



ACT Government modified version GC21 (Edition 2) General Conditions of Contract

Version: 1.8 November 2025

Project Name:

Contract No:

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Ref:

Preface
GC21 (Edition 2) General Conditions of Contract
Contract framework
Carrying out the Works
- Claim and Issue resolution
- Termination
- Meanings
Contract Agreement
Contract Information
Schedules
Attachments

This GC21 (Edition 2) General Conditions of Contract has been amended for use by the Australian Capital Territory and is used with the permission of the NSW Construction Agency Co-ordination Committee. A marked up version of the ACT modified GC21 (Edition 2) General Conditions of Contract is available for inspection on the Infrastructure Canberra website <https://www.act.gov.au/infrastructurecanberra/supplying-to-government/supplier-information/infrastructure-contract-suite/gc21-document-suite>. Any Special Conditions of Contract further modify the ACT modified GC 21 (Edition 2) General Conditions of Contract.

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**New South Wales.
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I. Title.

Acknowledgments

The NSW Government GC21 (Edition 2) General Conditions of Contract was developed in 2012 by the NSW Construction Consultative Committee based on experience in the use of Edition 1.

It was developed in consultation with representatives of: Department of Finance & Services, Land and Housing Corporation, Roads and Maritime Services, Health Infrastructure, and Sydney Water Corporation.

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

Revision History

Version	Issue Date	Details
1.4	January 2022	Clause 79 term <i>Senior Executive</i> added. References to <i>Senior Executive</i> amended in Clauses 69 and 70, and Contract Information Items 7, 11 and 52. Text in Schedule 12 removed. Schedule 15 Principal's Documents no longer includes reference to Site information documents. References to compliance with the <i>Code for the Tendering and Performance of Building Work 2016</i> removed.
1.5	June 2024	Updates to align, where applicable, with NSW GC21 Ed.2 updates to version of 1 September 2023. Inclusion of updated Formal Instrument of Agreement template. Inclusion of clause 1A acknowledgement. Inclusion of Attachment 5 (Labour Relations, Training and Workplace Equity Plan). Inclusion of Attachment 6 (Local Industry Participation Plan). Change to prompt note for Confidential Text. Other minor tidy ups.
1.6	September 2024	Deletion of clause 1A acknowledgement
1.7	August 205	Minor Update – MPC to iCBR, and PMARS to ContrACTs
1.8	November 2025	Minor Update from ContrACTs to CAMPS

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Preface

The GC21 (Edition 2) General Conditions of Contract

The GC21 (Edition 2) General Conditions of Contract is the major component of the GC21 Standard Form documents.

The GC21 suite of documents provides a holistic approach to construction procurement. In particular, the documents have been designed to:

Standardised Contract

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

Collaboration and cooperation

- continue the highly effective emphasis on co-operative contracting and enhanced communication, including early warning procedures, joint workshops and regular joint evaluation and monitoring; and
- provide equitable risk sharing between the parties, streamline operational processes such as delay and overhead cost assessments and include mechanisms for early agreement on changes, the resolution of ambiguities and inconsistencies and the use of independent valuers.

The GC21 (Edition 2) General Conditions of Contract built on the experience and project success delivered with Edition 1. Edition 2 focused on streamlining, updating and improving the operation of the contract to reflect experience and practice.

Using this document

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

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

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

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

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

Attachments 1, 2A, 2B, 3 and 4 do not form part of the Contract. All other Attachments form part of the Contract unless otherwise specified.

EXAMPLE ONLY

Formal Instrument of Agreement

Refer to clause 7 of the GC21 General Conditions of Contract

The Contract is formed by the Principal issuing a *Letter of Award* to the Contractor, unless the Principal requires the parties to be bound by execution of a formal agreement or deed. Pursuant to clause 7.5 of the General Conditions of Contract, even where a *Letter of Award* has been used to form the Contract, the Principal may require the Contractor to execute a formal agreement or deed on terms no different from those contained in the *Contract Documents*.

The template 'Formal Instrument of Agreement' below has been drafted for execution by the parties using the 'without a common seal' option in accordance with s127 & s110A of the Corporations Act 2001 (Cth).

Where signing by electronic means (i.e. not on a physical hard copy document) is to be used, the identification, reliability and consent requirements under s9 of the *Electronic Transactions Act 2001* apply. The formal instrument of agreement has been drafted to provide compliance with the:

- **identification requirements** – signature & name of person signing and indication the person intends to be bound by the terms of the agreement; and
- **reliability requirement** – an appropriate method being used to link the person signing to their signature. Three options are provided to satisfy the reliability requirement. The appropriate option should be selected by the Principal.

For information:

- a. an electronic signature platform such as DocuSign, SecureSign or similar can be used, as an advanced signer identification method, to provide the necessary interface to satisfy reliability and identification requirements and produce the necessary records; and
- b. the certified digital signature signing option to satisfy the reliability requirement verifies the identity of the signer and provides assurance that no document alteration has occurred after signing.

[Note: a *Letter of Award* cannot be used to form the Contract if you intend the Contract to be in the form of a deed. A deed may be preferred if you wish to secure the benefit of the 12 year limitation period which attaches to deeds, for bringing an action for breach. Deeds cannot be signed electronically by the Territory. The limitation period for a contract is 6 years from the date on which the action accrued. Seek legal advice if required]

[There are two options for clause (a). Use the first option if the Territory is issuing a *Letter of Award* to form the Contract, otherwise use the second option if the Contract is to be formed by execution of the formal contract. Include clauses (b) to (d) in all cases. Seek legal advice if you require the Contract to be a deed.]

[OPTION 1 – LETTER OF AWARD ISSUED]

- (a) Notwithstanding a Contract has been formed by the issue of a *Letter of Award*, the Principal requires the Contractor to execute this formal instrument of agreement on terms no different from those contained in the *Contract Documents* as at the Date of Contract.

[OPTION 2 – NO LETTER OF AWARD ISSUED, PARTIES TO BE BOUND BY SIGNING THE FORMAL INSTRUMENT. Note: If a deed is preferred seek legal advice regarding appropriate drafting (and note the above information regarding Deeds)].

- (a) The Principal requires the Contract to be formed by execution of this formal instrument of agreement.

[clauses (b) to (d) – include in all cases:].

- (b) The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract, including all documents referred to in clause 7 of the Contract as constituting the Contract.

- (c) This formal instrument of agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.
- (d) The parties:
- (i) accept that this formal instrument of agreement may be signed by electronic means by counterpart using an electronic signing platform or other agreed process that provides a suitable record identifying the person signing;
 - (ii) state that they may make use of the option to sign electronically and will be bound by their electronic signatures;

(select one of the 3 methods of signing electronically in sub-clause (d)(iii) below and then delete the other 2 methods & check the numbering)

Method 1 – use of personal email address

- (iii) agree that a personal email address is to be used for access to the document to be signed and in communications by the person signing electronically.

Method 2 – use of an advanced signer identification (e.g. DocuSign, SecureSign etc)

- (iii) agree that an advanced signer identification method is to be used by the persons signing electronically, utilising password access to the document to be signed.

Method 3 – use of certified digital signature

- (iii) agree that a certified digital signature is to be used by the persons signing electronically, utilising a digital certificate from a Certificate Authority.

Signed for and on behalf of the **Australian Capital Territory** in the presence of:

Signature of Witness

Signature of Delegate

Name of Witness in full

Full name of Delegate

Date

Date

Executed by **[NAME & ACN of Contractor]**

Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

Signature of director / authorised officer *

*DELETE whichever is not applicable (see note below)

Print full name

Print full name

Date

Date

Note:

***Authorised Signatories:**

For a Company: This form must be signed in accordance with either section 126 or section 127 of the *Corporations Act 2001* (Cwth), 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.

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

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

Contract framework

This section deals with the purpose and structure of the Contract. It allocates responsibilities and sets up the procedures for making the Contract work. Underlying it are the basic principles of GC21: co-operative contracting, enhanced communication, clear definition of roles, responsibility for outcomes, and promoting best practice.

Roles and relationships

Although the parties have different responsibilities, co-operation is a key element of the Contract.

1 General responsibilities

- .1 The Contractor must:
 - .1 design and construct the Works in accordance with the Contract; and
The Contract recognises that the Contractor will always have some design responsibility, irrespective of how the Contract is described. The Contract form has thus been developed to deal with a broad range of design from a minimal concept design to full design. It can suit fully documented; construct only; design, development and construct; design and construct; lump sum or some other similar description of contract. The extent of the Contractor's Design obligations is specified in clause 39.
 - .2 perform and observe all its other obligations under the Contract.
- .2 The Principal must:
 - .1 pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract; and
 - .2 perform and observe all its other obligations under the Contract.
- .3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

2 Authorised persons

Contractor's Authorised Person

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

Principal's Authorised Person

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

3 Co-operation

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

4 Duty not to hinder performance

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

5 Early warning

- .1 Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for *Completion*, or the cost or quality of the Works. The parties must then investigate how to avoid or minimise any adverse effect on the Works and *Scheduled Progress*.

The 'early warning' obligation does not replace or relieve the parties of complying with the notification requirements in the Contract. Refer, in particular, to notifications by the Contractor under clauses 37, 38, 45, 48, 49 & 50.

- .2 Information provided by a party under clause 5.1 must not be used against that party in any *Claim* or *Issue* resolution proceedings.

6 Evaluation and monitoring

As the Contract proceeds, regular meetings (usually monthly) allow the parties and selected stakeholders to evaluate performance and identify priorities for improvement.

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

Performance Evaluation and Performance Evaluation Record forms are provided at Attachments 2, 2A, 2B and 3. They do not form part of the Contract and the parties may amend them to suit the specific attributes of the Contract.

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

The Contract

7 The Contract

The Contract is formed by the Principal sending a *Letter of Award* to the Contractor, unless the Principal expressly states, in the *Letter of Award* or other document given to the Contractor before the *Letter of Award*, that no contract is formed until a formal agreement or deed is executed. Refer to definition of 'Date of Contract' for more detail.

- .1 The Contract is made up solely of the Contract Documents, which supersede all understandings, representations and communications made between the parties before the Date of Contract in relation to the subject matter of the Contract. The Contract Documents are:
 - .1 these GC21 General Conditions of Contract;
 - .2 the Contract Information;
 - .3 the annexed Schedules (which include, for the avoidance of doubt, the Special Conditions Schedule);
 - .4 the *Principal's Documents* as at the Date of Contract; and

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

8 Scope of the Works, Temporary Work and work methods

- .1 The Works are described in brief in Contract Information item 3 and in more detail in the *Contract Documents*, and include:
 - .1 all work specifically referred to in or contemplated by the Contract;
 - .2 all work and items necessary to achieve the effective and efficient use and operation of the Works; and
 - .3 all work and items necessary for the Works to be fit for the purposes required by the Contract.
- .2 Other work required in connection with the Contract includes:
 - .1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
 - .2 all work and items necessary to carry out and complete the Works properly; and
 - .3 all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract.
- .3 The Contractor acknowledges that:
 - .1 it is both experienced and expert in work of the type, complexity and scale of the Works;
 - .2 it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and
 - .3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.
- .4 The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works.
- .5 Unless the Contract specifies, or the Principal instructs, that the Contractor use a particular work method or perform particular *Temporary Work*, the Contractor is solely responsible for determining the work methods and the requirements for all *Temporary Work*.
- .6 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 its price (excluding all costs of delay) for any proposal by the Principal to use a particular work method or perform particular *Temporary Work* proposed by the Principal or to change a work method or *Temporary Work* specified in the Contract;

- .2 the anticipated effect of the Principal's proposal on achieving *Completion*; and
- .3 the effect of the Principal's proposal on any other matter specified by the Principal.
- .7 If the parties agree in writing on the effects of the Principal's proposal and the Principal instructs the Contractor to carry out the proposal, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
- .8 Subject to clause 8.9, if the Principal instructs the Contractor to use a particular work method or perform particular *Temporary Work* or to change a specified work method or *Temporary Work* without first agreeing in writing with the Contractor the effects of the instruction, the Contractor may make a *Claim*, that complies with clause 68.3, for:
 - .1 an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.
- .9 If the need for the instruction given under clause 8.8 arises from the Contractor's own act or omission, the Contractor is not entitled to any extension of time or adjustment to the *Contract Price*.

9 Assignment

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

10 Governing law of the Contract

- .1 The Contract is governed by the laws of the Australian Capital Territory, and the parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

11 Notices and instructions

- .1 Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11, 46 or 52, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.

As per clause 1.3, the Contractor is required to comply with an instruction given by the Principal. The instruction may initially be given orally. The Contractor may confirm its understanding of the Principal's verbal instruction.

Statutory and Government Requirements

12 Statutory Requirements

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

- .3 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all licences, authorisations, approvals, consents and other documents issued by authorities or providers of services in connection with the Works or the Site.

13 Codes of practice and guidelines

Not used

- .1 Not used.

Secure Local Jobs

- .2 In clauses 13.2 to 13.17:
- .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 a Territory Entity, 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 *ANZSIG* means the Australian and New Zealand Standard Industrial Classification 2006, as in force from time to time;
 - .6 *Code* means the *Secure Local Jobs Code*;
 - .7 *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*;
 - .8 *Industrial Law* means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
 - .9 *Labour Relations, Training and Workplace Equity Plan* has the meaning as set out in the *Procurement Act*;
 - .10 *Procurement Act* means the *Government Procurement Act 2001* (ACT);
 - .11 *Registrar* has the meaning as set out in the *Procurement Act*;
 - .12 *Secure Local Jobs Code* has the meaning as set out in the *Procurement Act*;
 - .13 *Territory Entity* has the meaning as set out in the *Procurement Act*; and
 - .14 *Territory-Funded Work* has the meaning as set out in the *Procurement Act*.

Subcontractors performing Applicable Subcontractor Work

- .3 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 clause 13.2 to clause 13.17 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 clause 13.3.2.1 and 13.3.2.2 are included in the relevant subcontract with the subcontractor.
- .4 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 clause 13.4.
- .5 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

- .6 The Contractor must comply with all of its obligations under the *Code*.
- .7 The Contractor must maintain a valid *Secure Local Jobs Code Certificate* during the term of the Contract.
- .8 Failure of the Contractor to maintain a valid *Secure Local Jobs Code 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.
- .9 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.
- .10 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*.
- .11 Failure of the Contractor to provide a statutory declaration in accordance with clause 13.10.1 or 13.10.2 or the making of a false statement in a statutory declaration by the Contractor or its representative will constitute a breach of this Contract.
- .12 If the Contractor fails to provide a statutory declaration in accordance with clause 13.10.2 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.
- .13 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*.
- .14 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.

- .15 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 clause 13.15 in circumstances where entry would result in a conflict with Commonwealth laws.
- .16 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.
- .17 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 1.1.17.1 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 without limiting the Principal's other rights and powers under this Contract, 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.
- .18 For the purposes of clause 13.4 and 13.10 the form set out in Attachment 4 is approved unless otherwise advised by the Principal.

Local industry participation

- .19 Clauses 13.20 to 13.25 apply unless Contract Information item 15E states that it does not apply.
- .20 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).
- .21 The Contractor must provide a local industry participation report ("LIP Report") on its compliance with clause 13.19 in a format and addressing matters reasonably required by the Principal within 6 months of the date of this Contract and on or before the first, and each subsequent, anniversary of this Contract.
- .22 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.
- .23 The Principal may withhold payment of the *Final Payment Claim* until submission of a satisfactory Final LIP Report by the Contractor.
- .24 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.
- .25 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.

14 No collusive arrangements

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

15 Compliance with ACT Government requirements

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

16 Appointment of principal contractor for WHS

- .1 Unless otherwise stated in the Contract, the Contractor:
 - .1 is engaged as principal contractor for the construction project in accordance with section 49B(2) of the *Work Health and Safety Act 2011*;
 - .2 is authorised to have management and control of the workplace as necessary to enable it to discharge the duties of a principal contractor and of a person having management or control of a workplace;
 - .3 must perform the duties of:
 - .1 a principal contractor, as specified in the chapter 6 of the *Work Health and Safety Regulation 2011*, and
 - .2 a person with management or control of a workplace as specified in the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*; and
 - .4 must notify the Principal promptly of any matter affecting WHS where consultation with the Principal is necessary.

17 Commonwealth WHS Accreditation

- .1 If required by Contract Information item 16, the Contractor must maintain accreditation under the Australian Government WHS Accreditation Scheme (Scheme) established under the *Federal Safety Commissioner Act 2022* (FSC Act) and specified in the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* while building

work (as defined in section 6 of the FSC Act) is carried out. The Contractor must comply with all conditions of Scheme accreditation.

18 Working hours and working days

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

19 Authorisation to release and use information, non-disclosure of Territory Information, Personal Information and Confidential Text

- .1 The Contractor authorises the Principal to:
 - .1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor's performance, to other Commonwealth, State, Territory or local government agencies at any time or for any reason; and
 - .2 take account of information about the Contractor, including reports of unsatisfactory performance, from any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.
- .2 The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 101A of the *Civil Law (Wrongs) Act 2002* and section 35 of the *Public Interest Disclosure Act 1994* in making information available to others as contemplated by clause 19.1.1.
- .3 The Contractor releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.

