



### Class 3 Government Contract with the Private Sector (Over \$5 M)

<b>1. Document Numbers</b>	
D19/50343	
<b>2. Name and Address of the contractor</b>	
Name: Ford Civil Contracting Pty Ltd Address:	
<b>3. Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract</b>	
<p>The contractor has listed the following subcontractors:</p> <ul style="list-style-type: none"> <li>• J &amp; E Asphalt Services - 29 Princes St, Riverstone NSW 2765</li> <li>• Elton Consulting - Level 6, 332-342 Oxford St, Bondi Junction NSW 1355</li> <li>• Straight Talk - Level 13, 255 Pitt Street, Sydney NSW 2000</li> <li>• T and T Concrete (NSW) Pty Ltd - 22/1 Adept Lane, Bankstown NSW 2200</li> <li>• Australian Civil Structures</li> <li>• Tyrrells Property Inspections Pty Ltd - PO Box 337 Gladesville NSW 1675</li> <li>• Australian Dilapidations - PO Box 24 Galston NSW 2159</li> <li>• Twin Connect Pty Ltd - Unit 4/40 Marigold Street, Revesby NSW 2212</li> <li>• Macarthur Gas Pty Ltd - 16 Hargraves Place, Wetherill Park NSW 2164</li> <li>• Dekker Landscapes Pty Ltd - Unit 9/36 Abbott Rd, Seven Hills NSW 2147</li> <li>• Co-ordinated Landscapes - Level 1/33-55 Belmont Street, Sutherland NSW 2232</li> <li>• Mansour Paving - 414 West Botany St, Rockdale NSW 2216</li> <li>• Sydney Brick Paving Co. - Suite 207/68 Alexander Street, Crows Nest NSW 2065</li> <li>• Melocco Stone Pty Ltd - 1 Booth St, Annandale NSW 2038</li> <li>• Victorian Bluestone Quarries - 410/422 Francis Street, Brooklyn VIC 3012</li> <li>• MGI Piling - 9 Enterprise Drive, Glendenning NSW 2761</li> <li>• Guidance Road Management</li> <li>• Corrigan Electrics Pty Ltd. - P.O Box 315 Round Corner 2158</li> <li>•</li> </ul>	
<b>4. The date on which the contract became effective and the duration of the contract</b>	
Effective Date: 28 May 2019	Duration: Superable 7 Portions - Completion is 7 June 2022 for 7 Portions if apply
<b>5. Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract</b>	
Bondi Junction Cycleway Construction Services - undertake a thorough initial site analysis of all the service pits, attain any approvals required and assume the construction of the Bondi Junction Cycleway.	

<p><b>6. The estimated amount payable to the contractor under the contract</b></p>
<p>AUD \$ 26,046,150.90 - Note the contract is set up on seven Separable Portions as described in Clause 1.1.</p>
<p><b>7. A description of any provisions under which the amount payable to the contractor may be varied</b></p>
<p>The Contractor shall not vary WUC except as directed in writing.  The Superintendent, before the date of practical completion, may direct the Contractor to vary WUC by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:</p> <ul style="list-style-type: none"> <li>(a) increase, decrease or omit any part;</li> <li>(b) change the character or quality;</li> <li>(c) change the levels, lines, positions or dimensions;</li> <li>(d) carry out additional work;</li> <li>(e) demolish or remove material or work no longer required by the Principal.</li> </ul>
<p><b>8. A description of any provisions with respect to the renegotiation of the contract</b></p>
<p><b>A provisional</b> sum included in the Contract shall not itself be payable by the Principal but where pursuant to a direction the work or item to which the provisional sum relates is carried out or supplied by the Contractor, the work or item shall be priced by the Superintendent, and the difference shall be added to or deducted from the contract sum.</p> <p>Where any part of such work or item is carried out or supplied by a subcontractor, the Superintendent shall allow the amount payable by the Contractor to the subcontractor for the work or item, disregarding:</p> <ul style="list-style-type: none"> <li>(a) any damages payable by the Contractor to the subcontractor or vice versa; and</li> <li>(b) any deduction of cash discount for prompt payment,</li> <li>(c) the contract sum will be reduced by the relevant provisional sum;</li> <li>(d) the Principal may itself carry out or engage another contractor to carry out the relevant work or item the subject of the deleted provisional sum; and</li> <li>(e) the Contractor is not entitled to claim, and the Principal will not be liable upon any claim by the Contractor arising out of, or in any way in connection with, the deletion of the relevant work or item the subject of the deleted provisional sum.</li> </ul>
<p><b>9. In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed</b></p>
<p>Request for Tender:  Evaluation Criteria:  Methodology  Recent Relevant Experiences  Proposed Personnel, Including Subcontractors and Consultants  Program and Staging  Price</p>
<p><b>10. A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services</b></p>
<p>N/A</p>

Date 28 / 5 /2019



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# Bondi Junction Cycleway Construction Contract

Ref: A18\0443

**Waverley Council**  
ABN 12 502 583 608

and

**Ford Civil Contracting Pty Ltd**  
ACN 002 542 814

**Interstate offices**  
Melbourne Canberra

Affiliated offices around the world through the  
Advoc Asia network - www.advocasia.com

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# Formal Instrument of Agreement

DATE 28 / 5 /2019

## BETWEEN

**Waverley Council ABN 12 502 583 608**  
of 55 Spring Street, Bondi Junction NSW 2022

**(Principal)**

## AND

**Ford Civil Contracting Pty Ltd ACN 002 542 814**  
of 9 Hattersley Street, Arncliffe NSW 2205

**(Contractor)**

## RECITALS

- A. The *Principal* wishes to engage the *Contractor* to construct *the Works*.
- B. The *Contractor* has agreed to accept the engagement and construct *the Works* in accordance with the terms of the *Contract*.

## IT IS AGREED

- 1. The *Contractor* agrees to carry out and complete its obligations in accordance with the *Contract*.
- 2. In consideration of the *Contractor* performing its obligations under the *Contract*, the *Principal* agrees to pay the *Contractor* the *contract sum* and perform its other obligations in accordance with the *Contract*.




Maddocks


EXECUTED as an agreement by the parties:

DATED: 28 MAY 2019

EXECUTED for and on behalf of )  
Waverley Council ABN 12 502 583 )  
608 by PETER MONKS but )  
not so as to incur any personal liability )  
in the presence of: )

  
.....  
Signature of witness )

RODHAN NAUGHTON  
.....  
Name of witness (block letters)

  
.....  
Signature ACTING GENERAL  
MANAGER

EXECUTED by Ford Civil Contracting )  
Pty Ltd ACN 002 542 814 in )  
accordance with section 127(1) of the )  
Corporations Act 2001 (Cth) by )  
authority of its directors: )

  
.....  
Signature of director )

Susan Ford.  
.....  
Name of director (block letters)

  
.....  
Signature of company secretary )

ALAN GORDON  
.....  
Name of company secretary (block  
letters)

Date 28 / 5 /2019

## Amended from AS 4000-1997 Australian Standard™

**AS 4000 - 1997  
Australian Standard™**

Incorporating:  
Amdt 1 – 1999  
Amdt 2 - 2000  
Amdt 3—2005

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Construction Industry Engineering Services Group  
Construction Policy Steering Committee  
Electricity Supply Association of Australia  
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Institution of Professional Engineers, New Zealand  
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# Australian Standard General Conditions of Contract

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## 1. Interpretation and construction of Contract

### 1.1 Definitions and interpretation

In the *Contract* except where the context otherwise requires:

**Item** means an *Item* in Annexure Part A.

**approval** means any licence, permit, consent, approval, determination, certificate or other requirement of any *authority*, or under any other applicable *legislative requirement*, which shall be obtained or satisfied to:

- (a) carry out *WUC*; or
- (b) occupy or use *the Works* for their intended purpose, as stated in, or reasonably inferable from, the *Contract*,

and to remove any doubt, includes the *REF*.

