors* and workers.
- d) The *Contractor* must use reasonable endeavours to mitigate the additional costs referred to in clause 45 c).
- e) If the *Contractor* has ordered materials and equipment for incorporation into the *Works* which cannot be returned to the supplier and ownership is transferred to the *Principal*, the *Contractor* is entitled for payment for that materials and equipment.
- f) The *Principal* must promptly release and return all *security* (or, if applicable, the balance remaining after a demand on the *security*) that would have been returned at the *date of practical completion* had the *Contract* not been *frustrated*.

### 46 CLAIMS

- a) The *Superintendent* acts as a certifier in this clause 46.
- b) This clause 46 does not apply if:
  - i) the determination of the *claim* is regulated by a separate procedure under any applicable legislation; or
  - ii) there is a specific provision for the submission and assessment of the *claim* in the *Contract*.
- c) Any notice or response provided by a party to the *Superintendent* pursuant to this clause 46 must also be provided to the other party at the same time.
- d) If a party wishes to make a *claim*, it must give to the *Superintendent* the *prescribed notice* within 20 *business days* after the first day upon which the party could reasonably have been aware of the entitlement to make the *claim*.
- e) Subject to clause 42.6 c), if the claimant fails to make a *claim* within the time specified in clause 46 d), the other party is not liable to the claimant in respect of any *claim* for costs incurred more than 20 *business days* before the date on which the party gives the *prescribed notice* pursuant to clause 46 d).

- f) Within 20 *business days* of receipt of the *prescribed notice*:
  - i) the other party may provide a response to the *prescribed notice* to the *Superintendent*; and
  - ii) the *Superintendent* may request the claimant to provide further particulars in connection with the *claim* to the *Superintendent*.
- g) If the claimant wishes to respond to a *Superintendent's* request to provide further particulars, it must do so within 10 *business days* of the request.
- h) If the claimant provides further particulars pursuant to clause 46 g), the other party may provide a response to the *Superintendent* in regard to the further particulars within 10 *business days* of receipt of the further particulars.
- i) The times to submit a response in clauses 46 g) and 46 h) may be extended by the *Superintendent*, acting reasonably.
- j) Within 40 *business days* of the expiry of all applicable timeframes for a party to provide a response pursuant to this clause 46, the *Superintendent* must assess the *claim* and notify the parties of the decision.
- k) Unless a party gives a notice of *dispute* under clause 47 in respect of the *Superintendent's* assessment of the *claim* under clause 46 j), within 20 *business days* of the notification of that assessment, the amount of the assessment is due and payable.

## **47 DISPUTE RESOLUTION**

### **47.1 Notice of dispute**

- a) A party is not entitled to issue a notice of *dispute* unless the *Superintendent* (or the *Principal*, in the case of a *claim* which the *Contract* specifies is assessed by the *Principal*) has assessed a *claim* in regard to the subject matter of the *dispute* and notified the parties of the decision or the time for the *Superintendent* (or *Principal*, as the case may be) to notify the parties of the decision has elapsed.
- b) If a party wishes to *dispute* any matter, it must deliver by hand or send by registered post to the other party a notice which provides adequate details of the *dispute* (notice of *dispute*) within 20 *business days* of the notification of the *Superintendent's* (or *Principal's*, as the case may be) decision in regard to the subject matter of the *dispute*. A copy of the notice of *dispute* must also be provided to the *Superintendent*.
- c) The parties must continue to perform their obligations under the *Contract*, subject to clauses 44 and 45, despite the existence of a *dispute*.
- d) By mutual agreement, the parties may extend the timeframes in this clause 47.

### **47.2 Meeting of representatives**

- a) Within 10 *business days* of service of a notice of *dispute*, the parties and the *Superintendent* (acting as a certifier) must confer at least once to attempt to resolve the *dispute* in good faith or attempt to agree to a procedure for resolution of the *dispute*. Unless the parties agree otherwise, the conference must be held in the state or territory stated in *Item 4*. The parties may agree to invite a mediator to attend the conference.
- b) At the conference, each party must be represented by a person having authority to agree to the resolution of the *dispute*.
- c) All aspects of every such conference, except the fact of its occurrence, are privileged and without prejudice.

- d) If within 30 *business days* of the service of a notice of *dispute*, the *dispute* remains unresolved, a party may refer the *dispute* to the resolution process specified in *Item 30*.
- e) A *dispute* for which notice has not been given in accordance with clause 47.2 d) is barred from the resolution process specified in *Item 30*, litigation or any similar action.

#### 47.3 Alternative 1 – Arbitration

- a) If Alternative 1 – Arbitration is specified in *Item 30*, the arbitration must be:
  - i) carried out in accordance with, and subject to, the rules stated in *Item 31*; and
  - ii) held in the state or territory stated in *Item 4*.
- b) The parties must endeavour to agree on the arbitrator to be engaged. If they cannot agree within 30 *business days* of the service of a notice of *dispute*, the arbitrator (who must be accredited) will be nominated (on the application of either party) by the person named in *Item 31*. That person must not nominate:
  - i) an employee of the *Principal* or the *Contractor*;
  - ii) a person who has been connected with the *Works* or the *Contract*; or
  - iii) a person who the *Principal* and the *Contractor* have already considered and not been able to agree on.

#### 47.4 Alternative 2 – Expert Determination

- a) If Alternative 2 – Expert Determination is specified in *Item 30*, the expert determination must be conducted in accordance with the provisions of the Dispute Resolution Framework attached as Annexure D.
- b) The parties must endeavour to agree on the expert to be engaged. If they cannot agree within 30 *business days* of the service of a notice of *dispute*, the expert will be nominated (on the application of either party) by the person named in *Item 32*. That person must not nominate:
  - i) an employee of the *Principal* or the *Contractor*;
  - ii) a person who has been connected with the *Works* or the *Contract*; or
  - iii) a person who the *Principal* and the *Contractor* have already considered and not been able to agree on.
- c) Neither party may commence litigation in respect of the matters determined by the expert unless the determination:
  - i) does not involve paying a sum of money; or
  - ii) requires one party to pay the other an amount in excess of the amount stated in *Item 32*, calculated without having regard to:
    - A) any interest that may be payable; and
    - B) any amount that has been paid pursuant to the *SOP Act*.
- d) Neither party may commence litigation in respect of the matters determined by the expert unless they do so within 40 *business days* after receiving the determination. Otherwise:
  - i) the parties are deemed to have accepted that the expert determination is final and binding; and
  - ii) any amount due and payable under the expert determination must be paid by the debtor to the other party within a further period of 10 *business days*.

#### 47.5 Alternative 3 – Alternative Dispute Resolution

- a) If an Alternative 3 – Alternative Dispute Resolution is specified in *Item 30*, the parties agree to avoid, manage and resolve disputes in accordance with the provisions of the Dispute Resolution Framework attached as Annexure D.

#### 47.6 Alternative 4 – Litigation

- a) If an Alternative 4 – Litigation is specified in *Item 30*, the litigation must be conducted in the state or territory stated in *Item 4*.

#### 47.7 Summary relief

- a) Nothing in the *Contract* is to prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

### 48 GOODS AND SERVICES TAX

- a) A word or expression which is defined in the *GST Act* has the same meaning in this clause 48.
- b) The *Contractor* warrants to the *Principal* that:
  - i) the *Contractor* is registered for *GST*; and
  - ii) the *Contractor's* ABN stated in the *Contract* (or otherwise notified by the *Contractor* to the *Principal*) is correct.
- c) The *Contractor* must notify the *Principal* immediately if it ceases to be registered for *GST* at any time.
- d) The Commercial Framework defines whether prices, rates or other sums payable in accordance with the *Contract* are inclusive or exclusive of *GST*.
- e) 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:
  - i) 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
  - ii) 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.
- f) If stated in *Item 33* that the *Principal* will issue recipient created tax invoices for taxable supplies provided by the *Contractor*, the following will apply:
  - i) the *Principal* will issue tax invoices and adjustment notes in respect of those supplies;
  - ii) the *Contractor* must not issue tax invoices or adjustment notes in respect of those supplies;
  - iii) the *Principal* acknowledges that it was registered for *GST* when it entered into the *Contract* and that it will notify the *Contractor* if it ceases to be registered; and
  - iv) the *Contractor* must notify the *Principal* immediately it becomes aware of an adjustment event occurring in respect of those supplies.

## Formal Instrument of Agreement

Refer to clause 6.2 of the General Conditions of Contract

**SIGNED** for and on behalf of )  
the Principal: ) \_\_\_\_\_

) Signature of Authorised Representative

in the presence of: ) \_\_\_\_\_

) Print Name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name of Witness

**SIGNED** for and on behalf of )

\_\_\_\_\_  
(Name of Contractor) )

\_\_\_\_\_  
Signature of Director

I: \_\_\_\_\_ )

\_\_\_\_\_  
Print Name

in the presence of: )

\_\_\_\_\_  
Signature of second Director / Secretary/Witness

\_\_\_\_\_  
Print Name

**Note:**

Company: This form must be signed in accordance with either section 126 or section 127 of the *Corporations Act 2001* (Cwlth), for example, by 2 directors or a director and a secretary.

If the company is a proprietary company that has a sole director who is also the sole company secretary then this form must be signed by that director and witnessed.

Partnership: This form must be signed by at least one partner on behalf of all other partners and witnessed.

Individual: This form must be signed by the individual tendering for the Works and witnessed

EXAMPLE ONLY

## SCHEDULE 1

### Work health & safety

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#### 1 General

- (a) Obligations set out in this *Contract*, do not derogate from the *Contractor's* obligations under *WHS Legislation*. Where there is any inconsistency between this *Contract* and the *WHS Legislation*, the *WHS Legislation* will prevail to the extent of any inconsistency.
- (b) The *Contractor* must comply with the *WHS Legislation* as part of its management of the *site* and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk.
- (c) The *Contractor* must institute and maintain systems to obtain regular written assurances from all *subcontractors* and other entities engaged to perform work on the *site* about their ongoing compliance with the *WHS Legislation* including the due diligence obligation contained in the *WHS Legislation*.
- (d) The *Contractor* must provide the written assurances obtained under paragraph (c), together with written assurances from the *Contractor* about the *Contractor's* ongoing compliance with *WHS Legislation*, to the *Superintendent*.
- (e) The *Contractor* must provide the *Superintendent* at each meeting with a written report on all work health and safety matters, or any other relevant matters including a summary of the *Contractor's* compliance with *WHS Legislation*.
- (f) The *Contractor* must exercise a duty of utmost good faith to the *Principal* in carrying out the *Works* to enable the *Principal* to discharge the *Principal's* duties under the *WHS Legislation*.
- (g) The *Contractor* must ensure its subcontracts include provisions imposing on the *subcontractor's* obligations equivalent to the obligations of the *Contractor* in this *Schedule*.
- (h) The *Contractor* must ensure that if any *statutory requirement* requires that a person:
  - .1 be authorised or licensed (in accordance with *WHS Legislation*) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
  - .2 has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the *WHS Legislation*), that person has the required qualifications or experience or is so supervised.
- (i) The *Contractor* must ensure that if any *statutory requirement* requires that a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance is so authorised or licensed.
- (j) The *Contractor* must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any *statutory requirement* and paragraph (h) are met.
- (k) If requested by the *Superintendent* or required by *WHS Legislation*, the *Contractor* must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to the work health and safety (as the case may be) to the satisfaction of the *Superintendent* before the *Contractor* or any subcontractor commences such work.

- (l) The *Contractor* must comply with its duty under the *WHS Legislation* to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- (m) The *Contractor* must regularly review its *WHS Management Plan* (which will be deemed to be a “WHS management plan” for the purpose of the *Work Health and Safety Regulations 2011 (ACT)*), and continue to update and amend it and submit it (as necessary) in accordance with this *Contract* and *WHS Legislation* (as applicable).
- (n) If the *Superintendent* reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the *Contractor* (or any of its *subcontractors*) the *Superintendent* may direct the *Contractor* (or the relevant *subcontractor*) to change its manner of working or cease working and the *Contractor* or subcontractor(as applicable) must comply.
- (o) The *Principal* may take any action necessary to protect the *Works* and other property or to prevent or minimise risk to health and safety of persons, which the *Contractor* must take but does not and the *Principal* may recover any costs associated with such action from the *Contractor*.
- (a) The *Contractor* must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in the *Contract* and the *WHS Legislation*.
- (b) The *Contractor* must demonstrate to the *Superintendent*, whenever requested, that the *Contractor* has met and is meeting at all times, its obligations under this *Schedule* but such demonstration does not relieve the *Contractor* of its primary obligation to perform work safely.

## 2 OHS&R System Requirements

- (a) The *Contractor* must:
  - .1 have in place and maintain a functioning Occupational Health, Safety & Rehabilitation (“OHS&R”) management system certified as meeting the *Principal’s* requirements. The certification must either be ACT Government second party certification or third party certification in accordance with the latest edition of Australian Standard AS4801, as amended, and the *Principal* may accept second party certification by an Australian state or territory or authority of an Australian state or territory to be adequate; and
  - .2 provide the *Superintendent* and *Principal* with access at all times to the *Contractor’s* and each of the *subcontractor’s* OHS&R management systems to enable monitoring and quality auditing.
- (b) The implementation of the OHS&R management system does not relieve the *Contractor* of the *Contractor’s* obligations under the *Contract*.
- (c) In the OHS&R management system the *Contractor* must:
  - .3 recognise its duty of care to employees and the wider community;
  - .4 develop an OHS&R policy that has the total support of management;
  - .5 have planning processes and procedures in place that have the capacity to identify possible health and safety impacts;
  - .6 have planning processes and procedures in place to develop measures to minimise health and safety impacts and risks;

- .7 establish a formal communication process for consultation and input from all staff on health and safety matters;
- .8 establish responsibilities and procedures for implementing required mitigation measures and for rehabilitating affected staff;
- .9 establish systems and procedures to review the implementation process;
- .10 establish a process of management review of systems and procedures that supports the OHS&R policy and which will lead to continually improving performance; and
- .11 ensure compliance with all *WHS Legislation*.

### **3 WHS Management Plan**

- (a) The *Contractor* must prepare and submit to the *Superintendent* a *WHS Management Plan* before any work on the *site* commences. The *WHS Management Plan* will be deemed to be a “WHS management plan” for the purpose of the *WHS Legislation*.
- (b) The *Contractor* must ensure that the *WHS Management Plan* addresses the following:
  - .1 the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under the *Contract*;
  - .2 the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under the *Contract* is being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the *WHS Legislation*;
  - .3 the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the *Superintendent* with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
  - .4 any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
  - .5 the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
  - .6 ensuring that work health and safety is a compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the *Superintendent*;
  - .7 if design forms part of the work under the *Contract*, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting *statutory requirements* regarding design and the process for addressing design changes relevant to work health and safety considerations;
  - .8 management of work health and safety generally, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication and dispute resolution on work health and safety matters;

- .9 management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication and the process for ensuring the subcontractor compliance with the *WHS Management Plan*; and
- .10 management of project hazards and risks generally, including but not limited to work involving:
- (1) fall hazards;
  - (2) telecommunications towers;
  - (3) demolition;
  - (4) disturbance or removal of asbestos;
  - (5) structural alterations requiring temporary supports;
  - (6) confined spaces;
  - (7) excavation deeper than 1.5 metres;
  - (8) tunnels;
  - (9) use of explosives;
  - (10) pressurised gas distribution mains and consumer piping;
  - (11) chemical, fuel and refrigerant lines;
  - (12) electrical work, including involving energised electrical installations and services;
  - (13) hazardous atmospheres;
  - (14) tilt-up and precast concrete;
  - (15) roadways or railways used by road or rail traffic;
  - (16) movement of powered mobile plant;
  - (17) extremes of temperature;
  - (18) water or other liquids where there is a risk of drowning;
  - (19) diving;
  - (20) remote or isolated work;
  - (21) above-standard exposure to noise;
  - (22) other hazardous manual tasks;
  - (23) exposure to falling objects;
  - (24) abrasive blasting;
  - (25) hazardous chemicals and substances; and

(26) working in the vicinity of electrical wires.

#### 4 Incident Reporting

- (a) In this clause, “regulator” and “notifiable incident” have the same meaning as in the *Work Health and Safety Act 2011* (ACT).
- (b) In addition to any obligations under *WHS Legislation*, the *Contractor* must:
- .1 notify the *Principal* and the *Superintendent* of any notifiable incident immediately after it notifies the regulator;
  - .2 provide the *Principal* and the *Superintendent* with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.
- (c) In addition to the obligations under paragraph (b), the *Contractor* must promptly notify the occurrence and furnish a written report to the *Principal* and the *Superintendent* of:
- .1 incidents resulting in damage to property;
  - .2 incidents resulting in significant delays to the *Works*;
  - .3 incidents resulting in injury or illness other than a notifiable incident; and
  - .4 incidents that may have resulted in or may result in any incident set out in paragraph (c).1, (c).2 or (c).3 above or a notifiable incident.

#### 5 WHS Active Certification Policy

- (a) In this clause, unless otherwise stated, capitalised words and phrases have the same meaning as in the Australian Capital Territory’s WHS Active Certification Policy (as amended from time to time).
- (b) Without limiting any other part of this *Contract* where the *Contractor*:
- .1 is prequalified under a Prequalification Scheme at the date of this *Contract*;
  - .2 becomes prequalified under a Prequalification Scheme during the term of this *Contract*; or
  - .3 has its prequalification status under a Prequalification Scheme cancelled, suspended or downgraded during the term of the *Contract*,
- the WHS Active Certification Policy will apply. To the extent necessary to give effect to the WHS Active Certification Policy its provisions are incorporated by reference into this *Contract*.
- (c) The *Contractor* will pay to the *Principal* by way of reimbursement the Auditor’s costs associated with the conduct of any Follow Up Audit (required as a result of the action or inaction of the *Contractor*) and any Close Out Audit conducted under the WHS Active Certification Policy.
- (d) Unless otherwise agreed by the parties, the costs of the Auditor referred to clause 5(c) of this *Schedule* will be paid by the *Contractor* to the *Principal* way of a deduction from an amount or amounts claimed by the *Contractor* in a payment *claim* or payment *claims* made under this *Contract*, at the absolute discretion of the *Principal*.

- (e) Where all or part of the costs of the Auditor are not paid to the *Principal* in accordance with clause 5(d) of this *Schedule* any amount outstanding will be a debt due and payable by the *Contractor* to the *Principal*.

**6 Smoke Free Workplace**

(a) The *Contractor*:

- .1 acknowledges that parts of the *site* as notified by time to time by the *Principal* are smoke free; and
- .2 is responsible for ensuring that all employees and *subcontractors* comply with this condition.

EXAMPLE ONLY

## SCHEDULE 2

# Industrial relations requirements

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### Item 1. Secure Local Jobs

#### 1.1 Definitions

(a) In this **Item 1**:

- .1 *Adverse Ruling* means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the *Contractor* or one of its *Associated Entities* has contravened an *Industrial Law*;
- .2 *Applicable Subcontractor Work* means services or works that would, if provided to the Territory, be "Territory-funded work";
- .3 *Approved Auditor* has the meaning as set out in the *Procurement Act*;
- .4 *Associated Entity* has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
- .5 *Code* means the *Secure Local Jobs Code*;
- .6 *Full Details* means:
  - .1 the nature of the *Adverse Ruling*;
  - .2 any conviction recorded or adverse finding made in respect of the *Adverse Ruling*;
  - .3 any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the *Adverse Ruling* and the maximum penalty that could have been imposed under the relevant *Industrial Law*;
  - .4 the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
  - .5 the name of the entity against which the *Adverse Ruling* was made; and
  - .6 any other relevant information that the *Contractor* may rely on as grounds for not terminating this Contract as a result of the *Adverse Ruling*;
- .7 *Industrial Law* means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
- .8 *Labour Relations, Training and Workplace Equity Plan* has the meaning as set out in the *Procurement Act*;
- .9 *Registrar* has the meaning as set out in the *Procurement Act*;
- .10 *Secure Local Jobs Code* has the meaning as set out in the *Procurement Act*;
- .11 *Territory Entity* has the meaning as set out in the *Procurement Act*; and
- .12 *Territory-Funded Work* has the meaning as set out in the *Procurement Act*.