Non-disclosure of Territory Information and Personal Information

- .4 The Contractor must:
 - .1 take all reasonable measures to ensure that *Territory 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;
 - .2 take all reasonable measures to ensure that only authorised personnel of the Contractor approved by the Principal have access to *Territory Information*;
 - .3 not disclose *Territory Information* without the prior written consent of the Principal except as required by law;
 - .4 immediately notify the Principal if the disclosure of *Territory Information* is required by law;
 - .5 only use *Territory Information* for the purposes of fulfilling the Contractor's obligations under the Contract;
 - .6 not transfer *Territory 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;
 - .7 ensure that any employee of the Contractor or any Subcontractor, Consultant or Supplier, 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, Subcontractor, Consultant or Supplier;

- .8 comply with the “Territory Privacy Principles” set out in the *Information Privacy Act 2014* as if they were provisions of this Contract;
 - .9 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* or otherwise, including the issuing of any guides concerning the handling of personal information;
 - .10 immediately notify the Principal in writing if the Contractor becomes aware of a breach of this clause 19.4; and
 - .11 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 19.4.
- .5 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*.
- .6 A complaint received alleging an interference with the privacy of an individual by the Contractor, a Subcontractor, Consultant or Supplier, 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 or agency:
- .1 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;
 - .2 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
 - .3 after the Principal has given or received notice in accordance with clause 19.6.1 or 19.6.2, 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.

Non-disclosure of Confidential Text

- .7 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 *Government Procurement Act 2001* and, if so, the Principal will be required to make the text of this Contract (excluding *Confidential Text*) available to the public, including by publication on a public contracts register.
- .8 If this Contract is a notifiable contract under the *Government Procurement Act 2001* and there is *Confidential Text*:
- .1 the grounds on which the text is confidential are set out in Item 56 of the *Contract Information*; and
 - .2 clause 19.9 will apply.
- .9 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*:
- .1 is required or authorised to be disclosed under law;
 - .2 is reasonably necessary for the enforcement of the criminal law;
 - .3 is disclosed to the Principal’s solicitors, auditors, insurers or advisers;
 - .4 is generally available to the public;

- .5 is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from the Contractor;
- .6 is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- .7 is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue.

20 Long service levy

- .1 Before starting construction work, the Contractor must:
 - .1 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*; and
 - .2 give the Principal documentary evidence of payment of the levy.

21 Registration and licences

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

Management duties

22 Time management

The Contractor must actively manage progress, anticipating and responding to events to stay on schedule and achieve *Completion by the Contractual Completion Dates*.

Contract Program

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

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

Scheduled Progress

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

Minimisation of delay

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

23 Intellectual property

- .1 The Contractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Contract, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal.
- .2 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract are assigned or otherwise transferred to the Principal upon their creation.
- .3 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Data* for the purposes of the Contract.

- .4 For *Data* not created specifically for the Contract but required to use, operate, maintain, modify and decommission the Works, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use that *Data* for those purposes, including a right to sub-licence.
- .5 Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Data* has not then been created) from the date the *Data* is created.
- .6 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.
- .7 The Contractor indemnifies the Principal against any claims (including *Claims*), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to *Data* created or provided by the Contractor in connection with the Contract, including any related design, *materials*, documents or methods of working, or otherwise in the course of the Contractor's performance of the Contract.
- .8 The Contractor warrants that the *Data* created or provided by the Contractor under the Contract, including any related design, *materials*, documents and methods of working, will not infringe any *Intellectual Property Rights*.
- .9 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract.
- .10 The Principal may grant the Contractor a royalty-free licence to use innovations developed during the course of the Contract for purposes agreed by the Principal.

24 Confidentiality

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

25 Media releases and enquiries

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

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

Obligations of care

- .1 The Contractor is responsible for all of the following:
 - .1 preventing personal injury or death;
 - .2 preventing loss or damage to the Site and the Works;
 - .3 preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
 - .4 locating and caring for existing services;

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

Indemnities for property, personal injury or death

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

27 Insurance

The Contract Information states whether the Principal or the Contractor is to provide Works and public liability insurance. All other insurance required must be provided by the Contractor.

Principal arranged insurance

- .1 If stated in Contract Information item 21 or 22, the Principal has taken out a *Policy* for the material damage to the Works and liabilities to third parties arising from the Works with coverage as set out in the terms of the *Policy*.
- .2 The Contractor represents and warrants that it has read the terms of the *Policy* prior to the Date of Contract and acknowledges that:
 - .1 the *Policy* has been obtained at the Principal's cost;
 - .2 the Contractor is not entitled to payment of any allowance for the cost of obtaining insurances, or additional insurance cover, it considers necessary in relation to the subject matter of the *Policy*; and
 - .3 the obtaining of the *Policy* by the Principal does not:
 - .1 limit the obligation of the Contractor to obtain and hold other insurance policies required by law or this clause; or
 - .2 prevent the Contractor from effecting any additional insurances if the Contractor deems it necessary or prudent to obtain them at its own cost.
- .3 Before the earlier of:
 - .1 10 *Business Days* after the Date of Contract; or
 - .2 the Contractor commencing to carry out any part of the Works,the Contractor must contact the insurance broker nominated in writing to the Contractor as the Principal's insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clause 27.1.
- .4 The Contractor is responsible for paying or bearing all excesses in relation to insured matters under the *Policy*. The Contractor may effect its own insurance to cover the amount of any excess.
- .5 The obtaining of insurance by the Principal in accordance with this clause does not reduce, vary, or otherwise affect the Contractor's liabilities and obligations pursuant to clause 26, warranties given or otherwise under the Contract or in connection with the Works.
- .6 If there is a claim for significant damage or destruction under the *Policy* (as determined by the Principal, acting reasonably):
 - .1 all settlement amounts must be paid by the insurer directly to the Principal;
 - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
 - .3 the Contractor must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Contract may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement.
- .7 The Contractor must give all such information and assistance to the Principal as may be reasonably practicable to assist the Principal or the insurer in respect of any claim or potential claim on the *Policy*. In addition, the provisions of clauses 27.20 and 27.21 also apply to insurance arranged by the Principal.

Contractor arranged insurance

- .8 If Contract Information item 21 or 22 states that the Contractor is responsible to effect insurance covering the Works and/or public liability, the Contractor must, before starting work in connection with the Contract, effect that insurance in accordance with the Contract Information item, as follows:
 - .1 a Works policy of insurance to cover loss or damage to the Works; and
 - .2 a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works.

- .9 Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with Contract Information items 23, 24 and 25 as follows:
- .1 workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1951* and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;
 - .2 if stated in Contract Information item 24, a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, Suppliers or Consultants;
 - .3 if any work in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, a marine liability policy of insurance to cover the use of such craft, as specified in Contract Information item 25; and
 - .4 if any work in connection with the Contract includes the use of motor vehicles of any kind, third party property damage policies of insurance, or policies of insurance that include cover for third party property damage, to cover the use of such vehicles by the Contractor as specified in Contract Information item 25A.
- .10 The party that is required to effect insurance must pay all necessary premiums and maintain the insurance in accordance with the requirements of the relevant Contract Information item.
- .11 The Contractor must ensure that every Subcontractor, Supplier and Consultant is insured for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1951* at all times.
- .12 Unless otherwise instructed by the Principal, the Contractor must make and manage all insurance claims.
- .13 The Contractor must meet the costs of all excesses or deductibles.
- .14 All policies must:
- .1 require the insurer to notify the Principal (other than in relation to workers compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
 - .2 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
- .15 Each policy referred to in clauses 27.8 and 27.9.3 must:
- .1 name or otherwise identify the Principal and the Contractor as persons covered by the policy or to whom the insurance cover provided by the policy extends; and
 - .2 include a cross-liability clause under which the insurer agrees that the term "insured" applies to each of the persons covered as if a separate policy of insurance had been issued to each of them, and a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action against any of the persons covered.
- .16 The Contractor must:
- .1 ensure that in respect of each policy of insurance required to be effected or taken out as required by clause 27 by the Contractor or any Subcontractor, Supplier or Consultant, it:
 - .1 does not do anything which prejudices any insurance;
 - .2 if necessary, rectifies anything which might prejudice any insurance;

- .3 reinstates an insurance policy if it lapses;
- .4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
- .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
- .6 gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- .2 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- .3 ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.
- .17 The Contractor must give the Principal proof that all insurance policies required to be effected by the Contractor under the Contract are current:
 - .1 before starting work in connection with the Contract; and
 - .2 whenever requested in writing by the Principal.
- .18 The Contractor must give the Principal copies of all insurance policies it is required to effect and maintain whenever requested in writing by the Principal, (other than in respect of workers compensation and professional indemnity, where the Contractor must provide a certificate of currency instead).
- .19 If the Principal has a reasonable objection to an insurer or to any conditions of an insurance policy, and notifies the Contractor of the objection and the reasons for the objection, the Contractor must, within five *Business Days* after receiving the notification, either obtain insurance from another insurer or arrange changes to the insurance policy, so that the Principal has no objections.
- .20 If the Contractor fails to comply with clauses 27.17, 27.18 or 27.19, 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.
- .21 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- .22 If there is a claim under the Works policy of insurance for damage or destruction that is significant, as determined by the Principal acting reasonably:
 - .1 all settlement amounts must be paid by the insurer directly to the Principal;
 - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
 - .3 the Contractor must reinstate the Works if instructed to by the Principal and, except as otherwise provided in the Contract, may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement.

Subcontractors, Suppliers and Consultants

Contractual relationships between the Contractor and Subcontractors, Suppliers and Consultants must be on a similar basis to those between the Principal and Contractor. Clause 31 specifies which requirements apply to Consultants and Suppliers.

28 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if

such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.

- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must include in every Subcontract:
 - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
 - .2 the relevant provisions of clauses 13, 14, 15, 23, 24, and 25;
 - .3 consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by clause 73.6.3; and
 - .4 when possible, a right of termination for convenience.
- .4 In addition, the Contractor must:
 - .1 for each Subcontract with a Subcontractor valued at or over the amount stated in Contract Information item 29, use the GC21 Subcontract provisions set out in Schedule 9 (Subcontract requirements); and
 - .2 include in each Subcontract with a Subcontractor valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.

29 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 Before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with an unpriced copy of the Subcontract and the name and address of the proposed or engaged Subcontractor (as applicable). The Contractor is to provide the requested information within 7 days of the Principal's request. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.
- .3 If Contract Information item 31 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.
- .4 If instructed by the Principal, the Contractor must accept novations of the contracts of specified Principal's consultants, contractors or suppliers, on the terms specified in the Contract.
- .5 Where a *Preferred Subcontractor* has been engaged or a contract has been novated ("Novated Contract"):
 - .1 the Contractor must not terminate the Subcontract or Novated Contract without reasonable cause and must give a minimum of 14 days notice to the Principal of its intention to terminate with reasons justifying the intended termination; and
 - .2 where the work under a terminated Subcontract or Novated Contract is not complete, the Principal may require the Contractor to subcontract the remaining work to another Contractor or Consultant nominated by the Principal.

30 Subcontractor warranties

- .1 For each trade, item or area of work listed in Contract Information item 32, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor

completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).

- .2 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

31 Consultant and Supplier relationships

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

EXAMPLE ONLY

Carrying out the Works

This section deals with design and construction activities. It contains provisions that apply to the physical carrying out of the Works and also covers procedures for payment.

Starting

32 Start-up workshop

The start-up workshop is held to encourage the parties and others concerned with the Works to work co-operatively towards achieving a successful Contract. The workshop provides the opportunity for both parties to commit to effective contract management. This commitment can be demonstrated by discussion of the Contractor's management plans & *Contract Program*. Start-up workshop guidance material is provided at Attachment 1.

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

33 Security

The Contractor is required to provide security to the Principal in the form of unconditional *Undertakings* to pay on demand, provided by financial institutions on the Contractor's behalf.

- .1 Within 14 days after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 Not used.
- .3 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
 - .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
 - .2 the *Post-Completion Undertaking* at the end of the period stated in Contract Information item 35 after the *Actual Completion Date* of the whole of the Works provided that at that time:
 - .1 there are no outstanding *Defects* or unresolved *Issues*; and
 - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal.
- .4 When any of the circumstances in clause 33.3.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.
- .5 If specified in Contract Information item 33:
 - .1 when *Completion* of a *Milestone* is achieved; or
 - .2 if the Principal requires to use or occupy any part or the whole of the Works before the Contractor achieves *Completion*, as provided for in clause 64.1,

the Principal may (in its absolute discretion) agree to a proportionate reduction in the amount held as *Undertakings*, based on the proportion of the Works included in the *Milestone*, or the proportion of the Works the Principal requires to use or occupy (as the case may be).

- .6 *Undertakings* must be provided by a bank, building society, credit union or insurance company listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA or that is otherwise acceptable to the Principal.
- .7 The Contractor must not take any steps to prevent the Principal making a demand against the *Undertakings*, or to prevent the provider of an *Undertaking* from complying with the *Undertaking* or any demand by the Principal.

34 Site access

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

35 Engagement and role of Valuer

Refer to Schedule 4 (Agreement with Valuer), under which the Valuer makes determinations about value and time under clauses 47 and 50.

The Valuer must be independent of both parties. With reference to clauses 2.3 and 2.4, the Valuer cannot be an agent, subcontractor or employee of the Principal.

- .1 If Contract Information item 50A states that a Valuer must be engaged or if the parties agree to engage a Valuer, then:
 - .1 the parties, acting reasonably, must endeavour to agree in writing on the identity of the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 50B to select the Valuer;
 - .2 within a further 21 days after the date of selection of the Valuer, the Principal and the Contractor must jointly engage the Valuer using the form in Schedule 4 (Agreement with Valuer); and
 - .3 a Valuer's certificate will be final and binding unless the net amount of the Valuer's determination (excluding any amount for interest) exceeds the amount stated in Contract Information item 50C, in which case either party may commence litigation in respect of the matters referred to the Valuer, but only within 56 days after receiving the determination.
- .2 The parties may agree at any time to engage a Valuer in accordance with this clause, either for a single valuation or on an ongoing basis. When the parties agree to engage a Valuer after the Date of Contract, "Date of Contract" for the purposes of clause 35.1.1 refers to the date the parties agree to appoint the Valuer.

The Site

36 Site information

- .1 The parties acknowledge that:

- .1 at the Date of Contract, the Principal has provided in good faith the information concerning the Site identified in Contract Information items 36A and 36B;
- .2 the information identified in Contract Information items 36A and 36B does not form part of the Contract;
- .3 the Principal does not guarantee the completeness of the information identified in Contract Information item 36A;
- .4 the Principal does not guarantee the accuracy, quality or completeness of the information identified in Contract Information item 36B; and
- .5 the Principal has no duty of care in connection with information identified in Contract Information item 36B, or with having provided it.

Other information concerning the Site may be included in the Contract.

- .2 The Contractor warrants that it:
 - .1 has made its own inquiries concerning the Site, including checking information provided by the Principal;
 - .2 has examined the Site and surrounds and satisfied itself through its own investigation as to the *Site Conditions* which might reasonably be expected;
 - .3 has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the *Contract Price* (subject to clause 37);
 - .4 did not in any way rely on the completeness of the information identified in Contract Information item 36A other than as a guide for ascertaining what further Site information the Contractor considers it needs to obtain;
 - .5 did not rely on the accuracy, quality or completeness of information identified in Contract Information item 36B; and
 - .6 has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

37 Site Conditions

- .1 The Contractor is solely responsible for dealing with any adverse *Site Conditions*:
 - .1 so as to minimise delay;
 - .2 so as to minimise increased costs; and
 - .3 without awaiting any instruction from the Principal, but must comply with any instruction given by the Principal.
- .1A Additionally, where clause 37.3 applies to the adverse *Site Conditions*, the Contractor must notify the Principal, prior to dealing with the *Site Conditions*, of any work it intends to carry out to deal with the adverse *Site Conditions* and when that work will commence.

When dealing with any adverse Site Conditions, the Contractor must not change the Works without an instruction from the Principal unless clause 39.7 applies.
- .2 Clauses 37.3 to 37.8 do not apply if it is stated in Contract Information item 37 that the Contractor is to bear the risk of adverse *Site Conditions*.

Notwithstanding clause 37.2, clause 5 (early warning) still applies. Additionally, the Contractor may propose a Variation under clause 48.5 or, where applicable, notify a Variation is necessary under clause 48.7 to deal with the adverse Site Conditions.
- .3 If the Contractor becomes aware of adverse *Site Conditions* that differ materially from those it should reasonably have expected at close of tenders, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of those *Site Conditions*. Where practicable, the notification is to be given before the *Site Conditions* are disturbed. The notification must include details of:
 - .1 the *Site Conditions* the Contractor claims are adverse;

- .2 the reasons why the Contractor considers that the *Site Conditions* differ materially from the *Site Conditions* the Contractor should reasonably have expected at close of tenders (having regard to the warranty in clause 36.2), including any information supporting this contention;
- .3 the effect on the Works;
- .4 the effect on achieving *Completion*;
- .5 the additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
- .6 any other matters the Contractor considers relevant.

The Contractor's notice must address all 6 items above, taking into account that Site Conditions should not be disturbed. Note also the application of clause 37.8 to any entitlements.

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

Design

The Contractor always has some design, design coordination and design management responsibility no matter whether the nature of the Contract is described as fully documented; construct only; design, development and construct; design and construct, lump sum or some similar description is given to it. The extent of design by the Contractor may be as little as shop detailing, as much as the full design of the Works, or something in between.

38 Faults in Contract Documents

- .1 The Contractor must check the *Contract Documents*. At least 21 days before the Contractor proposes to use a *Contract Document*, the Contractor must notify the Principal of any *Fault* in that *Contract Document* and any *related Contract Documents*.
- .2 The Principal must resolve any *Fault* notified under clause 38.1.
- .3 If the Principal resolves a *Fault* in the *Contract Documents*, then, subject to clause 38.4:
 - .1 to the extent that the Principal resolves the *Fault* by instructing a *Variation*, clause 48 applies; and
 - .2 to the extent that the Principal resolves the *Fault* other than by instructing a *Variation*:
 - .1 if the resolution has an effect on the time to achieve *Completion*, the Contractor may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50 and *Delay Costs* under clause 51, or the Principal may assess a reduction of time in accordance with clause 50; and
 - .2 if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders:
 - .1 the parties may agree in writing on an adjustment to the *Contract Price* and the Contractor may include that amount in a *Payment Claim*; or
 - .2 if the adjustment to the *Contract Price* is not agreed by the parties, the Contractor may make a *Claim* for an adjustment to the *Contract Price* to be valued in accordance with clause 47.
- .4 If the Principal resolves a *Fault* in the *Contract Documents* that was not notified in accordance with clause 38.1, the Contractor is not entitled to any *Delay Costs* or the cost of any aborted work.