**authority** includes any governmental or semi-governmental or local government authority, administrative or judicial person or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality, any private electricity, telecommunications, gas or other utility company or any other person having statutory rights in connection with the *site*, *the Works* or *WUC*.

**bill of quantities** means a document named therein as a *bill of quantities* issued to tenderers by or on behalf of the *Principal*, stating estimated quantities of *work* to be carried out.

**business day** means any day other than:

- (a) a Saturday, Sunday or public holiday in the State of New South Wales; or
- (b) in respect of subclauses 37.2 and 37.4 only, 27, 28, 29, 30 or 31 December.

**certificate of practical completion** has the meaning in subclause 34.6.

**claim** includes any claim (including for any increase in the *contract sum*, for payment of money (including damages) or for an *EOT*):

- (a) under, arising out of, or in any way in connection with, the *Contract*, including any *direction* of the *Superintendent*;
- (b) arising out of, or in any way in connection with, *WUC*, *the Works* or either party's conduct, including before the *Contract Date*; or
- (c) otherwise at law or in equity, including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation;
  - (iii) for restitution;

- (iv) on a quantum meruit;
- (v) under quasi contract; or
- (vi) for unjust enrichment.

**compensable cause** means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
- (b) those listed in Item 26.

**construction program** has the meaning in clause 32.

**construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*.

**contamination** means any waste, *pollution*, *hazardous substance*, toxic substance, dangerous good, hazardous waste or special waste, or any constituent of any such substance or waste in any solid, liquid or gas, including acid sulphate soils.

**Contract** means the contractual relationship between the parties constituted by:

- (a) the *formal instrument of agreement*;
- (b) these *General Conditions of Contract*;
- (c) Annexures Part A to F (inclusive) to these *General Conditions of Contract*; and
- (d) the *Project Requirements*.

**Contract Date** means the date of execution of the *formal instrument of agreement*.

**contract sum** means the *SP1 Sum*, as adjusted in accordance with the *Contract*.

**Contractor** means the person bound to carry out and complete *WUC*.

**date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender.

**date for practical completion** means:

- (a) where *Item 7(a)* provides a date for *practical completion*, the date;
- (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,

but if any *EOT* for *practical completion* is directed by the *Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom.

**date of practical completion** means:

- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date.

**deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6.

**defects** has the meaning in clause 35 and includes omissions.

**defects liability period** has the meaning in clause 35.

**dispute** has the meaning in clause 42.

**direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**environment** has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

**EOT (from 'extension of time')** has the meaning in subclause 34.3.

**excepted risk** has the meaning in subclause 14.3.

**final certificate** has the meaning in subclause 37.4.

**final payment** has the meaning in clause 37.

**final payment claim** means the *final payment claim* referred to in subclause 37.4.

**final payment claim reference date** means the date that is the later of:

- (a) 20 *business days* after the expiry of the last *defects liability period* to expire;
- (b) the date on which the *Contractor* has provided the items required under subclause 38.1(c); and
- (c) the date on which the *Contractor* has complied with subclauses 5.1, 5.6, 19.1 and 32 and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or a condition precedent to, any *reference date* arising under the *Contract*.

**formal instrument of agreement** means the formal instrument of agreement to which these *General Conditions of Contract* are attached.

**GST Amount** has the meaning given in subclause 44.3.

**GST Law** has the meaning given in subclause 44.1.

**Intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right.

**last certificate of practical completion** means:

- (a) where there are no *separable portions*, the *certificate of practical completion*; and
- (b) where there are *separable portions*, the *certificate of practical completion* issued in respect of the last *separable portion* to achieve *practical completion*.

**latent condition** has the meaning in subclause 25.1;

**legal challenge** means:

- (a) an application to any court or tribunal by a third party against either party in relation to preventing or restraining the carrying out or the continuance of *WUC*; or
- (b) an injunction or order from any court or tribunal preventing or restraining the carrying out or the continuance of *WUC* either absolutely or conditionally upon the application of a third party.

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, *approvals* and requirements of *authorities*;
- (c) fees and charges payable in connection with the foregoing (including long service levies payable in respect of *WUC* and *the Works* under the *Building and Construction Industry Long Service Payments Act 1986* (NSW)); and
- (d) each measure, action, standard or precaution to mitigate the impact or effect of *the Works* or *WUC* on the *environment*, as set out in the *REF*.

**payment claim** has the meaning given in subclause 37.1.

**payment schedule** has the meaning given in subclause 37.2.

**pollution** includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance that makes or may make the *environment* permanently or temporarily:

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

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

**PPS Law** means:

- (a) the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

**practical completion** is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor *defects*:
  - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
  - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not prejudice the convenient use of *the Works*;



- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied.

***practical completion payment claim reference date*** means the date that is the later of:

- (a) the date on which the *last certificate of practical completion* is issued;
- (b) the date on which the *Contractor* has provided the items required under subclause 38.1(b); and
- (c) the date on which the *Contractor* has complied with subclauses 5.1, 5.6, 19.1 and 32 and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or a condition precedent to, any *reference date* arising under the *Contract*.

***prescribed notice*** has the meaning in subclause 41.1 .

***Principal*** means the *Principal* stated in *Item 1*.

***progress certificate*** has the meaning in subclause 37.2.

***progressive payment claim reference date*** means, in respect of each month, until the earlier of:

- (a) termination of the *Contract*;
- (b) the date that the *Principal* exercises its rights under subclause 39.4(a) to take the whole of *WUC* out of the hands of the *Contractor*; and
- (c) the date on which the *last certificate of practical completion* is issued,

the date of that month (if any) that is the later of:

- (d) the date of that month specified in *Item 7A*;
- (e) the date of that month on which the *Contractor* has provided the items required under subclause 38.1(a) within the time required under subclause 38.1(a); and
- (f) the date of that month on which the *Contractor* has complied with subclauses 5.1, 5.6, 19.1 and 32 and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or a condition precedent to, any *reference date* arising under the *Contract*.

***Project Requirements*** means the document set out in Annexure Part F, including any drawings, specifications, standards and codes specified in that document.

***provisional sum*** means, for each item or *work* to which the *provisional sum* relates (as identified in *Item 9A*), the relevant sum stated in *Item 9A*.