#### *Subcontractors performing Applicable Subcontractor Work*

- (b) The *Contractor* must, in relation to any *subcontractors* engaged to perform *Applicable Subcontractor Work*:
- .1 ensure terms are included in the agreement with the *subcontractor*:
    - .1 requiring the *subcontractor* to comply with the *Code*; and
    - .2 imposing obligations on the *subcontractor* in the same form as those set out in Item 1 and imposed on the *Contractor* (subject to any necessary variation to reflect the different parties);

- .2 ensure:
  - .1 the subcontractor holds a *Secure Local Jobs Code Certificate*; and
  - .2 the subcontractor maintains a *Secure Local Jobs Code Certificate* during the term of their subcontract; and
  - .3 the obligations in Item 1.1(b).2.1 and Item 1.1(b).2.2 are included in the relevant subcontract with the subcontractor.
- (c) The *Principal* may by written notice request the *Contractor* obtain a statutory declaration from a *subcontractor* engaged to perform *Applicable Subcontractor Work* regarding its compliance with the *Code* and provide it to the *Principal* within 15 *Business Days* of the date of the written notice. The *Contractor* must use its reasonable endeavours to ensure the *subcontractor* supplies the declaration to enable the *Contractor* to comply with this Item 1.1(c).
- (d) The *Principal* (or nominated representative) and *Approved Auditors* may, at the *Contractor's* cost, access records kept by subcontractors engaged to perform *Territory-Funded Work* and conduct audits and other reviews and checks, to monitor compliance with this clause and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

#### *Contractor's Secure Local Jobs responsibilities*

- (e) The *Contractor* must comply with all of its obligations under the *Code*.
- (f) The *Contractor* must maintain a valid *Secure Local Jobs Code Certificate* during the term of the *Contract*.
- (g) Failure of the *Contractor* to maintain a valid *Secure Local Jobs Certificate* will constitute a breach of an essential term of this *Contract* entitling the *Principal* to terminate the *Contract* on written notice to the *Contractor*.
- (h) If at any time during the term of the *Contract* an *Adverse Ruling* is made, the *Contractor* must, within 7 *business days* of the making of the *Adverse Ruling*, provide a statutory declaration by an authorised representative of the *Contractor* setting out the *Full Details* of the *Adverse Ruling* and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the *Adverse Ruling* is based from recurring.
- (i) The *Contractor* must provide the *Principal* with a statutory declaration in a form approved by the *Principal* regarding its compliance with the *Code*:
  - .1 within 5 working days of a written request from the *Principal*; and
  - .2 if requested in writing by the *Principal*, at the time the *Contractor* provides a payment *claim*.
- (j) Failure of the *Contractor* to provide a statutory declaration in accordance with Item 1.1.(h) or 1.1.(i) or the making of a false statement in a statutory declaration by the *Contractor* or its representative will constitute a breach of this *Contract*.
- (k) If the *Contractor* fails to provide a statutory declaration in accordance with Item 1.1.(i).2 the *Principal* may withhold payment of monies otherwise due to the *Contractor* in respect of the relevant payment *claim* until the statutory declaration is received.
- (l) The *Principal* may require that *Contractor* conduct face-to-face induction sessions with employees at the commencement of *Territory-Funded Work* or commencement of employment in relation to *Territory-Funded Work*.
- (m) The *Principal* may require a union workplace delegate or employee representative to attend staff induction sessions held by the *Contractor* except in circumstances where attendance would result in a conflict with Commonwealth laws.
- (n) The *Contractor* must, at all reasonable times, allow the *Principal*, *Registrar* or person nominated by the *Principal* or *Registrar* to enter the *Contractor's* worksite where the *Territory-Funded Work* is being performed in order to undertake education and awareness raising activities in relation to the *Code*. A person may not be nominated by the *Principal* or *Registrar* under this Item 1.1(n) in circumstances where entry would result in a conflict with Commonwealth laws.
- (o) The *Principal* (or nominated representative) and *Approved Auditors* may, at the *Principal's* cost, access records kept by the *Contractor* and conduct audits and other reviews and checks, to

monitor compliance with this Schedule and the *Code*, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

- (p) If the *Contractor* was required to submit a *Labour Relations, Training and Workplace Equity Plan* as part of its tender for the *Works*:
- .1 the *Contractor* must implement its commitments set out in its *Labour Relations, Training and Workplace Equity Plan*;
  - .2 the *Contractor* must report to the *Principal* on its compliance with Item 1.1.(p)1 quarterly during the term of this *Contract*;
  - .3 the *Contractor* must attend any meetings scheduled by the *Principal* to review its progress in implementing its commitments set out in the *Labour Relations, Training and Workplace Equity Plan*; and
  - .4 failure to comply, in whole or in part, with the commitments contained in any *Labour Relations, Training and Workplace Equity Plan* may be taken into account in the award of future contracts for *Territory Entities* and/or the granting of future *Secure Local Jobs Code Certificates* by the *Registrar*.
- (q) For the purposes of Item 1.1(c) and Item 1.1(i) the following form is approved unless otherwise advised by the *Principal*:

## ETHICAL SUPPLIERS DECLARATION

### Statutory Declarations Act 1959 (Cth)

I, **[Name, address and occupation of person making declaration]** make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:

**“Adverse Ruling”** means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.

**“Authorised Entity”** means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Contractor has contravened the Prescribed Legislation.

**“Consultant”** means 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 one with the Contractor.

**“Contract”** means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.

**“Contractor”** means [insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract];

**“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Contractor or a Subcontractor with his or her labour.

**“Industrial Instruments”** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer’s employees.

**“Prescribed Legislation”** means all applicable Acts and subordinate instruments of the Commonwealth and the Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:

- (a) *Fair Work Act 2009* (Cth);
- (b) *Fair Work (Building Industry) Act 2012* (Cth);
- (c) *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (d) *Income Tax Assessment Act 1997* (Cth);
- (e) *Independent Contractors Act 2006* (Cth);
- (f) *Industry Research and Development Act 1986* (Cth);
- (g) *Long Service Leave Act 1976* (ACT);
- (h) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (i) *Migration Act 1958* (Cth);
- (j) *Paid Parental Leave Act 2010* (Cth);
- (k) *Payroll Tax Act 2011* (ACT);
- (l) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
- (m) *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (n) *Superannuation Guarantee Charge Act 1992* (Cth);
- (o) *Work Health and Safety Act 2011* (ACT);
- (p) *Workers’ Compensation Act 1951* (ACT);
- (q) *Workplace Gender Equality Act 2012* (Cth).

g)

**“Project”** means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];

**“Prescribed Works or Services”** means works or services that require the exertion of labour by Employees;

**“Secure Local Jobs Code Certificate”** has the meaning given by the *Government Procurement Act 2001*;

**“Subcontractor”** includes a sub-subcontractor; and

**“Supplier”** means an entity engaged by the Contractor to supply part of the Works (including temporary works).

all other capitalised words or terms have the same meaning as defined in the Contract.

2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
4. The Contractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
5. All Subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement by each of them for the performance of Work or the supply of materials for or in connection with the Contract.
6. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the Work done in connection with the Contract have been paid.
7. All payroll tax payable by the Contractor in respect of wages paid or payable to the relevant Employees of the Contractor for Work done in connection with the Contract to the date of this statutory declaration has been paid.
8. The Contractor holds a current Secure Local Jobs Code Certificate.
9. The Contractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.  
 True (delete 9A and initial)                       Not true (answer 9A)
- 9A. The Contractor has not complied with the following Industrial Instruments in the following respects.

**[Insert full details of failure to comply with Industrial Instruments]**

10. The Contractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

True (delete 10A and initial)  Not true (answer 10A)

- 10A. The Contractor has not complied with the following Prescribed Legislation.

**[Insert Full Details of the failure to comply with Prescribed Legislation]**

11. The Contractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 11A and initial)  Not true (answer 11A)

- 11A. The Contractor has not recognised the rights of Employees to union membership and representation in the following respects.

**[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]**

12. The Contractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 12A and initial)  Not true (answer 12A)

- 12A. The Contractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

**[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]**

13. In the preceding 24 months of the date of this declaration there have been no findings against the Contractor by any Authorised Entity, including a finding of a breach in a non-confidential consent order.

True (delete 13A and initial)  Not true (answer 13A)

- 13A. There have been the following findings (Full Details of which are provided) against the Contractor by an Authorised Entity:

**[Set out Full Details of findings]**

14. In the preceding 24 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Contractor.

True (delete 14A and initial)  Not true (answer 14A)

- 14A. There have been the following Adverse Rulings under the Prescribed Legislation against the Contractor:

**[Set out Full Details of convictions]**

15. There are currently no proceedings or prosecutions against the Contractor in respect of a breach of any Prescribed Legislation.

True (delete 15A and initial)  Not true (answer 15A)

- 15A. There are currently the following proceedings or prosecutions against the Contractor in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

16. The Contractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 16A and initial)  Not true (answer 16A)

- 16A. The Contractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular. \_\_\_\_\_

**[Signature of person making the declaration]]**

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[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

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Before me:

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[Signature of person before whom the declaration is made]

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[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

**Note 1** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

**Note 2** Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

(1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)  
Bailiff  
Bank officer with 5 or more continuous years of service  
Building society officer with 5 or more years of continuous service  
Chief executive officer of a Commonwealth court  
Clerk of a court  
Commissioner for Affidavits  
Commissioner for Declarations  
Credit union officer with 5 or more years of continuous service  
Employee of the Australian Trade Commission who is:  
    (a) in a country or place outside Australia; and  
    (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and  
    (c) exercising his or her function in that place  
Employee of the Commonwealth who is:  
    (a) in a country or place outside Australia; and  
    (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and  
    (c) exercising his or her function in that place  
Fellow of the National Tax Accountants' Association  
Finance company officer with 5 or more years of continuous service  
Holder of a statutory office not specified in another item in this list  
Judge of a court  
Justice of the Peace  
Magistrate  
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961  
Master of a court  
Member of Chartered Secretaries Australia  
Member of Engineers Australia, other than at the grade of student  
Member of the Association of Taxation and Management Accountants  
Member of the Australasian Institute of Mining and Metallurgy  
Member of the Australian Defence Force who is:  
    (a) an officer; or  
    (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or  
    (c) a warrant officer within the meaning of that Act  
Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
Member of:  
    (a) the Parliament of the Commonwealth; or  
    (b) the Parliament of a State; or  
    (c) a Territory legislature; or  
    (d) a local government authority of a State or Territory  
Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961  
Notary public  
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
Permanent employee of:  
    (a) the Commonwealth or a Commonwealth authority; or  
    (b) a State or Territory or a State or Territory authority; or  
    (c) a local government authority;  
with 5 or more years of continuous service who is not specified in another item in this list  
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
Police officer  
Registrar, or Deputy Registrar, of a court  
Senior Executive Service employee of:  
    (a) the Commonwealth or a Commonwealth authority; or  
    (b) a State or Territory or a State or Territory authority  
Sheriff  
Sheriff's officer  
Teacher employed on a full-time basis at a school or tertiary education institution

## SCHEDULE 3

# Unconditional Undertaking

Refer to clause 5 of the NCW4 General Conditions of Contract.

### 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 Title: ».

Contract Number: »

Other words and phrases in this *Undertaking* have the meanings given in the General Conditions of Contract.

### Undertaking

- (a) 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.
- (b) 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.
- (c) The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- (d) 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.
- (e) 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:

## Annexure A – Contract Particulars

The Contract Particulars are part of the *Contract*. Words and phrases are defined in clause 2.1.

Contract Particulars			
Item	Relevant Clause		
1	1	<i>Principal:</i>	<p>Australian Capital Territory, the body politic established by section 7 of the <i>Australian Capital Territory (Self Government) Act 1988</i> (Cth) represented by [INSERT Directorate/ Agency].</p> <p><b>[Instructional note:</b> The Principal must be an entity that is legally capable of entering the contract. As a general rule the Principal will be the Australian Capital Territory. However, in some circumstances the Principal could be a Territory statutory body, for example the Commissioner for Social Housing. If you are unsure how to describe the appropriate legal entity seek advice from your manager in the first instance.</p> <p>A Directorate is not a legal entity and should not be noted as the Principal. It is however appropriate to note the Territory as being represented by a Directorate – for example Infrastructure Canberra. The Directorate noted as representing the Territory will need to be varied on a case by case basis depending on which Directorate is to manage the Contract. In the unlikely event that the agency responsible for the work is a Territory owned corporation then the corporation may elect to be named as the Principal.</p> <p>The choice of the entity to be named as Principal is a matter for the agency.</p> <p>For further information, contact the Senior Director - Contracts]</p>
		<i>Principal's address:</i>	
2	1	<i>Contractor:</i>	ABN:
		<i>Contractor's address:</i>	
3	2 and 23	<i>Superintendent:</i>	
		<i>Superintendent's address:</i>	
4	2.2	State or territory:	Australian Capital Territory
5	33	<i>Date for practical completion:</i>	Include either Option 1 or Option 2 and delete the option that does not apply.

Contract Particulars																					
Item	Relevant Clause																				
			<p>Option1: If there are no separable portions: For the whole of the Works is: [Insert] weeks after the date of contract.</p> <p>OR</p> <p>Option 2: If there are separable portions: describe them and add a date for practical completion to suit each separable portion]</p> <p>The time period for practical completion should generally be described in weeks. The weeks may be from the date of contract, or weeks from the date for practical completion or date of practical completion of another seperable portion if there is a need to link seperable portions.</p> <table border="1"> <thead> <tr> <th>Separable portion number</th> <th>Description</th> <th>Date for practical completion</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>»</td> <td>»</td> </tr> <tr> <td>2</td> <td>»</td> <td>»</td> </tr> <tr> <td>3</td> <td>»</td> <td>»</td> </tr> <tr> <td>4</td> <td>»</td> <td>»</td> </tr> <tr> <td>5</td> <td>»</td> <td>»</td> </tr> </tbody> </table> <p>[Note that if linking seperable portions then any extension of time for the previous seperable portion will also give rise to a right to an extension of time for the linked seperable portion. However, this also means that a failure by the Contractor to complete the first seperable portion in time where it is not entitled to an extension of time, will not entitle the Contractor to an extension of time for the linked seperable portion – effectively reducing the total period for completion of the later seperable portion. This can be used as a strategy to incentivise the Contractor to complete all seperable portions on time. However, it is more administratively complicated and is not recommended if it is likely the Principal may cause delay.</p> <p>A simpler method, is to describe the date for practical completion of each seperable portion as being either a particular number of weeks</p>	Separable portion number	Description	Date for practical completion	1	»	»	2	»	»	3	»	»	4	»	»	5	»	»
Separable portion number	Description	Date for practical completion																			
1	»	»																			
2	»	»																			
3	»	»																			
4	»	»																			
5	»	»																			

Contract Particulars			
Item	Relevant Clause		
			from the <i>date of contract</i> , or from actual <i>date of practical completion</i> of a particular <i>seperable portion</i> .]
6	5	Amount of <i>security</i> :	(“4% for the first \$10 million plus 2% for any amount of the <i>contract sum</i> over \$10 million” applies if not filled in)
		Form of <i>security</i> :	[INSERT for example “unconditional bank guarantee”. Otherwise, if Special Condition Item 30.2 is included in this <i>Contract</i> , write: As allowed by Special Condition Item 30.2]
		Amount or percentage of <i>security</i> returned at <i>practical completion</i> of the whole of the <i>Works</i> :	(“50%” applies if not filled in)
		Period after the <i>date of practical completion</i> for the whole of the <i>Works</i> for return of remaining <i>security</i> :	(“12 months” applies if not filled in)
7	6.1	The <i>Contract documents</i> are:	<ul style="list-style-type: none"> <li>» <i>Letter of Award</i>; and</li> <li>» Request for Tender and all annexures and attachments;</li> <li>» Addenda to the request for tender (if any);</li> <li>» the following post tender correspondence with the preferred tenderer: [If there are correspondences not otherwise referenced in the <i>Letter of Award</i> that are to form contract terms, list them here:] <ul style="list-style-type: none"> <li>» .....</li> </ul> </li> <li>» Labour Relations Training Workplace Employment Plan as submitted with the <i>Contractor’s</i> tender for the <i>Works</i> (subject to any adjustments agreed after close of tenders).</li> <li>» Local Industry Participation Plan as submitted with the <i>Contractor’s</i> tender for the <i>Works</i> (subject to any adjustments agreed after close of tenders).</li> </ul> <p>(“<i>Letter of Award</i> (if any)” applies if not filled in)</p> <p>[List documents that are intended to be part of the <i>Contract</i> but which are not already included in the definition of <i>Contract</i> in clause 6, and</p>

Contract Particulars			
Item	Relevant Clause		
			which are not going to be bound into the Contract as a schedule or annexure]
	6.2	Is a formal instrument of agreement required?	("Yes" applies if not filled in)
8	9.2	Is any of the work to be undertaken by a novated subcontractor?	("No" applies if not filled in)
		If yes, the extent of work to be novated and the subcontractor:	
9	12.1	<i>Reliance information</i> (Documents not guaranteed for completeness):	<b>[Instructional note:</b> List all the documents containing geotechnical or other <i>site information</i> which it is intended will NOT form part of the <i>Contract</i> as either <i>reliance information</i> or <i>non-reliance information</i> .  <i>Reliance Information</i> is information that can be relied upon for factual accuracy but not for completeness. <i>Reliance information</i> does not form part of the <i>Contract</i> and are not <i>Principal's Documents</i> . Such documents might, for example, include surveyors reports, site survey information or chemical analysis not subject to disclaimer from the provider of the reports.]
10	12.1	<i>Non-reliance information</i> (Documents not guaranteed for accuracy, quality or completeness):	<b>[Instructional note:</b> <i>Non-reliance Information</i> is information that cannot be relied upon for factual accuracy, quality or completeness. <i>Non-reliance information</i> does not form part of the <i>Contract</i> and are not <i>Principal's Documents</i> . Such documents might, for example, include geotechnical reports and environmental studies which may be the subject of a disclaimer from the provider of the report or study]
11	12.3 b) ii)	Are there any <i>latent conditions</i> for which the <i>Contractor</i> has no entitlement to additional costs?	("No" applies if not filled in)
		If yes, the <i>latent conditions</i> for which the <i>Contractor</i> has no entitlement to additional costs are:	

Contract Particulars			
Item	Relevant Clause		
12	14	The <i>statutory requirements</i> to be satisfied by or on behalf of the <i>Principal</i> :	<p><b>[Instructional note:</b> The <i>Contractor</i> must comply with all <i>statutory requirements</i> except those stated in <i>Item 12</i> or those notified by the <i>Superintendent</i> to be satisfied by or on behalf of the <i>Principal</i>]</p> <p>("None" applies if not filled in)</p>
		Fees and charges paid by the <i>Principal</i> :	<p><b>[Instructional note:</b> If nothing is listed, all relevant approvals, fees and charges will be met by the <i>Contractor</i>]</p> <p>("None" applies if not filled in)</p>
13	15	Is the <i>Contractor</i> appointed as principal contractor?	<p><b>[Instructional Note:</b> Seek the advice of the Client and the Project Officer responsible for the Project prior to completing this Item. There can only be one Principal Contractor appointed per site, and this would normally be the Contractor where NCW4 is used as a head contract. Refer to the <i>Work Health and Safety Regulation 2011 (ACT)</i>.</p> <p>If a contractor other than the Contractor is the Principal Contractor then insert "No"]</p> <p>("Yes" applies if not filled in)</p>
14	18 and 19	Responsibility for effecting a <i>Works</i> policy of insurance:	<p><b>[Instructional note:</b> For the majority of ACT Government construction works a principal arranged works insurance policy will be used]</p> <p>("Principal" applies if not filled in)</p>
15	18 and 19	Responsibility for effecting a public liability policy of insurance:	<p><b>[Instructional note:</b> For the majority of ACT Government construction works a principal arranged public liability insurance policy will be used. However, the Contractor is also required to maintain this insurance.]</p> <p>("Both the <i>Principal</i> and <i>Contractor</i>" applies if not filled in)</p>
16	18	Reference or hyperlink to obtain the <i>Principal Arranged Insurance Works</i> Policy (if applicable):	<p><b>[Instructional note:</b> Insert policy details. Check with the Senior Director, Contracts, Portfolio Performance and Procurement, Infrastructure Canberra to ensure that the policy details are correct and that ACTIA does not need to organise a separate policy for the project.]</p> <p>("Policy details can be obtained from the Senior Director, Contracts, Portfolio Performance and Procurement – Infrastructure Canberra" applies if not filled in)</p>

Contract Particulars			
Item	Relevant Clause		
17	19	Minimum amount of Contractor's Public Liability insurance (if applicable):	<p><b>[Instructional note:</b> A risk assessment should determine the minimum level of coverage to be sought from Contractors. Given the size/value and complexity of works for which NCW4 is used, \$20million will often be appropriate. This insurance should be maintained through to cover the defects liability period, and for any period where maintenance services are provided. After these periods, should the Contractor be required to come back onto site (such as to correct a latent defect), officers should always ask the Contractor for evidence of insurance at that time. Clause 19 d) ii) provides that unless specified otherwise in the <i>Contract</i>, public liability insurance must be maintained by the <i>Contractor</i> until expiry of the <i>defects liability period</i>]</p> <p>("\$20 million through to expiry of the <i>defects liability period</i>" applies if not filled in)</p>
18	20	Is the <i>Contractor</i> required to take out Professional Indemnity Insurance for the design of <i>temporary Works</i> ?	<p><b>[Instructional note:</b> NCW4 recognises that the <i>Contractor</i> will generally need to complete minor and incidental design and detailing, including preparation of shop drawings and design of temporary works. As such professional indemnity insurance will usually be relevant.]</p> <p>("Yes" applies if not filled in)</p>
	20	If yes, the Professional Indemnity Insurance must be for not less than:	<p><b>[Instructional note:</b> A default minimum cover would normally be expressed as an amount "in respect of each claim and in the annual aggregate". You should seek the advice of your Senior Director if you are uncertain as to the amount to be inserted. A default of \$5 million has been included but can be varied according to the project. At a minimum \$5 million should be requested. If unsure, discuss with the Senior Director, Contracts, Infrastructure Canberra.]</p> <p>("\$5 million in respect of each claim and \$5 million in the annual aggregate" applies if not filled in)</p>
19	27.1	Time after the <i>date of contract</i> for giving possession of <i>site</i> :	<p>There are 2 options. Delete the option that does not apply.</p> <p><b>Option 1</b> – No separable portions: [insert] business days.</p>