39 Design by Contractor and Contractor's Documents

Design responsibilities

- .1 The Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works. The Contractor's design obligations include, but are not limited to:
 - .1 completion of design, documentation and workshop detailing for design provided by the Principal, including coordination of design activities and the interaction of the various disciplines;
 - .2 development of the preliminary design provided by the Principal for elements referred to in Contract Information item 38A.1; and
 - .3 full design by the Contractor of elements referred to in Contract Information item 38A.2.

The identification, or otherwise, of elements in Contract Information items 38A.1 and 38A.2 does not alter the Contractor's obligation to complete the design provided by the Principal.
- .2 The Contractor must carry out its design responsibilities so that the Works are fit for the purposes required by the Contract and comply with the other requirements of the Contract.

- .3 Except if the Contractor is required to adopt the *Principal's Documents* pursuant to clause 39.11, the Contractor's design responsibilities are reduced to the extent that the Works are not fit for a purpose required by the Contract because of the design provided by the Principal.
- .4 Subject to clause 39.6, design or design development does not cause a *Variation* or reduce the Contractor's design responsibilities under clause 39.

Departures from the design provided by the Principal

- .5 Subject to clause 39.7, the Contractor must not depart from the design provided by the Principal unless instructed in writing by the Principal.
- .6 If the Contractor considers that some departure from the design provided by the Principal is desirable to ensure the effectiveness and efficiency of the Works, or as a result of the design review pursuant to clause 39.8, then the Contractor may propose a *Variation* under clause 48. Where a departure is necessary for the Works to be fit for the purposes required by the Contract, the Contractor must notify the Principal in accordance with clause 48.7.
- .7 In carrying out the design and design development of the elements referred to in Contract Information item 38A.3, the Contractor may depart from the design provided by the Principal, but only:
 - .1 to the extent that any such departure does not adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract; and
 - .2 provided that the Contractor has notified the Principal in writing of the proposed departures and the Principal has not notified the Contractor of any objection within 7 days after receiving the notification.

Design review

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

Contractor's Documents

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

Adopting Principal's Documents

Clauses 39.11 to 39.14 only apply when this is indicated in Contract Information item 38. It does not replace any other provisions of the Contract, but adds further responsibilities when required.

If clauses 39.11 to 39.14 apply, the Contractor must accept full responsibility for design carried out by the Principal before the Date of Contract, in addition to Design to be carried out by the Contractor.

- .11 If *Contract Information* item 27A specifies that the Contractor must accept full responsibility for design carried out by the Principal before the Date of Contract, then without limiting clause 38, the Contractor (at its own cost) and before submitting any *Contractor's Documents* pursuant to clause 40.1 must:

- .1 check, and notify the Principal of details (together with appropriate supporting documents) of any *Fault*, error or omission in the *Principal's Documents*;
- .2 amend the documents to correct *Faults*, errors or omissions so that, on *Completion*, the Works and every part will be fit for the purposes required by the Contract; and
- .3 accept and adopt the *Principal's Documents* as if the Contractor prepared them so that they (amended by the Contractor as necessary) become *Contractor's Documents* when submitted under clause 40.1.

See clause 40.1 for requirements applying to Contractor's Documents.

- .12 Subject to any provisions of the Contract which provide for change to the *Principal's Documents* and clause 38, the Principal must instruct a *Variation* if the Contractor notifies the Principal of a *Fault*, error or omission in the *Principal's Documents* pursuant to clause 39.11.1 and the Principal requires a change to the Works as a result.
- .13 If *Principal's Documents* adopted by the Contractor pursuant to clause 39.11.3 contain a *Fault*, error or omission not notified to the Principal by the Contractor in accordance with clause 39.11.1:
 - .1 the Contractor will be responsible for, and not entitled to payment for delays or the cost of any aborted work arising out of, the *Fault*, error or omission; and
 - .2 the value of any *Variation* the Principal instructs as a result of the *Fault*, error or omission must not include the cost of such delays or aborted work.
- .14 If the *Principal's Documents* are required to be adopted by the Contractor pursuant to clause 39.11:
 - .1 the Contractor acknowledges that the Principal's design is incomplete and may contain *Faults*, errors or omissions, or conflict with *Statutory Requirements* or the National Construction Code (if applicable in *Contract Information* item 38B) or other codes or standards which the Contractor is required to comply with under the Contract;
 - .2 the Principal makes no representation concerning Principal's design and the Contractor is not entitled to rely on the completeness or accuracy of the Principal's design; and
 - .3 the Contractor acknowledges that the Principal relies on the Contractor to identify and remedy *Faults*, errors and omissions in the *Principal's Documents*.

40 Submitting Contractor's Documents

- .1 Unless the Contract provides otherwise, the Contractor must submit *Contractor's Documents* to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. *Contractor's Documents* must be submitted progressively with sufficient detail to demonstrate what is proposed. The number of copies must be as stated in *Contract Information* item 28.
- .2 The Principal need not respond to the Contractor about the *Contractor's Documents*.
- .3 If the Principal objects to the *Contractor's Documents*, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any *Fault*, error or omission in the *Contractor's Documents*.
- .4 If, after submitting the *Contractor's Documents*, the Contractor considers a change is required to its design or design development, not including a correction as per clause 40.3, it must resubmit the relevant *Contractor's Documents* and clauses 40.1 to 40.3 apply. If in this situation the Contractor cannot reasonably comply with the 21 day (review) period for the proposed changes, it must comply with the other requirements of clause 40.1 and promptly notify the Principal with reasons for its non-compliance and follow the Principal's instructions.

- .5 Nothing the Principal does or omits to do in connection with the *Contractor's Documents* makes the Principal responsible for the *Contractor's Documents*, or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.

41 Innovation

Clause 41 provides an incentive to the Contractor to improve its service to the Principal by innovation. If the Principal accepts the Contractor's proposal, the Contractor benefits from the *Variation* and the Principal benefits from the value added to the Works through reduced operating or maintenance costs or other savings.

- .1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:
 - .1 the proposed change to the Works and the proposed change in the *Contract Price*;
 - .2 potential risks to the Principal and the Contractor if the proposal is accepted;
 - .3 any changes required to *Contractual Completion Dates*;
 - .4 projected changes in operating and maintenance costs;
 - .5 projected changes in whole-of-life costs;
 - .6 any other benefit the Principal will receive; and
 - .7 any benefit the Contractor will receive.
- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.
- .3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
- .4 The Contractor must not begin implementation of any proposal unless the Principal has accepted the Proposal, subject to any conditions imposed by the Principal, in writing.
- .5 The share of the financial benefit of any proposal to be paid to the Contractor must be as stated in Contract Information item 39 unless the parties otherwise agree.

Construction

42 Setting out the Works and survey

- .1 The Contractor must set out the Works in accordance with the Contract.
- .2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 14 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
 - .1 the Contractor must notify the Principal; and
 - .2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract.
- .4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.
- .5 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain

matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

43 Construction

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

44 Testing

- .1 The Contractor must *Test* all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
- .3 If the results of any *Test* instructed by the Principal under clause 44.2 show compliance with the Contract, the Contractor may only make a *Claim*, that complies with clause 68.3, for an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor in carrying out the *Test*. Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.
- .4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects

The Principal considers the Contractor to be an expert in the design and construction of the Works and holds the Contractor responsible for its work. The Principal requires *Completion* to be defect-free.

These *Defects* provisions are to ensure that the Works are constructed to the standards required by the Principal. The Principal can also rely on its common law rights. Also refer to clause 67 which deals with *Defects* after *Completion*.

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.

A similar provision applies after Completion under clause 67.1.
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
 - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
 - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.

- .5 If at any time before *Completion* the Contractor becomes aware of any *Defect* or deficiency which results from design or other work or actions for which it is not responsible, it must:
 - .1 promptly notify the Principal; and
 - .2 carry out any *Variation* instructed by the Principal to make good the *Defect* or deficiency.

46 Acceptance with Defects not made good

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

Changes to work and time

47 Valuation of changes

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

- .4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

Valuation principles

- .5 When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the principles set out below apply.
- .6 Subject to clause 47.8, if the Contractor is entitled to an increase in the *Contract Price* for additional work or for unavoidable additional costs, the value of the increase is to be assessed or determined as the sum of:

- .1 the additional reasonable direct cost to the Contractor including labour, *Materials* and plant (not including the *Contractor's Margin*);
- .2 the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional work or in responding to the unavoidable circumstances (not including the *Contractor's Margin*);
- .3 an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 of the total of the costs under clauses 47.6.1 and 47.6.2; and

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

- .4 any *Delay Costs* due under clause 51, subject to the requirements of clause 50.

The Contractor is entitled to claim unavoidable additional costs under clauses 8.8, 37.6, 38.3, 49.4, 52.4 and 53.3 when the conditions of those clauses are satisfied.

- .7 The value of decreased or omitted work or of any reduction in costs under clause 38, is to be assessed or determined on the basis of rates and lump sums in the Contract or, if there are no applicable rates or lump sums in the Contract, based on reasonable rates and prices applying at the close of tenders. The deduction must include a reasonable amount for any time-dependent costs which will not be incurred by the Contractor and any profit on the decreased or omitted work.
- .8 A valuation under clause 47.6 must not include:
- .1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
 - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
 - .3 any amount that the Contractor is not entitled to claim under clause 37.8, 38.4, 49.6 or 68.2.
- .9 A valuation under clause 46 must take into account the specific matters required by that clause.

Application of adjustments

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

48 Variations

The Principal will normally obtain, and seek to settle by negotiation, the Contractor's price and allowance for effect on time for a proposed *Variation* before instructing the *Variation* in writing, and clauses 48.2 to 48.3 provide for this. This does not prevent the Principal from instructing a *Variation* at any time, subject to clause 48.1, and clause 48.4 provides for this.

Instructing and commencing Variations

- .1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) and the Contractor must comply.

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

Variations proposed by the Contractor

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

49 Changes to Statutory Requirements

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

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

50 Changes to Contractual Completion Dates

The Contractor is responsible for managing progress to achieve *Contractual Completion Dates* for *Milestones* (if any) and for the Works. The initial *Contractual Completion Dates* are stated in the Contract Information and these may be adjusted under the Contract.

Clause 50 sets out the conditions under which the Contractor may claim an extension of time for a delay event. It also entitles the Principal to extend time for any reason, at its sole discretion.

Extensions of time

- .1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Dates* if:
 - .1 the Contractor is or will be delayed in achieving *Completion* by a cause beyond the control of the Contractor, including an act, default or omission of the Principal, but not including any cause which the Contract expressly states is at the Contractor's risk or for which the Contract expressly precludes an entitlement for extension of time;
 - .2 the delay is to an activity or activities on the critical path of the then current *Contract Program* and work is proceeding in accordance with this program;
 - .3 the Contractor has given the Principal an initial notice in writing within 7 days after the start of the delay which:
 - .1 sets out the cause of the delay;
 - .2 sets out the steps taken or to be taken to minimise the delay;
 - .3 sets out any relevant facts; and
 - .4 includes a copy of the *Contract Program*, verified as current at the start of the delay which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and
 - .4 the Contractor has given the Principal the *Claim* and other information required by clauses 50.3 and 50.4.

Refer to clause 22 for Contract Program requirements

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

Reductions in time

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

Adjustment to Contractual Completion Dates

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

51 Delay Costs and liquidated damages

Delay Costs

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

Liquidated damages

- .8 If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works or any *Milestone* by its *Contractual Completion Date*.

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

52 Acceleration

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

53 Principal's suspension

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

54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the *Building and Construction Industry (Security of Payment) Act 2009*, it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay. If the Contractor is delayed, it may make a *Claim*, that complies with clause 68.3, for an extension of time in accordance with clause 50.
- .2 Clause 54 is not intended to limit any rights of the Contractor under the *Building and Construction Industry (Security of Payment) Act 2009*.

Payment

55 The Contract Price

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

Provisional Sums

- .4 If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:

- .1 the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
- .2 if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*; and
- .3 if the Principal instructs the Contractor to carry out the work:
 - .1 the Contractor must comply with the instruction; and
 - .2 the *Contract Price* must be adjusted by deducting the *Provisional Sum* and adding:
 - .1 the additional reasonable cost to the Contractor of the work specified against the *Provisional Sum*, being the direct costs of labour, *Materials* and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the *Provisional Sum* margin; and
 - .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 43 to the cost calculated in accordance with clause 55.4.3.2.1, and
- .4 where the Principal instructs the Contractor to carry out work specified against a *Provisional Sum*, the Contractor will not be entitled to an extension of time for that work. However, clause 50 applies where, following notification under clause 22.2.5.2, there is an unreasonable delay in the issue of an instruction to proceed with the work. Clause 50 only applies to any additional delay caused by the late instruction.

56 Goods and Services Tax (GST)

- .1 In this clause 56 references to “GST”, “tax invoice”, “recipient” and “taxable supply” have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
- .2 As a condition precedent to any amount on account of GST being due in respect of a taxable supply from the recipient of the taxable supply to the party making the supply (“Supplier”), the Supplier must provide a tax invoice to the recipient. Without limiting the foregoing, if the Principal makes any supply to the Contractor as a consequence of any matter arising under or in connection with this Contract, the Contractor must pay to the Principal on demand an amount equal to any GST payable in relation to that supply.
- .3 If the amount paid to the Supplier in respect of GST:
 - .1 is more than the GST on the supply, then the Supplier must refund the excess to the recipient; or
 - .2 is less than the GST on the supply, then the recipient must pay the deficiency to the Supplier.
- .4 If there is any change in the GST liability associated with any supply by the Contractor under this Contract, the consideration payable for the supply must be varied so that the Contractor's net dollar margin in respect of the supply remains the same.
- .5 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST.

Reimbursable expenses

- .6 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:

- .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
- .2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

57 Prepayment

Prepayment is an advance payment against the Contract Price which provides early cash flow to the Contractor. The Prepayment is repaid by the Contractor progressively by deductions from amounts payable under the Contract. Prepayment is secured by Undertakings provided to the Principal in respect of the Prepayment. Prepayment may be utilised for any purpose related to the Contract.

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

58 Payment Claims

The Contract allows for progress payments by regular (usually monthly) payments or payments based on Milestone Completion or both.

- .1 Subject to clauses 58.2 and 58.3, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in, and otherwise in accordance with, Contract Information item 46A, for work carried out up to that date.
- .2 For *Milestones* for which Contract Information item 46B states that payments will be made after they reach *Completion*, each *Payment Claim* may only include the value of work in those *Milestones* if they reached *Completion* before the specified submission date.

- .3 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .4 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.
- .5 Every *Payment Claim* must:
 - .1 identify the work and *Materials* to which the *Payment Claim* relates;
 - .2 state the value of that work and those *Materials*;
 - .3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
 - .4 state the amount of interest, if any, that the Contractor claims under clause 62; and
 - .5 state the *Claimed Amount*, after allowing for retention of the *Completion Amount* specified in clause 60 and for payments already made.
- .6 Every *Payment Claim* must be accompanied by:
 - .1 a completed and true statutory declaration in the form of Schedule 6, executed on the date of the *Payment Claim*;
 - .2 all relevant calculations;
 - .3 all relevant *Conformance Records*; and
 - .4 any other information specified in the Contract.
- 6A. The parties acknowledge and agree that following from clause 58.5.3 *Payment Claims* must not include amounts for *Claims* that the Principal has not agreed or is not otherwise required to pay under clause 68 or another provision of the Contract.

A Claim that includes a monetary amount is not payable under the Contract and should not be included in a Payment Claim if, for example, it is an amount in respect of a Variation not agreed to by the Principal, or the Principal has agreed the Contractor is entitled to an adjustment to the Contract Price but the value of the adjustment has not yet been determined under clause 47 (including by the Valuer if relevant), or the Claim is an Unresolved Claim not yet resolved under clauses 69 to 71.

Unfixed Materials

- .7 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
 - .1 the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
 - .2 the Contractor provides before or with the *Payment Claim*:
 - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
 - .2 a statement in the terms in Schedule 11 (Statement regarding Materials);
 - .3 the Contractor provides evidence before or with the *Payment Claim* that:
 - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
 - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
 - .4 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on-board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
- .8 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.

- .9 Upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.
- .10 If:
- .1 the Contract or the Contractor's employment under the Contract is terminated by the Principal; or
 - .2 the Principal exercises its right to *Step-In*,
- the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

Personal Property Securities

The Personal Property Securities Act (Cth), (PPSA) regulates personal property security interests. Personal property is all property other than land, fixtures (*materials* etc. incorporated into the Works) and rights (e.g. water rights). The PPSA allows the Principal to register and protect its interests over affected personal property. It has application to unfixed *Materials* that have an *Encumbrance* and in termination and *Step-In*.

- .11 Schedule 20 (Personal Property Securities) applies to the Contract.

59 Payments

Under the *Building and Construction Industry (Security of Payment) Act 2009* a *Payment Schedule* is not required in circumstances where the *Payment Claim* is to be paid in full. However, to reduce risk, the Contract requires a *Payment Schedule* always be provided.

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:

For clarity, the time when the Principal is 'served' a Payment Claim means the time when the person responsible for dealing with the payment receives the Payment Claim during business hours and in accordance with the normal course of business.

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

- .1 clause 33 (Security);
- .2 clause 27 (Insurance);
- .3 clause 58.6.1 (statutory declaration- Schedule 6);

The Principal may withhold any payment to the Contractor until this Statement is provided.