***public liability policy*** has the meaning in clause 17.

***qualifying cause of delay*** means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*), excluding any

failure of the *Principal* to review the pedestrian traffic management and control plans within the time required and circumstances referred to in *Item 23* in respect of the relevant *separable portion*; or

- (b) those events or circumstances listed in *Item 23*.

**REF** means the document titled “Bondi Junction Cycleway and Streetscape Upgrade Review of Environmental Factors” (Report Number J180351 RP1, Version v1 Final, dated 18 January 2019 and prepared by EMM Consulting), that was prepared in order to assist the *Principal* to satisfy its environmental assessment obligations under Division 5.1 of Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) in relation to the *Works* and *WUC*.

**reference date** means any one or more of the following:

- (a) a progressive payment claim reference date;
- (b) a practical completion payment claim reference date; and
- (c) the final payment claim reference date.

**schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices.

**security** means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
- (e) an approved unconditional undertaking (the form in Annexure Part C is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the *security*.

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

**selected subcontract work** has the meaning in subclause 9.3.

**selected subcontractor** has the meaning in subclause 9.3.

**separable portion** means:

- (a) the *SP1 Works*;
- (b) if the *SP2 Notice to Proceed* is issued under subclause 2.7(a), the *SP2 Works*;
- (c) if the *SP3 Notice to Proceed* is issued under subclause 2.8(a), the *SP3 Works*;

- (d) if the *SP4 Notice to Proceed* is issued under subclause 2.9(a), the *SP4 Works*;
  - (e) if the *SP5 Notice to Proceed* is issued under subclause 2.10(a), the *SP5 Works*;
  - (f) if the *SP6 Notice to Proceed* is issued under subclause 2.11(a), the *SP6 Works*;
  - (g) if the *SP7 Notice to Proceed* is issued under subclause 2.12(a), the *SP7 Works*;
- and

a portion of *the Works* identified as such in the *Contract* or by the *Superintendent* under clause 4.

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

**SP1 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP1 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(a) of Annexure Part F.

**SP2 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP2 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(b) of Annexure Part F.

**SP3 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP3 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(c) of Annexure Part F.

**SP4 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP4 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(d) of Annexure Part F.

**SP5 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP5 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(e) of Annexure Part F.

**SP6 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP6 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(f) of Annexure Part F.

**SP7 Activities** means all work which the *Contractor* is or may be required to carry out to complete the *SP7 Works* in accordance with the *Contract* (including *variations*, remedial work, *construction plant* and *temporary works*), including as set out in section 1.5(g) of Annexure Part F.

**SP2 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.7(a) directing the *Contractor* to proceed with the *SP2 Activities*, which is titled "Notice to Proceed with SP2 Activities".

**SP3 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.8(a) directing the *Contractor* to proceed with the *SP3 Activities*, which is titled "Notice to Proceed with SP3 Activities".

**SP4 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.9(a) directing the *Contractor* to proceed with the *SP4 Activities*, which is titled “Notice to Proceed with SP4 Activities”.

**SP5 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.10(a) directing the *Contractor* to proceed with the *SP5 Activities*, which is titled “Notice to Proceed with SP5 Activities”.

**SP6 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.11(a) directing the *Contractor* to proceed with the *SP6 Activities*, which is titled “Notice to Proceed with SP6 Activities”.

**SP7 Notice to Proceed** means a written notice issued by the *Principal* to the *Contractor* under subclause 2.12(a) directing the *Contractor* to proceed with the *SP7 Activities*, which is titled “Notice to Proceed with SP7 Activities”.

**SP1 Sum** means the amount stated in *Item 6A* for *separable portion 1*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP2 Sum** means the amount stated in *Item 6A* for *separable portion 2*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP3 Sum** means the amount stated in *Item 6A* for *separable portion 3*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP4 Sum** means the amount stated in *Item 6A* for *separable portion 4*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP5 Sum** means the amount stated in *Item 6A* for *separable portion 5*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP6 Sum** means the amount stated in *Item 6A* for *separable portion 6*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP7 Sum** means the amount stated in *Item 6A* for *separable portion 7*, including relevant *provisional sums*, as adjusted in accordance with the *Contract*.

**SP1 Works** means that part of *the Works* described in Annexure Part A as *separable portion 1*.

**SP2 Works** means that part of *the Works* described in Annexure Part A as *separable portion 2*.

**SP3 Works** means that part of *the Works* described in Annexure Part A as *separable portion 3*.

**SP4 Works** means that part of *the Works* described in Annexure Part A as *separable portion 4*.

**SP5 Works** means that part of *the Works* described in Annexure Part A as *separable portion 5*.

**SP6 Works** means that part of *the Works* described in Annexure Part A as *separable portion 6*.

**SP7 Works** means that part of *the Works* described in Annexure Part A as *separable portion 7*.

**Superintendent** means the person stated in *Item 5* as the *Superintendent* or other person from time to time appointed in writing by the *Principal* to be the *Superintendent* and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*.

**Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21.

**supporting documentation** means:

- (a) documentary evidence (to the reasonable satisfaction of the *Principal*) of the payment of moneys due and payable to:
  - (i) workers of the *Contractor* and its subcontractors; and
  - (ii) subcontractors,in respect of *WUC* performed up to the date of submission;
- (b) a duly completed and executed statutory declaration in the form of Annexure Part E by the *Contractor*, or where the *Contractor* is a corporation, by a representative of the *Contractor* who is in a position to know the facts attested to, completed to a date not earlier than the date of its submission; and
- (c) a duly completed and executed *supporting statement* dated no earlier than the date of submission of the *supporting statement*.

**supporting statement** has the meaning given in section 13(9) of the *Security of Payment Act*.

**survey mark** in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*.

**temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*.

**test** has the meaning in subclause 30.1 and includes examine and measure.

**the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal* and includes:

- (a) the *SP1 Works*;
- (b) if the *SP2 Notice to Proceed* is issued under subclause 2.7(a), the *SP2 Works*;
- (c) if the *SP3 Notice to Proceed* is issued under subclause 2.8(a), the *SP3 Works*;
- (d) if the *SP4 Notice to Proceed* is issued under subclause 2.9(a), the *SP4 Works*;
- (e) if the *SP5 Notice to Proceed* is issued under subclause 2.10(a), the *SP5 Works*;
- (f) if the *SP6 Notice to Proceed* is issued under subclause 2.11(a), the *SP6 Works*; and
- (g) if the *SP7 Notice to Proceed* is issued under subclause 2.12(a), the *SP7 Works*.

**variation** has the meaning in clause 36.

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

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

**work** includes the provision of materials.

**working day** means any day other than a:

- (a) Sunday;
- (b) public holiday;
- (c) Saturday immediately after a Friday public holiday; or
- (d) Saturday immediately before a Monday public holiday,

in the State of New South Wales.

**WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works* and includes:

- (a) the *SP1 Activities*;
- (b) if the *SP2 Notice to Proceed* is issued under subclause 2.7(a), the *SP2 Activities*;
- (c) if the *SP3 Notice to Proceed* is issued under subclause 2.8(a), the *SP3 Activities*;
- (d) if the *SP4 Notice to Proceed* is issued under subclause 2.9(a), the *SP4 Activities*;
- (e) if the *SP5 Notice to Proceed* is issued under subclause 2.10(a), the *SP5 Activities*;
- (f) if the *SP6 Notice to Proceed* is issued under subclause 2.11(a), the *SP6 Activities*; and
- (g) if the *SP7 Notice to Proceed* is issued under subclause 2.12(a), the *SP7 Activities*,

and like words have a corresponding meaning.

## 1.2 General interpretation

In the *Contract*:

- (a) references to days (other than *business days*) mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) except in respect of the carrying out of *WUC* or the achievement of *practical completion*, time for doing any act or thing under the *Contract* shall, if it ends on a day that is not a *business day*, be deemed to end on the day next following which is a *business day*;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context and words importing a gender include every gender;

- (e) communications between the Principal, the Superintendent and the Contractor shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in Item 8;
- (g) unless otherwise provided, prices are in the currency in Item 9(a) and payments shall be made in that currency at the place in Item 9(b);
- (h) the law governing the Contract, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8* and, subject to clause 42, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction (and courts entitled to hear appeals from those courts);
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the *Contract* or any part;
- (j) the words "includes" and "including" (and any variants of those words) shall be read as if followed by the words "without limitation";
- (k) references to "shall" will (unless the context otherwise requires) be construed as references to "must";
- (l) a reference to the *Contract* or to any other agreement, document or instrument is deemed to include a reference to the *Contract* or such other agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (m) a reference to any legislation or to any section or provisions of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by laws, regulations of and other statutory instruments issued under that legislation, section or provision; and
- (n) a reference to any body or agency (***Original Body***) which no longer exists or has been reconstituted, renamed or replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body or agency which most closely serves the purposes or objects of the *Original Body*.

### 1.3 Miscellaneous

- (a) The *Contract* constitutes the entire, final and concluded agreement and understanding between the parties and will take effect according to its tenor despite:
  - (i) any previous representations, correspondence or prior agreement in conflict or at variance with the *Contract*; or
  - (ii) any correspondence or other documents relating to the subject matter of the *Contract* which may have passed between the parties prior to the *Contract Date* and which are not included in the *Contract*.
- (b) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the *Contract*.
- (c) If any provision or part of any provision in the *Contract* is, in any way, illegal, void, invalid or unenforceable, it is to be read down so as to be legal, valid and

enforceable. If this is not possible, the provision (or where possible, the offending part) is to be severed from the *Contract* to the extent only of such illegality, voidness, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions (or parts of these provisions) which will continue in full force and effect.

- (d) *The Works* and *WUC* include, and the *Contractor* is deemed to have made allowance in the *contract sum* and *date for practical completion* for each *separable portion*, the provision and performance of, all *work*, services, activities, materials, *construction plant* and *temporary works* which are not expressly mentioned in the *Contract* but which should reasonably have been anticipated or inferred by a reasonably competent and experienced contractor at the *Contract Date* as being necessary or desirable for the performance of *WUC* had such contractor inspected:
  - (i) all written information made available by or on behalf of the *Principal* to the *Contractor* for the purpose of tendering, or otherwise in connection with the *Contract*;
  - (ii) all *Contract* documents;
  - (iii) all information relevant to risk allocation under the *Contract*, including the *contract sum* and the *date for practical completion* for each *separable portion*, which is reasonably obtainable by the making of reasonable enquiries; and
  - (iv) the *site* and its near surrounds.
- (e) All obligations to indemnify under the *Contract* survive termination of the *Contract*.
- (f) It is not necessary for the *Principal* to incur expense or to make any payment before enforcing a right of indemnity under the *Contract*.
- (g) The *Contract* may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes an original of the *Contract*, all of which together constitute one agreement.
- (h) Subject to any express provision in the *Contract* to the contrary:
  - (i) a provision of the *Contract* which says that the *Principal* or the *Superintendent* "may" do or not do something is not to be construed as imposing an obligation on the *Principal* or the *Superintendent* to do or not do that thing; and
  - (ii) there will be no procedural or substantive limitation upon the manner in which the *Principal* or the *Superintendent* may exercise any discretion, power or entitlement conferred by the *Contract*.
- (i) Without limiting subclause 1.3(h), neither the *Principal* nor the *Superintendent* will be under any obligation to exercise any discretion, power or entitlement, for the benefit of the *Contractor* or as required by any legal doctrine which in any way limits the express words used in the provision of the *Contract* conferring the discretion, power or entitlement.



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## **2. Nature of Contract**

### **2.1 Performance and payment**

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for *work* for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

### **2.2 Bill of quantities**

The Alternative in *Item* 10(a) applies.

#### ***Alternative 1***

A *bill of quantities* forms part of the *Contract* and shall be priced in accordance with subclause 2.3.

#### ***Alternative 2***

A *bill of quantities* does not form part of the *Contract* and shall not be priced in accordance with subclause 2.3 unless so stated in *Item* 10(b).

### **2.3 Priced bill of quantities**

Where a *bill of quantities* is to be priced:

- (a) all items included in the *bill of quantities* shall be priced and extended by the *Contractor* and the prices as extended shall on addition equal the sum accepted by the *Principal* for carrying out the whole of the *work* to which the *bill of quantities* relates;
- (b) the *Contractor* shall lodge the *bill of quantities* so priced and extended with the *Superintendent* before the expiration of the time for lodgement stated in *Item* 10(c) or such further time as may be directed by the *Superintendent* from time to time;
- (c) notwithstanding any other provision of the *Contract*, the *Contractor* shall not be entitled to payment until the *Contractor* has lodged the *bill of quantities* so priced and extended.

If the aggregate amount in a priced *bill of quantities* does not equal the sum accepted for the *work*, the subject of the *bill of quantities*, the *Superintendent* shall (unless the parties agree within 7 days of notification) determine an appropriate correction of errors and inconsistencies in rates and prices therein, so that the aggregate amount equals such sum.

### **2.4 Quantities**

Quantities in a *bill of quantities* or *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an *item* required to perform the *Contract* being greater or less than the quantity shown in a *bill of quantities* which forms part of the *Contract* or *schedule of rates*.

## 2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an *item* required to perform the *Contract* is greater or less than the quantity shown in a *bill of quantities* which forms part of the *Contract* or *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the *item*, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the *item*, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 11*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *bill of quantities* or *schedule of rates* omits an *item* which should have been included, the *item* shall be a deemed *variation*.

Notwithstanding the preceding provisions of this subclause in respect of a *bill of quantities*, a *variation* shall not be deemed for actual quantities of an *item* pursuant to paragraph (a), or for an omitted *item* or any adjustment made for actual quantities of an *item* pursuant to paragraph (b), if the difference, the value of the omitted *item* or the adjustment respectively is less than \$400.