Contract Particulars																					
Item	Relevant Clause																				
			<p><b>Option 2 – Separable portions apply. Drafters may optionally specify different times for possession of site for each separable portion.</b></p> <table border="1"> <thead> <tr> <th>Separable portion number</th> <th>Description</th> <th>Time for giving possession of site</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>»</td> <td>»</td> </tr> <tr> <td>2</td> <td>»</td> <td>»</td> </tr> <tr> <td>3</td> <td>»</td> <td>»</td> </tr> <tr> <td>4</td> <td>»</td> <td>»</td> </tr> <tr> <td>5</td> <td>»</td> <td>»</td> </tr> </tbody> </table> <p>(If nothing stated, 10 <i>business days</i>)</p>	Separable portion number	Description	Time for giving possession of site	1	»	»	2	»	»	3	»	»	4	»	»	5	»	»
Separable portion number	Description	Time for giving possession of site																			
1	»	»																			
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5	»	»																			
	27.1 d)	Maximum delay in the <i>Principal</i> giving possession of site:	<p><b>[Instructional note: It is not considered a breach of contract if the <i>Principal</i> delays granting possession of site for less than the number of days stated here]</b></p> <p>(If nothing stated, within 90 <i>business days</i>)</p>																		
20	30.6	Is the <i>Contractor</i> required to implement a quality management system?	<p><b>[Instructional note: If a quality management system is required also consider if Special Condition Item 26 (Quality Assurance) is required]</b></p> <p>(“Yes” applies if not filled in)</p>																		
21	32	<i>Working days</i> and working hours:	<p><b>[Instructional note: Seek the advice of the project manager responsible for the project. When required, complete the working days and hours details for each day. It may be relevant to refer to the development approval or other government requirements.</b></p> <p>If specific working days and hours are required write, for example:</p> <p>“Monday to Friday 7.00am to 5.00pm; Saturday 7.00am to 1.00pm”]</p> <p>(“In accordance with <i>statutory requirements</i>” applies if not filled in)</p>																		
22	33.1 d) iii)	<i>Contract program</i> – times or stages for revision and submission:	<p><b>[Instructional note: Insert the times or stages when the <i>Contractor</i> must provide revised <i>Contract programs</i> to the <i>Superintendent</i>]</b></p>																		

Contract Particulars			
Item	Relevant Clause		
			("Monthly" applies if not filled in)
23	35.3 a) i) B)	Events outside of the <i>Contractor's</i> reasonable control for which the <i>Contractor</i> is not entitled to an extension of time for <i>practical completion</i> :	<p><b>[Instructional note:</b> The Contractor will be entitled to an extension of time for <i>practical completion</i> only in particular circumstances set out in clause 35.3 a). The <i>Contractor</i> is not entitled to an extension of time if it is delayed by a cause specified in this Item, even where that cause is otherwise reasonably beyond the Contractor's control.]</p> <p>("None" applies if not filled in)</p>
24	35.4	Do liquidated damages apply?	<p><b>[Instructional note:</b> The default is "No", in which case the <i>Principal</i> will instead rely on the <i>Principal's</i> right to claim general damages. Drafters should seek the advice of the client and the project manager responsible for the project prior specifying liquidated damages. A decision to include an amount of liquidated damages will remove the Territory's capacity to claim general damages.]</p> <p>("No" applies if not filled in)</p>
		If yes, amount of liquidated damages per day:	<p><b>[Instructional note:</b> There are 2 options. Delete the option that does not apply.</p> <p>Any amount inserted for liquidated damages must be a genuine pre-estimate of the likely damages to be incurred by the Territory as a result of the delay to <i>practical completion</i>. The text below provides one method of calculating the daily liquidated damages. Any decision to place a cap or limit on the amount of liquidated damages should be carefully considered as it may have significant financial ramifications for the Territory.</p> <p>Calculation of the liquidated damages amount should be documented and approved by a senior manager. The amount should be itemised and a copy of the calculation methodology included on the file. In some instances it may also be appropriate to provide the contractor with a copy of the calculation.</p> <p>The following formula may provide an assessment of the minimum cost/loss due to recurrent contract administration costs and opportunity costs of capital invested in the works:</p> <p>Rate per calendar day = <math>(0.08 * CE / 365) + (F / D)</math>  where:</p>

Contract Particulars			
Item	Relevant Clause		
			<p>CE = pre-construction estimate F = construction management fee D = original contract period in days</p> <p>Assess cost/losses that the <i>Principal/client</i> may suffer due to delay based on recurrent administration costs, costs of capital invested, delay in realising savings in operating and maintenance costs, delay in obtaining revenue from the <i>Works</i>, costs of alternative facilities and so on. Use formula to assess minimum rate if no better data is available.]</p> <p><b>Option 1 – There are no separable portions:</b> For the whole of the <i>Works</i>: [insert rate per day]</p> <p><b>Option 2 – There are separable portions:</b> Separable portion 1: \$[insert rate per day] Separable portion 2: \$[insert rate per day] Separable portion 3: \$[insert rate per day] etc</p> <p>OR if Item 30.3 in the Special conditions is included - For each <i>separable portion</i>: as per Item 30.3 of the Special Conditions.</p>
25	35.4	Limiting amount or percentage of the <i>contract sum</i> for liquidated damages:	<p><b>[Instructional note:</b> If a limiting amount or percentage of the <i>contract sum</i> is included in this item, the <i>Contractor's</i> liability to pay liquidated damages is limited to that amount or percentage.]</p> <p>("No limit" applies if not filled in)</p>
26	37	The <i>defects liability period</i> is:	<p>There are 2 options. Delete the option that does not apply.</p> <p><b>Option 1:</b> Use if there are no <i>separable portions</i>: For the whole of the <i>Works</i> is: [insert eg 12 months]</p> <p><b>Option 2:</b> If there are <i>separable portions</i>: Separable portion 1: [insert eg 12 months] Separable portion 2: [insert eg 12 months] Separable portion 3: [insert eg 12 months] etc</p> <p>OR if Item 30.3 in the Special conditions is included - For each <i>separable portion</i> is: as specified in Item 30.3 of the Special Conditions.]</p> <p>("12 months" applies if not filled in)</p>

Contract Particulars			
Item	Relevant Clause		
	37 f)	The maximum period by which a <i>defects liability period</i> may be extended for rectified work:	<p><b>[Instructional note: Where defective work is rectified, the <i>Superintendent</i> may extend the <i>defects liability period</i> applicable to the rectified part of the <i>Works</i>. The extended <i>defects liability period</i> commences at 4.00 pm on the date that the rectification is completed and must not exceed the period stated in this item.]</b></p> <p>("12 months" applies if not filled in)</p>
27	42.1 e)	Address for submission of payment <i>claims</i> :	<p>1. For the Territory: Payment <i>claims</i> to be submitted through CAMPS. To be made in favour of the represented Directorate of the <i>Territory</i> being (insert the full name of the Directorate or Agency and their ABN as applicable) addressed as follows: Directorate Directorate Representative Directorate Address</p> <p>2. For the Superintendent: To the Superintendent's address in Item 3 [OR Insert]</p>
	42.1	Time for submission of payment <i>claims</i> or stages of the work for payment <i>claims</i> :	<p><b>[Instructional note: Each date, or stage of work (if payment is tied to completion of particular items of work), specified in this item will constitute a 'reference date' for the SOP Act, and is a date, or stage of work, at which point the <i>Contractor</i> can submit a payment <i>claim</i>.]</b></p> <p>("the last <i>business day</i> prior to the end of each calendar month" applies if not filled in).</p>
	42.1 g)	Time after the submission of a payment <i>claim</i> by which payment must be made:	<p>("15 <i>business days</i>" applies if not filled in)</p> <p><b>[Instructional note: the time for payment may be amended to an earlier time, but cannot be greater than 15 <i>business days</i> after submission of the <i>claim</i>]</b></p>
	42.1 m)	Interest rate on overdue payments:	For the Principal – as determined in accordance with section 45 of the <i>Government Procurement Act 2001</i>

Contract Particulars			
Item	Relevant Clause		
			<p>For the Contractor – [INSERT the default 7% or another amount] %</p> <p><b>[Instructional note:</b> Section 45 of the <i>Government Procurement Act 2001 (ACT)</i> deals with the interest to be paid by the Territory or a Territory entity on commercial accounts not paid in full by the relevant date. Interest is payable at a rate worked out in accordance with the rules under the <i>Court Procedures Act 2004 (ACT)</i> as if the unpaid amount were a judgement of the Supreme Court.</p> <p>Interest payable by the Contractor will need to be determined having regard to the current interest rate market and any policies of the Relevant agency. 7% is the default, but should be amended if another value is determined to be more appropriate in light of the assessment of these matters]</p>
28	42.4	Unfixed materials, plant, machinery or equipment – the Alternative applying:	<p><b>[Instructional note:</b> Alternative 1 is the default - the <i>Contractor</i> is not entitled to payment for materials, plant or equipment not incorporated in the <i>Works</i>.</p> <p>Alternative 2 allows the <i>Contractor</i> to claim payment for specified unincorporated items if particular conditions are met, including the provision of additional security. Contractors may request long lead items such as elevators be paid for up front].</p> <p>("Alternative 1" applies if not filled in)</p>
		If Alternative 2 applies, the Unfixed materials, plant, machinery or equipment for which payment may be claimed:	
29	43.1	Form of documentary evidence of payment of <i>subcontractors</i> and workers:	<p>An <i>Ethical Suppliers Declaration</i> in a form required by the <i>Territory</i>.</p> <p>("A statutory declaration to the reasonable satisfaction of the <i>Superintendent</i>" applies if not filled in)</p>
30	47.2	Dispute resolution process, as outlined in General Conditions of	<p><b>[Instructional note:</b> The alternatives are: 1. Arbitration, 2. Expert Determination, 3. Alternative Dispute Resolution, 4. Litigation]</p>

Contract Particulars						
Item	Relevant Clause					
		Contract – Annexure D – Expert Determination Procedure:	("Alternative 2 – Expert Determination applies if not filled in)			
		Rules for the conduct of Expert Determination:	("Australian Disputes Centre Rules, current at the <i>date of contract</i> " applies if not filled in)			
31	47.3 b)	If the parties fail to agree on an Expert, the person to nominate the Expert:	("the Chief Executive Officer, Australian Disputes Centre Level 16, 1 Castlereagh Street Sydney NSW 2000 Telephone number: (02) 9239 0700" applies if not filled in)			
32	47.4	If the parties fail to agree on an Expert, the person to nominate the Expert:	("the Chief Executive Officer, Australian Disputes Centre Level 16, 1 Castlereagh Street Sydney NSW 2000 Telephone number: (02) 9239 0700" applies if not filled in)			
		Lowest amount determined by the Expert which may be subject to litigation:	("\$500,000" applies if not filled in)			
33	48 f)	Will the Principal issue recipient created tax invoices?	("No" applies if not filled in)			
34	8.6	Confidential Text	This Agreement is a "notifiable contract" under the Procurement Act and the following is Confidential Text: <table border="1" data-bbox="874 1563 1390 2016"> <thead> <tr> <th>Clause No.</th> </tr> </thead> <tbody> <tr> <td>If there is no personal information in the <i>Contract</i> and no other Confidential Text, write "<i>Item 34</i> not used - there is no Confidential Text".</td> </tr> <tr> <td>Otherwise, INSERT <u>specific clause or item number</u> in the Agreement that either party requires the Territory to keep confidential. eg. "Item 3(2) Schedule 1" or "Names of persons where they appear in Item 4 Schedule 1" or "Item 1 and 3 of the Labour Relations, Training and Workplace Equity Plan"</td> </tr> </tbody> </table>	Clause No.	If there is no personal information in the <i>Contract</i> and no other Confidential Text, write " <i>Item 34</i> not used - there is no Confidential Text".	Otherwise, INSERT <u>specific clause or item number</u> in the Agreement that either party requires the Territory to keep confidential. eg. "Item 3(2) Schedule 1" or "Names of persons where they appear in Item 4 Schedule 1" or "Item 1 and 3 of the Labour Relations, Training and Workplace Equity Plan"
Clause No.						
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Contract Particulars			
Item	Relevant Clause		
			<p><b>DO NOT</b> include general statements such as “all personal information” or “contractor pricing” or “contractor methodology”, as it will not be clear to either party which specific clauses are agreed to be redacted from the public text version.</p> <p>Note that from 1 July 2024:</p> <p>(1) all personal information in notifiable contracts is considered Confidential Text. Personal Information is information about an identified individual, or an individual who is reasonably identifiable; and</p> <p>(2) the Territory can only propose text be Confidential Text if the conditions in section 18(2) and (3) of the Procurement Act are met.</p> <p>All documents that make up the <i>Contract</i> under clause 6, including any documents specified as <i>Contract Documents</i> in Contract Particulars – Item 7 are part of the <i>Contract</i>, whether or not they are attached/bound in. Accordingly, consideration must be given to each of those documents and whether they contain any Confidential Text.</p> <p>By default this includes the Contractor’s Labour Relations, Training and Workplace Equity (LRTWE) plan and Local Industry Participation plan (LIP) submitted by the <i>Contractor</i> with its tender for the Works.</p> <p><b>Instructional Note:</b> If the <i>Contract</i> is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the <i>Contract</i> if the text is personal information, there is a requirement imposed by law that has the effect of requiring a party to keep the text confidential, or the Territory is otherwise permitted to not disclose the text on the basis of one or more of the grounds</p>

Contract Particulars			
Item	Relevant Clause		
			<p>set out in section 18 of the Procurement Act. The relevant grounds should be specified below.</p> <p>The Procurement Act, part 3 (Notifiable Contracts) applies to this <i>Contract</i>. The <i>Confidential Text</i> is “confidential information” for the purposes of the Procurement Act because:</p> <p><b>EXAMPLE ONLY</b></p> <p>(1) it is personal information about a person;</p> <p>(2) the Territory is satisfied that disclosure of the text would:</p> <p>(i) be an unreasonable disclosure of information about internal costings or profit margins; or</p> <p>(ii) disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished by the disclosure]</p>
35	16	Is a Project IR Plan required?	(“No” applies if not filled in)
36	15c)	Is a work health and safety management plan required?	(“Yes” applies if not filled in)
37	15Cb)	Is an environmental management plan required?	(“Yes” applies if not filled in)
38	15F	Does clause 15E (Local Industry Participation) apply?	(“Yes” applies if not filled in)
39	22 and 2.1	Separable Portions	<b>[Instructional Note: Insert list of separable portions and a brief description of each. Alternatively, if Special Condition of Contract Item 30.3 is included, write: are as specified in Special Condition of Contract Item 30.3.</b>

Contract Particulars			
Item	Relevant Clause		
			("are as specified in Special Condition of Contract Item 30.3" applies if not filled in)
40	42.6 a)	Time to submit final payment claim	<p><b>[Instructional Note:</b> Insert time to submit final payment claim. If payments are to occur during the defects liability period, for consolidation or maintenance, it may be appropriate to specify a time after the end of the defects liability period. Otherwise, the default is as listed below and assumes all work for which payment attaches will be complete by the <i>date of practical completion</i> of the whole of the Works]</p> <p>("65 business days after the <i>date of practical completion</i> for the whole of the Works" applies if not filled in)</p>
	42.7 a)	Time to issue final <i>payment schedule</i> if Contractor has not submitted a final payment <i>claim</i> in accordance with clause 42.6 a)	<p><b>[Instructional Note:</b> Insert time to issue final <i>payment schedule</i>. This must be after the time for submission of the final <i>payment claim</i> noted above. If payments are to occur during the defects liability period, for consolidation or maintenance, it may be appropriate to specify a time after the end of the defects liability period. Otherwise, the default is as listed below and assumes all work for which payment attaches will be complete by the <i>date of practical completion</i> of the whole of the Works]</p> <p>("75 business days after the <i>date of practical completion</i> for the whole of the Works" applies if not filled in)</p>

## Annexure B – Commercial Framework

Clause reference		
Clause 2.1 –	<b>Contract Sum</b> The <i>contract sum</i> at the <i>date of contract</i> is:	\$.....
Clause 29 b)	<b>Rates, items and lump sums</b> The basis of payment is: (Lump sum / schedule of rates / lump sum with rate items)  If a schedule of rates is used, limits of accuracy do not apply.	<b>[Instructional note: Include rates, items and lump sums used as the basis of payment here, or cross reference to a relevant annexure. Additional annexures can be created if required. Include here the relevant sum (if any) payment of which is to be tied to receipt of work as executed drawings, operational manuals or other documents as per Item 25.1 of the Special Conditions]</b>
Clause 11	<b>Provisional Sums / Provisional Quantities</b> The <i>Contract</i> includes <i>provisional sums</i> and/or <i>provisional quantities</i> :	Provisional Sums:.....  Margin to be applied for profit and overheads on <i>provisional sums</i> : ('10%' applies if not filled in)  Provisional Quantities:.....  ('Nil' applies if not filled in)
Clause 12	<b>Limitation to entitlements – latent conditions</b> Is there a limitation on the Contractor's entitlement to additional costs / extension of time for latent conditions?	.....  (If nothing is specified, the <i>Contractor</i> is (subject to the <i>Contract</i> ), entitled to additional costs / extension of time to the full extent as calculated or provided for in the <i>Contract</i> .)
Clause 35.3	<b>Limitation to entitlements – extension of time</b>  In addition to any limitations specified in <i>Item 23</i> , are there any events outside of the reasonable control of the <i>Contractor</i> (such as inclement weather or industrial conditions) for which the <i>Contractor</i> has no entitlement to an extension of time?	.....  (If nothing is specified, no further limitations apply to the <i>Contractor's</i> entitlement to an extension of time for these events.)
Clause 36 c)	<b>Method of calculating Contractor's delay costs</b> Rate per day for delay costs payable by the <i>Principal</i> is:	.....  ('Nil delay costs payable' if item not filled in).
Clause 1 b) i)	<b>Rise and fall</b> Will the <i>contract sum</i> (and the rates and/or lump sums it includes) be adjusted for rise or fall in costs?	<b>[Instructional note: If the <i>Contract</i> involves road works it may be relevant to include Special Condition Item 32, and the following text: Yes - bitumen rise and fall in accordance with Special Condition of Contract Item 32.</b>

		(If nothing is specified, there will be no adjustment to payment for external factors.)
<b>Clause 40.5 d) iv) C)</b>	<b>Valuations</b> If the method for valuation specified in clause 40.5 d) iv) is used, the relevant percentage for <i>Contractor</i> profit and overheads is:	..... (‘10%’ applies if item not filled in)
<b>Clause 40.5 i)</b>	<b>Profit and overheads</b> The following rates and prices do not include an amount for profit and overheads:  (Rates and prices are deemed to include an amount for profit and overheads unless specified otherwise)  The amount for profit and overheads to be applied is:	..... (‘Nil – all rates and prices include an amount for profit and overheads’ applies if not filled in)  ..... (‘10%’ applies if not filled in)
Clause 41 a) i)	<b>Daywork – upper limit of accuracy</b> The <i>Superintendent</i> may direct that quantities greater than those determined by reference to a specified upper limit of accuracy is to be carried out as daywork.  Upper limit of accuracy is:	.....
Clause 41 c) ii)	<b>Daywork schedules</b> The <i>Superintendent</i> may determine the value of <i>daywork</i> pursuant to clause 41 c), including from these rates and amounts ( <i>daywork</i> schedules):  Are these rates and amounts inclusive of overheads and profit?	..... [Include rates and prices for daywork, or cross reference to relevant annexure. Additional annexures can be included as necessary.]  ..... (‘yes’) applies if item not filled in)
Clause 41e)	<b>Daywork margin</b> If the rates and amounts in the <i>daywork</i> schedules are not inclusive of overheads, the following percentage applies:	..... (‘10%’ applies if not filled in)
Clause 48 d)	<b>GST</b> Are rates and amounts are inclusive or exclusive of GST?  (If nothing is specified, then under the GST Act, rates and amounts will be deemed to be inclusive of GST.)	All prices, rates or other sums are GST inclusive unless otherwise stated.
[INSERT]	[INSERT any other financial and commercial matters not specified elsewhere]	[INSERT any other financial and commercial matters not specified elsewhere]

## Annexure C – Subcontracting Framework

Contractual relationships between the Contractor and Subcontractors must be on a similar basis to those between the Principal and Contractor and are in the form of the NCW4 General Conditions of Subcontract held at [NCW4 document suite - Infrastructure Canberra](#) webpage.

EXAMPLE ONLY

## Annexure D – Dispute Resolution Framework

### Item 1. Expert Determination Procedure

- a) This Item 1 Annexure D applies if Alternative 2 - Expert Determination is specified in *Item 30*.
- b) 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:
  - i) the *dispute* referred to the expert for determination;
  - ii) the expert's fees;
  - iii) the procedure for expert determination in Items 1f) to 1 o) Annexure D; and
  - iv) any other matters which are relevant to the engagement.
- c) 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.
- d) The procedure for expert determination is set out in Items 1f) to 1 o) Annexure D below.
- e) In response to any *dispute* referred to the expert by a party, the other party may raise any defence, set-off or cross-claim.

#### Questions to be determined by the Expert

- f) For each *dispute*, the expert must determine the following questions, to the extent that they are applicable to the *dispute* and unless otherwise agreed by the parties:
  - i) Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *dispute* if no compensation is claimed:
    - A) under the *Contract*,
    - B) for damages for breach of the *Contract*, or
    - C) otherwise in law?
  - ii) If so:
    - A) what is the event, act or omission?
    - B) on what date did the event, act or omission occur?
    - C) what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *dispute*?
    - D) 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?
  - iii) In light of the answers to the questions in Item 1 f) i) and 1 f) ii) Annexure D:
    - A) what compensation, if any, is payable by one party to the other and when did it become payable?
    - B) applying the rate of interest specified in the *Contract*, what interest, if any, is payable when the expert determines that compensation?
    - C) if compensation is not claimed, what otherwise is the resolution of the *dispute*?
- g) The expert must determine, for each *dispute*, any other questions identified or required by the parties, having regard to the nature of the *dispute*.