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

60 Completion Amount

The *Completion Amount* is intended to provide an incentive for the Contractor to achieve on-time, defects free *Completion* as soon as possible; the earlier the Contractor achieves defect-free *Completion* of the whole of the Works (or an earlier specified Milestone), the earlier the *Completion Amount* is paid.

- .1 Subject to clause 60.4, if Contract Information item 47 specifies a *Completion Amount*, the Contractor may claim it in the next *Payment Claim* after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*, subject to the Principal's right to set-off under clause 63.
- .2 The Principal will retain the *Completion Amount* from payments when the amount paid to the Contractor exceeds 75% of the *Contract Price* at the Date of Contract. Until the *Completion Amount* has been retained in full, the amount retained against each payment must not exceed 50% of the value of the payment. Thereafter, the *Completion Amount* will be held until the Contractor claims it in accordance with clause 60.1.
- .3 The Principal will own any interest earned on the monies retained for the *Completion Amount*.
- .4 If specified in *Contract Information* item 47 and provided the *Completion Amount* has, at the relevant date, been retained in full:
 - .1 when *Completion* of a *Milestone* is achieved; and/or
 - .2 if the Principal requires to use or occupy any part or the whole of the Works before the Contractor achieves *Completion*, as provided for in clause 64.1,
 the Principal may (in its absolute discretion) agree to a proportionate reduction in the amount held as the *Completion Amount*, based on the proportion of the Works included in the *Milestone* or the proportion of the Works the Principal requires to use or occupy (as the case may be).

61 Final payment

Clause 61 contains provisions which apply to the Contractor's *Final Payment Claim* and the Principal's *Final Payment Schedule*.

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

- .3 any *Issue* arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.
- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

62 Interest on late payments

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

63 Set-off

- .1 If the Principal claims a sum, including a debt due, in connection with the Contract or any other contract between the Principal and the Contractor or the Contractor and any other Territory entity as defined in the *Government Procurement Act 2001*, the Principal may:
 - .1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and
 - .2 make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

Completion

64 Early use

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

65 Completion

The Contract requires defect-free *Completion*. *Completion* applies to any *Milestone* as well as to the whole of the Works.

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

66 Close-out workshop

The close-out workshop is an opportunity to review the management of the Contract. It is also used to collect and provide feedback to the parties to enable them to improve the overall communication and management process for any possible future contract.

- .1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works or such other period as the parties agree.

- .2 The parties must attend the close-out workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.

67 Defects after Completion

- .1 At any time after *Completion*:
 - .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
 - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
 - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.
- .2 Clause 67 does not reduce the Contractor's liability, whether arising under the Contract or otherwise. The Contractor's liability continues until any limitation period under statute expires.
- .3 Clause 67 does not affect the Principal's rights under clause 46.

Claim and Issue resolution

This section provides a step-by-step procedure for handling *Claims* and *Issues*.

Claim resolution

68 Contractor's Claims

- .1 If the Contractor makes:
 - .1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
 - .2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,

the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim* and the time the event should have become known to the Contractor, with reasonable diligence on its part.

- .2 If the Contractor fails to make a *Claim* within the applicable specified time, the Contractor will not be entitled to interest on any amount paid in relation to the *Claim* for the period before the Contractor made the *Claim*. However, any *Claim* not made within the time specified in clause 61.1 is barred.
- .3 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The *Claim* must also include the effect of the event giving rise to the *Claim* on both the *Contract Price* and *Contractual Completion Date(s)*.

Pursuant to clause 47.2, the Principal is not required to assess a Claim nor is a Claim to be referred to the Valuer until the Contractor provides all the information specified in clause 68.3.

To assist in valuation, where practicable, a Claim for an adjustment to the Contract Price is to include a break-up of costs similar to that set out in clause 47.6.

- .4 The Contractor must ensure its *Claim* complies with clause 68.3 and in that regard, the Contractor's attention is directed to the provisions of clause 47.2. As well, the period of 28 days specified in clause 68.7 will not commence until the Contractor has provided the information specified in clause 68.3. The Principal may, but is not obliged to, notify the Contractor of any non-compliance in the Contractor's *Claim*.
- .5 If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price* or an adjustment to *Contractual Completion Date(s)*:
 - .1 any claimed adjustment to *Contractual Completion Date(s)* is to be valued in accordance with clause 50;
 - .2 any claimed adjustment to the *Contract Price*, including any applicable *Delay Costs*, is to be valued in accordance with clause 47; and
 - .3 the parties are to follow the process in clause 47.1 to resolve the adjustments claimed.
- .6 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .7 If, within 28 days after the Contractor has provided the information specified in clause 68.3, a *Claim* is rejected, not agreed or has not been referred to a Valuer, it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.

The period of 28 days only commences when the Contractor has provided all the information specified in clause 68.3.

- .8 The provisions of clauses 68.2 to 68.7 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

Issue resolution

Generally, the aim of the Contract is for the parties to resolve matters through discussions as soon as possible and within the times specified. Further steps are only needed if the representatives of the parties who are involved in day-to-day management of the Contract are unable to resolve matters themselves.

69 Notification of Issue

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

70 Resolution by Senior Executives

- .1 If a party gives notice of an *Issue* under clause 69, the *Senior Executives* must promptly confer to try to resolve the *Issue*.
The authorised persons may assist the senior executives in resolving the Issue.
- .2 A party is not entitled to refer an *Issue* to *Expert Determination* until 28 days after giving notice of an *Issue*.
- .3 A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's *Senior Executive*) within the time stated in Contract Information item 51 or such longer time as agreed by the parties in writing prior to the expiration of that period.
- .4 Subject to clause 69.6, an *Issue* for which notice has not been given in accordance with clause 70.3 is barred from *Expert Determination* or litigation or similar action.

71 Expert Determination

- .1 The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
- .2 If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
 - .1 an employee of the Principal or the Contractor;

- .2 a person who has been connected with the Works or the Contract; or
- .3 a person who the Principal and the Contractor have already considered and not been able to agree on.
- .3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
 - .1 the *Issues* referred to the *Expert* for determination;
 - .2 the *Expert's* fees;
 - .3 the procedure for *Expert Determination* in Schedule 5 (Expert Determination Procedure); and
 - .4 any other matters which are relevant to the engagement.
- .4 The Principal and the Contractor must share equally the *Expert's* fees and out-of-pocket expenses for the determination, and bear their own costs.
- .5 The procedure for *Expert Determination* is set out in Schedule 5 (Expert Determination Procedure).
- .6 In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim, whether or not related to the *Issue*.
- .7 Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 days after receiving the determination.
- .8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
 - .1 does not involve paying a sum of money; or
 - .2 requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
 - .1 any interest that may be payable; and
 - .2 any amount that has been paid pursuant to the *Building and Construction Industry (Security of Payment) Act 2009*.
- .9 Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

72 Parties to perform the Contract

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

Termination and Step-In

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

- .1 The Principal may:
 - .1 terminate the Contractor's employment under the Contract, or
 - .2 exercise its right to *Step-In*,
for *Contractor's Default* or *Contractor's Insolvency* by giving notice in accordance with clause 73.
- .2 Nothing in clause 73 affects or negates the Principal's common law rights to terminate or for damages.
- .3 In the case of *Contractor's Default*, the Principal must first give the Contractor notice that it has 7 days after receipt of that notice to remedy the *Contractor's Default*.
Where the Contractor's Default is caused by the Contractor's Insolvency or also constitutes the Contractor's Insolvency, clause 73.5 applies.
- .4 If the Contractor fails to:
 - .1 give the Principal a notice containing clear evidence that it has remedied a *Contractor's Default*; or
 - .2 propose steps reasonably acceptable to the Principal to remedy the *Contractor's Default*,
 the Principal may give the Contractor a notice:
 - .3 terminating its employment under the Contract; or
 - .4 exercise its right to *Step-In*.
if a right to terminate exists at common law, a notice to terminate at common law may be given without first giving notice to remedy a Contractor's Default.
- .5 In the case of *Contractor's Insolvency* and subject to applicable law, the Principal may give the Contractor a notice:
 - .1 terminating its employment under the Contract; or
 - .2 exercising its right to *Step-In*.
- .6 If the Principal acts under clause 73 to:
 - .1 terminate the Contractor's employment; or
 - .2 exercise its right to *Step-In* and take all remaining work in connection with the Contract out of the Contractor's hands,
it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
 - .3 the Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* and *Materials* it has brought onto the Site, apart from any *Temporary Work* and *Materials* identified by the Principal as being necessary to have the Works completed;
 - .4 the Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional *undertakings*, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract;
 - .5 the Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts

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

74 Termination for Principal's convenience

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

NUPCP	Amount
90% of the <i>Contract Price</i> or greater	0% of the NUPCP

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

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

75 Termination for Principal's default

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

the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.
- .2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4.

76 Termination notices

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

77 Survival

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

Meanings

78 Interpretation

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

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

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

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

79 Definitions

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don't normally apply. In order to understand the Contract, you need to take these special meanings into account.

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

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

- .1 There are a number of other words or phrases used in this Contract with initial capitals, which have the special meanings set out opposite the first reference to that word or those phrases in the Contract, unless the context otherwise requires.

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

Acceleration Notice

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

Actual Completion Date

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

Business Day

Any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory, or 27, 28, 29, 30 or 31 December. Refer to clause 78.4 for interpretation of 'day'.

Claim

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

Claimed Amount

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

Completion

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

This includes:

- .1 the supply to the Principal of:
 - .1 all Subcontractor's Warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
 - .2 certificates, authorisations, approvals and consents from statutory authorities and service providers;

- .3 those certificates required for the occupation, use and maintenance of the Works; and
- .4 all other documents required by the Contract;
- .2 *Testing* required by the Contract;
- .3 the provision of all training required by the Contract; and
- .4 all other requirements specified in the Contract.

Completion Amount

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

Completion Undertaking

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

Confidential Text

Any text of this Contract specified in Contract Information item 55.

Conformance Records

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

Consultant

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

Contract

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

Contract Documents

All the documents listed or referred to in clause 7.1.

Contract Information

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

Contract Price

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

Contract Program

The program described in clause 22.

Contractor

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

Contractor's Authorised Person

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

Contractor's Default

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

- .1 abandoning the carrying out of the Works;

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

Contractor's Documents

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to design and construct the Works in accordance with the Contract and includes *Principal's Documents* adopted by the Contractor pursuant to clause 39.11.3.

Contractor's Insolvency

Any of the following applying to the Contractor:

- .1 the Contractor is insolvent;
- .2 the Contractor indicates it does not have the resources to perform the Contract;
- .3 an application for winding up is made which is not stayed within 14 days;
- .4 a winding-up order is made;
- .5 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- .6 a mortgagee enters into possession of any property of the Contractor;
- .7 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- .8 any actions having a similar effect are taken.

Contractor's Margin

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

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

The *Contractor's Margin* includes allowances for:

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

Contractual Completion Date

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

Data

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

Date of Contract

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

Daywork

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

Defect

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

Defect Notice

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

Delay Costs

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

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

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

Encumbrance

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

Expert

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

Expert Determination

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

Fault

Ambiguity, inconsistency or discrepancy.

Final Payment Claim

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

Final Payment Schedule

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

Guidelines and Policies

The *Territory* guidelines and policies specified in Contract Information item 15.

Intellectual Property Rights

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

Issue

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

Letter of Award

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

Materials

Includes materials, plant, equipment and other goods.

Milestone

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

Payment Claim

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

Payment Schedule

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

Personal Health Information

Has the meaning given by the *Health Records (Privacy and Access) Act 1997*.

Personal Information

Has the meaning given by the *Information Privacy Act 2014*.

Policy

The policy of insurance for material damage to the Works and liability to third parties arising from the Works, taken out by the Principal, the details of which are set out in *Contract Information* item 21.

Post-Completion Undertaking

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

Preferred Subcontractor

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

Prepayment

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

Pricing Schedule

Schedule 19 or other *Contract Document* setting out pricing information.

Principal

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

Principal's Authorised Person

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

Principal's Documents

The drawings, specifications and other documents provided to the Contractor and containing the Principal's requirements in respect of the Works or that further describe the requirements of the Contract.

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

Provisional Sum

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

Rate Item

An item of work for which payment will be calculated by multiplying the measured quantity of work, carried out in accordance with the Contract, by the rate accepted for that work. A *Rate Item* may appear in the *Pricing Schedule* or be an identified lump sum.

Schedule of Rates

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

Scheduled Amount

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

Scheduled Progress

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

Senior Executive

A person having authority to agree to the resolution of *Issues* for a party, as notified from time to time, which at the Date of Contract is the person (or person occupying the position from time to time) specified in Contract Information item 7 (for the Principal) and item 11 (for the Contractor).

Site

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

Site Conditions

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

Statutory Requirements

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

Step-In

The Principal's right to step in and take out of the Contractor's hands the whole or any part of the work in connection with the Contract remaining to be completed. The right applies in the case of the *Contractor's Default* or *Contractor's Insolvency* under clause 73.

Subcontract

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

Subcontractor

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

Supplier

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

Temporary Work

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

Territory

Means:

- .1 when used in a geographical sense, the Australian Capital Territory; and
- .2 when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

Territory Information

The kind of information that:

- .1 is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Principal which are by their nature confidential;
 - .2 is notified (whether in writing or not) by the Principal to the Contractor as being confidential;
 - .3 is Personal Information;
 - .4 is Personal Health Information,
- but does not include information which:
- .5 is or becomes public knowledge other than by breach of this Contract;
 - .6 has been independently developed or acquired by the Contractor; or
 - .7 has been notified in writing by the Principal to the Contractor as being not confidential.

Test

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

Undertaking

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

Unresolved Claim

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

Value Completed

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

Valuer

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

Variation

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

WHS Management Plan

A plan for the management of work health and safety matters in accordance with the *Work Health and Safety Regulation 2011*, containing at a minimum the requirements set out in Schedule 17.

Works

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

EXAMPLE ONLY

Contract Information

The Contract Information is part of the Contract. Refer to clauses 78 & 79 for the interpretation and definition of words and phrases.

Contract

Item

1 Contract name

The Contract name is:

»

The Contract number is:

»

2 Site

Defined in clause 79

The Site is:

»

3 Description of the Works

Mentioned in clause 8

The Works are:

»

Principal's details

4 Principal

Defined in clause 79

The Principal is:

» Australian Capital Territory, the body politic established by section 7 of the *Australian Capital Territory (Self Government) Act 1988* (Cth) represented by [INSERT Directorate/ Agency – eg Infrastructure Canberra].

5 Principal's Authorised Person

Mentioned in clause 2

The *Principal's Authorised Person* is:

»

6 Notices to the Principal

Mentioned in clause 11

Notices must go to the *Principal's Authorised Person* named above, at the address or number shown here.

Office address:
(for delivery by hand)

»

»

»
»

Postal address:
(for delivery by post)

»
»
»
»

e-mail address (general):

7 Principal’s Senior Executive

Mentioned in clauses 69 & 70

The Principal’s *Senior Executive* is:

»<EBM position not name >

Office address:
(for delivery by hand)

»<street address with EBM position not name >
»
»
»

Postal address:
(for delivery by post)

»<postal address with EBM position not name>
»
»
»

e-mail address:

»<generic EBM email>

Contractor’s details

8 Contractor

(item completed after tenders close)

The Contractor is:

.....
.....
ACN.....
ABN

9 Contractor’s Authorised Person

(item completed after tenders close)

Mentioned in clause 2

The Contractor’s *Authorised Person* is:

.....

10 Notices to the Contractor

(item completed after tenders close)

Mentioned in clause 11

Notices must go to the *Contractor's Authorised Person* named above, at the address or number shown here.

Office address:
(for delivery by hand)

.....
.....
.....
.....

Postal address:
(for delivery by post)

.....
.....
.....
.....

e-mail address:

.....

11 Contractor's Senior Executive

(item completed after tenders close)

Mentioned in clause 70

The Contractor's *Senior Executive*
is:

.....

Office address:
(for delivery by hand)

.....
.....
.....
.....

Postal address:
(for delivery by post)

.....
.....
.....
.....

e-mail address:

.....

Dates and times

12 Date of Contract

(item may be completed after tenders close)

Defined in clause 79

The Date of Contract is:

.....
("the date specified in the *Letter of Award*, or if no date is specified, the date of the *Letter of Award*", applies if not filled in).

13 Times for Site access and Completion

Site access: Mentioned in clause 34

Contractual Completion Date and Completion: Mentioned in clause 65

Time periods for Site access and for calculating *Contractual Completion Dates* are as shown.

Description		Time Period for giving Site access	Time Period for Completion
The whole of the Works:		» days after the Date of Contract <i>(14 days applies if item not filled in)</i>	» weeks after the Date of Contract
•			
•			
•			
Milestone number	Description	Time Period for giving Site access	Time Period for Completion
1	»	»	»
2	»	»	»
3	»	»	»
4	»	»	»
5	»	»	»

Statutory and Government requirements

14 Fees, charges and approvals

Mentioned in clause 12

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

»
("None obtained or paid by the Principal" applies if not filled in).

15 Compliance with ACT Government Guidelines and Polices

A - Work Health and Safety (WHS)

Mentioned in clause 15 and Schedule 17

Is the Contractor required to submit a WHS Management Plan in accordance with the *Work Health and Safety Regulation 2011*?
(Yes/No)

»
("Yes" applies if not filled in).

If required, the WHS Management Plan must be provided:

("not less than 14 days before starting work on the Site" applies if not filled in)

B – Not used

C - Quality Management*Mentioned in clause 15 and Schedule 18*

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

»
("Yes" applies if not filled in).

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

»
("Yes" applies if not filled in).

If required, the Quality Management Plan must be provided:

»
("before starting design or construction work in connection with the Contract" applies if not filled in).

D - Environmental Management*Mentioned in clause 15 and Schedule 16*

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

»
("Yes" applies if not filled in).

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

»
("Yes" applies if not filled in).