## 2.6 SP1 Activities, SP2 Activities, SP3 Activities, SP4 Activities, SP5 Activities, SP6 Activities and SP7 Activities

- (a) The parties acknowledge and agree that *WUC* has been divided into:
  - (i) the *SP1 Activities*;
  - (ii) if the *SP2 Notice to Proceed* is issued in accordance with subclause 2.7(a), the *SP2 Activities*;
  - (iii) if the *SP3 Notice to Proceed* is issued in accordance with subclause 2.8(a), the *SP3 Activities*;
  - (iv) if the *SP4 Notice to Proceed* is issued under subclause 2.9(a), the *SP4 Activities*;
  - (v) if the *SP5 Notice to Proceed* is issued under subclause 2.10(a), the *SP5 Activities*;
  - (vi) if the *SP6 Notice to Proceed* is issued under subclause 2.11(a), the *SP6 Activities*; and
  - (vii) if the *SP7 Notice to Proceed* is issued under subclause 2.12(a), the *SP7 Activities*.
- (b) The *Contractor* acknowledges and agrees:
  - (i) that, as at the *Contract Date*, *WUC* is the *SP1 Activities* only;
  - (ii) to commence the *SP1 Activities* immediately after the *Contract Date*;

- (iii) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP2 Activities* unless and until the *Superintendent* issues the *SP2 Notice to Proceed* in accordance with subclause 2.7(a);
  - (iv) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP3 Activities* unless and until the *Superintendent* issues the *SP3 Notice to Proceed* in accordance with subclause 2.8(a);
  - (v) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP4 Activities* unless and until the *Superintendent* issues the *SP4 Notice to Proceed* in accordance with subclause 2.9(a);
  - (vi) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP5 Activities* unless and until the *Superintendent* issues the *SP5 Notice to Proceed* in accordance with subclause 2.10(a);
  - (vii) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP6 Activities* unless and until the *Superintendent* issues the *SP6 Notice to Proceed* in accordance with subclause 2.11(a); and
  - (viii) notwithstanding any other provision in the *Contract*, that it shall not commence any part of the *SP7 Activities* unless and until the *Superintendent* issues the *SP7 Notice to Proceed* in accordance with subclause 2.12(a).
- (c) The *Principal* and the *Contractor* acknowledge and agree that *WUC* is required to be carried out by the *Contractor* in the following sequential order:
- (i) the *SP1 Activities*;
  - (ii) if the *SP2 Notice to Proceed* is issued in accordance with subclause 2.7(a), the *SP2 Activities*;
  - (iii) if the *SP3 Notice to Proceed* is issued in accordance with subclause 2.8(a), the *SP3 Activities*;
  - (iv) if the *SP4 Notice to Proceed* is issued under subclause 2.9(a), the *SP4 Activities*;
  - (v) if the *SP5 Notice to Proceed* is issued under subclause 2.10(a), the *SP5 Activities*;
  - (vi) if the *SP6 Notice to Proceed* is issued under subclause 2.11(a), the *SP6 Activities*; and
  - (vii) if the *SP7 Notice to Proceed* is issued under subclause 2.12(a), the *SP7 Activities*.

## **2.7 SP2 Notice to Proceed**

- (a) The *Superintendent* may issue the *SP2 Notice to Proceed* to the *Contractor* at any time before or after the *SP1 Works* or any other *separable portion* reaches *practical completion*.
- (b) If the *Superintendent* issues the *SP2 Notice to Proceed* in accordance with subclause 2.7(a):
  - (i) the *Contractor* shall commence the *SP2 Activities* from the date which is the latter of:

- A. the date of issue of the *SP2 Notice to Proceed*; and
  - B. the *date for practical completion* for the *SP1 Works*; and
- (ii) the *contract sum* will be increased by an amount equal to the *SP2 Sum*.
- (c) The parties acknowledge and agree that:
- (i) the *Principal* may direct the *Superintendent* to issue the *SP2 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP2 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP2 Notice to Proceed* by any particular date, or at all;
  - (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP2 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.7(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP2 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP2 Sum* unless and until the *Superintendent* has issued the *SP2 Notice to Proceed* in accordance with subclause 2.7(a).
- (d) If the *SP2 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.7(a) on or before the *date of practical completion* for the *SP1 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at any time on or after the *date of practical completion* for the *SP1 Works*, to direct the *Contractor* to demobilise from the *site*.
- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.7(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP2 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.7(a) on or before the date which is 7 days after the *date of practical completion* for the *SP1 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.7(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP1 Works* until the earlier of:
- (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.7(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP2 Activities*;
  - (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.7(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP2 Notice to Proceed* to the *Contractor* in accordance with subclause 2.7(a).

- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.7(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP2 Notice to Proceed*, in which case, if:
- (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.7(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP2 Notice to Proceed* to the *Contractor* in accordance with subclause 2.7(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).

- (h) If the *SP2 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.7(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP1 Works*, then:
- (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP1 Works*, submit to the *Superintendent* a proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) which:
    - A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP2 Activities*, *SP3 Activities*, *SP4 Activities*, *SP5 Activities*, *SP6 Activities* and/or *SP7 Activities* (as applicable);
    - B. includes evidence of the increased cost referred to in subclause 2.7(h)(i)A; and
    - C. includes any other supporting documentation requested by the *Superintendent*; and
  - (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.7(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.7(h)(ii)C):
    - A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
    - B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) by an independent auditor, estimator or other third party; and
    - C. if the *Principal* is not satisfied with the proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor* in accordance with subclause 2.7(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.7(h)(i) and provide a further proposed revised *SP2 Sum*, *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) (in which case, this subclause 2.7(h)(ii) will reapply in relation to the resubmission under subclause 2.7(h)(i)).

- (i) At any time before the *SP2 Notice to Proceed* is issued to the *Contractor*:
  - (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP2 Activities*; and/or
  - (ii) regardless of whether a notice is issued under subclause 2.7(i)(i) not to proceed with the *SP2 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP2 Activities* or procure the execution of the whole or part of the *SP2 Activities* in any manner which the *Principal* may determine.

## 2.8 SP3 Notice to Proceed

- (a) The *Superintendent* may issue the *SP3 Notice to Proceed* to the *Contractor* at any time before or after the *SP2 Works* or any other *separable portion* reaches *practical completion*.
- (b) If the *Superintendent* issues the *SP3 Notice to Proceed* in accordance with subclause 2.8(a):
  - (i) the *Contractor* shall commence the *SP3 Activities* from the date which is the latter of:
    - A. the date of issue of the *SP3 Notice to Proceed*; and
    - B. the *date for practical completion* for the *SP2 Works*; and
  - (ii) the *contract sum* will be increased by an amount equal to the *SP3 Sum*.
- (c) The parties acknowledge and agree that:
  - (i) the *Principal* may direct the *Superintendent* to issue the *SP3 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP3 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP3 Notice to Proceed* by any particular date, or at all;
  - (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP3 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.8(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP3 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP3 Sum* unless and until the *Superintendent* has issued the *SP3 Notice to Proceed* in accordance with subclause 2.8(a).
- (d) If the *SP3 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.8(a) on or before the *date of practical completion* for the *SP2 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at any time on or after the *date of practical completion* for the *SP2 Works*, to direct the *Contractor* to demobilise from the *site*.

- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.8(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP3 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.8(a) on or before the date which is 7 days after the *date of practical completion* for the *SP2 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.8(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP2 Works* until the earlier of:
  - (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.8(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP3 Activities*;
  - (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.8(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP3 Notice to Proceed* to the *Contractor* in accordance with subclause 2.8(a).
- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.8(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP3 Notice to Proceed*, in which case, if:
  - (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.8(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP3 Notice to Proceed* to the *Contractor* in accordance with subclause 2.8(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).

- (h) If the *SP3 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.8(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP2 Works*, then:
  - (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP2 Works*, submit to the *Superintendent* a proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) which:
    - A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP3 Activities*, *SP4 Activities*, *SP5 Activities*, *SP6 Activities* and/or *SP7 Activities* (as applicable);
    - B. includes evidence of the increased cost referred to in subclause 2.8(h)(i)A; and
    - C. includes any other supporting documentation requested by the *Superintendent*; and
  - (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.8(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.8(h)(ii)C):

- A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
  - B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) by an independent auditor, estimator or other third party; and
  - C. if the *Principal* is not satisfied with the proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor* in accordance with subclause 2.8(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.8(h)(i) and provide a further proposed revised *SP3 Sum*, *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) (in which case, this subclause 2.8(h)(ii) will reapply in relation to the resubmission under subclause 2.8(h)(i)).
- (i) At any time before the *SP3 Notice to Proceed* is issued to the *Contractor*:
    - (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP3 Activities*; and/or
    - (ii) regardless of whether a notice is issued under subclause 2.8(i)(i) not to proceed with the *SP3 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP3 Activities* or procure the execution of the whole or part of the *SP3 Activities* in any manner which the *Principal* may determine.

## **2.9 SP4 Notice to Proceed**

- (a) The *Superintendent* may issue the *SP4 Notice to Proceed* to the *Contractor* at any time before or after the *SP3 Works* or any other *separable portion* reaches *practical completion*.
- (b) If the *Superintendent* issues the *SP4 Notice to Proceed* in accordance with subclause 2.9(a):
  - (i) the *Contractor* shall commence the *SP4 Activities* from the date which is the latter of:
    - A. the date of issue of the *SP4 Notice to Proceed*; and
    - B. the *date for practical completion* for the *SP3 Works*; and
  - (ii) the *contract sum* will be increased by an amount equal to the *SP4 Sum*.
- (c) The parties acknowledge and agree that:
  - (i) the *Principal* may direct the *Superintendent* to issue the *SP4 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP4 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP4 Notice to Proceed* by any particular date, or at all;



- (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP4 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.9(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP4 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP4 Sum* unless and until the *Superintendent* has issued the *SP4 Notice to Proceed* in accordance with subclause 2.9(a).
- (d) If the *SP4 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.9(a) on or before the *date of practical completion* for the *SP3 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at any time on or after the *date of practical completion* for the *SP3 Works*, to direct the *Contractor* to demobilise from the *site*.
- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.9(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP4 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.9(a) on or before the date which is 7 days after the *date of practical completion* for the *SP3 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.9(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP3 Works* until the earlier of:
- (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.9(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP4 Activities*;
  - (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.9(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP4 Notice to Proceed* to the *Contractor* in accordance with subclause 2.9(a).
- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.9(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP4 Notice to Proceed*, in which case, if:
- (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.9(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP4 Notice to Proceed* to the *Contractor* in accordance with subclause 2.9(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).

- (h) If the *SP4 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.9(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP3 Works*, then:
- (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP3 Works*, submit to the *Superintendent* a proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) which:
- A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP4 Activities*, *SP5 Activities*, *SP6 Activities* and/or *SP7 Activities* (as applicable);
- B. includes evidence of the increased cost referred to in subclause 2.9(h)(i)A; and
- C. includes any other supporting documentation requested by the *Superintendent*; and
- (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.9(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.9(h)(ii)C):
- A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
- B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) by an independent auditor, estimator or other third party; and
- C. if the *Principal* is not satisfied with the proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor* in accordance with subclause 2.9(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.9(h)(i) and provide a further proposed revised *SP4 Sum*, *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) (in which case, this subclause 2.9(h)(ii) will reapply in relation to the resubmission under subclause 2.9(h)(i)).
- (i) At any time before the *SP4 Notice to Proceed* is issued to the *Contractor*:
- (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP4 Activities*; and/or
- (ii) regardless of whether a notice is issued under subclause 2.9(i)(i) not to proceed with the *SP4 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP4 Activities* or procure the execution of the whole or part of the *SP4 Activities* in any manner which the *Principal* may determine.

## **2.10 SP5 Notice to Proceed**

- (a) The *Superintendent* may issue the *SP5 Notice to Proceed* to the *Contractor* at any time before or after the *SP4 Works* or any other *separable portion* reaches *practical completion*.

- (b) If the *Superintendent* issues the *SP5 Notice to Proceed* in accordance with subclause 2.10(a):
- (i) the *Contractor* shall commence the *SP5 Activities* from the date which is the latter of:
    - A. the date of issue of the *SP5 Notice to Proceed*; and
    - B. the *date for practical completion* for the *SP4 Works*; and
  - (ii) the *contract sum* will be increased by an amount equal to the *SP5 Sum*.
- (c) The parties acknowledge and agree that:
- (i) the *Principal* may direct the *Superintendent* to issue the *SP5 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP5 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP5 Notice to Proceed* by any particular date, or at all;
  - (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP5 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.10(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP5 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP5 Sum* unless and until the *Superintendent* has issued the *SP5 Notice to Proceed* in accordance with subclause 2.10(a).
- (d) If the *SP5 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.10(a) on or before the *date of practical completion* for the *SP4 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at any time on or after the *date of practical completion* for the *SP4 Works*, to direct the *Contractor* to demobilise from the *site*.
- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.10(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP5 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.10(a) on or before the date which is 7 days after the *date of practical completion* for the *SP4 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.10(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP4 Works* until the earlier of:
- (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.10(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP5 Activities*;

- (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.10(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP5 Notice to Proceed* to the *Contractor* in accordance with subclause 2.10(a).
- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.10(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP5 Notice to Proceed*, in which case, if:
- (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.10(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP5 Notice to Proceed* to the *Contractor* in accordance with subclause 2.10(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).

- (h) If the *SP5 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.10(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP4 Works*, then:
- (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP4 Works*, submit to the *Superintendent* a proposed revised *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) which:
    - A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP5 Activities*, *SP6 Activities* and/or *SP7 Activities* (as applicable);
    - B. includes evidence of the increased cost referred to in subclause 2.10(h)(i)A; and
    - C. includes any other supporting documentation requested by the *Superintendent*; and
  - (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.10(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.10(h)(ii)C):
    - A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
    - B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) by an independent auditor, estimator or other third party; and
    - C. if the *Principal* is not satisfied with the proposed revised *SP5 Sum*, *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor* in accordance with subclause 2.10(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.10(h)(i) and provide a further proposed revised *SP5 Sum*, *SP6 Sum*

and/or *SP7 Sum* (as applicable) (in which case, this subclause 2.10(h)(ii) will reapply in relation to the resubmission under subclause 2.10(h)(i)).