#### Submissions

- h) The procedure for submissions to the expert is as follows:

- i) The party to the Contract which referred the *dispute* to expert determination must make a submission in respect of the *dispute*, within 15 *business days* after the date of the letter of engagement of the expert.
- ii) 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 *dispute* 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 may include cross-claims.
- iii) The party referred to in Item 1 h) i) Annexure D 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 Item 1 h) ii) Annexure D after receiving the response, and must not raise new matters.
- iv) 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 Item 1 h) ii) Annexure D) after receiving the reply, and must not raise new matters.
- i) The expert must ignore any submission, response, reply, or comment not made within the time given in Item 1 h) Annexure D of this Expert Determination Procedure, unless the *Principal* and the *Contractor* agree otherwise.
- j) 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.
- k) 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.

#### **Conference**

- l) 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.
- m) 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.

#### **Role of Expert**

- n) The expert:
  - i) acts as an expert and not as an arbitrator;
  - ii) 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
  - iii) 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.
- o) 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.

## Annexure E – Special Conditions

Terms in italics have the same meaning as in the General Conditions of Contract. In addition, in these *Special Conditions* the following definitions apply unless the context otherwise requires: **[Instructional note: Insert any other definitions that apply]**

<p><b>Commissioning and Handover Plan</b></p>	<p><b>[Instructional note: include this definition if Special Condition “Commissioning and Handover Plan” is included]</b></p> <p>if required under these <i>Special Conditions</i>, means the commissioning and handover plan prepared by the <i>Contractor</i> and finalised under these <i>Special Conditions</i> which must set out in adequate detail the procedures the <i>Contractor</i> will implement to manage the <i>Contractor’s</i> activities from a commissioning and handover perspective to ensure:</p> <ul style="list-style-type: none"> <li>(a) the timely, efficient and comprehensive commissioning of the <i>Works</i> (including the inspection and testing process);</li> <li>(b) the smooth handover of the <i>Works</i> to the <i>Principal</i>; and</li> <li>(c) that all required planned and unplanned maintenance is provided during the <i>defects liability period</i> (if required under these <i>Special Conditions</i>),</li> </ul> <p>in accordance with the <i>Contract</i>.</p>

### Item 1. Audit and review

**[Instructional note: This Item 1 will generally be applicable to all projects]**

The *Contractor* must make available, on request, all records, including those of or relating to *subcontractors*, relevant to compliance with requirements of the *Contract*, for the purposes of audit, review (including peer review) or surveillance. The *Contractor* must provide all reasonable assistance during the audits or reviews including attendance by the *Contractor*.

The *Contractor* must promptly implement effective corrective action on matters disclosed by audit or review.

### Item 2. Prequalification

**[Instructional note: Include this Special Condition if Tenderers were required to be prequalified under the RFT]**

The *Contractor* must maintain its prequalification to **[INSERT LEVEL]** with the Territory or a suitable corresponding prequalification under the National Prequalification Scheme for the duration of the project, until the end of the *defects liability period*.

### Item 3. Use of Qualified Tradespersons

**[Instructional note: Include if relevant]**

The *Contractor* must use qualified tradespersons when completing the *work under the Contract*. The use of such persons shall not relieve the *Contractor* of liability for the fitness of the *work under the Contract* for the purposes required by the *Contract*.

### Item 4 Use of public unleased land

**[Instructional note: Include this Special Condition if the *Contractor* is required to obtain consent with respect to the use of public unleased land. NCW4 is a construct only contract, DA and BA, if applicable, should be in place at the time of tender]**

To the extent the *site* includes any public unleased land the *Contractor* must obtain approval from Transport Canberra and City Services.

### Item 5. Documents to be supplied by the *Contractor*

*See clause 8.4 of General Conditions of Contract*

The *Contractor* must supply the *Principal* and *Superintendent* with the following documents (without limitation), in accordance with clause 8.4 of the General Conditions of Contract:

- (a) **[Instructional note: Unless this information is already contained in the Principals Documents, describe the documents to be provided by the *Contractor*.**

### Item 6. Work as executed drawings

**[Instructional note: Drafters should ensure that the 'technical' sections of the specification include details of the information that is required to be shown on work as executed drawings. Include this Special Condition if work as executed drawings are to be submitted within 28 days of the work being completed]**

The *Contractor* must progressively produce work as executed drawings and submit work as executed drawings showing work which has been completed within 10 days of completion of that work. The *Contractor* must endorse each drawing certifying accuracy and correctness.

The *Contractor* is required to submit work as executed drawings in accordance with the Transport Canberra and City Services policy 'Requirements for Works as Executed Quality Records' (located at: [TCCS Reference Documents - City Services \(act.gov.au\)](#)).

### Item 7. Priced Builder's Bill of Quantities

**[Instructional note: Include this Special Condition if the *Contractor* is required to submit a priced builder's bill of quantities. The default is to delete the text and insert Not Used. Generally a schedule of rates is used and has a contractual status for method of payment. The prices in the builder's bill of quantities do not form part of the *Contract*. Rather, the purpose is to assist in making valuations of works carried out. The *Principal* is not bound to use them. Do not include this Item if the *Contract* is lump sum or a schedule of rates and lump sum items.**

The *Contractor* must lodge with the *Principal* a priced Builder's Bill of Quantities within **[insert time, eg 10 business days]** after the *date of contract*.

The parties agree that prices in the Builder's Bill of Quantities do not form part of the *Contract* and that their purpose is to assist in making valuations of works carried out. The parties also agree that the *Principal* is not bound to use them.

Notwithstanding any other provision of the *Contract*, the *Contractor* is not entitled to any payment until the priced Builder's Bill of Quantities has been lodged.

**Item 8. Order of work**

**[Instructional note:** Include this Special Condition if it is necessary to direct the Contractor to perform the Works in a particular order or complete stages or parts of the work in a particular sequence or at stated times. If it is required, include the order of work below. Note that an order of work is not a Separable Portion but sits within a Separate Portion (i.e. the order of steps to be undertaken to achieve the Separate Portion or, if there are no Separable Portions the Works as applicable)].

» [INSERT]

**Item 9. Site access and limitations**

*See clause 27.2 of General Conditions of Contract*

**[Instructional note:** Include this Special Condition if it is necessary to:

- identify who is to provide and maintain access to the *site* if the *site* is away from public thoroughfare;
- include details of any weight or height limits and/or any other restrictions which may apply;
- identify what is to be done at the end of the *Contract*;
- identify restrictions to the movement or activities of the *Contractor* on *site*, eg
  - o easements
  - o covenants and restrictions arising from actions of adjoining owners
  - o environmental protection
  - o noise reduction etc]

» [INSERT]

**Item 10. Occupied premises**

**[Instructional note:** Include this Special Condition if the *Principal* is to remain in occupation of part of a building or the *site*]

The *Principal* or persons authorised by the *Principal* will continue in possession and occupancy of:

» [INSERT - include details of buildings (or parts thereof) or the *site* that the *Principal* is to continue to occupy]

The *Contractor* must provide safe access to such premises for the *Principal* and authorised persons notified to the *Contractor* by the *Principal*.

The *Contractor* must take responsibility for the suitability of all workers and *subcontractors* on the *site*, set reasonable standards of conduct, investigate complaints about their behaviour and take appropriate action including removal from the *site* if so warranted.

» [INSERT specific requirements, eg Include details when unrestricted access by the *Contractor* is not desirable. In consultation with the client establish the security and access requirements that are to be imposed. Consider matters such as:

- Compliance with existing security systems, eg wearing of id tags in hospitals;
- Requiring the *Contractor* to implement a security system;
- Requiring all workers and visitors to report to the client's representative, eg the School Principal (after completion).
- Restricted working hours;
- Out of bounds areas, eg student change rooms and toilets, existing carparking]

## Item 11. Existing services

**[Instructional note: Include this Special Condition if the Contractor is to be responsible for locating and dealing with existing services which may be of issue at the site]**

### Locating Existing Services

The Contractor is responsible for locating all existing services.

**[Instructional note: Include the following paragraph if the contractor is required to use dial before you dig]**

### Dial Before You Dig

Before commencing excavation the Contractor must obtain, from the Dial Before You Dig information service or relevant public authorities or owners of underground services, written confirmation of the exact positions of all underground services at and around the site, and verify and prominently mark the locations of the underground services on the site.

### Dealing with Existing Services

Existing services (such as drains, watercourses, public utilities, telecommunications and other services) obstructing the Works or if damaged in the course of the Contract, must be dealt with by the Contractor as follows:

- a) if the service is to be continued: repair, divert, relocate as required;
- b) if the service is to be abandoned: cut and seal or disconnect and make safe as required.

### Cost and Delay

Where an existing service obstructs the Works and requires diversion or relocation, the Contractor must bear all resulting costs and delays except to the extent that the Contractor is entitled to an adjustment of the contract sum in accordance with clause 12 of the General Conditions of Contract. Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor shall bear all costs and any delays for repairing or disconnecting the service.

### Notification

The Contractor must notify the Principal immediately upon the discovery of services obstructing the Works not shown in the Principal's Documents.

## Item 12. Dangerous substances on site

**[Instructional note: Include if the presence of dangerous substances (including asbestos) may be of issue at the site]**

- (a) If at any time the Contractor discovers the presence on the site of any material suspected of containing or likely to contain a "dangerous substance" as defined in the *Dangerous Substances Act 2004* (ACT) it must:
  - (i) not disturb the material under any circumstances;
  - (ii) contact the Principal and inform the Principal within one business day of the existence of the material on site; and
  - (iii) ensure that all persons are protected from exposure to the material.
- (b) The Principal must inspect the site and report any suspected dangerous substance to the Contractor who must report the finding to the relevant regulator and comply with the regulator's directions.
- (c) All such materials upon the site must if so directed by the relevant regulator be treated or removed in accordance with the requirements for the safe removal of such materials and any other statutory requirements in the Territory relating to the removal of such materials.

**[Instructional note: If the Contractor's activities include the surveying and removal of such substances (e.g. asbestos products or mineral fibre material), insert the following Item (d), otherwise delete]**

- (d) The Contractor must remove all material defined or listed in the *Dangerous Substances Act 2004* (ACT) as "dangerous substances" from the site, including, without limitation, conducting any surveys necessary to determine the full extent of such material and any required monitoring during the removal of any such material.

#### **Item 13. Use of Dangerous Substances**

**[Instructional note: Include if the use of dangerous substances in the Works may be of issue. Acceptance of dangerous substance could require testing at the Contractor's cost consistent with clause 31 of the General Conditions of Contract].**

- (a) Any "dangerous substance" as defined in the *Dangerous Substances Act 2004* (ACT) must not be used in the work under the Contract without the prior written consent of the Principal.
- (b) Where such consent is given the Contractor must ensure that:
  - (i) full details of any dangerous substances as identified in accordance with paragraph (a), and included in the work under the Contract, are provided to the Principal in the format of a material safety data sheet;
  - (ii) all documentation, including that related to operation, maintenance, assembly, shipping and handling, is clearly endorsed to identify the presence and nature of the hazard; and
  - (iii) all goods containing dangerous substances are to bear appropriate labels which clearly identify the nature of the substances, the associated hazards, dangers and appropriate safeguards.
- (c) The Contractor undertakes to advise the Principal, at any time during the work under the Contract, within 14 days of becoming aware of a non-dangerous substance which could be substituted for the dangerous substance without significant detriment to the performance of the work under the Contract.
- (d) The Contractor must ensure that all goods for incorporation in the work under the Contract conform to all statutory requirements and other laws relating to any dangerous substances included therein which apply in the country of manufacture, on the high seas and within the Commonwealth of Australia. In no circumstances must the goods emit fumes, liquids, solids, electromagnetic radiation, heat or noise which could be detrimental to persons, the environment or the operation of other equipment, except where this is consistent with the end-use and nature of the goods.

#### **Item 14. Standards**

**[Instructional note: This Special Condition will generally be relevant to all projects, but particularly if reference to any standards or codes is made in the Brief, Principal's Documents or elsewhere]**

- (a) Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code shall be the one current at the closing date for tenders, except for the National Construction Code, which shall be the one current at the time of issuing of the Building Approval.
- (b) Where the Contract refers to an Australian Standard it does not preclude the adoption of an equivalent international standard.
- (c) Aluminium cladding panels are not to be used for any cladding system. This requirement applies to all cladding locations, i.e. internal or external cladding and to non-combustible proprietary aluminium cladding systems.
- (d) Without limiting the above, the Principal requires the following materials, fixtures or fittings (as the case may be) to comply with the specified standard, rating or certification, and the Contractor must produce evidence satisfactory to the Principal of compliance with this Item upon request:

[Include a list of materials, fixtures or fittings AND relevant standard, rating or certification required to be met.]

- (e) For the purposes of paragraph (d), the *Principal* may, at its discretion and without limitation:
- (i) accept as evidence a sample test result or certificate of compliance or similar document provided with the relevant materials, fixtures or fittings; or
  - (ii) require the *Contractor* to test the material, fixture or fitting in accordance with General Conditions of Contract clause 31, at the *Contractor's* cost.

#### **Item 15. Cleaning up**

*See clause 38 of General Conditions of Contract*

**[Instructional note: This Special Condition will generally be relevant to all building projects]**

All visible external and internal surfaces, including fittings, fixtures and equipment, must be free of marks, dirt, dust, vermin and unwanted materials, at the *date of practical completion*.

#### **Item 16. Samples**

**[Instructional note: Include this Special Condition if samples are required]**

The *Contractor* must:

- (a) match any approved samples throughout the *Works*;
- (b) give notice before commencing work affected by samples unless the samples have been approved; and
- (c) keep approved samples in good condition on the *site* until *practical completion*.

Samples required for approval are listed [INSERT where samples are listed, for example if there is a list in the *Principal's Documents*. OR, alternatively, samples can be listed here if they are not included elsewhere by using the following text:

Samples are required for the following items:

» [Include a list of items for which samples are required. These may include materials listed in Item 14 (Standards) in order to check compliance of the material with the specified standard prior to the *Contractor* ordering the material in bulk.]

#### **Item 17. Testing**

**[Instructional note: Include this Special Condition if relevant]**

The *Contractor* agrees that any testing required to be undertaken by an independent authority shall be carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

#### **Item 18. Proprietary items**

**[Instructional note: This Special Condition will generally be relevant to all projects, particularly if proprietary items are known to have been listed in the *Principal's Documents*. Acceptance of an alternative proprietary item could require testing at the *Contractor's* cost in accordance with clause 31 of the General Conditions of Contract.]**

Identification by the *Principal* of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

The *Contractor* may offer an alternative to any proprietary item by applying in writing for approval to use the alternative. The request must be accompanied by all available technical information and describe how, if at all, the alternative differs from the proprietary item and how it will affect other parts of the *Works* and performance of the *Works*. Approval of an alternative is at the *Principal's* absolute discretion.

Except to the extent that the approval, if any, of the *Principal* includes a contrary provision, the approval is deemed to include the conditions that:

- (a) use of the alternative must not directly or indirectly result in any increase in the cost to the *Principal* of the *Works*;
- (b) the alternative product must comply with any applicable standard, rating or certification specified in the *Contract*, and the *Contractor* must provide evidence satisfactory to the *Principal* of compliance with this Item upon request;
- (c) the *Contractor* must indemnify the *Principal* against any increase in costs of the *Works*;
- (d) use of the alternative must not directly or indirectly cause any delay to the *Works* and if it does, the *Contractor* will compensate the *Principal* for any loss which the delay causes; and
- (e) the *Contractor* must include a provision equivalent to this Item 18 in all subcontracts (subject to any necessary variation to reflect the different parties).

#### **Item 19. Items supplied by the Principal**

**[Instructional note: Use this Special Condition if the *Principal* is to supply items to be incorporated into the *Works*]**

The following items ("*Principal's Items*") will be supplied free to the *Contractor* for use in the execution of the *Works*.

» [INSERT a list of relevant items, delivery dates and storage details]

The *Contractor* must:

- (a) take delivery, unload and inspect the *Principal's Items* for defects;
- (b) notify the *Principal* if the *Principal's Items* are defective or unsuitable for the proposed use;
- (c) store the *Principal's Items* in suitable storage so as to maintain the condition of the *Principal's Items* until incorporated into the *Works*;
- (d) record the storage location on the delivery documents and submit copies of the delivery documents to the *Principal*;
- (e) notify the *Principal* if the *Principal's Items* are not delivered 5 days before they are due to be incorporated into the *Works* or if the *Principal's Items* are lost from storage; and
- (f) return unused *Principal's Items* to the *Principal*.

If in the opinion of the *Principal* any damage to *Principal's Items* supplied was due to *defects* existing at the time of receipt, but not discoverable upon reasonable inspection thereof the *Contractor* shall not be held responsible for such damage.

#### **Item 20. Plant and equipment details**

(See clause 29 of General Conditions of Contract )

**[Instructional note: USE this Special Condition if plant and equipment of a unique nature is to be supplied under the Contract]**

The *Contractor* must submit the following details of plant and equipment listed prior to ordering for the *Works*:

» [Describe the details sought and items that it applies to]

#### **Item 21. Maintenance during defects liability period**

**[Instructional note: USE this Special Condition if the Contractor is required to provide maintenance services (which may include maintenance of landscaping or establishment activities) for a period after practical completion.**

If these services are required, the default provided below is that the services will be provided during the period between *practical completion* and the date of return of the *security* provided by the Contractor. Unless otherwise specified in *Contract Particulars* Item 6, that period will be 12 months from *Practical Completion*.

If a lesser period is required, seek drafting advice from the Contracts team. It is advisable that the *security* be returnable only after, or concurrently with, the completion of the maintenance period.

To the extent set out below, the *Contractor* must ensure that during the *defects liability period* such planned and unplanned maintenance is carried out as is necessary to ensure that the *Works* are throughout and at the end of the *defects liability period* in a condition fit for their intended purpose [AND, if the *Contractor* is required to produce a Commissioning and Handover Plan in accordance with Item 22 below, also include the words: and otherwise in accordance with the Commissioning and Handover Plan (as defined in these Special Conditions)].

**[Instructional note: INSERT below a description of the level of planned and/or unplanned maintenance that the Contractor is required to carry out during the defects liability period. If the description is too lengthy to include below, or is included in the Principal's Documents or other document, it can be cross-referenced to the appropriate Annexure or location in the Principal's Documents.**

For landscaping works requiring a 52 week consolidation period consider:

*The duration of the consolidation period is 52 weeks from the date of practical completion of the Works.*

This will require an amendment to TCCS Technical Clauses where 52 weeks is required in lieu of the previous standard 13 weeks. Note that if the RMS landscape specification forms part of the *Principal's Documents* the term consolidation is not defined. The *Principal's Documents* will require inclusion of a definition of consolidation or maintenance services to be provided by the Contractor for the nominated period.

Also consider how maintenance is addressed in the relevant sections of the *Contract Particulars*. Payments could be made on a monthly basis determined by a rate item included in the tender price breakdown.]

Planned:	
Unplanned:	

#### **Item 22. Commissioning and Handover Plan**

**[Instructional note: Use this Special Condition if the Contractor is required to provide a Commissioning and Handover Plan]**

The *Contractor* must prepare a draft Commissioning and Handover Plan and submit it to the *Superintendent* so as to ensure there is no delay or disruption to the *Works* or *practical completion* and in any event no later than [INSERT days] (30 days applies if prompt not filled in) days after the *date of contract*. If any draft Commissioning and Handover Plan is rejected, the *Contractor* must submit an amended draft to the *Superintendent* and in any event finalise the Commissioning and Handover Plan so as to ensure there is no delay or disruption to the *Works*

or *practical completion* and in accordance with the requirements of the *Contract* to the satisfaction of the *Superintendent*.

After the Commissioning and Handover Plan has been finalised, the *Contractor* must continue to correct any defects or omissions in it (whether identified by the *Contractor* or the *Superintendent*) and submit an amended draft to the *Superintendent*. The *Contractor* must maintain records of inspections or audits undertaken in accordance with the Commissioning and Handover Plan.

Without limiting the *Contractor's* obligations or liabilities, or the Territory's rights under clause 35.2 of the General Conditions of Contract, the *Contractor* must:

- (a) take all steps necessary to ensure:
  - (i) the timely, efficient and comprehensive commissioning of the *Works*; and
  - (ii) the smooth handover of the *Works* to, and the initial occupation of the *Works* by, the *Principal*;
- (b) without limiting paragraph (a):
  - (i) comply with its Commissioning and Handover Plan; and
  - (ii) in consultation with the *Superintendent*, provide the *Principal* with such other specific assistance as may be required by the *Superintendent* to facilitate the timely, efficient and comprehensive commissioning of the *Works* and the smooth handover of the *Works* to the *Principal*;
- (c) as a condition precedent to *practical completion*, hand to the *Superintendent* or any other person nominated by the *Superintendent* all *Contractor's* Documents which are required for the use, operation and maintenance of the *Works*; and
- (d) as and when reasonably required by the *Superintendent*, meet with the *Superintendent* and such other persons as are nominated by the *Superintendent* with a view to ensuring that the *Principal* or other persons have sufficient information to enable the *Principal*, or other persons to:
  - (i) operate the *Works*;
  - (ii) maintain the *Works*; or
  - (iii) perform such other activities as may be required by the *Principal* in respect of the *Works*.