If required, the Environmental Management Plan must be provided:

»
("at least 14 days before starting work on the Site" applies if not filled in).

E – Local industry participation

Do clauses 13.18 to 13.24 apply?

»
("Yes" applies if not filled in).

F – Other Territory guidelines and policies

Other guidelines and policies that the Contractor must comply with:

» National Code of Practice for the Construction Industry;
» the Territory's WHS Active Certification Policy;
» the Territory's Secure Local Jobs Code.

16 Requirements for Commonwealth funded projects

Australian Government Work Health and Safety Accreditation Scheme

Mentioned in clause 17

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

»
("No" applies if not filled in)

17 Principal contractor

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

Mentioned in clause 16

»
("Yes" applies if not filled in).

18 Working hours and working days

Working hours and working days are:

Mentioned in clause 18

»
("to comply with *Statutory Requirements*" applies if not filled in).

Not used

19 Not used

20 Not used

Insurance

21 Works insurance

Mentioned in clauses 27.1 & 27.2

The party responsible for effecting Works insurance is:

»
("the Principal" applies if not filled in).

If the Principal is responsible:

Minimum cover is:

Insurer:

Policy number:

\$» See *Policy* for details.

Period of cover is:

»
("until *Completion*" applies if not filled in).

If the Contractor is responsible:

Minimum cover is:

\$»

Period of Cover is: »
("until release of the *Post Completion Undertaking*" applies if not filled in).

Period of cover is: »
("until release of the *Post Completion Undertaking*" applies if not filled in).

22 Public liability insurance

Mentioned in clauses 27.1 & 27.8

Principal:

Minimum cover is: \$ See *Policy* for details.

Insurer:

Policy number:

Period of cover is: Until *Completion*.

Contractor

Minimum cover is: \$»
("\$20 million in respect of each claim" applies if not filled in).

Period of cover is: »
("until release of the *Post-Completion Undertaking* applies if not filled in).

23 Workers compensation insurance

Minimum cover is: as required by law.

Period of cover is: as required by law.

24 Professional indemnity insurance

Mentioned in clause 27.9.2

Is a professional indemnity insurance policy to be held by the Contractor? (Yes/No) »
("Yes" applies if not filled in).

Minimum cover is: »
(\$5 million in respect of each claim and in the annual aggregate applies if not filled in).

Period of cover is: until issue of the *Final Payment Schedule*.

25 Marine liability insurance

Mentioned in clause 27.9.3

Is a Marine Liability insurance policy to be held by the Contractor? (Yes/No) »
("No" applies if not filled in)

Minimum cover is: \$5 million for any one occurrence.

Period of cover is:

the whole of the period of use of waterborne craft of 8 or more metres in length on work in connection with the Contract.

25A Motor vehicle 3rd party property damage insurance

Mentioned in clause 27.3.4

Is motor vehicle 3rd party property damage insurance to be held by the Contractor? (Yes/No)

»
("Yes" applies if not filled in).

Minimum cover is:

\$20 million for any one occurrence.

Period of cover is:

the whole of the period of use of motor vehicles on work in connection with the Contract.

Contract Documents

26 Other Contract Documents

(item completed after tenders close)

Mentioned in clause 7.1.5

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

1. the Letter of Award, and any formal agreement or deed constituting the Contract; and
2. the following written communications between the parties:
3. Request for tender for the Works
<insert tender number>
4. Addenda issued under the request for tender <list each addendum and date>
5. Labour Relations Training Workplace Employment Plan at **Attachment 5** of this Contract
6. Local Industry Participation Plan at **Attachment 6** of this Contract..

Principal's Documents

27 Copies of Principal's Documents

Mentioned in clause 7.4

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

»
("1 electronic copy" applies if not filled in).

27A Adopting the Principal's Documents

Mentioned in clause 39.11

Is the Contractor required to adopt the *Principal's Documents*?

»
("no" applies if not filled in).

Contractor's Documents

28 Copies of Contractor's Documents

Mentioned in clause 40.1

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

»
("1 electronic copy in a format acceptable to the Principal" applies if not filled in).

Subcontract work

29 Use of GC21 Subcontract

Mentioned in clause 28.4

The Subcontract value requiring use of the GC21 subcontract as set out in Schedule 9 (Subcontract requirements) is:

\$200,000

30 Payment period for Subcontracts

Mentioned in clause 28.4.2

The maximum period before payment, for Subcontracts is:

15 Business Days.

31 Preferred Subcontractors

Mentioned in clause 29.3

The Preferred Subcontractors referred to in clause 29 are:

Class of work	Subcontractors
»	
("Not applicable" applies if not filled in).	

»

("Not applicable" applies if not filled in).

32 Subcontractor's warranty

Mentioned in clause 30.1

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

»

[Note to drafters: guide only – amend as necessary to reflect the nature of the Works and project]

Building Element	Minimum Warranty Period (years)
Lifts	15
ICT equipment	15
Data and Communications	15

Audio Visual	as per manufacturer's warranty
Electrical fixtures	10
Electrical switchboards	15
Light fittings	5
Electrical, Fire and Mechanical Control Panels	15
External lighting fixtures and poles	15
Mechanical Services Equipment	15
Mechanical Services Ductwork	20
Mechanical Services Pipework	20
Fire Protection Systems	15
Security equipment	15
Sanitary Fittings and Fixtures	as per manufacturer's warranty
Hydraulic fixtures & pumps	15
Rainwater tanks	15
UPS units	10
Hydrotherapy Pool and Associated Equipment	10
Medical Gasses Equipment	10
Nurse Call Equipment	10
Structural Steel	25
Concrete Structure	25
Expansion joint systems	10
Metalwork	10
Roof Sheeting/flashings/access panels	20
Facade	20
Doors and Door hardware	15
Roller doors	15
Waterproofing	15
Suspended Ceilings Grid	10
Suspended Ceilings Panels	5
Internal Partitions	10
Joinery	5
Painting	5
In-ground irrigation	5
Resilient Finishes	5
Carpet	5
Floor and Wall Tiling	5

Entry Mats	as per manufacturer's warranty
Windows	10
Window Furnishings	2
FF&E	as per manufacturer's warranty
Ceiling Mounted Hoists	as per manufacturer's warranty
Signage	5
Line marking	5

("Not required" applies if not filled in).

Undertakings

33 Completion Undertaking

Mentioned in clause 33.1

The amount of the *Completion Undertaking* is:

»\$ [specify the \$ amount using the following formula and add text 'being' and delete text 'applies if not filled in']

("4% of the *Contract Price* at the Date of Contract for the first \$10 million plus 2% of any amount over \$10 million" applies if not filled in).

Mentioned in clause 33.5

Will the Principal consider a proportion of the *Completion Undertaking* to be reduced on the *Completion* of a *Milestone*?

» Yes/No

[If yes, specify whether this will be considered in relation to all *Milestones* or only specified milestones]

("Yes, for all *Milestones*" applies if not filled in).

Mentioned in clause 33.5

Will the Principal consider a proportion of the *Completion Undertaking* to be reduced on the Principal's early use or occupation of the *Works*?

» Yes/No

("Yes" applies if not filled in).

34 Post-Completion Undertaking

The Amount of *Post-Completion Undertaking* is:

Mentioned in clause 33.1

»\$ [specify the \$ amount using the following formula and add text 'being' and delete text 'applies if not filled in']

("1% of the *Contract Price* at the Date of Contract" applies if not filled in).

35 Return of Post-Completion Undertaking

Mentioned in clause 33.3.2

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

» months.
("12 months" applies if not filled in).

Site information

36 Site information

Mentioned in clause 36

*Information contained in the documents identified in Contract Information items 36A and 36B does **NOT** form part of the Contract.*

A - Documents not guaranteed for completeness

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

»
("None" applies if not filled in)

B - Documents not guaranteed for accuracy, quality or completeness

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

»
("None" applies if not filled in)

37 Site Conditions

Mentioned in clause 37.2

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

»
("No" applies if not filled in).

Design and documentation

38 Scope of design activities

A - Design by the Contractor

Mentioned in clause 39

Items 38A.1, and 38A.2 allow the Principal, at its discretion, to provide information to tenderers of aspects of design, without altering the Contractor's obligations, under clause 39.1, to complete the Principal's design.

The parts of the Works listed in these items do not describe all the Works required to be designed and completed by the Contractor.

Notwithstanding that parts of the Works require design or design development, the Principal may not identify all or any parts of the Works.

THE WHOLE OF THE OR

- .1 Without limiting the design obligations of the Contractor under clause 39.1, some selected items and components of the Works for which the Contractor is responsible for developing the preliminary design provided by the Principal are (clause 39.1.2):

- .2 Without limiting the design obligations of the Contractor under clause 39.1, some selected items and components of the Works for which the Contractor must fully design are (clause 39.1.3):

- .3 Items, services and components of the Works in respect of which the Contractor may depart from the design provided by the Principal (clause 39.7):

»
 (“No particular items or components have been selected, refer to clause 39.1” applies if not filled in).

»
 (“No particular items or components have been selected, refer to clause 39.1” applies if not filled in).

»
 (“no items, services or components of the Works” applies if not filled in).

B –National Construction Code

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

Mentioned in clauses 39 & 43
 »
 (“Yes” applies if not filled in).

Innovation

39 Innovation

Mentioned in clause 41.5

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

»
 (“100%” applies if not filled in).

Payments

40 Contract Price at the Date of Contract

(item completed after tenders close)

Mentioned in clause 55.1

The Contract Price at the Date of Contract is:

\$

Basis of payment

The basis of payment is:
(Lump sum / *Schedule of Rates* /
Lump sum with *Rate Items*)

»

41 Rise or fall adjustments

Mentioned in clause 55.2

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

»
("No" applies if not filled in).

42 Provisional Sums

Mentioned in clause 55.4

Provisional Sum items referred to
in clause 55.4 are:

»
("Not applicable" applies if not filled
in).

43 Provisional Sum margin

Mentioned in clause 55.4

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

»
("and on site overheads including
attendance and administration"
applies if not filled in).

The *Provisional Sum* margin is:

»
("10%" applies if not filled in).

44 Contractor's Margin

Mentioned in clauses 47 and 79

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

»
("and on-site overheads including
attendance and administration"
applies if not filled in).

The percentage for *Contractor's
Margin* is:

»
("10%" applies if not filled in).

45 Amount of Prepayment

Mentioned in clause 57.1.1

The amount of *Prepayment* is:

»\$ [specify the \$ amount using the
following formula]
("An amount equal to 10% of the
Contract Price at the Date of Contract"
applies if not filled in).

46 Payment Claims

Mentioned in clauses 56 & 58

The date in the month for making
Payment Claims is:

»
("the last *Business Day* prior to the end of each calendar month" applies if not filled in).

The person authorised to deal with
Payment Claims is:

»
("the *Principal's Authorised Person*" applies if not filled in).

The address for submission of
Payment Claims is:

» Payment claims to be submitted through CAMPS SRM.

» Payment claims are to be made in favour of the represented Directorate of the Principal being the (insert the full name of the Directorate or Agency and ABN as applicable) and are to be provided to the Principal's Authorised Person. Payment Claims are to be addressed as follows:
Directorate
Directorate Representative
Directorate Address

[1. If a different electronic system or email address for Payment Claims is required from this default, delete the above and write the appropriate system or email. Seek advice from an appropriate senior manager prior to amending this email address.

2. Insert the name of the Directorate, their representative and all other information that the Directorate requires to be provided in the Payment Claim so that they are able to process the Payment Claim after assessment by the PAP.]

B - Method of payment

Mentioned in clause 58.2

Milestones for which payment will not be made until after they reach
Completion:

Milestone »
Milestone »
("Not applicable" applies if not filled in).

47 Completion Amount

Mentioned in clause 60

The *Completion Amount* is:

\$ »
("\$ NIL" applies if not filled in).

The *Completion Amount* is payable after:

(*Completion* of the whole of the Works/ *Completion of Milestone* »)

Will the Principal consider a proportion of the *Completion Amount* to be reduced on the *Completion* of a *Milestone*?

»
("Completion of the whole of the Works" applies if not filled in).

» Yes/No

[If yes, specify whether this will be considered in relation to all *Milestones* or only specified *milestones*]

("Yes, for all *Milestones*" applies if not filled in).

Will the Principal consider a proportion of the *Completion Amount* to be reduced on the Principal's early use or occupation of part or the whole of the *Works*?

» Yes/No

("Yes" applies if not filled in).

48 Interest on late payments

Mentioned in clause 62

The rate of interest per annum is:

For the Principal –

» as determined in accordance with section 25 of the *Government Procurement Act 2001* (ACT)

»

For the Contractor –

("8%" applies if not filled in).

Delay Costs

49 Delay Costs and liquidated damages

Mentioned in clauses 34 & 51

A – Delay Costs

A1 - Delay Costs for delay in access to the Site

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

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

\$ »("No delay costs payable" applies if not filled in)

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

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

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

\$ »

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

Milestone 1: \$ »

Milestone 2: \$ »

Milestone 3: \$ »

**The rate for each Milestone is separate and distinct from the others.*

B - Liquidated damages

Mentioned in clauses 51.8 and 51.9

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

»
("No" applies if not filled in).

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

\$ »
("Liquidated damages are not payable" applies if not filled in).

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

Milestone 1: \$ »

Milestone 2: \$ »

Milestone 3: \$ »

("Liquidated damages are not payable" applies if not filled in).

**The rate for each Milestone is separate and distinct from the others.*

Engagement of Valuer**50 Engagement of Valuer****A - Engagement of Valuer**

Mentioned in clause 35

Must a Valuer be engaged? (Yes/No)

»
("No" applies if not filled in).

B - Person to select the Valuer

Mentioned in clause 35

The person is:

»

(the President, (AIQS), Suite 303, Level 3, 70 Pitt Street, Sydney applies if not filled in).

Telephone number:

»
((02) 8234 4000 applies if not filled in).

Email/ website:

»
(<https://www.aiqs.com.au/contact-us>
applies if not filled in).

C - Litigation Threshold

Mentioned in clause 35

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

»
("\$200,000" applies if not filled in).

Expert Determination

51 Time to refer Issue to Expert Determination

Mentioned in clause 70.3

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

»
("28 days after becoming entitled under clause 70.2" applies if not filled in).

52 Expert Determination representative

Mentioned in clause 71

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

» Director General, Infrastructure
Canberra.

("the Principal's *Senior Executive* until the Principal notifies otherwise" applies if not filled in).

Office address:
(for delivery by hand)

» Infrastructure Canberra
Level 3, 2 Constitution Avenue
CANBERRA CITY ACT 2601
("as shown in Contract Information item 7" applies if not filled in).

Postal address:
(for delivery by post)

» Infrastructure Canberra
GPO Box 158
CANBERRA CITY ACT 2601
("as shown in Contract Information item 7" applies if not filled in).

e-mail address:

»iCBRContractRequests@act.gov.au

[OR, INSERT OTHER EMAIL ADDRESS AS APPLICABLE]

("as shown in Contract Information item 7" applies if not filled in).

53 Person to nominate an Expert

The person is:

*Mentioned in clause 71*Chief Executive Officer
Australian Disputes Centre
Level 16, 1 Castlereagh Street
Sydney, NSW 2000

Telephone number:

(02) 9239 0700

Email/ website:

<https://www.disputescentre.com.au/>**54 Threshold amount for litigation***Mentioned in clause 71*The threshold amount for litigation following an *Expert's* determination is:»
("\$1 million" applies if not filled in).

Confidential Text**55 Confidential Text***Mentioned in clause 19.7*

The following is Confidential Text:

»

Clause no.

If there is no personal information in the Contract and no other Confidential Text, write "There is no Confidential Text".

Otherwise, INSERT specific clause or item number in the Contract that is personal information or that a party to the Contract requires be kept confidential.

eg. "Item 1 and 3 of the Labour Relations, Training and Workplace Equity Plan" or "Names of persons where they appear in Contract Information - Item 1 and Contract Information Item 6"

DO NOT include general statements such as "contractor pricing" "all personal information" 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.

Note that from 1 July 2024:

- (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
- (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.

All documents that make up the Contract under clause 7, including any documents specified as *Contract Documents* in Contract Information – Item 26 are part of the Contract, 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.

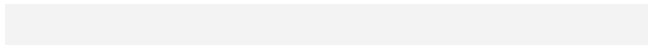
By default this includes the Contractor’s Labour Relations, Training and Workplace Equity (LWERTY) plan and Local Industry Participation plan (LIP) submitted by the Contractor with its tender for the Works.

If the Contract is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Contract 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 set out in section 18 of the Procurement Act. The relevant grounds should be specified below.

Grounds for confidentiality:

The Confidential Text is “confidential information” for the purposes of the Procurement Act because:

- (a) it is Personal Information about a person; or
- (b) the Territory is satisfied that disclosure of the text would:
 - (i) be an unreasonable disclosure of information about the business affairs of a person; or
 - (ii) disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished by the disclosure]



EXAMPLE ONLY

Schedules

Schedule 1	Subcontractor's Warranty
Schedule 2	Undertaking
Schedule 3	Payment Claim Worksheet
Schedule 4	Agreement with Valuer
Schedule 5	Expert Determination Procedure
Schedule 6	Statutory declaration
Schedule 7	Costs Adjustment Formula
Schedule 8	Daywork
Schedule 9	Subcontract requirements
Schedule 10	Not used
Schedule 11	Statement regarding Materials
Schedule 12	Not used
Schedule 13	Not used
Schedule 14	Special Conditions
Schedule 15	Principal's Documents
Schedule 16	Environmental Management
Schedule 17	WHS Requirements
Schedule 18	Quality Requirements
Schedule 19	Pricing Schedule
Schedule 20	Personal Property Securities
Schedule 21	Site Requirements

Schedule 1

Subcontractor's Warranty

The Contractor has entered into the Contract with the Principal for the carrying out of the Works.