- (i) At any time before the *SP5 Notice to Proceed* is issued to the *Contractor*:
  - (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP5 Activities*; and/or
  - (ii) regardless of whether a notice is issued under subclause 2.10(i)(i) not to proceed with the *SP5 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP5 Activities* or procure the execution of the whole or part of the *SP5 Activities* in any manner which the *Principal* may determine.

## 2.11 SP6 Notice to Proceed

- (a) The *Superintendent* may issue the *SP6 Notice to Proceed* to the *Contractor* at any time before or after the *SP5 Works* or any other *separable portion* reaches *practical completion*.
- (b) If the *Superintendent* issues the *SP6 Notice to Proceed* in accordance with subclause 2.11(a):
  - (i) the *Contractor* shall commence the *SP6 Activities* from the date which is the latter of:
    - A. the date of issue of the *SP6 Notice to Proceed*; and
    - B. the *date for practical completion* for the *SP5 Works*; and
  - (ii) the *contract sum* will be increased by an amount equal to the *SP6 Sum*.
- (c) The parties acknowledge and agree that:
  - (i) the *Principal* may direct the *Superintendent* to issue the *SP6 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP6 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP6 Notice to Proceed* by any particular date, or at all;
  - (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP6 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.11(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP6 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP6 Sum* unless and until the *Superintendent* has issued the *SP6 Notice to Proceed* in accordance with subclause 2.11(a).
- (d) If the *SP6 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.11(a) on or before the *date of practical completion* for the *SP5 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at

any time on or after the *date of practical completion* for the *SP5 Works*, to direct the *Contractor* to demobilise from the *site*.

- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.11(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP6 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.11(a) on or before the date which is 7 days after the *date of practical completion* for the *SP5 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.11(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP5 Works* until the earlier of:
  - (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.11(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP6 Activities*;
  - (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.11(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP6 Notice to Proceed* to the *Contractor* in accordance with subclause 2.11(a).
- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.11(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP6 Notice to Proceed*, in which case, if:
  - (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.11(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP6 Notice to Proceed* to the *Contractor* in accordance with subclause 2.11(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).

- (h) If the *SP6 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.11(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP5 Works*, then:
  - (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP5 Works*, submit to the *Superintendent* a proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) which:
    - A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP6 Activities* and/or *SP7 Activities* (as applicable);
    - B. includes evidence of the increased cost referred to in subclause 2.11(h)(i)A; and
    - C. includes any other supporting documentation requested by the *Superintendent*; and

- (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.11(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.11(h)(ii)C):
  - A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
  - B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) by an independent auditor, estimator or other third party; and
  - C. if the *Principal* is not satisfied with the proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) submitted by the *Contractor* in accordance with subclause 2.11(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.11(h)(i) and provide a further proposed revised *SP6 Sum* and/or *SP7 Sum* (as applicable) (in which case, this subclause 2.11(h)(ii) will reapply in relation to the resubmission under subclause 2.11(h)(i)).
- (i) At any time before the *SP6 Notice to Proceed* is issued to the *Contractor*:
  - (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP6 Activities*; and/or
  - (ii) regardless of whether a notice is issued under subclause 2.11(i)(i) not to proceed with the *SP6 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP6 Activities* or procure the execution of the whole or part of the *SP6 Activities* in any manner which the *Principal* may determine.

## **2.12 SP7 Notice to Proceed**

- (a) The *Superintendent* may issue the *SP7 Notice to Proceed* to the *Contractor* at any time before or after the *SP6 Works* or any other *separable portion* reaches *practical completion*.
- (b) If the *Superintendent* issues the *SP7 Notice to Proceed* in accordance with subclause 2.12(a):
  - (i) the *Contractor* shall commence the *SP7 Activities* from the date which is the latter of:
    - A. the date of issue of the *SP7 Notice to Proceed*; and
    - B. the *date for practical completion* for the *SP6 Works*; and
  - (ii) the *contract sum* will be increased by an amount equal to the *SP7 Sum*.
- (c) The parties acknowledge and agree that:
  - (i) the *Principal* may direct the *Superintendent* to issue the *SP7 Notice to Proceed*, or decide not to have the *Superintendent* issue the *SP7 Notice to Proceed*, in the *Principal's* absolute discretion;
  - (ii) the *Principal* is not obliged to have the *Superintendent* issue the *SP7 Notice to Proceed* by any particular date, or at all;

- (iii) no failure by the *Principal* or the *Superintendent* to issue, or delay by the *Principal* or the *Superintendent* in issuing, the *SP7 Notice to Proceed* will constitute a *direction* to terminate the *Contract* under clause 39 or suspend the whole or part of *WUC* under clause 33;
  - (iv) subject to subclause 2.12(f), it will not be entitled to make, and the *Principal* will not have any liability in respect of, any *claim* arising out of, or in any way in connection with, any delay by the *Principal* or the *Superintendent* in issuing, or failure by the *Principal* or the *Superintendent* to issue (whether by a particular date, or at all), the *SP7 Notice to Proceed*; and
  - (v) notwithstanding any other provision in the *Contract*, the *Contractor* shall not be entitled to payment of any part of the *SP7 Sum* unless and until the *Superintendent* has issued the *SP7 Notice to Proceed* in accordance with subclause 2.12(a).
- (d) If the *SP7 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.12(a) on or before the *date of practical completion* for the *SP6 Works*, then the *Principal* may in its absolute discretion direct the *Superintendent*, at any time on or after the *date of practical completion* for the *SP6 Works*, to direct the *Contractor* to demobilise from the *site*.
- (e) If the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.12(d), the *Principal* will pay to the *Contractor* a demobilisation amount (at the fixed rate of \$37,000 (ex GST)).
- (f) If the *SP7 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.12(a) on or before the date which is 7 days after the *date of practical completion* for the *SP6 Works*, then (providing the *Superintendent* has not directed the *Contractor* to demobilise from the *site* under subclause 2.12(d)) the *Principal* shall pay to the *Contractor* a stand down amount (at the fixed rate of \$19,100 (ex GST) per *working day* and pro-rated for any part *working day*) for the period from the date which is immediately after the date which is 7 days after the *date of practical completion* for the *SP6 Works* until the earlier of:
- (i) if applicable, the date that the *Superintendent* issues a notice under subclause 2.12(h)(i) notifying the *Contractor* in writing that it is not to proceed with the *SP7 Activities*;
  - (ii) if applicable, the date that the *Superintendent* directs the *Contractor* to demobilise from the *site* under subclause 2.12(d); and
  - (iii) if applicable, the date that the *Superintendent* issues the *SP7 Notice to Proceed* to the *Contractor* in accordance with subclause 2.12(a).
- (g) If the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.12(d), the *Principal* may nonetheless, in its absolute discretion at any time, direct the *Superintendent* to issue the *SP7 Notice to Proceed*, in which case, if:
- (i) the *Principal* has directed the *Contractor* to demobilise from the *site* under subclause 2.12(d);
  - (ii) the *Contractor* has demobilised from the *site*; and
  - (iii) the *Superintendent* issues the *SP7 Notice to Proceed* to the *Contractor* in accordance with subclause 2.12(a),

the *Principal* will pay to the *Contractor* a remobilisation amount (at the fixed rate of \$34,000 (ex GST)).