**Item 23. Not used**

**Item 24 Contractor monthly reporting**

**[Instructional note: USE this Special Condition if the *Contractor* is required to undertake monthly reporting on a range of government, statutory and contractual requirements]**

The *Contractor* is to provide a progress report no later than five days after the end of the month which is the subject of the report. The report is to contain at a minimum:

- (a) project summary: including project name, site address, project team, key contractual dates and stakeholders;
- (b) executive summary providing an overall summary of progress and highlighting key issues for the reporting period and key activities to be achieved in the next reporting period;
- (c) implementation and progress against the required implementation plans submitted at time of tender;

- (d) project financials: including contract value, approved, pending and forecast variations; provisional sum management, cashflow tracking and payment *claim* records;
- (e) procurement: including *subcontractor* engagement status, long lead time items and any delays;
- (f) program and milestones: including overview; risks and opportunities, delays, staging planning, contingency and a status-ed contract program;
- (g) contractual matters: including *claims*, unresolved requests for information (“RFI”), potential issues, contract notices, extensions of time and minutes of construction control group meetings;
- (h) design and documentation: including risks, issues and opportunities, samples register, RFI register and change register status report;
- (i) authority/utility and approvals updates;
- (j) construction of and procurement for the works activities, planned and completed in the reporting period ;
- (k) WHS, environment, quality, secure local jobs code and compliance matters and statistics;
- (l) *practical completion* requirements: including commissioning and acceptance, O&M manuals and as-built documentation (work as executed documentation), building tuning and user training; and
- (m) *site* photographs showing key construction of the works activities.

**Item 25 Documents**

**25.1 Drawings and Information for *practical completion***

**[Instructional note:** For Item 25.1(a), use where the Contractor is responsible for obtaining the certificate of occupancy. Otherwise RESERVED

- (a) Despite any other provision of this *Contract*, the *date of practical completion* of the *Works*, or a *separable portion*, will be no earlier than the date of the issue of a certificate of occupancy for the *Works* or a *separable portion* for which the certificate of occupancy is to be issued in accordance with this *Contract* and pursuant to the *Building Act 2004 (ACT)*.

**[Instructional note:** For Items 25.1(b) to 25.1(f) use in all documents.]

- (b) The *Superintendent* will not certify the *date of practical completion* for the *Works* or a *separable portion* for which a certificate of occupancy is to be issued in accordance with this *Contract* and pursuant to the *Building Act 2004 (ACT)*, as a date earlier than the date of the issue of the certificate of occupancy.
- (c) The *Superintendent* will not issue a *certificate of practical completion* for or in respect of the *Works* or a *separable portion* for which a certificate of occupancy in accordance with this *Contract* and pursuant to the *Building Act 2004 (ACT)* is to be issued until the issue of the certificate of occupancy.
- (d) Unless otherwise *directed*, the *Contractor* must, at the time required by this *Contract* or, if no time is specified, within 14 days after *practical completion*, supply to the *Superintendent* complete sets of the documents as specified in paragraph (e) below:
- (e) The documents specified for the purposes of **Item 25.1(d)** are as follows:

Document	Number of Copies
work-as-executed drawings and maintenance and operational manuals	(if this item not completed, 3 copies)

[Instructional note: insert other documents required to be submitted for practical completion]	

- (f) The *Contractor* may submit a payment *claim* in respect of the sum set out in the *Commercial Framework* (if any) with respect to work as executed drawings, operational manuals and other documents upon provision of those documents as specified in the table at Item 25.1(e):
- (i) in the required number of copies set out in the *Contract*;
  - (ii) which comply with this *Contract*; and
  - (iii) if asset acceptance by the Transport Canberra and City Services Directorate’s Asset Acceptance Unit is required under this *Contract*, documents which are acceptable to that Unit.

## 25.2 Dimensions and Levels

**[Instructional note: Mandatory, use in all documents.]**

- (a) The layout of plant and equipment as shown in the *Principal’s Documents* is diagrammatic only. The *Contractor* must obtain measurements and other information necessary to carry out the *Works*.
- (b) If the *Works* include alterations and/or additions to existing work, the *Contractor* must verify the dimensions of the existing work before proceeding and must notify the *Superintendent* of all discrepancies.
- (c) Spot levels will take precedence over contour lines and ground profile lines.

## Item 26 Quality Assurance

*See clauses 15B & 30.6 of General Conditions of Contract*

**[If this Item 26 is included, also include Attachment 1 to this Annexure E]**

**[Instructional note 1: Management System Requirements**

Management System requirements currently include: Quality System, Occupational Health Safety and Rehabilitation System (OHS&R) and Environmental Management System (EMS). Others may be added in the future as industry capability is developed through application of enhanced prequalification requirements.

Separate management systems or a combination system are acceptable. The following are model specification clauses which may be used as a basis for specifying contractual requirements:

**Instructional note: 2** Use appropriate clauses including the Hold Points and their requirements to be separately determined for each Civil Works project.]

## 26.1 Quality Management System Requirements

- (a) The *Contractor* must:

- (i) implement and maintain a quality management system for the *Works* ("**Quality System**") which:
    1. is listed on the Joint Accreditation System of Australia & New Zealand (JAS-ANZ) register as having current third party certification in accordance with the latest edition, as amended, of AS/NZS ISO 9001; or
    2. has been assessed as suitable for the award of current ACT Government prequalification; and
  - (ii) provide the *Superintendent* and *Principal* with access at all times to the *Contractor's* and each of the *subcontractor's Quality Systems* to enable monitoring and quality auditing.
- (b) Specific quality requirements are included in the forms/tables listed in the Quality Requirements Index in Attachment 1 to this Annexure E. The *Quality System* requirements of Attachment 1 to this Annexure E will take precedence over the requirements of this Item 26.

## 26.2 Project Quality Plan and Program of Work

- (a) The *Contractor* must prepare and supply to the *Superintendent* for *direction* as to its suitability a project quality plan ("**PQP**"). The *PQP* must be provided no later than 7 days before commencing *work under the Contract on site* and must specify:
- (i) the quality objectives to be attained for the *Works*;
  - (ii) the specific procedures, methods and work instructions to be applied;
  - (iii) the proposed construction program;
  - (iv) the procurement plan (materials and services);
  - (v) key staff and responsibilities;
  - (vi) staff induction and training plan;
  - (vii) the inspection and testing plan;
  - (viii) schedule of forecast monthly payment claims;
  - (ix) schedule of proposed quality records to be submitted;
  - (x) audit program; and
  - (xi) other measures necessary to meet the quality objectives including a method for changes and modifications to the *PQP* as the *work under the Contract* is carried out.
- (b) The *PQP* must specify a construction program consistent with the *Contract* showing:
- (i) the sequence of *work under the Contract*;
  - (ii) the *Principal's* nominated milestone control points;
  - (iii) the critical path of activities related to the *work under the Contract*;
  - (iv) proposed staging of the *Works*, including the dates by which or the time within which the various stages or portions of the *Works* are to be executed; and
  - (v) any other information which the *Contract* requires be included in the construction program.

- (c) The *Contractor* must review the construction program each month and submit any revision for the *Superintendent's* acceptance taking into account actual progress, any changed circumstances and the effects of delays and any extensions of time to *practical completion* granted or notified.
- (d) The *Contractor* must mount and display in the *Contractor's* site office a bar chart or network diagram based on the construction program and maintain it so that it accurately depicts the progress of the *Works*.
- (e) The *Superintendent* will notify the *Contractor* as to the suitability of the submitted *PQP*. The *PQP* will be taken as suitable if the *Superintendent* has not responded within 7 days.
- (f) The acceptance by the *Superintendent* of the *Contractor's PQP* does not relieve the *Contractor* of its obligation to comply with and demonstrate compliance with the *Contract*.

### **26.3 Inspection and Test Plans**

- (a) Unless otherwise permitted by the *Superintendent*, the *Contractor* must submit inspection and test plans ("*ITPs*") to the *Superintendent* for *direction* as to their suitability no later than the date specified in, and in accordance with Attachment 1 to this Annexure E.
- (b) The *Contractor* may progressively submit to the *Superintendent* for review and acceptance *ITPs* which meet the requirements of the *Works* milestone control point dates in accordance with the requirements of Attachment 1 to this Annexure E ("*Document Submission*").
- (c) The *Contractor* will be notified by the *Superintendent* as to whether or not the *Superintendent* has accepted as suitable the proposed *ITPs*. If the *Superintendent* does not accept the proposed *ITPs*, the *Contractor* must submit revised proposed *ITPs* for *direction* as to their suitability by the *Superintendent*.
- (d) The *Contractor* must plan and undertake the inspections and tests to determine that the *Works* have been constructed in accordance with the *Contract*. The *Contractor* must ensure that the *ITPs* require the *Contractor* to inspect and test the characteristics and observe the criteria specified by the *Contract*.
- (e) The acceptance by the *Superintendent* of the *Contractor's ITPs* does not relieve the *Contractor* of its obligation to comply with and demonstrate compliance with the *Contract*.

### **26.4 Inspection and Testing Equipment**

- (a) The *Contractor* must ensure that inspection, measuring and test equipment ("*IMTE*") used by the *Contractor* and *Subcontractors* for verifying that the *Works* meet the requirements of the *Contract* is calibrated in accordance with ISO 10012:2003 "Measurement management systems - Requirements for measurement processes and measuring equipment".
- (b) If *IMTE* has not been calibrated within the 6 months prior to inspection and testing of the *Works*, the *IMTE* must be recalibrated, unless the *Superintendent* determines in writing that due to the nature and circumstances of use of the *IMTE* the current calibration is acceptable.
- (c) The *Contractor* must make available records of calibration of *IMTE* to the *Superintendent* on request by the *Superintendent*.

### **26.5 Witness/Hold Point Testing**

- (a) At any witness and/or hold points identified in Table 8 in Attachment 1 to this Annexure E ("*Witness/Hold Points*"), the *Contractor* must provide the period of notice referred to in in Attachment 1 to this Annexure E in respect of each witness and/or hold point to the *Superintendent*. The inspections and tests in respect of witness points may be carried out by the *Contractor* without the attendance of the *Superintendent*.
- (b) Unless otherwise specified or approved, the *Contractor* must carry out all testing under the *Contract* by a laboratory which is registered for the inspection or testing required at the witness and/or hold point with the National Association of Testing Authorities.

- (c) The *Contractor* must store and distribute the test certificates and other inspection records in the manner specified by Table 11 in Attachment 1 to this Annexure E.

#### **26.6 Non-conforming Work**

In addition to the *Contractor's* obligations under General Conditions of Contract clause 30.2:

- (a) if the *Contractor* discovers, or is notified of any material or work, which is not in accordance with the *Contract*, the *Contractor* must promptly initiate the corrective action procedure required by the *Contractor's Quality System*;
- (b) if the *Contractor* proposes to use or carry out any nonconforming materials or work which would require a *variation* to the *Contract*, the *Contractor* must submit a *variation* in accordance with clause 40.4 of the General Conditions of Contract. Nonconforming materials or work must be approved by the *Superintendent* in writing before the material or work which it represents is covered up or incorporated in the *Works*.

#### **26.7 Surveillance and Monitoring**

- (a) The *Contractor* must ensure, by surveillance, monitoring and audit, that each of the *subcontractors* engaged to carry out the *Works* has established and maintains a *Quality System* which will enable the *subcontractor* to meet the *Contractor's* obligations under the *Contract*.
- (b) Alternatively, the *Contractor* must include within the *Contractor's* own *Quality System*, the activities of *subcontractors*.
- (c) The *Contractor* must produce an audit schedule monitoring the *Works* as part of its *PQP* to demonstrate that this surveillance has been planned.
- (d) The *Contractor* must:
- (i) permit the *Principal* to enter onto any of the *Contractor's* premises; and
  - (ii) ensure that any contract between the *Contractor* and a *subcontractor* permits the *Principal* to enter any of the *subcontractor's* premises,
- at any time, for the purpose of quality audit and surveillance.

#### **26.8 Quality Records to be Provided by the Contractor**

- (a) The *Contractor* must submit to the *Principal* all records specified in Table 11 in Attachment 1 to this Annexure E ("Quality Records") and any other record that the *Contractor* is obliged to supply pursuant to any other provision of this *Contract*.
- (b) The *Contractor* must, at the time at which the *Contractor* makes payment claims and on handover of the *Works* at *Practical Completion*, submit *Quality Records* relevant to the completed stages of the *Works*.
- (c) At the time the *Contractor* requests in writing the *Superintendent* to issue a *certificate of practical completion*, the *Contractor* must submit to the *Superintendent* a completed Form USF957 "Certificate of Compliance" together with any outstanding documents comprising the *Quality Records*.
- (d) From the commencement of the *Contract* until the *date of practical completion*, the *Contractor* must establish, file and maintain all records which demonstrate implementation of the *Contractor's Quality System* (including specified *Quality Records*) up-to-date and on-hand at the *site* office for inspection at any time by the *Superintendent* and the *Principal*.

### **Item 27 Environmental Management Systems**

*See clause 15C General Conditions of Contract*

**Instructional note:** Use is mandatory in all documents. For projects above \$100,000 the following clauses will be retained. For projects below \$100,000 the control requirements may be modified with the Territory's Project Officer's agreement but only to the extent that such modifications do not compromise the requirements of the Environment, Planning and Sustainable Development Directorate.

### 27.1 EMS Requirements

- (a) The *Contractor* must:
- (i) implement and maintain an environmental management system ("*EMS*") which:
    - i. is listed on the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) register as having current third party certification in accordance with the latest edition, as amended, of AS/NZ ISO 14001; or
    - ii. has been assessed as suitable for the award of current ACT Government prequalification; and
  - (ii) provide the *Superintendent* and *Principal* with access at all times to the *Contractor's* and each of the *subcontractor's EMS* to enable monitoring and quality auditing.
- (b) The *Contractor* must implement an *EMS* that:
- (i) acknowledges the impact of the *Contractor's* activities, products or services on the environment;
  - (ii) includes an environmental policy that has the total support of management involved in the *Works*;
  - (iii) has planning processes and procedures in place that have the capacity to identify possible environmental impacts;
  - (iv) has planning processes and procedures in place to develop mitigation measures to minimise environmental impacts;
  - (v) establishes responsibilities and procedures for implementing required mitigation measures;
  - (vi) establishes systems and procedures to review the implementation process; and
  - (vii) establishes a process of management review of systems and procedures that support the environmental policy and which will lead to continually improving performance.
- (c) The implementation of an *EMS* will not relieve the *Contractor* of its obligations under the *Contract*.

### 27.2 Environmental Management Plan

*See clause 15C of General Condition of Contract*

The *Contractor* must:

- (a) prepare and supply to the *Superintendent* for *direction* as to its suitability an environmental management plan ("*EMP*") as a discrete plan or as a part of the project plan in accordance with clause 15C of the General Conditions of Contract; and
- (b) ensure that the *EMP* specifies:
- (i) the environmental objectives to be attained for the *Works*;
  - (ii) the specific procedures, methods and work instructions to be applied;

- (iii) key staff and responsibilities;
- (iv) staff induction and training plan;
- (v) schedule of proposed environmental records to be submitted;
- (vi) audit program; and
- (vii) other measures necessary to meet the environmental objectives including a method for changes and modifications to the *EMP* as the *Works* proceed.

### 27.3 Environmental Authorisations and Environmental Protection Agreements

Before commencing the *Works*, the *Contractor* must:

- (a) obtain any necessary environmental authorisation and/or enter into an environmental protection agreement as required by the *Environment Protection Act 1997* (ACT); and
- (b) provide a copy of the applicable authorisation or agreement to the *Superintendent*.

### 27.4 Existing Flora

**[Instructional note: Mandatory, use in all documents]**

- (a) The *Contractor* must protect from damage all trees and other plants that:
  - (i) are shown or specified in the *Principal's Documents* to be retained;
  - (ii) are beyond the limits allowed to the *Contractor*; or
  - (iii) which need not be removed or damaged for construction operations.
- (b) If trees, shrubs, lawns or gardens ("*flora*") are affected by the *Works*, the *Contractor* must:
  - (i) give 14 days written notice (prior to commencing the *Works*) to the *Superintendent*; and
  - (ii) comply with any request or *direction* by the *Superintendent* in relation to the *flora*.

### 27.5 Dust and Noise

**[Instructional note: Mandatory, use in all documents.]**

The *Contractor* must:

- (a) restrict dust caused by the *Works* to a minimum; and
- (b) take all practicable steps to minimise noise resulting from the *Works*.

### 27.6 Waste Management

**[Instructional note: Mandatory, use in all documents. Only include reference to the appropriate proforma(s) depending on the nature of the project. Include any additional requirements of ACT Waste in the *Contract documents*. This could include mandatory contract requirements to recycle such items as existing paving of all kinds, concrete kerbing and plant material.]**

- (a) For *Works* that are the subject of a development application and/or building application, the *Contractor* must comply with the "*Development Control Code for best practice waste management in the ACT*" (DCCWM). The waste management plan ("*WMP*"), Parts 3 and 4, included in the DCCWM form part of this *Contract*. The DCCWM is available from [Waste Management Development Control Code - City Services \(act.gov.au\)](http://act.gov.au) .

- (b) Before the *Contractor* commences the *Works*, the *Contractor* must lodge with the *Superintendent*, a completed *WMP*, Part 3 (Demolition Waste Proforma) and/or a *WMP*, Part 4 (Construction Waste Proforma).
- (c) If the *Contractor* has failed to lodge the appropriate *WMP* proforma(s), the *Principal* may refuse to give the *Contractor* possession of the *site* or any part of the *site* until the *Contractor* lodges the correct *WMP* proforma(s) with the *Superintendent*.
- (d) The *Contractor* must:
  - (i) recycle existing unit paving, asphalt paving, base course material, concrete kerbing and plant material such as trees and shrubs in an approved manner; and
  - (ii) if required, store any material to be recycled on *site* or other approved location to facilitate efficient handling of the material.
- (e) The *Contractor* must include in its *PQP* the disposal of material to be recycled.

**Item 28 Screening of Contractor and Employees**

*See also Item 11 of this Annexure E*

**[Instructional note:** Use in all documents where there is a requirement to protect persons and/or information present at or located on the *site*. Examples of such premises include occupied schools, high security environments, financial centres. Otherwise indicate 'Not used'.]

- (a) The *Contractor* must ensure that its employees, *subcontractors* and *subcontractor's* employees, undergo a National Police Check conducted by the Australian Federal Police and the *Contractor* must, within 7 days of the date of a written request by the *Principal*, provide the *Principal* with the result of the National Police Check in respect of all (or nominated) employees, *subcontractors* and employees of the *subcontractors* prior to the relevant personnel commencing work under the *Contract* at the *site*, or a number of days prior to work under the *Contract* commencing at the *site*.
- (b) The *Principal* may, at its absolute discretion and by written notice, withhold or withdraw approval for any person to have access to the *site*. The *Principal* will not be liable for any detriment caused by the withholding or withdrawal of approval. If the *Principal* withholds or withdraws approval for any person under this clause, the *Contractor* must not permit that person to have access to the *site* under this *Contract*. The *Principal* further will not permit specified persons access to the *site* with an adverse identity check resultant to a National Police Check in accordance with sub-clause (a) above.
- (c) If requested by the *Principal* in writing to do so, the *Contractor* and its employees must provide all information and do any other act or thing for the purpose of assessing the suitability and fitness of any person to carry out any part of the *work under the Contract*, including but not limited to, giving finger prints to any police force.

**Item 29 Contracting**

**29.1 Collusive Arrangements**

*See clause 3.3 of General Conditions of Contract*

If, in the reasonable opinion of the *Principal*, the *Contractor* has entered into a collusive arrangement in respect of the *Works*, then without limitation, to any other right or remedy the *Principal* may have:

- (a) the *Principal* may by notice in writing terminate this *Contract*;
- (b) if the *Contractor* has received any money or allowance from or on behalf of another tenderer in relation to the *Works*, that money or the value of the allowance will be held in trust for and will become immediately payable to the *Principal*; and/or
- (c) if the *Contractor* pays a trade or industry association or another tenderer for the *Works* any money in breach of this clause, the *Contractor* must immediately give the *Principal* written notice of that event and the *Principal* will be entitled to withhold from any monies due to the *Contractor* under this *Contract* an equivalent sum as liquidated damages.

## 29.2 Measurement of Work

**Instructional note:** Use only as required.

Unless otherwise specified in the *Contract*, work must be measured as follows:

- (a) Building Work: in accordance with the Australian Standard Method of Measurement of Building Works (AS 1418.1-2021); and  
[insert any other requirements]

## Item 30 Administration

### 30.1 Site Meetings

**Instructional note:** Meetings to be arranged as agreed between the Superintendent and Contractor.

- (a) The *Contractor* must ensure that site meetings are attended by the *Contractor*, appropriate *subcontractors* and the *Superintendent*, and are held throughout the duration of the *Contract*. If agreement cannot be reached, the *Superintendent* will determine the frequency.
- (b) The *Superintendent* will keep minutes of those meetings and will provide copies to each party within 3 working days after each meeting.
- (c) At the first site meeting, the *Superintendent* and the *Contractor* will submit to each other the names and telephone numbers of all responsible persons who may be contacted after hours during the course of the *Contract*.

### 30.2 Security

**Instructional note:** Optional security clause. If this Item 30.2 is NOT used, the amount and type of security must be specified in *Contract Particulars* Item 6. If this Item 30.2 is used, write "As allowed by Special Condition Item 30.2" against "Form of security" in *Contract Particulars* Item 6.