The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work or Products, which are to be used by the Contractor in performing the Contract.

In return for the Principal allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Principal against the Contractor or the Subcontractor.

Refer to clause 30.1 of the GC21 General Conditions of Contract.

Definitions

Deed dated: The date of execution by the Subcontractor
between

Subcontractor or Supplier:

 ABN/ACN

and

The Principal: »
concerning

The Contract: The contract between the Principal and the Contractor

Contract Name: Contract Name:

Contract Number: Contract No.

Works: The works to be designed (to the extent specified) and constructed by the Contractor, as described in the Contract.

The Contractor:
 ACN

Subcontract Work or Products:

Warranty Period:years from the *Actual Completion Date* of the whole of the Works.

Other words and phrases in this Deed have the meanings given in the Contract. In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assignees.

Terms of Deed

1 Warranty

- .1 The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
 - .1 comply in all respects with the requirements of the Contract;

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

2 Replacement or making good

- .3 The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
- .1 be of a lower standard or quality than referred to in clause 1 of this Deed; or
 - .2 have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- .4 The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
- .1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
 - .2 normal wear and tear;
 - .3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
 - .4 any other cause beyond the control of the Subcontractor.
- .5 Nothing in this Deed affects the Subcontractor's liability with respect to the Subcontract Work or Products.

3 Costs

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

4 Indemnity

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

5 Notice of Defects

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

6 Time to remedy

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

7 Failure to remedy

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

by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

8 Urgent action by Principal

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

9 Assignment

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

10 Signing of Deed *(see Guidance Note 3 below)*

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

11 Operation of Deed

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

Executed as a deed

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

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

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

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

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

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

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

Signed, sealed and delivered for and on behalf of	
<i>(name of Principal)</i>
by its duly authorised representative:	
.....
Name of Principal’s Representative	Signature of Principal’s Representative
in the physical presence of:	
.....
Name of Witness	Signature of Witness

Guidance Notes for the execution of this Deed:

- The Subcontractor should only complete and sign in the applicable execution block.*
- Where this Deed is executed by the Contractor using electronic signing (i.e. not on a physical hard copy document) identification, reliability and consent requirements must be complied with.*

This Deed has been drafted to provide compliance with the:

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

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

Schedule 2

Undertaking

Refer to clauses 33, 57 and 58 of the GC21 General Conditions of Contract.

For the purpose of giving unconditional undertakings; banks, building societies, credit unions and insurance companies listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA are acceptable. Refer to:

<https://www.apra.gov.au/list-of-registered-financial-corporations>

On behalf of the Contractor

Name of Financial Institution:

The Principal: »

The Contractor:

ABN

Security Amount: \$

The Contract: The contract between the Principal and the Contractor

Contract Name: Contract Name:

Contract Number: Contract No.

Undertaking

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

Dated at

Execution by the Financial Institution:

Schedule 3

Payment Claim Worksheet

Refer to clause 58 of the GC21 General Conditions of Contract.

The Contractor:

ABN

The Contract: The contract between the Principal and the Contractor

Contract Name: Contract Name:

Contract Number: Contract No.

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

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

Complete this section on the last sheet only

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

Schedule 4

Agreement with Valuer

Refer to clause 35 of the GC21 General Conditions of Contract.

Definitions

Agreement dated:
The Valuer:
ABN
and:
The Principal: »
and:
The Contractor:
ABN
concerning:
The Contract: The contract between the Principal and the Contractor
Contract Name: Contract Name:
Contract Number: Contract No.
Dated:
The Works: The works to be designed and constructed by the Contractor, as described in the Contract.

Unless the context requires otherwise, other words and phrases in this agreement have the meanings given in the Contract.

The terms Contractor and Principal include their successors and permitted assignees.

Terms of agreement

1 Request to determine and acceptance

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

2 Determination by Valuer

.2 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days (or another period agreed by the parties) after the matter is referred to the Valuer.

.3 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

3 Principles for valuation

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

4 Meeting

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

5 Documents

.6 The Valuer must take into consideration:

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

6 Role of Valuer

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

7 Certificate final

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

8 Liability of Valuer

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

9 Fees and expenses

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

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

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

- .3 Substantiated out-of-pocket expenses.

10 Confidentiality

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

11 Termination of agreement

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

12 Payment

- .16 The Principal and the Contractor must pay the Valuer within 15 *Business Days* after receiving an invoice which complies with this agreement.

- .17 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

13 Period of engagement of Valuer

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

Signed by the Contractor:

Signature of Authorised Person:

Name of Authorised Person:

Date:

Signed by the Principal:

Signature of Authorised Person:

Name of Authorised Person:

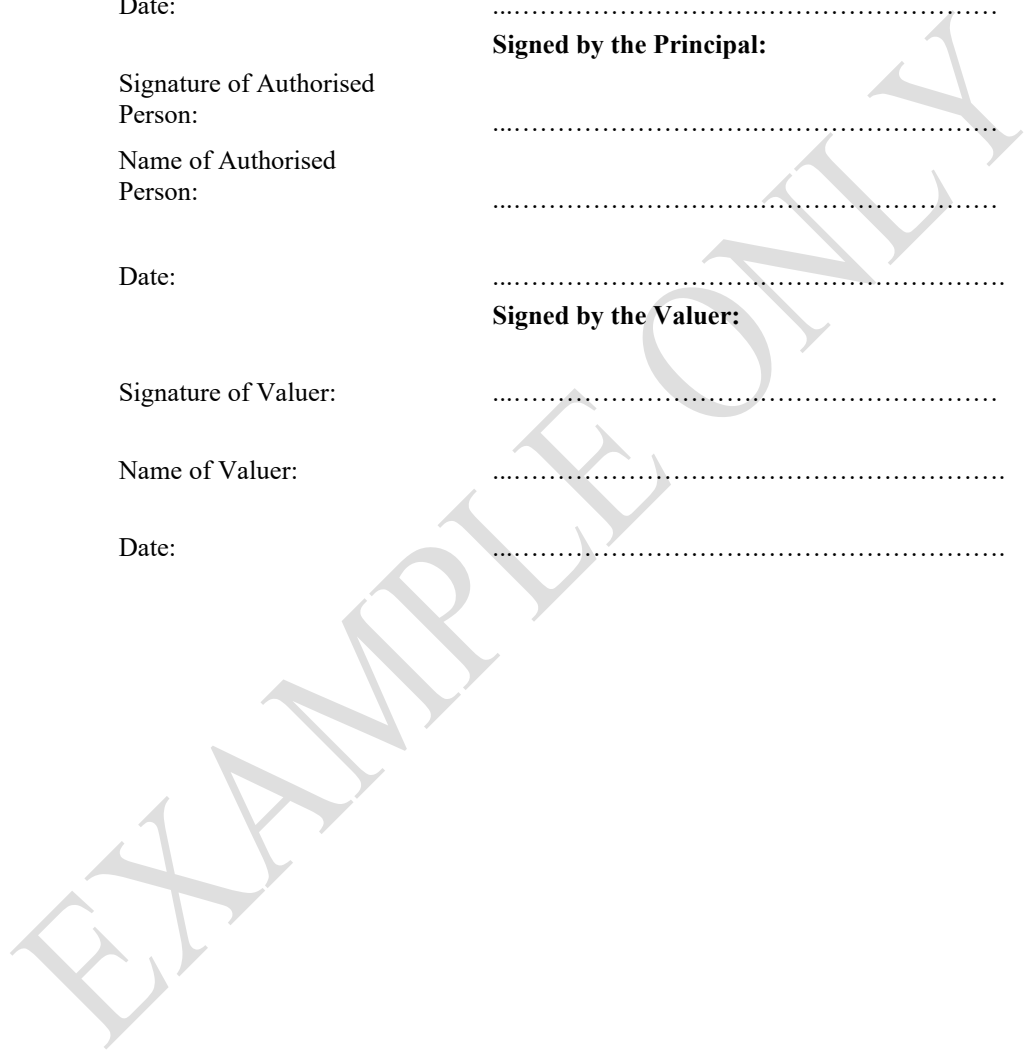
Date:

Signed by the Valuer:

Signature of Valuer:

Name of Valuer:

Date:



Schedule 5

Expert Determination Procedure

Refer to clause 71 of the GC21 General Conditions of Contract.

1 Questions to be determined by the Expert

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

2 Submissions

- .3 The procedure for submissions to the *Expert* is as follows:
 - .1 The party to the Contract which referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
 - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
 - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.
 - .4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.
- .4 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- .5 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.

- .6 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 52.

3 Conference

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

4 Role of Expert

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

Schedule 6

Statutory Declaration

STATUTORY 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:
 - a. **“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.
 - b. **“Contractor”** means **[insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract]**;
 - c. **“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]**; and
 - d. all 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.

The Contractor has made provision for

4. all other benefits (as required by Prescribed Legislation) accrued in respect of its Employees as at the date of this statutory declaration.

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.

- (a) 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.

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.

5. The provisions of clause “Subcontractor relationships”, if included in the Contract, have been complied with by the Contractor.
6. All Subcontract security held in the form of cash and all cash retentions from Subcontractor payments are held in trust by the Contractor. The cash security and

Contract Name: » *[Insert]*

Contract No: » *[Insert]*

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retentions are held in trust for whatever party is entitled to them, until payment is made to that party.

7. The Contractor is maintaining complete records to account for the cash. The records are available to the relevant Subcontractors and the Principal on request.

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]]

[Print name of person making the declaration]

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

Before me:

[Signature of person before whom the declaration is made]

[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)
Bailliff
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 7

Costs Adjustment Formula

Refer to clause 55.2 of the GC21 General Conditions of Contract This Schedule is blank unless Contract Information 41 states that rise and fall adjustments are applicable.

EXAMPLE ONLY

Schedule 8**Daywork**

Refer to clause 48.4 of the GC21 General Conditions of Contract. Note clauses 47.6 - 47.10 and clause 51 do not apply to *Variations* carried out as *Daywork*.

1 Daywork procedure and determination

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

2 Amounts included in and excluded from Daywork

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

3 Principles for calculating time

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

EXAMPLE ONLY

Schedule 9

Subcontract requirements

Refer to clause 28.4.1 of the GC21 General Conditions of Contract.

Available from the Infrastructure Canberra GC21 Document Suite website at <https://www.act.gov.au/infrastructurecanberra/supplying-to-government/supplier-information/infrastructure-contract-suite/gc21-document-suite>.

EXAMPLE ONLY

Schedule 10

Not used

EXAMPLE ONLY

Schedule 11

Statement regarding Materials

Refer to clause 58.7 of the GC21 General Conditions of Contract.

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

SCHEDULE

Materials

[list the Materials]

Principal

[insert name of the Principal]

SIGNED.....

DATE:.....

Schedule 12

Not used

EXAMPLE ONLY

Schedule 13

Not used

EXAMPLE ONLY

Schedule 14**Special Conditions**

Refer to clause 7 of the GC21 General Conditions of Contract

In these Special Conditions the following definitions apply unless the context otherwise requires:
[Instructional note: Insert any definitions apply]

Commissioning and Handover Plan	<p>[Instructional note: include this definition if Special Condition “Commissioning and Handover Plan” is included]</p> <p>if required under these Special Conditions, means the commissioning and handover plan prepared by the Contractor and finalised under these Special Conditions which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's activities from a commissioning and handover perspective to ensure:</p> <ul style="list-style-type: none"> (a) the timely, efficient and comprehensive commissioning of the Works (including the inspection and testing process); (b) the smooth handover of the Works to the Territory; and (c) that all required planned and unplanned maintenance is provided during the Post-Completion Period (if required under these Special Conditions), <p>in accordance with the Contract.</p>
Other Contractor	<p>[Instructional note: include this definition if Special Condition “Other Contractors” and/or “Commissioning and Handover Plan” is included]</p> <p>any contractor, consultant, artist, tradesperson or other person engaged or permitted to do work at the Site other than the Contractor and its subcontractors.</p>
Post-Completion Period	<p>[Instructional note: include this definition if Special Condition “Maintenance during post-completion period” is included]</p> <ul style="list-style-type: none"> • the period from the <i>Actual Completion Date</i> of the whole of the Works until the date the Territory is required to return the <i>Post-Completion Undertaking</i>.

Item 1. Audit and review

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

The Contractor must make available, on request, all records, including those of or relating to Subcontractors or suppliers, 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 handover of the last *Post-Completion Undertaking*.

Item 3. Use of Qualified Designers

[Instructional note: Include this special condition if the contractor is required to provide design services]

The Contractor must use persons professionally qualified in the relevant disciplines when completing the Design of the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

Item 4. Use of Qualified Tradespersons

[Instructional note: Include if relevant]

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

Item 5. Statutory approvals

5.1 Development/Building consent/Approvals

[Instructional note: Include this special condition if the contractor is required to lodge a Development Application (i.e. Development Consent has not or will not be obtained by the Territory), and/or an application for building approval, and/or obtain consent with respect to the use of public unleased land. Delete the options that do not apply.]

Option 1 – Contractor applies

The Contractor must prepare and lodge on behalf of the Principal a Development Application for the Works. The Contractor is responsible for all lodgement fees and other costs associated with the Development Application and resulting from the development consent.

OR

The Contractor is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. However, if, as a result of the acceptance of an Alternative Tender, through design development or due to conditions placed on the Development Consent a new, revised or amended Development Application is required the Contractor is responsible for preparation and submission of new, revised or amended documentation including all associated fees.

Option 2 – Principal applies:

[Instructional note: Include this option if the Principal is required to lodge a Development Application to obtain Development consent for the Works (i.e. Industry is informed the Principal has obtained Development consent prior to release of the RFT)]

The Contractor is not required to prepare and lodge on behalf of the Principal a Development Application for the Works. The Principal will prepare, lodge and obtain an approved Development Application for the Works and is responsible for all lodgement fees and costs resulting from the Development Consent.

Development Consent for the Works will be obtained by the Principal prior to release of the Request for Tender for the Works.

OR:

Option 3 - Principal applies

Development Consent for the Works has been submitted for approval by the Principal on the [INSERT DATE]. The current status of the application is [INSERT DETAILS SO AS TO INFORM TENDERERS].

AND/OR:

The Contractor must obtain Building Approval from the ACT Planning and Land Authority.

AND/OR:

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

Item 5.2 Building Certifier

[**Instructional note:** Include this item if a building certifier is to be appointed in accordance with the *Building Act 2004* if the works under this RFT involves construction or design & construction (including demolition and maintenance) services. Otherwise DELETE. Two alternatives are provided. Option 1 is to be used when the works are for a residential project and when the Principal elects to engage the Certifier for a non-residential project. Option 2 is to be used when the Principal elects to have the Contractor engage the Certifier, note that this Option cannot be selected for residential projects. Delete the Option that does not apply.]

Option 1

Principal to appoint

The Principal will appoint the certifier (**Certifier**) for the purposes of section 19, and to undertake the functions specified in section 17A, of the *Building Act 2004*. The Principal will be responsible for all fees and charges associated with the engagement of the Certifier. The Contractor is to cooperate with, and accept all directions from, the Certifier as reasonably required so as to enable the parties to comply with the *Building Act 2004*.

OR

Option 2

Contractor to appoint

The Contractor will appoint the certifier (**Certifier**) for the purposes of section 19, and to undertake the functions specified in section 17A, of the *Building Act 2004*. The Contractor will be responsible for all fees and charges associated with the engagement of the Certifier. The Contractor is to cooperate with, and accept all directions from, the Certifier as reasonably required so as to enable the parties to comply with the *Building Act 2004*.

Item 6. Contractor's tender concept/design

[**Instructional note:** Include this special Condition if the contractor is required to design and construct the works and tenderers were required to submit a concept/design in their tenders. This should correspond with the scope of design activities set out in Item 38 of the Contract Information]

In preparing the Contractor's Documents, the Contractor must not alter the Contractor's accepted tender concept / design without the Principal's agreement.

Item 7. Inclusions in the Contractor's documents

The Contractor's Documents must include, without limitation:

- » **[Instructional note:** Unless this information is already contained in the Brief, describe the Contractor's documents to be provided by the Contractor.

Ensure the documents listed align with the extent of design by the Contractor described in General Conditions of Contract, Contract Information item 38 - Scope of Design activities.

eg: for a building project where the Principal has only provided developed sketch plans and the Contractor is required to provide all the design construction documents, then the following may be appropriate;

"The Contractor's documents must include provision of all construction documentation for the Works. Construction documentation includes but is not limited to:

- *the production of the construction drawings;*
- *the verification of the developed sketch plans;*
- *the coordination of the design including the structure and the services; and*
- *a specification.*

The Contractor's documents must include the following:

- *Cover sheet with:*
 - *project title information;*
 - *a location plan; and a list of all drawings including any sub-consultant drawings.*
- *Site plan at 1:500 scale showing:*
 - *all survey information, north point, contours (existing and proposed), existing features;*
 - *services point-of-entry, site entries;*
 - *roads, paths and paving, play area(s), Contractor's area(s), demountable building locations, new building(s) locations with set-out dimensioning and key and/or legend relating to this information.*
- *Site works at 1:200 scale showing:*
 - *all buildings in outline with finished floor levels of ground floor plans, north point, contours, surrounding levels to buildings;*
 - *site drainage treatment (falls and direction);*
 - *locations and dimension of paths, paving, roads, bus lay-bys, garbage pads, meter boxes, planter beds, and a legend relating to this information.*
- *Elevations at 1:100 scale showing:*
 - *all building elevations, reduced levels, section references, detail cross-references for windows, doors, gates, screens and louvers and the like;*
 - *materials identification;*
 - *direction of cladding and any legend relating to this information.*
- *Floor plans at 1:100 scale showing:*
 - *all building elements normally shown on plan;*
 - *rooms numbered and named, dimensions, section references, detail cross-references;*
 - *windows, doors, gates, screens and louvers (cross-referenced to schedules if not shown on elevations);*
 - *all fixtures and fittings including heaters (cross-referenced to schedules);*
 - *materials identification and legend relating to this information.*
- *Sections at 1:100 scale showing:*

- *all building elements normally shown on section;*
- *section titles, room names;*
- *applicable heights above finished floor level, datum heights;*
- *detail cross-references;*
- *materials identification;*
- *direction of ribbing and a legend relating to this information.*
- *Reflected ceiling plans at 1:100 scale showing:*
 - *all building elements normally shown on ceiling plans;*
 - *rooms numbered and named;*
 - *detail cross-references;*
 - *materials identification;*
 - *lighting;*
 - *air-conditioning grilles;*
 - *sprinkler heads;*
 - *smoke detectors;*
 - *direction of ribbing and a legend relating to this information.*
- *Roof plan at 1:200 scale showing:*
 - *all buildings and walkways identified;*
 - *roof materials(s) with cappings, flashings, barge boards, ridges, valleys etc, roof falls;*
 - *gutters;*
 - *downpipes;*
 - *vents;*
 - *lights and a legend relating to this information.*
- *Details at appropriate scale(s) including:*
 - *construction, footings, thresholds, stair, links and ramps, toilets, canteen, gates and screens, door and window, fixtures, furniture and any miscellaneous items.*
- *Layouts at scale(s) to suit, cross-referenced to applicable details, for: toilets, canteen, covered ways and special elements/spaces (where applicable).*
- *Door and window schedule at 1:50 scale, for all door and window types, showing:*
 - *opening swing/type/direction;*
 - *material(s) glazing areas/types;*
 - *overall dimensions and dimensions of panels;*
 - *divisions, elements (stiles and rails), chair rails and observation panels;*
 - *security and any special features.*

Note: this drawing(s) must be cross-referenced to plans and/or elevations and cross-matched to the furniture and blinds schedules.
- *Furniture layout at 1:100 scale showing:*
 - *all rooms numbered (to match floor plans);*
 - *door swings, all fixtures, fittings and heater locations matching the floor plans; and*
 - *all loose furniture keyed with code abbreviations cross-matched to the furniture schedule.*
- *Finishes schedule listing: all internal and external materials for all buildings*
- *Hardware schedule listing: all internal and external hardware including door and window hardware and fire extinguishers*

- *Furniture schedule listing: all internal and external furniture and including Principal supplied furniture and fittings.*
- *Colour schedule listing: all internal and external colours, by name, by manufacturer, by finish and including details of primers and undercoats.*
- *Structural and civil engineering drawings at suitable scales:*
 - *prepared to the drafting standards of the Standards Association of Australia.*
 - *Note: Final working drawings are to be suitable for production of work-as-executed drawings, microfilming and readable at A2 size.*
- *Electrical services documentation and drawings, at suitable scales, including:*
 - *Final design calculations including maximum demand, fault level, voltage drop, and lighting level.*
 - *Symbols list;*
 - *Site plan (minimum scale 1:500) and reticulation schedule;*
 - *Single line diagrams for main switchboard, distribution boards and control systems;*
 - *Light and fan layouts including circuitry for all buildings;*
 - *Power and communication layouts for each building including circuitry;*
 - *Communication (Telephones, A/V, MATV, PA, etc.), computer network provision and security layouts including circuitry;*
 - *Miscellaneous details such as control block diagrams, fixing details, control panel layouts, room sections showing mounting heights etc (as appropriate); and*
 - *Electronic security layouts for each building.*
- *Hydraulic services drawings that effectively present*
 - *Major pipe runs indicating control valves, meters and access pits and connection to existing services;*
 - *Reticulation indicating materials, pipe sizes, control valves, fixtures and taps;*
 - *Hydraulic axonometric diagrammatic drawings;*
 - *Construction details of pits, inspection openings, valves etc; and*
 - *a schedule of fixtures and fittings with brand names, model numbers etc*
- *Landscape design documentation and drawings, at suitable scales, including:*
 - *landscape site plans at scale 1:500;*
 - *landscape plans detailing of the main build areas at 1:200 scale; and*
 - *construction and planting details at 1:20 or 1:10 scale. Note: The construction landscape drawings must fully detail the existing and proposed contours at 0.5m intervals; surfaces and their edge treatments; position, number, species and container size of plantings; areas to be turfed, mulched and /or planted; drainage and irrigation systems including hose cock locations; and existing significant trees with canopy size.*
- *Specification (in NATSPEC format) with: a table of contents for each trade section and/or item of work.*

Item 8. 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 28 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 9. Not used

Item 10. 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 Milestone, but sits within a Milestone (i.e. the order of steps to be undertaken to achieve the Milestone)].

» [INSERT]

Item 11. Site access and limitations

[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 12. Occupied premises

[Instructional note:Include this Special Condition if the Client agency 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 client 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 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 hours;
- police checks if required depending on the nature of the work;
- out of bounds areas, eg student change rooms and toilets]

Item 13. 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.

Dial Before You Dig

[Instructional note: Include the following paragraph if the contractor is required to use 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:

- if the service is to be continued: repair, divert, relocate as required;
- 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 Price or payment for a Variation in accordance with

General Conditions of Contract clause 37 - Site Conditions. 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 14. Dangerous substances on Site

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

- .1 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:
 - .1 not disturb the material under any circumstances;
 - .2 contact the Principal and inform the Principal of the existence of the material on Site; and
 - .3 ensure that all persons are protected from exposure to the material until the nature of the material has been competently determined.
 - .2 The Principal must inspect the Site and must issue directions to the Contractor in respect of further action to be taken.
 - .3 All such materials upon the Site must if so directed by the Principal be treated or removed in accordance with the requirements for the safe removal of such materials and any other Statutory Requirements in the Australian Capital Territory relating to the removal of such materials.
- [Instructional note: If the Contractor's activities include the surveying and removal of such substances (eg asbestos products or mineral fibre material), insert the following Item 14.4, otherwise delete]**
- .4 The Contractor's activities include the removal of all material defined or listed in the *Dangerous Substances Act 2004* (ACT) as “dangerous substances” on 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 15. 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 contractors cost consistent with Item 16].

- .1 The Territory considers the substances so defined or listed in the *Dangerous Substances Act 2004* (ACT) as “dangerous substances” in all forms, to be dangerous substances. Such substances must not be used in the Works without the prior written consent of the Principal.
- .2 Where such consent is given the Contractor must ensure that:
 - .1 full details of any dangerous substances as identified in accordance with paragraph (a), and included in the Works, are provided to the Principal in the format of a material safety data sheet;
 - .2 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
 - .3 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.
- .3 The Contractor is responsible for all materials used by its subcontractors under this clause.
- .4 The Contractor undertakes to advise the Territory, at any time during the Works, 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 Works.
- .5 The Contractor must ensure that all goods for incorporation in the Works 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 16. 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 or elsewhere]

- .1 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 issuing of the Building Approval.
- .2 Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.
- .3 Aluminium cladding panels are not to be used for any cladding system. This requirements applies to all cladding locations, i.e. internal or external cladding and non-combustible proprietary aluminium cladding systems.
- .4 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 of fittings AND relevant standard, rating or certification required to be met.**
- .5 For the purposes of **Item 16.4**, the Principal may, at its discretion and without limitation:
 - .1 accept as evidence a sample test result or certificate of compliance or similar document provided with the relevant materials, fixtures or fittings; or
 - .2 require the Contractor to test the material, fixture or fitting in accordance with clause 49, at the Contractor's cost.

Item 17. Cleaning up

[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 Completion.

Item 18. 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 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 16 (Standards) in order to check compliance of the material with the specified standard prior to the Contractor ordering the material in bulk]**

Item 19. Testing

[Instructional note: Include this Special Condition if relevant]

Any testing required to be 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 20. 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 specifications. Acceptance of an alternative proprietary item could require testing at the contractors cost as per Item 16].

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:

- use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- 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;
- the Contractor must indemnify the Principal against any increase in costs;
- 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.

The Contractor must include a provision equivalent to this Item 20 Schedule 14 in all Subcontracts (subject to any necessary variation to reflect the different parties).

Item 21. Items supplied by the Principal

[Instructional note: Use this Special condition if the Principal is to supply items to be incorporated into the works]

Generally

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 Principals 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 Principal's Items are not delivered 5 days before they are due to be incorporated into the works or if Principal's Items are lost from storage; and
- (f) return unused Principal's Items to the Principal.

Responsibility

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 22. Plant and equipment details

[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:

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

Item 23. Maintenance during post-completion 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 Completion.

If these services are required, the default provided below is that the services will be provided during the period between Completion and the date of return of the *Post-Completion Undertaking* (defined in this Schedule as the "Post Completion Period"). Unless otherwise specified in *Contract Information* Item 35, that period will be 12 months from Completion.

If a lesser period is required, seek drafting advice from your Manager or the ACT Government Solicitor. It is advisable that the *Post-Completion Undertaking* be returnable only after, or concurrently with, the completion of the maintenance period.

If the Contractor is not required to provide maintenance services during the Post-Completion Period it may not be clear whether particular unplanned/unscheduled maintenance work should properly be characterised as a *Defect* (and therefore the responsibility of the Contractor) or general maintenance work (and therefore the responsibility of the Territory or its other engaged maintenance provider). GC21 does not by default require the Contractor to provide maintenance services post-completion, only to correct *Defects*. Accordingly, if the Contractor is to be responsible for carrying out such planned and/or unplanned work, then it is critical that it is clearly set out in this Item (or cross-referenced to another document or annexure) the extent to which the Contractor is required to carry out maintenance work]

To the extent set out below, the Contractor must ensure that during the *Post-Completion Period* such planned and unplanned maintenance is carried out as is necessary to ensure that the Works are, or each *Milestone* is, throughout and at the end of the *Post-Completion 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 24 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 Post-Completion Period. If the description is too lengthy to include below, or is included in the Principals 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 the Notice of Completion of the Works or the applicable Milestone.

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 specification 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 Program and Payment sections of Contract Information. Payments could be made on a monthly basis determined by a rate item included in the tender.]

Planned:

Unplanned:

Item 24. 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 Principal's Authorised Person so as to ensure there is no delay to the Works or 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 Principal's Authorised Person and in any event finalise the Commissioning and Handover Plan so as to ensure there is no delay to the Works or Completion and in accordance with the requirements of the Contract to the satisfaction of the Principal's Authorised Person.

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 Principal's Authorised Person) and submit an amended draft to the Principal's Authorised Person. The Contractor must maintain records of inspections or audits undertaken in accordance with the Commissioning and Handover Plan.

Without limiting **clause 15** or **Schedule 17**, the Contractor's obligations or liabilities, or the Territory's rights under **clause 65**, the Contractor must:

- .1 fully co-operate with Other Contractors and otherwise to take all steps necessary to ensure:
 - .1 the timely, efficient and comprehensive commissioning of the Works; and
 - .2 the smooth handover of the Works to, and the initial occupation of the Works by, the Territory;
- .2 without limiting paragraph .1
 - .1 comply with its Commissioning and Handover Plan; and
 - .2 in consultation with the Principal's Authorised Person, provide the Territory with such other specific assistance as may be required by the Principal's Authorised Person to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the Territory;
- .3 as a condition precedent to Completion, hand to the Principal's Authorised Person or any other Contractor or other person nominated by the Principal's Authorised Person all

Contractor's Documents which are required for the use, operation and maintenance of the Works or the relevant *Milestone*; and

- .4 as and when reasonably required by the Principal's Authorised Person, meet with the Principal's Authorised Person and such Other Contractors or other persons as are nominated by the Principal's Authorised Person with a view to ensuring that the Territory and the nominated Other Contractors or other persons have sufficient information to enable the Territory, the nominated Other Contractors or other persons to:
- .1 operate the Works;
 - .2 maintain the Works; or
 - .3 perform such other activities as may be required by the Territory in respect of the Works.

Item 25. Cooperation with other contractors

[Instructional note: USE this Special Condition if the Contractor is required to interface with other contractors on site – for example if SSICT will be carrying out some of the Works]

Without limiting **clause 15** the Contractor must:

- .1 permit other Contractors to carry out their work;
- .2 fully co-operate with Other Contractors;
- .3 carefully co-ordinate and interface the Contractor's activities with the work carried out or to be carried out by Other Contractors; and
- .4 carry out the Works and other Contractor's activities so as to avoid interfering with, disrupting, or delaying the work of Other Contractors.

Item 26. Retention of Data

The Contractor must retain copy of the *Data* for a period of 7 years from *Completion*.

Item 27 Cash Security - Subcontracts

[Instructional note: USE this Special Condition if the Contractor is required to place subcontractor retention money in a trust account]

The Contractor may require Subcontractors to provide security for Subcontracts in the form of cash security, retention money or unconditional *undertakings* to pay on demand provided by financial institutions on the Subcontractor's behalf.

- .1 If the Contractor receives or retains security in cash or converts security to cash under any of its Subcontracts, that security is held in trust by the Contractor from the time it receives, retains or converts it.
- .2 If the Contractor receives payment under the Contract for, or on account of, work done or *Materials* supplied by any Subcontractor, and does not pay the Subcontractor the whole amount to which the Subcontractor is entitled under the relevant Subcontract, the difference is held in trust for payment for the work done or *Materials* supplied.
- .3 The Contractor must deposit all money it receives in trust, as described in **Item 27.1** and **27.2**, into a trust account in a bank selected by the Contractor no later than the next *Business Day*, and:
 - .1 the money must be held in trust for whichever party is entitled to receive it until it is paid in favour of that party;
 - .2 the Contractor must maintain proper records to account for this money and make them available to the Subcontractor on request; and

- .3 any interest earned by the trust account is owned by the party which becomes entitled to the money held in trust.

Item 28 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]

Work Health and Safety (WHS)

- .1 The Contractor is to provide a monthly WHS report, in the format supplied by the Principal, no later than five days after the end of the month which is the subject of the report.

Contractor Monthly Progress Reporting

- .2 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:
 - .1 Project Summary: including project name, site address, project team, key contractual dates and stakeholders;
 - .2 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;
 - .3 Implementation and progress against the required Implementation Plans submitted at time of tender;
 - .4 Project Financials: including contract value, approved, pending and forecast variations; provisional sum management, cashflow tracking and progress claim record;
 - .5 Procurement: including subcontractor and supplier engagement status, long lead time items and any delays;
 - .6 Program and Milestones: including overview; risks and opportunities, delays, staging planning, contingency and a status-ed contract program;
 - .7 Contractual Matters: including Claims, unresolved Requests for Information, potential Issues, contract notices, Principal relation matters, extensions of time and minutes of Construction Control Group meetings;
 - .8 Design and Documentation: including documentation schedule, design items requiring action, risks, issues and opportunities, samples register, RFI register and change register status report;
 - .9 Authority/Utility and Approvals updates;
 - .10 Construction Activities;
 - .11 WHS, Environment, Quality, SLJC and Compliance matters and statistics;
 - .12 Defect free Completion Requirements: including commissioning and acceptance, O&M Manuals and as-built documentation, building tuning and user training; and
 - .13 Site photographs showing key construction activities.

Schedule 15**Principal's Documents**

Refer to clause 7.1.4 of the GC21 General Conditions of Contract

[Instructional note: Include in this Schedule a list of *Principal's Documents*. This list should reflect any documents provided by the Principal to the Contractor prior to the date of execution of the Contract which are intended to form part of the Contract. This list should not include site information documents that are noted in Contract Information items 36A or 36B]

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.	
2.	
3.	
4.	

Schedule 16**Environmental Requirements**

Refer to clause 15 of the GC21 General Conditions of *Contract*

1. General

- .1 The requirements of this Schedule are in addition to the requirements of Clause 15 of the General Conditions of *Contract*.

2. Environmental Management Systems Requirements

- .2 The Contractor must:
 - .1 have in place and maintain a functioning environmental management system (“EMS”) that 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 has been assessed as suitable for the award of current ACT Government prequalification; and
 - .2 provide the *Principal’s Authorised Person* and Principal or Principal’s agent with access at all times to the Contractor’s EMS and to each Subcontractor’s EMS to enable monitoring and quality auditing.

.2 The implementation of an EMS does not relieve the Contractor of the Contractor’s obligations under the *Contract*.

- .3 In an EMS the Contractor must:
 - .1 accept that its activities, products or services have an impact on the environment;
 - .2 develop an environmental policy (“*Environmental Policy*”) that has the total support of the Contractor’s management;
 - .3 have planning processes and procedures in place that have the capacity to identify possible environmental impacts;
 - .4 have planning processes and procedures in place to develop mitigation measures to minimise environmental impacts;
 - .5 establish responsibilities and procedures for implementing required mitigation measures;
 - .6 establish systems and procedures to review the implementation process; and
 - .7 establish a process of management review of systems and procedures that support the *Environmental Policy* and which will lead to continually improving performance.

3. Environmental Management Plan

- .1 The Contractor must prepare and submit to the *Principal’s Authorised Person* for direction as to its suitability an *Environmental Management Plan* as a discrete plan. In preparing the *Environmental Management Plan* the Contractor must follow the requirements set out in the “Environmental Guidelines for Preparation of an Environment Management Plan” prepared by the Environment Protection Authority as established by the *Environment Protection Act 1997* (ACT). The *Environmental Management Plan* must be submitted not later than specified in Quality Requirements Table 1 and must specify:

- .1 the environmental objectives to be attained for the project;
- .2 the specific procedures, methods and work instructions to be applied;

- .3 key staff and responsibilities;
- .4 staff induction and training plan;
- .5 schedule of proposed environmental records to be submitted;
- .6 audit program; and
- .7 other measures necessary to meet the environmental objectives including a method for changes and modifications to the *Environmental Management Plan* as the Works proceed.