See clause 5 of *General Conditions of Contract* and *Contract Particulars* Item 6

- (a) The *security* must be in the form of one or more of:
- (i) cash or bank cheque;
  - (ii) an unconditional undertaking in the form of Schedule 3 to the General Conditions of Contract, approved by the *Principal*, given by a financial institution which:
    - i. is approved by the *Principal*;
    - ii. is a body regulated by the Australian Prudential Regulation Authority pursuant to the *Australian Prudential Regulation Authority Act 1998*; and
    - iii. has a Standard and Poor's or Best's credit rating of A- or better; or
  - (iii) retention monies provided in accordance with Item 30.2(b)(i), if applicable.
- (b) If the *contract sum* is less than \$500,000:
- (i) the *Contractor* may elect to provide *security* in the form of cash, bank cheque or an unconditional undertaking in a form of Schedule 3 to the General Conditions equal to 1% of the *contract sum* within the time stated in clause 5.1(a) of *General Conditions of Contract*; and
  - (ii) the *Principal* will deduct retention monies from payment *claims* at the rate of 10% of the approved payment amount until the amount of *security*, including the amount of retention monies, held equals the amount of *security* required by *Contract Particulars* item 6.
- (c) Until the *Contractor* has provided *security* in accordance with the *Contract*, including this Item 30.2:

- (i) the *Principal* will not be liable to pay the amount of the first or any payment *claim* (and any unpaid payment *claim* will not be deemed to be an overdue payment); and
- (ii) notwithstanding the provisions of clause 27.1(a) of General Conditions of Contract, the *Principal* may refuse to give the *Contractor* possession of the *site* or any part of the *site* until the *Contractor* has complied with the requirements of Item 30.2.

**30.3 Separable Portions**

See clause 22 of General Conditions of Contract and Contract Particulars Item 39

**[Instructional note:** Use in all documents where there are *separable portions*. Where there are no *separable portions* insert completion details in Contract Particulars Item 5 for *date of practical completion*. If no *separable portions* indicate as “not used”]

- (a) Without limiting clause 22 of the General Conditions of Contract, at the *date of contract* the part of the *Works* comprising each *separable portion* are set out below:  
 Separable Portion 1: .....  
 Separable Portion 2: .....etc
- (b) Despite any other provision of the *Contract*, the *Contractor* must complete each *separable portion* of the *Works* by the *date for practical completion* of that *separable portion*, as amended from time to time. The *date for practical completion* for each *separable portion* will be calculated from the *date of this Contract* and the construction period set out in the table below.
- (c) The *defects liability period* for each *separable portion* of the *Works* is set out in the table below. Construction periods stated do not include *defects liability periods*.
- (d) The consolidation period for landscape works will commence from the date that the *Works* associated with each *separable portion* are accepted in writing by the *Superintendent* as being complete and will be for the periods set out in the table below. Construction periods stated do not include maintenance periods.
- (e) Liquidated damages for each *separable portion* are set out in the table below:

Separable Portion	Construction Period (in weeks)	Liquidated Damages (per day)	Defects Liability Period (in weeks)	Consolidation Period (in weeks)
1		\$	52	
2		\$	52	
3 etc		\$	52	

**Item 31 Site**

**[Instructional note:** Use as required.]

**31.1 Signboard**

- (a) The *Contractor* must:
  - (i) within 2 weeks of establishment of the *site*, provide a signboard with the details shown in the most recent revision of ACT Project’s Drawing P-QD-01G as provided for on [Built for CBR Brand Guardian and Templates](#) or as otherwise directed;

- (ii) erect the signboard at or near ground level on the *site* where directed; and
  - (iii) maintain the signboard in good condition until *practical completion*, then dismantle and remove it.
- (b) The signboard remains the property of the *Contractor*.
- (c) The *Contractor* must obtain approval from the *Superintendent* for any *subcontractors'* signboards. No other contractor's or *subcontractor's* signs are permitted on the *site*.

### 31.2 Site Office

**[Instructional note:** Use as required. This Clause should only be used when the size or nature of the project warrants such a facility.]

The *Contractor* must:

- (a) provide and erect on the *site*, approved temporary facilities for the use by the *Contractor's* employees and *subcontractors*. The facilities must have a suitably secured entrance door, opening windows on at least two sides and finished externally and internally to the satisfaction of the *Superintendent*;
- (b) ensure the facilities comply with minimum award and WHS requirements;
- (c) ensure the facilities include provision of a meeting room to conduct regular *site* meetings;
- (d) maintain the facilities in good order and clean condition with suitable furniture and with electricity connected for the duration of the *Works*; and
- (e) after obtaining permission from the *Superintendent*, remove the facilities on completion of the *Works*.

### 31.3 Superintendent's Site Office

**[Instructional note:** Use as required. This Clause should only be used when the size or nature of the project warrants such a facility.]

The *Contractor* must:

- (d) within 2 weeks of taking possession of the *site*, provide the *Superintendent* a site office including all furniture (desks, chairs, filing cabinets, lighting etc), access to high-speed internet, a telephone, and other equipment necessary to allow the *Superintendent* to effectively perform its functions;
- (e) maintain the communications facilities so that they are always in operational condition;
- (f) remove the site office and facilities on the *date of practical completion*, or earlier if the *Superintendent* gives written permission; and
- (g) bear all costs associated with this clause, including the costs of installing, renting, maintaining and removing the site office and facilities.

### 31.4 Access for Visitors

**[Instructional note:** Use in all documents.]

The *Principal* may require that the *site* be available from time to time for access by visitors. The *Contractor* will allow access to the *site* if required.

### 31.5 Adjoining Property

**[Instructional note:** Use as required where project site adjoins properties.]

The *Contractor* must:

- (a) arrange a joint inspection with the *Superintendent* and the owners and occupants of adjoining properties prior to commencement of and on completion of the *Works*;
- (b) at the initial inspection, make detailed records of conditions existing within the adjoining properties, especially structural defects and other damage or defacement;

- (c) arrange for not less than 2 copies of each record, including drawings, written descriptions and photographs, to be endorsed by the owners and occupants, or their representative, as evidence of conditions existing before commencement of the *Works*;
- (d) provide 1 copy endorsed by the owner or occupier of each record to the *Superintendent* and retain the other endorsed copy on the *site*;
- (e) give notice of intention to commence the *Works* to owners and/or occupants of adjoining property, and give them an outline description of the type and extent of the *Works*;
- (f) not demolish or damage adjoining property shown on the drawings as encroachments on the *site*; and
- (g) obtain instructions immediately from the *Principal* if the *Works* reveal encroachments of the adjoining property on to the *site* or encroachments of existing *site* structures on to adjoining property, and those encroachments are not referred to in the *Contract*.

**Item 32 Rise and Fall - Bitumen**

**[Instructional note: This clause should be RESERVED if the contract does not require price adjustment for bitumen]**

**32.1 Adjustment to *contract sum* for Supply and Placement of Bitumen in Asphalt Products**

- (a) This clause provides for the adjustment of the *contract sum* for rise and fall in the price of bitumen for the supply and placement of asphalt component of contracts and separate supply and place asphalt contracts.
- (b) Notwithstanding anything to the contrary in General Conditions of Contract the *contract sum* shall be subject to adjustments for variations in the price of bitumen used in asphalt to be supplied under the *Contract*.
- (c) For the purpose of this Item 32 the “Price of Class 170 bitumen” for the relevant month shall be the average published list selling price for Class 170 bitumen from the main suppliers (BP, Mobil and Shell) as determined by the Roads Corporation trading as Vicroads. The Roads Corporation is the corporation established under Part II of the *Transport Act 1983* (Vic).
- (d) The price adjustment shall be effected in *claims* for payment submitted by the *Contractor* in accordance with clause 42 of the General Conditions of Contract.
- (e) Any price adjustment shall be calculated from the formula:  

$$D = (C - B) \times A$$
 Where:  
 A = mass (in tonne) of bitumen derived from the approved job mix design;  
 B = the Price of Class 170 bitumen applicable for the month immediately preceding the month during which the tenders closed;  
 C = the Price of Class 170 bitumen applicable for the month immediately preceding the month during which the work is performed; and  
 D = the applicable price adjustment for this payment *claim*.

**32.2 Adjustment to *contract sum* for Bituminous Materials for the Supply of Bitumen for Priming, Primersealing and Sealing**

- (a) This item provides for the adjustment of the *contract sum* for rise and fall in the price of bituminous material for supply of bitumen, priming, primersealing and sealing contracts, and the priming, primersealing and sealing component of contracts.
- (b) Notwithstanding anything to the contrary in the General Conditions of Contract the *contract sum* shall be subject to adjustments for variations in the price of bituminous material to be supplied under the *Contract*.
- (c) The price adjustment shall be effected in *claims* for payment submitted by the *Contractor* in accordance with clause 42 of the General Conditions of Contract.
- (d) Where the price adjustment is in terms of mass, and materials are supplied on the basis of volume at 15°C, the price adjustment shall be calculated from the formula:

$$D = \frac{C - B}{100} \times A$$

Where:

A = the quantity of bitumen supplied by the *Contractor* derived from:

- the calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat;
- the approved design binder content where the product is asphalt;
- the approved residual binder content where the product is a bituminous slurry surfacing;
- (Where the binder is modified bitumen, the quantity shall be the quantity of manufactured polymer modified binder).

B = the Price of Class 170 bitumen applicable for the month immediately preceding the month during which the tenders closed;

C = the Price of Class 170 bitumen on the 15<sup>th</sup> day of the month during which the work is performed; and

D = the applicable price adjustment for this payment claim.

## ATTACHMENT 1 to ANNEXURE E (Special Conditions) – Quality Assurance Documents and Hold Points

[Include this Attachment 1 if Special condition Item 26 (Quality Assurance) is included]

### Process Control

The *Contractor* must:

- (a) prepare and document process control procedures as required under the *Contract* to address the planning, process descriptions, process verification and program of work (as described in Clause 8.5 and Appendix 'A' of HB90.3-2000 (R2016) The Construction Industry - Guide to ISO 9001:2000; and
- (b) identify all relevant factors affecting the quality of process control.

### Survey

- (a) The *Contractor* must prepare surveys ("*Surveys*") that include, without limitation, measurement, calculation and record descriptions necessary to:
  - (i) set out the *Works*;
  - (ii) verify conformity to the drawings and specifications in relation to dimensions, tolerances and three dimensional position; and
  - (iii) determine lengths, areas or volumes of materials or products, where required for measurement of the *Works*.
- (b) The *Contractor's* survey procedures must conform to this Item and must be in accordance with TfNSW NG71 Guide to Construction Specification G71 – Construction Surveys.
- (c) The *Contractor* must use surveyors who are:
  - (i) members of the Institution of Surveyors to the grade of Associate Member (Associate Surveyor), Australia; or
  - (ii) members of the Australian Institute of Mining Surveyors; and
  - (iii) qualified to *direct* and take responsibility for all *Surveys*.
- (d) The *Contractor* must comply with AS/NZS ISO 9001:2015 in relation to survey instruments and survey activities generally. Use of *subcontractors* for *Surveys* will not relieve the *Contractor* from any of its obligations under the *Contract*. The methods and equipment used by the *Contractor* must relate to the attainment of the tolerances nominated in the specification.

### Joint Survey

- (e) If the *Contract* requires, or the *Superintendent* directs, that a *Survey* be a joint survey, the *Contractor* must carry out the *Survey* in accordance with this Item. The *Contractor* must supply all personnel and resources necessary to carry out, record and report the *Survey*.
- (f) The *Contractor* must give written notice to the *Superintendent* at least 3 *working days* prior to carrying out the *Survey* together with the name of the surveyor, a description of the methods and equipment to be used.

### HOLD POINT

Process Held.	Joint survey
Submission Details.	3 <i>working days</i> written notice of date, work and location, surveyor's name, description of methods and equipment to be used for survey.

Release of Hold Point.	The <i>Superintendent</i> will consider the submitted documents, arrange and notify the <i>Superintendent's</i> participation, prior to the release of the Hold Point.
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- (g) The *Contractor* may only proceed with the *Survey* in the presence of the *Superintendent*, unless otherwise agreed. The *Contractor* must report the results of the *Survey* together with relevant calculations of quantities to the *Superintendent* within 5 *working days* of completion of the *Survey*.

#### **HOLD POINT**

Process Held.	Disturbing or covering up location of joint survey.
Submission Details.	Survey Report with relevant calculations of quantities.
Release of Hold Point.	The <i>Superintendent</i> will consider the submitted documents prior to authorising the release of the Hold Point.

#### *Conformity Surveys*

- (h) The *Contractor* must:
- (i) adopt methods for conformity *Surveys* which ensure independence from the methods used to set out the *Works*;
  - (ii) where possible, use measurements taken directly from survey control marks; and
  - (iii) not use subsidiary *survey marks* established for the setout process for product conformity *Surveys*.
- (i) If the *Contractor* needs to use subsidiary *survey marks* for verification purposes, the *Contractor* must re-establish their position and level.
- (j) The *Contractor* must:
- (i) not restrict sampling for conformity verification purposes to the locations used to set out the *Works*;
  - (ii) undertake sampling in a random or unbiased manner at any location in the *Works* to verify conformity with the *Principal's Documents*; and
  - (iii) perform conformity verification *Surveys* for concrete base, concrete sub-base and bound pavement layers as soon as practicable but in any event no later than 1 *working day* after the pavement lot has become accessible for survey, unless otherwise agreed by the *Superintendent*.
- (k) If a *Survey* identifies a nonconformity, the *Contractor* must:
- (i) immediately prepare a nonconformance report and submit a copy to the *Superintendent* within 24 hours; and
  - (ii) implement appropriate corrective action as *directed* by the *Superintendent*.
- (l) The *Contractor* must:
- (i) submit a survey report for each lot or component where design levels, position and/or tolerances have been specified; and
  - (ii) show in each survey report the following information and the information must be certified by the qualified surveyor responsible for the verification *Survey*:

- i. position (defined by co-ordinates or chainage and offset);
- ii. specified and actual levels; and
- iii. specified tolerance and whether it is met.

<b>HOLD POINT</b>	
Process Held.	Covering up of work subject to a conformity survey.
Submission Details.	Survey Report verifying conformity.
Release of Hold Point.	The Superintendent will consider the submitted documents prior to authorising the release of the Hold Point.

#### *Care of Survey Control Marks*

- (m) The Contractor must, if a *survey mark* is affected by the execution of the *Works*, establish other stable marks, of similar accuracy, clear of the *Works*, before recommending the *Works*.
- (n) The Contractor must:
  - (i) ensure the preservation of survey control marks;
  - (ii) liaise with the Commissioner for Surveys as necessary; and
  - (iii) immediately notify the Commissioner for Surveys of any discrepancies.

<b>HOLD POINT</b>	
Process Held.	Use of a survey control mark forming part of the Survey Control Network.
Submission Details.	Survey Report verifying coordination and level values of the survey control marks. Where requested, submit the procedure for replacing the affected primary survey control marks.
Release of Hold Point.	The <i>Superintendent</i> will consider the submitted documents and may inspect the mark, prior to authorising the release of the Hold Point.

#### *Survey Reports*

- (o) The Contractor must:
  - (i) include all survey reports prepared in the *Quality Records*;
  - (ii) ensure that verification field book pages are clearly labelled, dated and signed by the surveyor with cross-indexed references to equipment used and lot/component identification;
  - (iii) ensure that the survey reports reference verification field book page numbers;
  - (iv) if automatic data recording systems are used for verification *surveys*, retain a printout of both raw (field) data and reduced data in a similar manner as conventional field books;
  - (v) maintain and regularly update a register of the *survey marks* defining the Survey Control Network;
  - (vi) supply a controlled copy of the register to the *Superintendent*; and
  - (vii) regularly update the register.

#### **Processes Requiring Validation**

The Contractor must:

Contract name: »[insert]  
 Contract No: »[insert]

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- (a) identify any work processes (including subcontracted work) for which results cannot be fully verified by subsequent inspection and testing, including those processes identified in Table 7 below as being “Processes Requiring Validation” as defined in ISO9001:2015; and
- (b) at least 14 days prior to the intended implementation of a work process, submit to the *Superintendent* for approval details of proposed procedures and operator qualifications intended to satisfy the validation of the processes.

Forms

The *Contractor* must:

- (a) specify Quality Assurance requirements in accordance with the Forms Schedule below and Tables 1 to 11 identified below or by means of other forms or tables with similar content (note that if forms with numbers other than indicated below are used, the text references as set out in the preceding clauses may need to be modified);
- (b) complete Form “Certificate of Compliance” each time a progress payment is to be claimed; and
- (c) comply with all relevant obligations in the following forms:

Forms Schedule	
Table No	NAME OF FORM
Form Index	Quality Requirements Index
Table 1	Document Submission
Table 2	Design Verification Methods
Table 3	Design Review Points
Table 4	Measurement/Design Data
Table 5	Notification of Intention to Commence Project Activities
Table 6	Traceability Requirements
Table 7	Processes Requiring Validation
Table 8	Witness/Hold Points
Table 9	Principal Supplied Products
Table 10	Documentation for Servicing Work
Table 11	Quality Records
Certificate	Certificate of Compliance

<b>QUALITY REQUIREMENTS INDEX</b>	
<b>PROJECT :</b> _____  	
<b>CLIENT:</b> _____ <b>PROJECT No :</b> _____	
<b>SERVICE ROLE:</b> _____ <i>(insert as applicable)</i> [Project Director, Project/Construction/Works Manager, Consultant, Contractor]	
<b>QUALITY STANDARD: AS/NZS ISO 9001:2015 (as interpreted by HB90.3-2000)</b>	
Where information is to be specified enter <b>YES</b> in Column 1	
Details to be Specified	Table / Form Title
	Table 1 – Document Submission
	Table 2 – Design Verification Methods
	Table 3 – Design Review Points
	Table 4 – Measurement/Design Data
	Table 5 – Notification of Intention to Commence Project Activities
	Table 6 – Traceability Requirements
	Table 7 – Processes Requiring Validation
	Table 8 – Witness / Hold Points
	Table 9 – Principal Supplied Products
	Table 10 – Servicing Work
	Table 11 – Quality Records
Certificate	Certificate of Compliance

TABLE 1 – DOCUMENT SUBMISSION				
Document	No. of Copies	When to be SUBMITTED	To be Available for Inspection on Request	Comments
Quality Plan Procedure	1	with proposal/tender		
PQP for Design Phase, <u>or</u> the Total Project.	2	14 days after award of Consultancy.		
PQP for the Superintendence Phase	1	14 days after award of Contract.		
Quality Records ( <i>refer to specific table</i> )				
Certificates of Compliance	1	at <i>practical completion</i>		

TABLE 2 – DESIGN VERIFICATION METHODS	
<p>The Consultant/Project Manager shall provide in the Design Verification Plan(s) to undertake design verification of the following components in accordance with the nominated method(s). Such verification shall not relieve the Consultant/Project Manager of the responsibility for design.</p> <p><b><i>(Refer ISO 9001:2015 Cl 7.3.5 and see HB90.3-2000 Page 60 for examples of design verification methods).</i></b></p>	
Design Components	Nominated Design Verification Method

**TABLE 3 – DESIGN REVIEW POINTS**

The Consultant/Project Manager shall include in their Design Verification Plan the following Design Reviews and the involvement of the parties nominated below. Such Design Reviews shall be arranged by the service provider and all parties are to be notified ten working days prior to the Design Review.

*(Refer ISO 9001:2015 Cl 7.3.4 and HB90.3-2000 Pages 58-59 for guidance).*

Design Component	Stage of Design	Nominated Parties to Participate in Design Review	Comments

**TABLE 4 - MEASUREMENT / DESIGN DATA**

The following measurements and/or design data are to be submitted for verification of adequacy.

Note: Such verification shall not relieve the Project Director / Consultant / Subconsultant / Specialist Consultant / Contractor (*delete as applicable*) of responsibility for providing design services/constructed works in accordance with the specification requirements.

*(Refer ISO 9001:2015 Cl7.3.2 and HB90.3-2000 Pages 55-56 for guidance)*

Required Data	Date to be Submitted	Entity to be submitted to

**TABLE 5 – NOTICE OF INTENTION TO COMMENCE PROJECT ACTIVITIES**

The ..... shall notify the ..... in writing of the intention to commence the following project activities (e.g. WorkCover, Environment ACT etc):

Activity	Required Notice (Days)
Grass and topsoil stripping	2
Commencement of unsuitable material removal	5
Commencement of placing imported select material placing	15
All underground services	1
Backfilling of underground services below pavement	1
Subgrade preparation	5
Pavement gravels	3
Kerbing and concrete works	1
Asphaltic concrete and bituminous works	1
Traffic control devices	5

**TABLE 6 – TRACEABILITY REQUIREMENTS**

Enter details of items for which it is necessary to trace the history, application, or location by means of recorded identification.

Refer to Quality Record Requirements (Table 11) for more specific requirements of Records of Traceability.

*(Refer ISO 9001:2015 Cl7.5.3 and HB90.3-2000 Page 72 for guidance).*

Item	Extent of Trace	
	Start	Finish
Survey level and set-out data	Registered Surveyor's Field Notes	WAE drawings
Subgrade and select fill CBR tests	Location of Sample	Test Certificate
Select fill/subbase/base/cement treated base material tests	Location of Sample	Test Certificate
Subgrade/Base/Subbase/ cement treated base/Fill Compaction Tests	Location of Sample	Test Certificate
Asphaltic Concrete compaction Tests	Suppliers Batch No.	Test Certificate and Location
Thickness measurement for each specified pavement layer	Location of measurement	Sign-off by Contractor
Concrete Pours	Suppliers Batch No.	Test Certificate and Location
Hydraulic services tests	Location of Test	Test Certificate
Trench backfill compaction tests	Location of Test	Test Certificate
Topsoil quality	Location of Sample	Test Certificate

**TABLE 7 – PROCESSES REQUIRING VALIDATION**

"Validated processes" are those processes which cannot be fully verified by subsequent inspection and testing or processes where the deficiencies may only become apparent when the product is in use.

*(Refer ISO 9001:2015 Cl7.5.2 and HB90.3-2000 Page 71 for guidance).*

Process	Validation Requirements
Base of excavation following removal of unsuitable material	Technical Engineer's report or suitable foundation and pro
Backfilling of trenches below pavements	Backfill materials to be nominated for each layer Compaction methods to achieve specified density values Proposed test methods in relation to materials and density.
Pavement subgrades	CBR tests
Pavement surface	Tolerance confirmation
Concrete structures	Concrete batch / test results  Confirming date, batch/placement time, grade and compressive strength test results.
Topsoil quality	Tests and tolerances

**QUALITY REQUIREMENTS TABLE 8 (formerly USF952)**

**HOLD POINTS**

Note: The Service Provider shall arrange Hold Point inspections.

*(Refer ISO 9001:2008 Cl8.2.4 and HB90.3-2000 Pages 88-90 for guidance).*

Item	Clause title	Requirement	Notice for inspection
0A.1	Signage - General	Submit details	1 week before purchase
0A.2	Survey control – Supplied setting out information	Survey method and results including any discrepancies. Authorised Person may undertake check survey prior to releasing Hold Point.	Within 10 working days of possession of site and at least 3 working days prior to commencement of earthworks in any given area
0A.3	Utilities and Authorities – Existing services	Locate existing services on site	1 working day before new work
0A.4	Site facilities – Temporary fencing	Removal of temporary fencing	1 working day before removal

0C.1	Erosion and sediment control plan - General	Provide copy of EPA endorsed ESCP to Authorised Person.	1 working days before site disturbance on each stage
0C.2	Erosion and sediment control plan - General	Provide copy of Waterway Works Licence after issued by EPA	1 working days prior to undertaking any works within the waterway
0C.3	Erosion and sediment control plan - General	Provide copy of EPA endorsed amended ESCP to Authorised Person.	1 working days before implementation of amendments on site
1.1	Traffic Guidance Scheme	Approval of TMP	5 working days before proposed submission to TCCS
1.2	Traffic Guidance Scheme	TCCS approvals and other Authorities for Temporary traffic arrangement	10 working days before proposed commencement on site
1.3	Gantries, Hoisting zones, and Elevated Site Sheds - General	Gantries to be designed by an appropriately qualified Structural Engineer.	Prior to construction
1.4	Side Roads and Property Access - Access	Submit proposal for alternative property access prior to commencing work	10 working days
1.5	Side Roads and Property Access – Notice to Property Owners	Notify affected residents	24 hours (minimum) prior to access restriction
1.6	Opening to Traffic – Opening Temporary Road Ways and Detours to Traffic	Inspect and approve all roadways and detours prior to opening	2 Working days prior to carrying out works
1.7	Opening to Traffic – Opening Completed Work	Written notice and procedure for road opening	5 working days prior to carrying out works
2A.1	Limits of clearing - Extent of clearing	Submit extent of clearing survey plan and identify the perimeter of the area on site.	3 working days before proposed commencement of clearing
2A.2	Environment to be preserved - Tagging	Confirm clearing perimeters and mark trees to be preserved	3 working days before proposed site clearing
2A.3	Tree protection - General	Any excavation within the TPZ of protected trees has an approved LMPP/TMP.	3 working days before proposed excavation
2A.4	Tree protection - Fencing	Tree protection fencing installed according to approved LMPP/TMP.	3 working days before proposed site clearing
2A.5	Tree protection - Timber falling on private property	Written consent from the owner to leave in place or to enter property to remove	Prior to carrying out works
2A.6	Tree Protection - Damage	Approval for any rehabilitation of vegetation or fauna habitat	3 working days prior to carrying out works
2B.1	Submissions - Documents	Provide advice as to the Geotechnical Consultant engaged to monitor / endorse the Controlled Fill.	At least 3 working days' notice prior to commencement of earthworks.

2B.2	Contaminated material and wastes - Excavating contaminated material	Provide EPA or Site Auditor endorsed RAP for the excavation and disposal of contaminated material	3 working days prior to commencement of excavation
2B.3	Contaminated material and wastes - Unexpected finds	Provide approval from relevant authority for work to recommence within isolated area.	1 working day prior to work recommencing in affected area.
2B.4	Site establishment - Excavation method	Provide details of special procedures for design and execution of blasting to meet all statutory and environmental requirements and the requirements of Appendix B in this Specification.	At least 10 working days prior to commencement of blasting
2B.5	Removal of topsoil - Survey	Provide a detailed topographic survey of the stripped surface.	Within 10 working days after removing the topsoil and 3 working days prior to commencing bulk earthworks
2B.6	Cuttings - Ripping floors of cuttings	Submit ripped or loosened material for inspection	1 working day before re-compaction commences
2B.7	Cuttings - Compacting floors of cuttings	Inspection of compacted cutting floor	Prior to placing any subsequent layers over the completed cutting floor
2B.8	Unsuitable material - Floor inspection	Present the floor of the excavation after the removal of unsuitable material	Prior to backfilling with replacement material
2B.9	General fill - Foundations	Inspection of the fill foundation area after removal of topsoil.	Prior to filling
2B.10	Placing fill - Trimming top fill areas	Inspection of the completed surface to receive subsequent layers	Prior to placing any subsequent pavement layers
2B.11	Selected Material Zone - Inspection	Inspection of the completed Selected Material Zone surface prior to placing any subsequent pavement layers	Prior to placing any subsequent pavement layers
2B.12	Select Material – Select material pre-treatment	Contractor to specify source and provide conformance report to the Authorised Person	Prior to placing any subsequent layers
2B.13	Fill adjacent to structures - Treatment at weepholes	Proposal to use synthetic membrane geotextile	3 working days before proposed use
2B.14	Borrow - Imported Material	Contractor to provide conformance report to the Authorised Person	1 working day before importation of the material.
2C.1	Stabilisation processes - Stabilisation Work Plan (SWP)	Submit SWP	Within 14 days of possession of site being granted and at least 3 working days prior to commencement of earthworks in any given area
2C.2	Stabilisation processes - Materials proposed for use in the work	Submit NATA certificate of compliance	5 working days prior to commencement of works

2C.3	Stabilisation processes – Field Working Period	Nominate the specific field working period in Annexure A.	5 working days prior to commencement of works
2C.4	Cement - Storage	Re-test cement stored in excess of 3 months	2 working days prior to usage
2C.5	Application of stabilising agent - In situ application	Proposals for special processes of supply of stabilising agent into the mixing bowl	5 working days prior to mixing
2C.6	Mixing - In situ mixing process	Demonstration of equipment mixing efficiency in trial section	Same day as production but before production is approved to commence.
2C.7	Trimming and compaction - Trimming	Work methods to exclude laminations and slurring	3 working days prior to production stabilisation
2C.8	Trimming and compaction - Survey control methods	Use of trimmed material as fill or spoil	3 working days prior to disposition
2C.9	Trial section of stabilised earthworks - General	Submit details of the proposed trial section of stabilised earthworks	3 working days prior to commencement of works
2C.10	Trial section of stabilised earthworks - General	Any deficient sections will require to be investigated and may be directed to be removed	Progressive
3A.1	Bedding, support and backfill material - General	Proposed use of any recycled material must be approved.	10 working days prior to ordering
3A.2	Site Establishment – Set out of trenches	Submit survey set-out of trenches for approval	1 working days prior to proceeding
3A.3	Excavation - Shoring	Submit documentation of the proposed method of trench support	3 working days prior to excavation of trenches
3A.4	Excavation for drainage systems - Foundation	Confirm soil type with design	1 working day
3A.5	Excavation for drainage systems - Foundation	Inspect any area of the foundation including the sides of the trenches that may contain unsuitable material.	1 working day
3B.1	General - Certification	Submit manufacturer's certification	5 working days prior to ordering
3B.2	Plastic Flexible Pipes - Proprietary products	Submit proprietary product for approval prior to construction	5 working days prior to ordering
3B.3	Installation - General	Give notice for inspection of completed installation and jointed pipes	Progressive before backfilling
3C.1	Precast Concrete - General	Submit certificate of conformance	3 working days prior to dispatch
3C.2	Handling, delivery, and storage - General	Inspect box culvert units for dimensional accuracy and defects	3 working days prior to installation

3C.3	Installation – Cast insitu base and link slabs	Submit certification that installation of reinforcement and compliance of formwork conforms with MITS 10 Concrete works and the Drawings and give notice for inspection.	1 working day before pouring concrete
3C.4	Installation - Placement of units	Present joints and seals for before backfilling	1 working day
3C.5	Completion - Construction loading on culvert	Provide certification base slab concrete has achieved minimum compressive strength of 32MPa.	28 days
3D.1	Precast units - General	Submit details of precast or proprietary items for approval, including drawings, method of manufacture, testing and installation.	3 working days before ordering
3D.2	Precast units - Substitutions	Submit details for substituting precast units for cast insitu units.	3 working days before ordering
3D.3	Installation – Cast insitu reinforced concrete structures	Submit certification that installation of reinforcement and compliance of formwork conforms with MITS 10 Concrete works and the Drawings and give notice for inspection.	1 working day before pouring concrete
3E.1	General - Authorised products and materials	Submit for certification of conformance for all products and materials or approval for alternative products and materials	2 weeks before ordering
3E.2	Excavation for water supply - Foundation	Identify any unsuitable material and proposed actions	1 working day prior to preparation of foundations
3F.1	General - Authorised products and materials	Submit for certification of conformance for all products and materials or approval for alternative products and materials	2 weeks before ordering
3F.2	Excavation for sewerage systems - Foundation	Identify any unsuitable material and proposed actions	1 working day prior to preparation of foundations
3G.1	General – Components	Provide certificates	Before delivery
3H.1	Excavation - Trench	Submit proof of approval of method of excavation	3 working days before excavation
3H.2	Trench backfill – General	Submit proposed recycled material for approval	2 weeks before excavation
3H.3	Surface restoration - Subbase and base	Approval of source and installation of material	1 working day before restoration of pavement
3H.4	Surface restoration - Pathways and paved public areas	Approval to retain in place temporary subbase material	1 working day before restoration of pavement

3I.1	Subsurface drainage pipes - General	Submit compliance certificates	5 working days before ordering
3I.2	Other types of subsurface drainage pipes - Alternatives	Submit details of proposed alternative pipes and evidence of conformity for approval.	5 working days before ordering
3I.3	Geotextile - Properties	NATA compliance certificates, sample, and manufacturer's instructions.	5 working days before ordering
3J.1	Subsoil drains - Excavation	Confirm design when groundwater conditions change during excavation	3 working days before next activity
3K.1	Type A Mats - Geotextile	Approval of condition or repair of geotextile	1 working day before next activity
3K.2	Type A Mats – Filter Material	Approval of thickness and layers of filter material	3 working days before placing filters
3K.3	Type B Mats - Geotextile	Approval of condition or repair of geotextile	1 working day before next activity
3K.4	Type B Mats – Filter Material	Approval of thickness and layers of filter material	3 working days before placing filters
4.1	Proposed materials	Prepare and submit schedule detailing material properties including NATA test results	5 working days before ordering materials
4.2	Bound or modified materials	Complete and submit Annexure A of RMS R71	5 working days before ordering materials
4.3	Variations to approved materials	Submit details of changes to approved materials	5 working days before use in works
4.4	Alternative materials	Submit details of alternative material including test results	5 working days before ordering materials
4.5	Lime modification	Submit proposals to modify materials	5 working days before placing
4.6	In-situ lime modification	Submit proposals for the in-situ use of hydrated lime or quicklime	5 working days before activity
4.7	Underlying layer	Inspection to determine suitability of underlying layer	1 working day before placing next layer
4.8	Temperature	Submit proposal to proceed outside allowable conditions	1 working day before placement
4.9	Subsequent layers	Submit completed test results of previous layer	1 working day before placing next layer
4.10	Lots for acceptance	Submit compaction test results	1 working day after testing
4.11	Compaction requirements and acceptance	Submit evidence that compaction is within tolerances	1 working day after test results
4.12	General	Submit lot survey reports	1 working day before next activity

4.13	Corrective action - Rejected unbound layers	Submit proposal for corrective action	1 working day before next activity
4.14	Corrective action - Rejected bound layers	Submit proposal for corrective action	3 working days before next activity
4.15	Extent of removal	Submit proposal to remove less than full width	1 working day before next activity
4.16	Prior to replacement	Give notice for inspection of underlying material	1 working day before next activity
4.17	Replacement	Submit proposed methods to make good	1 working day before next activity
6A.1	Concrete - General	NATA compliance certificates for concrete and constituents	5 working days before ordering
6A.2	Proprietary Products - General	Submit proprietary products and manufacturer's instructions	5 working days before ordering
6A.3	Wire mattresses - General	Compliance certificates for proposed wire mattress	5 working days before ordering
6A.4	Gabions - General	Compliance certificates for proposed Gabions	5 working days before ordering
6A.5	Rock fill material – General	NATA compliance certificates and rock fill sample for proposed rock fill material	5 working days before ordering
6A.6	Stone pitching material - General	NATA compliance certificates and stone sample for proposed rock fill material	5 working days before ordering
6A.7	Geotextile - Properties	NATA compliance certificates, sample, and manufacturer's instructions.	5 working days before ordering
6A.8	Lining - Concrete lining	Approval for extent of lining, subsurface drainage, jointing and bedding requirements, as marked out onsite.	2 working days before concreting.
6A.9	Lining – Stone Pitching	Approval for extent of stone pitching, subsurface drainage, and bedding requirements, as marked out onsite.	2 working days before commencing stone pitching.
6A.10	Kerb and gutter - Foundation	Approval for shape and compaction of foundation material	1 working day before forming
6B.1	Concrete - General	NATA compliance certificates for concrete and constituents	3 working days prior to commencement on site
6B.2	Concrete – Coloured concrete	Submit two test panels of each different colour concrete type.	5 working days before ordering
6B.3	Concrete – Exposed aggregate	Submit proposed methodology for exposed aggregate finish	5 working days before commencement of concreting

6B.4	Preparation of subgrade - Compaction	Compacted subgrade before installation of polyethylene sheeting or a blinding layer or sand	1 working day prior to commencement of laying subbase
7.1	Samples	Submit two samples of each different type and/or source of paving.	5 working days before ordering
7.2	Quality plan	Prepare and submit Quality plan including Inspection and Test Plan.	2 weeks before commencing site work
7.3	Nominated materials	For each paver type submit samples and test results stating source and demonstrating conformance.	5 working days before ordering
7.4	Base	Present the finished base and all test/survey results conforming to MITS 04 Flexible pavement construction or MITS 06 Concrete kerbs, footpaths, and minor works as appropriate.	1 working day before commencing placement of bedding sand
7.5	Substrate	Present the finished substrate and all test/survey results demonstrating conformance of material properties, compaction, and levels.	1 working day before commencing placement of bedding/adhesive.
8A.1	Establishment - General	Confirm approval for access and work on adjacent property	One week before commencing site work
8A.2	Establishment - Connection to existing fences	Connection proposal of existing and new fencing	One week before next activity
8A.3	Erection of posts - Depth of posts	Method of installing and proposed type of posts to be used	One week before manufacture or order
8B.1	Playground Equipment	Provide information from equipment manufacturer / supplier	At the time of project commencement
8B.2	Organic softfall	Submit 1kg sample with certification to meet AS4422	4 (four) weeks prior to commencement of installation
8B.3	Compaction - subgrade	Submit information confirming conformance	Two (2) days prior to installation of drainage sand
8B.4	High end risers	Setout location for high end risers	Two (2) days prior to installation
8B.5	Play Equipment Setout	Setout equipment and fall zones	Two (2) days prior to setting out
8B.6	Operation and Maintenance Manuals	Submit certifications, warranty, and maintenance manuals	Prior to Operational Acceptance
8B.7	Playground Compliance Inspection and Audit	Submit report confirming compliance with AS4685	Prior to Operational Acceptance
8B.8	Organic Softfall Testing	Submit report confirming compliance with AS4685	Prior to Operational Acceptance
8C.1	Polyurethane binder and rubber granules – wear course	Submit information for proposed products	4 weeks prior to commencement of installation

8C.2	Rubber Granules – wear course	Submit information to verify product conformance of rubber granule	4 weeks prior to commencement of installation
8C.3	Rubber Granules – wear course and Impact base	Submit samples	4 weeks prior to commencement of installation
8C.4	Impact base	Submit details to confirm that impact base will achieve requirements	1 week prior to commencement of works
8C.5	Compaction - subgrade	Submit information confirming conformance	24 hrs prior to installation of subbase courses
8C.6	Compaction – subbase	Submit information confirming conformance	48 hrs prior to installation of base courses
8C.7	Acceptance of substrate by Installer	Provide certification from rubber softfall installer verifying acceptance of substrate	2 days prior to commencement of rubber impact and wear course
8C.8	Operation and Maintenance Manuals	Submit manufacturers published use, care, and maintenance requirements for each type of synthetic surfacing	Prior to Operational Acceptance
8C.9	Warranty documents	Submit Warranty documents	Prior to Operational Acceptance
8D.1	Standard drawings - furniture and fixtures	Submit installation details and colour schedule for each element	Four (4) weeks prior to commencement of installation
8D.2	Shop Drawings – Bike Shelter	Submit shop drawings for Bike Shelter	Four (4) weeks prior to commencement of installation
8D.3	Samples	Submit samples for each element	Four (4) weeks prior to commencement of installation
8D.4	Compaction - Subgrade	Submit information confirming conformance	48 hours prior to installation of base
8D.5	Compaction - Base	Submit information confirming conformance	48 hours prior to installation decomposed granite gravel
8D.6	Compaction – decomposed granite gravel	Submit information confirming conformance	Completion of installation of decomposed granite gravel
8D.7	Set out – Furniture, Fixtures, Shade sails etc	Advise that setout is complete	Two (2) days prior to installation
8D.8	Setout – all services (electrical, water, drainage etc)	Advise that setout is complete for alignment of electrical conduit	Two (2) days prior to excavation of trenching
8D.9	Bike Shelter – footing excavation	Advise that footings have been excavated	Two (2) days prior to installation of posts and backfilling
8D.10	Decomposed Granite Gravel	Incorporation of Stabiliser	During installation of decomposed granite gravel
8D.11	Furniture delivery to site	Advise that the furniture / fixtures have been delivered to site and are ready for installation	Prior to installation of items

8D.12	Line and level	Advise that furniture has been installed to conforming line and level	At completion of installation of furniture / fixtures
8D.13	Bike Shelter	Mousing off of all connections	At completion of installation
8D.14	Operation and Maintenance Manuals	Submit warranty and maintenance manuals	Prior to Operational Acceptance
9A.1	Stockpile locations	Submit a proposal for storage of materials onsite	A minimum of Two (2) weeks prior to commencement of works
9A.2	Topsoil analysis - Soil Type 1, 2, 3, 4 and 5	Topsoil Samples	A minimum of four (4) weeks prior to commencement of works
9A.3	Subsoil analysis - Soil Type 6	Prior to supplying topsoil	A minimum of four (4) weeks prior to commencement of works
9A.4	Topsoil – completion of initial compliance certification	Prior to supplying topsoil	A minimum of four (4) weeks prior to commencement
9A.5	Supply of topsoil	Notification of topsoil supply	At least 3 working days prior to supplying topsoil to site
9B.1	Supplier information for turf supply	Submit information to meet the requirements of the specification	A minimum of four (4) weeks prior to ordering of turf
9B.2	Surface preparation before spreading of topsoil	Notify that surface has been prepared and ready for inspection prior to spreading of topsoil	A minimum of (2) two days prior to spreading of topsoil
9B.3	Placement on consolidation	Notify that the works are sufficiently established for Placement on Consolidation	A minimum of two (2) weeks prior to inspection
9B.4	End of consolidation	Notify that the works are sufficiently established for Placement on Consolidation	A minimum of two (2) weeks prior to inspection
9B.5	Seed mix	Submit representative samples	A minimum of 2 weeks prior to commencement of works
9B.6	Maintenance Manuals	Submit maintenance manual demonstrating the care and maintenance tasks during the consolidation (maintenance period)	One (1) week prior to Placement on Consolidation
9C.1	Plant provenance	Provide written certification to meet the specification requirements for provenance stock	A minimum of (4) weeks prior to commencement of works
9C.2	Inspection of plant material	Notify that the stock is ready to be inspected for conformance.	A minimum of (3) three days prior to commencement of works
9C.3	Plant Substitution	Notify requirement for substitution and provide evidence as required.	A minimum of eight (8) weeks prior to planting