4. Environmental Authorisations and Environmental Protection Agreements

- .1 Before commencing the Works the Contractor must obtain any necessary environmental authorisation and/or enter into an environmental protection agreement as required by the *Environment Protection Act 1997* (ACT). The Contractor must submit a copy of the applicable environmental authorisation or environmental protection agreement to the *Principal's Authorised Person*.

5. Existing Flora

- .1 The Contractor must protect from damage all trees and other plants which:
 - .1 are shown or specified to be retained; or
 - .2 are beyond the limits allowed to the Contractor; or
 - .3 which need not be removed or damaged for construction operations.
- .2 On any part of the Sites where trees, shrubs, lawns or gardens are affected by the Works, the Contractor must give fourteen (14) days notice (prior to commencing work) to the Environment Protection unit being part of the Environment and Sustainable Development Directorate, to allow them sufficient time to reply or remove any trees, plants or other flora which they require. Removal of all other flora remains the responsibility of the Contractor.

6. Dust and Noise

- .1 The Contractor must restrict dust caused by the Works to a minimum.
 - .2 The Contractor must take all practicable steps to minimise noise resulting from the Works.
-

Schedule 17**WHS Requirements**

Refer to clause 7.1.4 of the GC21 General Conditions of Contract

2. General

- .1 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.
- .2 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.
- .3 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*.
- .4 The Contractor must provide the written assurances obtained under paragraph .3, together with written assurances from the Contractor about the Contractor's ongoing compliance with *WHS Legislation*, to the *Principal's Authorised Person*.
- .5 The Contractor must provide the *Principal's Authorised Person* 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*.
- .6 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*.
- .7 The Contractor must ensure its Subcontracts include provisions imposing on the Subcontractor's obligations equivalent to the obligations of the Contractor in this Schedule.
- .8 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.
- .9 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.

- .10 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 .9 are met.
- .11 If requested by the *Principal's Authorised Person* 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 *Principal's Authorised Person* before the Contractor or any subcontractor commences such work.
- .12 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.
- .13 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).
- .14 .If the *Principal's Authorised Person* 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 *Principal's Authorised Person* 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.
- .15 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.
- .1 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*.
- .2 The Contractor must demonstrate to the *Principal's Authorised Person*, 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.

3. OHS&R System Requirements

- .1 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's Authorised Person* 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 *Principal's Authorised Person* 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.
- .2 The implementation of the OHS&R management system does not relieve the Contractor of the Contractor's obligations under the Contract.

- .3 In the OHS&R management system the Contractor must:
 - .1 recognise its duty of care to employees and the wider community;
 - .2 develop an OHS&R policy that has the total support of management;
 - .3 have planning processes and procedures in place that have the capacity to identify possible health and safety impacts;
 - .4 have planning processes and procedures in place to develop measures to minimise health and safety impacts and risks;
 - .5 establish a formal communication process for consultation and input from all staff on health and safety matters;
 - .6 establish responsibilities and procedures for implementing required mitigation measures and for rehabilitating affected staff;
 - .7 establish systems and procedures to review the implementation process;
 - .8 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
 - .9 ensure compliance with all *WHS Legislation*.

4. WHS Management Plan

- .1 The Contractor must prepare and submit to the *Principal's Authorised Person* 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*.
- .2 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 *Principal's Authorised Person* 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 *Principal's Authorised Person*;
- .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.

5. Incident Reporting

- .1 In this clause, “regulator” and “notifiable incident” have the same meaning as in the *Work Health and Safety Act 2011* (ACT).
- .2 In addition to any obligations under *WHS Legislation*, the Contractor must:
 - .1 notify the Principal and the *Principal’s Authorised Person* of any notifiable incident immediately after it notifies the regulator;
 - .2 provide the Principal and the *Principal’s Authorised Person* 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.
- .3 In addition to the obligations under paragraph .2, the Contractor must promptly notify the occurrence and furnish a written report to the Principal and the *Principal’s Authorised Person* 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 paragraphs .3.1, .3.2 or .3.3 above or a notifiable incident.

6. WHS Active Certification Policy

- .1 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).
- .2 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.

- .3 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.
- .4 Unless otherwise agreed by the parties, the costs of the Auditor referred to in clause 5.3 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.
- .5 Where all or part of the costs of the Auditor are not paid to the Principal in accordance with clause 5.4 of this Schedule any amount outstanding will be a debt due and payable by the Contractor to the Principal.

7. Smoke Free Workplace

- .1 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.

Schedule 18**Quality requirements**

1. Refer to clause 15 of the GC21 General Conditions of **Contract**
-

1. Quality System Requirements

- .1 The Contractor must:
 - .1 have in place and maintain a functioning quality management system (“QMS”) certified as meeting the Principal’s requirements for the award of current ACT Government prequalification and/or 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, and
 - .2 provide the *Principal’s Authorised Person* and Principal or Principal’s agent with access at all times to the Contractor’s QMS and each of the Subcontractor’s QMS to enable monitoring and quality auditing.
- .2 The implementation of QMS does not relieve the Contractor of the Contractor’s obligations under the Contract.
1. Specific quality requirements are included in the *Contract Documents*. Any QMS requirements set out in the *Principals Documents* will take precedence over the requirements of this Schedule 18, in the event of any inconsistency.

2. Project Quality Plan and Program of Work

- .1 The Contractor must prepare and submit to the *Principal’s Authorised Person* for direction as to its suitability a project quality plan (“*Project Quality Plan*”). The Contractor must submit the *Project Quality Plan* to the *Principal’s Authorised Person* not later than the time specified in the Contract for submission of the relevant document, and the *Project Quality Plan* must specify:
 - .1 the quality objectives to be attained for the project;
 - .2 the specific procedures, methods and work instructions to be applied;
 - .3 the proposed *Contract Program*;
 - .4 the procurement plan (materials and services);
 - .5 key staff and responsibilities;
 - .6 staff induction and training plan;
 - .7 the inspection and testing plan;
 - .8 schedule of forecast monthly payment claims (if applicable);
 - .9 schedule of proposed quality records to be submitted;
 - .10 audit program; and
 - .11 other measures necessary to meet the quality objectives including a method for changes and modifications to the *Project Quality Plan* as the project proceeds.
- .2 The *Project Quality Plan* must specify a *Contract Program* consistent with the *Contract* and which complies with the requirements of clause 22.2 of the GC21 General Conditions of Contract.

- .3 The Contractor must review the *Contract Program* each month and submit any revision for the *Principal's Authorised Person's* approval.
- .2 The Contractor must keep in the Contractor's site office a network diagram based on the *Contract Program* and maintain it so that it accurately depicts the progress of the work under the Contract.
- .3 The *Principal's Authorised Person* will notify the Contractor as to the suitability of the submitted *Project Quality Plan*. The plan may be taken as suitable if the *Principal's Authorised Person* has not responded to the Contractor to the contrary within 7 days of receiving the *Project Quality Plan*.
- .4 The approval by the *Principal's Authorised Person* of the Contractor's *Project Quality Plan* does not relieve the Contractor of complying with and demonstrating compliance with the *Contract Documents*.

EXAMPLE ONLY

Schedule 19

Pricing Schedule

Refer to clause 55 of the GC21 General Conditions of Contract

[Modify Pricing Schedule as necessary for the project and tendered response. Item 1 applies if the contract is lump sum. Item 2 applies if the contract is schedule of rates. Item 3 applies if there are provisional sums]

1. Schedule of Prices – lump sum / lump sum

Lump Sum

[Include Item 1 where the tender is for a lump sum.

Delete the text of Item 1 and write “not used” if the contract is wholly a schedule of rates contract.

This item allows for a small number of tendered rates to be included. These are useful where the quantity of specific items of work may vary.]

Lump sum Contract Price is: » \$

Provisional Sums

[Insert the Total of Provisional Sums (brought forward from tender].

Total of Provisional Sums: \$ »

Rate Items

[ensure that scope, payment methods and condition details are completed for all relevant Rate items.]

Item No.	Description	Quantity	Unit	Rate	Amount
3.	Rate Items				
3.X	»	»	»	\$	\$
3.X	»	»	»	\$	\$
Extended Total for Rate Items					\$

2. Schedule of Rates

[Include this item if the contract is schedule of rates. If this item is included, delete the text in item 1 "Lump Sum" and write "not used".

A Schedule of Rates is used where VALUATIONS of the work will be based primarily on tendered rates. This is useful where the quantities for a significant part of the expected work may vary, e.g. pipelaying or earthworks in a range of materials.

The schedule allows for some lump sum items to BE INCLUDED.

Item No.	Description	Quantity	Unit	Rate	Amount
1	All work and obligations under the Contract NOT INCLUDED ELSEWHERE in this Item.	1	Item	Lump Sum	\$
2	Rate items:				
2.1	»	»	»	\$	\$
3	Lump Sum items:				
3.1	»	1	Item	Lump Sum	\$
4	Total of Provisional Sums				\$ »
Total of Schedule of Rates					\$

3. Provisional Sums

[Include this item if provisional sums are used.]

Item No.	Description	Provisional Sum
A.	»	\$ »
B.	»	\$ »
Total of Provisional Sums		\$ »

EXAMPLE ONLY

Schedule 20

Personal Property Securities

Refer to clause 58.11 of the GC21 General Conditions of Contract

.1 In these clauses:

PPS Act means The *Personal Property Securities Act 2009* (Cth).

PPS Law has the meaning given in clause 79 **Definitions**

Security Interest means a security interest for the purposes of the PPS Law

.2 The Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a Security Interest, the Contractor must do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the *PPS Law* for the purposes of:

.1 ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;

.2 enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

.3 enabling the Principal to exercise rights in connection with the Security Interest and this Contract.

.3 The Contractor acknowledges that the Principal may register one or more financing statement(s) on the Personal Property Securities Register established under s147 the PPS Act.

.4 The Contractor:

.1 waives its rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPS Act;

.2 agrees that the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPS Act is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPS Act; and

.3 waives its right to receive notice of a verification statement under section 157 of the PPS Act.

Schedule 21

Site Requirements

Refer to clause 34.1 of the GC21 General Conditions of Contract

8. Signboard

- .1 Prior to commencement of construction work on Site, the Contractor must provide a signboard(s) complying with the Principal's requirements and approved by the *Principal's Authorised Person*. The Contractor must erect the signboard(s) at or near ground level on the Site where directed by the *Principal's Authorised Person*. The signboard(s) must be maintained by the Contractor in good condition until *Completion*, then dismantled and removed by the Contractor.
- .2 The signboards shall remain the property of the Contractor.
- .3 The Contractor must obtain approval from the *Principal's Authorised Person* for any Subcontractors' signboards. No other Contractor's signs or Subcontractor's signs are permitted on the Site, without the prior approval of the *Principal's Authorised Person*.
- .4 The signboard must comply with section 308 of the *Work Health and Safety Regulations 2011 (ACT)*.

9. Site Office and Telephone

- .1 The Contractor must, within 10 *Business Days* of being given possession of the Site, provide an approved temporary office (including landline telephone service) for the use of the *Principal's Authorised Person*. The office must have a suitably secured entrance door, opening windows on at least one side and finished to the satisfaction of the *Principal's Authorised Person*. The office is to be located within the Contractors site office and adjacent to the Contractors Site Managers office, accommodation. The office must be of a size to adequately accommodate 3 of the Principal's representatives.
- .2 The Contractor must, at its expense, maintain the office (including landline telephone service) in good order and clean condition with suitable furniture, including desks, chairs, filing cabinets suitable for the accommodation of 3 persons and with electricity connected for the duration of the Works. The Contractor must obtain the permission of the Principal for removal of the office prior to *Completion* and must remove the office on *Completion*, unless otherwise directed by the *Principal's Authorised Person*. The Contractor is responsible for the cost of providing electricity to the office.
- .3 The Contractor is responsible for all costs associated with installation, rental, maintenance and removal of the telephone service, but is not responsible for the cost of calls.

10. Protection and Recovery of Survey Control Marks

- .1 Prior to commencing work on the Site the Contractor must provide the Surveyor -General of the Australian Capital Territory with details of the area of activity and the date of commencement of earth works. The Contractor must follow any instructions given by the Surveyor-General regarding the identification and preservation of surface and sub-surface ACT government survey marks within the area of activity. The Surveyor-General will carry out any mark recovery surveys considered necessary.
- .2 The Contractor must submit to the *Principal's Authorised Person* upon request by the *Principal's Authorised Person* written evidence that this clause has been complied with.

11. Asbestos

- .1 The Contractor must immediately report all asbestos found on the Site to the *Principal's Authorised Person*. The Contractor must employ a suitably qualified person to dispose of the asbestos in accordance with *WHS Legislation*.

12. Adjoining Property

- .1 The Contractor must arrange a joint inspection with the *Principal's Authorised Person* and the owners and occupants of adjoining properties prior to commencement of any work on the Site and again on completion of the Works.
 - .2 At the initial inspection, the Contractor must make detailed records of conditions existing within the adjoining properties, especially structural defects and other damage or defacement. The Contractor must arrange for not less than two 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 work. The Contractor must provide one copy endorsed by the owner or occupier of each record to the *Principal's Authorised Person* and must retain the other endorsed copy on the Site.
 - .3 The Contractor must give notice of intention to commence work to owners and/or occupants of adjoining property, and give them an outline description of the type and extent of the work.
- .1 The Contractor must not demolish or damage adjoining property shown on the *Contractor's Documents* as encroachments on the Site.
 - .2 If the Contractor becomes aware of:
 - .1 an encroachment of the adjoining property on to the Site; or
 - .2 encroachments of existing Site structures on to adjoining propertyand if those encroachments are not referred to in the Contract, the Contractor must obtain instructions from the *Principal's Authorised Person* immediately as to how those encroachments are to be dealt with by the Contractor, and follow those instructions once provided.

Attachments

Attachments 1, 2A, 2B, 3 and 4 do not form part of the Contract. If specified as being "Contract Documents" attachment 5 and 6 do form part of the Contract.

Attachment 1	GC21 Start-up Workshop
Attachment 2A	Performance Evaluation (Example)
Attachment 2B	Performance Evaluation
Attachment 3	Performance Evaluation Record
Attachment 4	Ethical Suppliers Declaration
Attachment 5	Labour Relations, Training and Workplace Equity Plan
Attachment 6	Local Industry Participation Plan

Attachment 1

The GC21 Start-up Workshop

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Attachment 1 is intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

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

Agenda

The agenda should include:

- welcome by the facilitator who outlines the workshop purpose, agenda; and guidelines;
- overview of the Contract;
- introduction of all participants;
- opening statements by key participants;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- presentation by the Contractor of activities of interest including *Contract Program* and management plans;
- identification of key concerns and solutions;
 - opportunities for innovation;
 - monthly reporting requirement on Labour Relations, Training and Workplace Equity Plans
 - secure local jobs requirements when engaging subcontractors
- - risk and issue management'
- closing comments and feedback; and
- close of workshop.

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

Attachment 2A

2A Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 2B and 3 provide a structure for evaluation and discussion.

Attachment 2A indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds. They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract.

Use Attachment 2B to develop a Contract-specific Performance Evaluation form and Attachment 3 to record ratings and identify trends.

<i>Contract name:</i>	Contract Name:	Rating system 5 excellent 4 above expectation 3 meeting expectation 2 below expectation 1 unsatisfactory
<i>Contract number:</i>	Contract No.	
<i>Date:</i>	

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

Contract Name: » [Insert]

Contract No: » [Insert]

-
- compliance with Secure Local Jobs Code including quarterly reporting on the LRTWE
-

EXAMPLE ONLY

Attachment 2B

2B Performance Evaluation

Insert in the form below topics that are important to the Contract.

Contract name: Contract Name:
 Contract number: Contract No.
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

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

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

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

Attachment 3

Performance Evaluation Record

Insert the Contract-specific topics. Record the participants' ratings for each topic to illustrate trends in the Team's performance.

Contract name: Contract Name:
 Contract number: Contract No.
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Meeting	Number Month Year	1	2	3	4	5	6	7	8	9	10	11	12

TOPIC													
Communication	1												
	2												
	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												
	1												
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	3												
	4												
	5												
	1												
	2												
	3												
	4												
	5												

Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

Contract name: Contract Name:

Contract number: ... Contract No.

Date:

Rating system

5 excellent

4 above expectation

3 meeting expectation

2 below expectation

1 unsatisfactory

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

Deteriorating Performance

Communication	5											
	4	■										
	3	■	■									
	2	■	■	■	■	■						
	1	■	■	■	■	■	■	■				

Steady Performance

Communication	5											
	4											
	3	■	■	■	■	■	■	■				
	2	■	■	■	■	■	■	■				
	1	■	■	■	■	■	■	■				

Improving Performance

Communication	5					■	■					
	4		■	■	■	■	■					
	3	■	■	■	■	■	■					
	2	■	■	■	■	■	■					
	1	■	■	■	■	■	■					

Attachment 4**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).

“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]

[Print name of person making the declaration]

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

Before me:

[Signature of person before whom the declaration is made]

[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:
- in a country or place outside Australia; and
 - authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 - exercising his or her function in that place
- Employee of the Commonwealth who is:
- in a country or place outside Australia; and
 - authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 - 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:
- an officer; or
 - a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
 - 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:
- the Parliament of the Commonwealth; or
 - the Parliament of a State; or
 - a Territory legislature; or
 - 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:
- the Commonwealth or a Commonwealth authority; or
 - a State or Territory or a State or Territory authority; or
 - 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

EXAMPLE ONLY

Attachment 5

**Labour Relations, Training and
Workplace Equity Plan**

[If required, INSERT version of LRTWE from tender or as negotiated. If LRTWE is part of the Contract Documents, whether attached or not, consideration may be given to any confidential text requirements]

EXAMPLE ONLY

Attachment 6

Local Industry Participation Plan

[If required, INSERT version of LIP plan from tender or as negotiated. If LIP plan is part of the Contract Documents, whether attached or not, consideration may be given to any confidential text requirements]

EXAMPLE ONLY