9C.4	Preparation of surface before spreading of topsoil	Notify that surface has been prepared and ready for inspection prior to spreading of topsoil	A minimum of (2) two days prior to spreading of topsoil
9C.5	Setout of planting completed	Notify that the planting positions have been marked onsite.	A minimum of Three (3) days prior to commencement of works
9C.6	Setout of root barrier completed	Notify that root barrier positions have been marked onsite	A minimum of Three (3) days prior to commencement of works
9C.7	Placement on consolidation	Notify that the works are sufficiently established for Placement on Consolidation	A minimum of two (2) weeks prior to inspection
9C.8	End of consolidation	Notify that the works are sufficiently established for Placement on Consolidation	A minimum of two (2) weeks prior to inspection
9C.9	Mulch	Submit representative sample	A minimum of 2 weeks prior to commencement of works
9C.10	Maintenance Manuals	Submit maintenance manual demonstrating the care and maintenance tasks during the consolidation (maintenance period)	One (1) week prior to Placement on Consolidation
9D.1	Works permit and plan certification	Supply local authority "works approval permit" and approved plans	Prior to commencement of irrigation installation
9D.2	Point of connection	Test and confirm system design flow and pressure requirement	At commencement of project prior to commencement of irrigation installation
9D.3	Shop drawings	Provide details of proposed key equipment and or shop drawings, Controller, Tanks, pumps, Cabinets, Equipment sheds etc	2 (two) weeks prior to commencement of installation
9D.4	System Set out	Peg proposed key system locations (valve pits etc), Mark proposed trench routes.	1 (one) week prior to commencement of irrigation installation
9D.5	Headworks	Mark out and confirm final location of key equipment at POC and demonstrate componentry.	At commencement of project
9D.6	Quality control samples of sprinklers, valves, valve pits, cable, cable joints, drip line (where approved), saddles, swing arms, solenoid valve assembly.	Supply or show samples for, records inspection and approval.	At site establishment and before commencement of installation of irrigation equipment
9D.7	Excavation	Sample trench excavation, depth, bedding and backfill material and re-compaction	Commencement of installation of initial pipe work

9D.8	Initial solenoid valve / Isolation valve/ QCV valve pit installation	Initial valve installation to confirm final finished levels or depths and inspect materials clearances etc	1 (one) week prior to commencement of installation
9D.9	Pipe Pressure test	Flush pipes, Purge all air and seal pipe, apply pressure as required and observe/ document results	Upon completion of the entire system or sections of main that can be isolated
9D.10	Initial system flush, sprinkler fit off and test	Flush all lines and fit off sprinklers.	1 (one) week prior to commencement of sprinkler fitting
9D.11	Final and full system test and commissioning	Demonstration of all stations (sprinklers and valves) working electrically from the controller as per design intent.	Two (2) weeks prior Commissioning
9D.12	Operation and Maintenance Manuals & Irrigation Compliance Certificate	Submit compliance certifications, warranty, and maintenance manuals	Prior to Operational Acceptance
9D.13	WAE plans	Provide WAE plans for cross checking approval and acceptance	Minimum 48hrs Prior to Operational Acceptance Inspection
9D.14	Operational Acceptance Inspection	Submit statement of irrigation compliance. Full system operational demonstration	Minimum One (1) week prior to or as negotiated & agreed
9E.1	Completion - Checklist	Submit completion checklist and associated evidence along with approval of the relevant authorities.	7 days before planned completion
10.1	Loading - Loads on minor concrete structures	Approval for early loading of the structure by design strength in situ tests	3 working days
10.2	Design documentation - Formwork	Formwork design certificates	3 working days
10.3	Design documentation - Formwork	Proposed loading schedule	3 working days
10.4	Formwork - General	Certification of installed formwork and inspection	1 working day prior to covering
10.5	Steel reinforcement placement – Approval	Inspect reinforcement placement	2 working day prior to covering
10.6	Cores, fixings, and embedded items - General	Shop drawings for cores, fixings, and embedded items	10 working days prior to casting
11.1	Complying materials proposed for use.	Submit a signed verification statement and compliance documentation	7 days prior to scheduled work commencement
11.2	Non-complying materials proposed for use.	Submit details of proposed materials with documentation supporting its use.	7 days prior to scheduled work commencement

11.3	Details of proposed long-life material	The manufacturer's technical data for the LLM proposed for use together with written evidence from a Principal Approved Laboratory or equivalent scheme that the material complies with the requirements of this Specification	7 days prior to scheduled marking including material samples if requested
11.4	Details of proposed glass beads	Submission of the manufacturer's technical data for the glass beads proposed for use together with written evidence from a Principal Approved Laboratory or equivalent scheme that the glass beads comply with the requirements of this Specification.	7 days prior to scheduled use of glass beads including material samples if requested
#	Details of proposed raised pavement markers	Details of raised pavement markers specified for use in the contract works, together with full technical details of the adhesive proposed for use, and written evidence from a Principal Approved Laboratory or equivalent scheme that the adhesive materials comply with the requirements of this Specification.	7 days prior to scheduled application of raised pavement markers including material samples if requested
		Refer to RMS Technical Direction TD 2015/01 Prequalified Retroreflective Raised Pavement Markers	
11.6	Surface preparation for pavement marking	Notification that the road surface and/or existing pavement markings will be prepared on site	2 working days prior to scheduled pavement marking commencement
11.7	Set out of pavement marking	Notification that the pavement marking works will be marked out on site	2 working days prior to scheduled pavement marking commencement
11.8	Eradication of pavement markings	Identification of all markings to be eradicated have been marked out on site.	1 working day prior to scheduled work commencement
11.9	Removal of raised pavement markers	Submit written procedure on their method of raised pavement marker removal and proposed method of pavement rectification	2 working days prior to scheduled work commencement
11.1	Use of "Blackout" material	Submission of the manufacturer's documentation on the material / method intended for use and details of the areas proposed for use of the material / procedure.	5 working days prior to scheduled work commencement

11.11	Non-conforming work rectification	Submission of a non-conformance report and acceptance of the disposition by the Authorised Person.	To be included on the non-conformance report
13.1	Quality plan and Temporary traffic management plans.	Submission of a quality plan including a program, temporary traffic management plans, resourcing and inspection and test plans	7 days prior to scheduled work commencement
13.2	Set out of posts.	Notification that the posts have been marked out on site	2 working days prior to scheduled work commencement
13.3	Installation of posts.	Submission of evidence that all traffic signal equipment needed for the completion of the signal installation is available, the civil works have advanced to the stage where all components can be installed without creating a traffic hazard and set out of posts is clearly marked on site	1 day prior to scheduled commencement of signal post installation.
13.4	Inspection of posts prior to backfill.	Notification that the posts have been installed (prior to backfilling)	2 working days prior to backfilling
13.5	Controller compliance with RMS specifications for SCATS operation	Submission of the documentation proving compliance of the controller with the RMS specifications for SCATS operation.	5 days prior to installation of the controller
13.6	Request for signal personality module	Submission of the documentation proving request to the Road Authority Traffic Signal Unit for provision of the signal controller personality module	10 days prior to bench testing the controller
13.7	Commissioning of Controller	Submission of the documentation proving that the signal controller has been bench tested and confirmation of onsite commissioning date	2 days prior to installation of the controller
13.8	Details of cable testing	Submission of the documentation proving the cable has been tested and fully meets the requirements of AS 2276.1 and AS 2276.2.	3 days prior to the commencement of cable installation
14.1	Quality plan	Submit a quality plan with documentation as specified in the Contract	5 working days prior to signage manufacture
14.2	Non-complying materials proposed for use.	Submit details of proposed materials with documentation supporting its use.	5 working days prior to signage manufacture
14.3	Details of fingerboard sections proposed for use.	Submission of the details of the proposed sections of fingerboards proposed for use including	5 working days prior to commencement of sign manufacture.

		certification that the sections meet the requirements.	
14.4	Non-listed regulatory signs	Submission of proposed mounting details	5 working days prior to commencement of sign manufacture.
14.5	Non-listed warning signs	Submission of proposed mounting details	5 working days prior to commencement of sign manufacture.
14.6	Processes for sign blank preparation	Submission of details of the proposed processes for sign blank preparation with certification that the processes are in accordance with recommendations made by the manufacturers of sheeting or paint coatings to be applied to the blank	5 working days prior to commencement of sign manufacture.
14.7	Non-reflective material and application technique	Submission of details of the proposed non-reflective material and application technique.	5 working days prior to commencement of sign manufacture.
14.8	Retro-reflective material and application technique	Submission of details of the proposed retro-reflective material and application technique.	5 working days prior to commencement of sign manufacture.
14.9	Material type for use on legends and method of application– all sign types	Submission of details of the proposed type of material and method of application to be used for the legends including manufacturer and trade name	5 working days prior to commencement of sign manufacture.
14.10	Sign set-out including proposed location and alignment of each sign support structure	Submission of set-out details of each sign including details of the proposed location and alignment of each sign support structure	5 working days prior to commencement of sign manufacture.
14.11	Sign support details including calculations and detail design drawings if required	Submission of detailed design drawings and calculations for signs, such as urban arterial / freeway signs	5 working days prior to commencement of sign installation.
14.12	Excavation of support structure footings	Inspection of excavated footings prior to backfilling	1 working day prior to commencement of backfilling
14.13	Non-conformance of installed products	Submission of a non-conformance report with appropriate disposition	As soon as non-conformance is detected. Work held until disposition is approved
15A.1	Proprietary posts (Non timber) – Proposed supplier	Performance guarantee statement.	Two weeks before manufacture
15A.2	Establishment – Existing underground services	Check for services	5 working days
15A.3	Establishment – Location of guide posts	Guide post placement.	Two weeks before installation

15A.4	Installation of guide posts – Guide posts on concrete pavements	Provide fixing details	5 working days
15A.5	Installation of guide posts – Proprietary guideposts	Provide manufacturer’s anchorage instructions	5 working days
15B.1	General - Approved Products	Submit compliance certification	1 week prior to erection
15B.2	Steel - Certificates of compliance	Provide documentary evidence of conformity of steel components	1 week prior to erection
15B.3	Steel - Protective treatment	Provide manufacturer’s certificate of compliance for galvanizing	1 week prior to erection
15B.4	Timber - Certificates of compliance	Provide documentary evidence of conformity of timber components	1 week prior to erection
15B.5	Wire rope safety barrier systems -Proprietary item	Submit compliance certification	1 week prior to erection
15B.6	Establishment - Method statement	Process description for the installation of road safety barrier systems	1 week prior to erection
15B.7	Establishment - Location of barriers	Set out to drawings or as directed	2 working days prior to erection
15B.8	Installation of wire rope safety barrier systems - Manufacturer’s published requirements	Submit tension certificates and testing	Same day as tensioning
15C.1	General - Approved Products	Submit compliance certification	1 week prior to erection
15C.2	Concrete – Properties	Confirm concrete strength requirements for slip forming	5 working days before commencing works
15C.3	Establishment – Method Statement	Process description for the manufacture, supply, and installation of any road safety barrier system	7 working days before commencing works
15C.4	Establishment – Location of barriers	Safety barrier set out approval	2 working days before construction
15C.5	Manufacture of precast reinforced concrete – Procedures	Submit process details for the manufacture of precast safety barriers	5 days before commencing manufacture
15C.6	Manufacture of precast reinforced concrete – Manufacturing records	Submit information on specific precast barriers	3 working days before use
15C.7	Placing, compacting, and finishing concrete – Slip forming	Submit proprietary extrusion machines for approval	5 working days prior to commencing works
15C.8	Joints in concrete placed in-situ – Expansion joints	Jointing material for approval	3 working days before ordering

15C.9	Curing – General	Curing method and materials for approval	3 working days before placing concrete
15C.10	Signage and line marking at barrier - Removal of temporary traffic control devices	Inspection of permanent works before removal of temporary works	24 hours before removal
16A.1	Underdrainage pipes, lining material, Drainage, Transition, Filtration and Mulch Layer Materials	Provide documentation of conformity of drainage/transition/ filtration/mulch layer material and installation process, liner materials and Compliance certificates for drainage pipes	14 days before supplying materials
16A.2	Protection of Bioretention System from Pollutant Ingress and Upstream Drainage Established	The Contractor shall notify the Authorised Person that protection measures to prevent pollutants entering bioretention system works (including upstream diversions) are constructed in accordance with the specification and ready for inspection and approval.	3 days prior to commencement of excavation for bioretention system.
			Construction of large bioretention areas where protection measures are constructed in stages shall be subject to inspection on each stage of the works
16A.3	Excavation - Trenches	Approval of completed trenches required.	1 working day prior to installation of liner materials.
16A.4	Installation of Liner Material	Approval of completed liner material required.	1 working day prior to installation of drainage pipes.
16A.5	Installation of Underdrainage	Approval of completed underdrainage pipe works required.	1 working day prior to installation of drainage layer materials.
16A.6	Maintenance of bioretention systems – Commencement	Submit request to commence maintenance period with proposed maintenance schedule in accordance with Clause 3.1 of this specification.	5 working days prior to proposed commencement of maintenance period upon operational acceptance by TCCS or as detailed in the contract.
16A.7	Maintenance of bioretention systems – Decreased life/Damage to system functionality from upstream catchment outside contractor scope	The contractor shall provide a summary of the extent of damage occurred to WSUD and include a report on specific sources of pollution for further investigation by the Authorised Person. The Authorised person shall then determine and provide the contractor with a summary of activities required (if any) to rectify the damage to WSUD.	5 working days after damage has been identified to newly constructed WSUD measures.
16A.8	Maintenance of bioretention systems – Undertaking of maintenance works	The contractor shall provide all relevant approved TTM/Environmental documentation and proposed materials/methodologies for use in the rectification of WSUD infrastructure.	5 working days prior to commencing maintenance works on WSUD system.

16A.9	Maintenance of bioretention systems - Completion	Submit request to complete maintenance period with submission of maintenance records completed in accordance with Clause 3.3 of this specification. Notify that the WSUD system is ready for flushing inspection.	5 working days prior to proposed completion of maintenance period.
16B.1	Liner, Embankment, Edge Gravel. Filtration Materials - General	Provide documentation of conformity of liner, embankment, edge gravel and filtration materials and installation process	14 days before proceeding to provide liner materials
16B.2	Protection of Pond System from Pollutant Ingress and Upstream Drainage Established	The Contractor shall notify the Authorised Person that protection measures to prevent pollutants entering pond works (including upstream diversions) are constructed in accordance with the specification and ready for inspection and approval.	3 days prior to commencement of excavation for pond.
16B.3	Establishment - Set out	Submit the proposed set-out for approval by the Authorised Person.	7 days before planned execution.
16B.4	Installation of Liner Material	Approval of completed liner layer and drainage infrastructure.	1 working day prior to construction of filter layer and/or edge gravels.
16B.5	Maintenance of pond – Commencement	Submit request to commence maintenance period with proposed maintenance schedule in accordance with Clause 3.1 of this specification.	5 working days prior to proposed commencement of maintenance period upon operational acceptance by TCCS or as detailed in the contract.
16B.6	Maintenance of pond – Decreased life/Damage to system functionality from upstream catchment outside contractor scope	The contractor shall provide a summary of the extent of damage occurred to WSUD and include a report on specific sources of pollution for further investigation by the Authorised Person. The Authorised person shall then determine and provide the contractor with a summary of activities required (if any) to rectify the damage to WSUD.	5 working days after damage has been identified to newly constructed WSUD measures.
16B.7	Maintenance of pond systems – Undertaking of maintenance works	The contractor shall provide all relevant approved TTM/Environmental documentation and proposed materials/methodologies for use in the rectification of WSUD infrastructure.	5 working days prior to commencing maintenance works on WSUD system
16B.8	Maintenance of pond - Completion	Submit request to complete maintenance period with submission of maintenance records completed in accordance with Clause 3.3 of this	5 working days prior to proposed completion of maintenance period.

		specification. Notify that the pond is ready for inspection.	
16C.1	Lining, Rock and Filtration Materials - General	Provide documentation of conformity of liner material including proposed installation process and documentation of conformity for rock and filter materials.	14 days before supplying materials
16C.2	Protection of Wetland from Pollutant Ingress and Upstream Drainage Established	The Contractor shall notify the Authorised Person that protection measures to prevent pollutants entering wetland works (including upstream diversions) are constructed in accordance with the specification and ready for inspection and approval.	3 days prior to commencement of excavation for wetlands
16C.3	Excavated Levels	Approval and inspection/proof roll of completed earthworks, submission of survey conformance and notification of any groundwater presence	3 working days prior to construction of liner materials.
16C.4	Installation of Liner Materials	Approval of completed liner layer and drainage infrastructure.	1 working day prior to construction of filter layer
16C.5	Maintenance of wetland – Commencement	Submit request to commence maintenance period with proposed maintenance schedule in accordance with Commencement	5 working days prior to proposed commencement of maintenance period upon operational acceptance by TCCS or as detailed in the contract
16C.6	Maintenance of wetland – Decreased life/Damage to system functionality from upstream catchment outside contractor scope	The contractor shall provide a summary of the extent of damage occurred to WSUD and include a report on specific sources of pollution for further investigation by the Authorised Person. The Authorised person shall then determine and provide the contractor with a summary of activities required (if any) to rectify the damage to WSUD.	5 working days after damage has been identified to newly constructed WSUD measures.
16C.7	Maintenance of wetland systems – Undertaking of maintenance works	The contractor shall provide all relevant approved TTM/Environmental documentation and proposed materials/methodologies for use in the rectification of WSUD infrastructure.	5 working days prior to commencing maintenance works on WSUD system.
16C.8	Maintenance of wetland - Completion	Submit request to complete maintenance period with submission of maintenance records completed in accordance with Completion Notify that the WSUD system is ready for final inspection.	5 working days prior to proposed completion of maintenance period

16D.1	Proprietary products	Submit certification / documentation from the manufacturer confirming that proprietary products are compliant with the specification.	7 days before ordering proprietary products.
16D.2	GPT installation	Approval of completed trenches and replacement of any deleterious material required prior to installation of GPT components	2 working days prior to installation of GPT.
16D.3	Removal of Temporary Weirs and Diversions to bring GPT on line.	Approval of all stormwater and WSUD system components prior to bringing on line.	5 working days prior to removal of temporary weirs and stormwater diversions.

TABLE 9 - PRINCIPAL SUPPLIED PRODUCTS			
<p>Include here, or reference attached schedule(s) of, products to be supplied free issue to the <i>Contractor</i> for incorporation into the <i>Works</i>.</p> <p>The required method of handover/acceptance and the documentation to be completed is as follows.  <i>(Refer ISO 9001:2015 Cl7.5.4 and HB90.3-2000 Page 73 for guidance).</i></p>			
Product	Quantity	Special Handling, Delivery or Storage Requirements	Point of delivery if other than site

**TABLE 10 - DOCUMENTATION FOR SERVICING WORK**

Procedures or instructions for undertaking the contract servicing works shall be developed for the following activities. (Note: procedures/instructions and their associated documents shall provide the necessary evidence that the servicing work meets the contract requirements):

Servicing Activity


EXAMPLE ONLY

<b>QUALITY RECORDS</b>					
<b>Type of Record</b>	<b>No. of Copies</b>	<b>Submit</b>		<b>Retention</b>	
		<b>To Whom</b>	<b>Date Required</b>	<b>Retain By Whom</b>	<b>Minimum Period (Years)</b>
Inspection and Test Plans	2	Superintendent	Within 5 days after award	Contractor	7 years
Quality Procedures/Instructions	2	Superintendent	Within 5 days after award	Contractor	7 years
Traceability Records	1	Superintendent	Progressively	Contractor	7 years
Inspection and Test results of works completed	1	Superintendent	Progressively With Progress Claims	Contractor	7 years
Works as Executed Drawings (of all drawings issued for construction)	3 hard copies 1 digital	Superintendent	Refer special conditions of contract clause 2.04	Contractor	7 years
Supplier's certificates of conformance	3	Superintendent	Progressively with payment claims	Contractor	7 years
Non-conformance Reports	1	Superintendent	Within 2 days of detection	Contractor	7 years
Corrective action requests	1	Superintendent	Within 2 days of detection	Contractor	7 years

**CERTIFICATE OF COMPLIANCE**

**This section to be completed by Contractor's Representative:**

I hereby claim that the above listed works have been duly completed in accordance with the *Contract* requirements, except for the concessions granted in writing by the *Superintendent* which are detailed in the attached listing of nonconformances and their status.

I have verified that:

- (a) outstanding minor nonconformances as per the attached listing are applicable to the *Works*.
- (b) all Inspection and Test Plan(s) (ITPs) applicable to the *Works*, as indicated in the attached register of ITPs, any associated test record sheets and other quality records as required by the specification, have been satisfactorily completed and signed.
- (c) any identified nonconformances have been satisfactorily disposed of and their documentation closed out, excepting any minor nonconformances.
- (d) all positive recalls have been completed and verified.
- (e) concessions have been granted for the nonconforming items on the attached listing.
- (f) WAE Drawings and Asset Lists relevant to the attached *claim* are being progressively prepared.

NAME (PRINT): \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: / /

(Contractor's Representative)

**This section to be completed by the Superintendent's Representative:**

*Contractor's* above completed works *claim* is noted and has been verified.

Payment to be reduced for outstanding minor nonconformances      YES       NO

(Tick As Appropriate)

NAME (PRINT): \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: / /

(Superintendent's Representative)

## Annexure F – Principal’s Documents

**[Instructional note:** Include in this Attachment a list of *Principal’s Documents* provided with the RFT and can be updated as necessary to reflect any documents provided by the Principal to the Contractor prior to the date of execution.

The list must be comprehensive and fully complete. Each drawing must be fully described including the drawing title, drawing number and revisions number. Similarly documents such as Specifications that are to be listed must have the full document title and version control and author. Failure to fully describe each individual items forming the *Principal’s Documents* leaves the basis of the formation of the Contract open to argument after contract award.

If the list of *Principal’s Documents* is in a PDF include it as a new Attachment to this Annexure, and write in the table below “As set out in the Attachment to this Annexure F”.]

Refer to clause 8.3 of the NCW4 General Conditions of Contract

*Principal’s Documents* include the following. This list is not intended to be a definitive list of *Principal’s Documents* for the purposes of the Contract or in any way limit the definition of *Principal’s Documents* in the Contract.

No.	Document
1	[insert]
2	[insert]

## Annexure G – Pricing Schedule

EXAMPLE ONLY

## Annexure H – Labour Relations, Training and Workplace Equity Plan

EXAMPLE ONLY

## Annexure I – Local Industry Participation Plan

EXAMPLE ONLY