- (h) If the *SP7 Notice to Proceed* has not been issued to the *Contractor* in accordance with subclause 2.12(a) on or before the date which is 8 weeks after the *date of practical completion* for the *SP6 Works*, then:
- (i) the *Contractor* may, within 10 weeks after the *date of practical completion* for the *SP6 Works*, submit to the *Superintendent* a proposed revised *SP7 Sum* *SP7 Sum* which:
    - A. reflects any actual increases in cost to the *Contractor* in relation to the supply of materials for the *SP7 Activities*;
    - B. includes evidence of the increased cost referred to in subclause 2.12(h)(i)A; and
    - C. includes any other supporting documentation requested by the *Superintendent*; and
  - (ii) upon the *Superintendent's* receipt of any submission by the *Contractor* within the period set out in, and in accordance with, subclause 2.12(h)(i) (or of any resubmission by the *Contractor* further to subclause 2.12(h)(ii)C):
    - A. the *Principal* may confer with the *Contractor* regarding the reasonableness of the proposed revised *SP7 Sum* submitted by the *Contractor*, with a view to ensuring that the *Principal* receives value for money;
    - B. the *Principal* may also request conferral with any other party regarding the proposed revised *SP7 Sum* submitted by the *Contractor*, including seeking scrutiny of the proposed revised *SP7 Sum* by an independent auditor, estimator or other third party; and
    - C. if the *Principal* is not satisfied with the proposed revised *SP7 Sum* submitted by the *Contractor* in accordance with subclause 2.12(h)(i), the *Principal* may in writing request the *Contractor* to revise its submission under subclause 2.12(h)(i) and provide a further proposed revised *SP7 Sum* (in which case, this subclause 2.12(h)(ii) will reapply in relation to the resubmission under subclause 2.12(h)(i)).
- (i) At any time before the *SP7 Notice to Proceed* is issued to the *Contractor*:
- (i) the *Superintendent* may notify the *Contractor* in writing that it is not to proceed with the *SP7 Activities*; and/or
  - (ii) regardless of whether a notice is issued under subclause 2.12(i)(i) not to proceed with the *SP7 Activities*, the *Principal* may re-tender the execution of the whole or part of the *SP7 Activities* or procure the execution of the whole or part of the *SP7 Activities* in any manner which the *Principal* may determine.

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### 3. Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a subcontractor, the *Superintendent* shall allow the amount payable by the *Contractor* to the subcontractor for the *work* or item, disregarding:

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

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 12* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

If, pursuant to a *direction*, any *work* or item to which a *provisional sum* relates is deleted:

- (c) the *contract sum* will be reduced by the relevant *provisional sum*;
- (d) the *Principal* may itself carry out or engage another contractor to carry out the relevant *work* or item the subject of the deleted *provisional sum*; and
- (e) the *Contractor* is not entitled to *claim* and the *Principal* will not be liable upon any *claim* by the *Contractor* arising out of, or in any way in connection with, the deletion of the relevant *work* or item the subject of the deleted *provisional sum*.

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## **4. Separable portions**

### **4.1 Separable portions**

The interpretations of:

- (a) *certificate of practical completion*;
- (b) *date for practical completion*;
- (c) *date of practical completion*;
- (d) *final certificate*; and
- (e) *practical completion*,

and clauses 14, 27, 28, 29, 32, 34 and 35 shall apply separately to each *separable portion* and references therein to *the Works* and to *WUC* shall mean so much of *the Works* and *WUC* as is comprised in the relevant *separable portion*.

### **4.2 Additional separable portions**

*Separable portions*, in addition to those identified in the *Contract* (if any), may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of *the Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

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## 5. Security

### 5.1 Provision

*Security* shall be provided in accordance with *Item* 13 or 14. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

If the:

- (a) *SP2 Notice to Proceed* is issued in accordance with subclause 2.7(a), the *Contractor* shall, within 7 days after receipt of the *SP2 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 2*;
- (b) *SP3 Notice to Proceed* is issued in accordance with subclause 2.8(a), the *Contractor* shall, within 7 days after receipt of the *SP3 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 3*;
- (c) *SP4 Notice to Proceed* is issued in accordance with subclause 2.9(a), the *Contractor* shall, within 7 days after receipt of the *SP4 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 4*;
- (d) *SP5 Notice to Proceed* is issued in accordance with subclause 2.10(a), the *Contractor* shall, within 7 days after receipt of the *SP5 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 5*;
- (e) *SP6 Notice to Proceed* is issued in accordance with subclause 2.11(a), the *Contractor* shall, within 7 days after receipt of the *SP6 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 6*;
- (f) *SP7 Notice to Proceed* is issued in accordance with subclause 2.12(a), the *Contractor* shall, within 7 days after receipt of the *SP7 Notice to Proceed*, provide to the *Contractor*, *security* in accordance with *Items* 13(a), 13(b) and 13(c) for *separable portion 7*.

### 5.2 Recourse

*Security* shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

### 5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item* 13(e)) shall be reduced by the percentage or amount in *Item* 13(f), and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item* 13(e) shall cease 14 days after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

To the extent that the *Principal's* entitlement to *security* ceases in accordance with the preceding paragraph, the *Principal* shall release and return forthwith the *security* in excess of its entitlement to the *Contractor*.

## 5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

## 5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

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## 6. Not used

## 7. Service of notices

Any notice, demand, consent or other communication given or made under the *Contract* which is in writing:

- (a) shall be delivered to the intended recipient by prepaid post, by hand, by fax (except that any notice pursuant to the *Security of Payment Act* may not be served by fax), or by email, to the address, fax number or email address last notified by the intended recipient to the sender; and
- (b) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by:
    - A. regular prepaid post or registered post, 6 *business days* after the date of posting;
    - B. priority prepaid post or priority registered post, 4 *business days* after the date of posting; and
    - C. using express post, 2 *business days* after posting;
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching fax machine showing the relevant number of pages, the

correct destination fax machine number and the result of the transmission as "OK"; and

- (iv) in the case of sending via email, immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient's email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed, in which case the notice is not taken to have been effected,

but if the result is that a notice would be taken to be given or made on a day which is not a *business day* in the place to which the notice is sent, or (except in the case of a *payment schedule* or *final certificate*) is received later than 4:00 pm (local time) at the place to which the notice is sent, it will be taken to have been duly given or made at the commencement of business on the next *business day* in that place.

The *Principal*, the *Contractor* and the *Superintendent* shall each notify the others in writing of a change of address.

Without limiting the generality of "notice", it includes a document.

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## **8. Contract documents**

### **8.1 Discrepancies**

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

If compliance with any such *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

### **8.2 Principal-supplied documents**

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 15*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

### **8.3 Contractor-supplied documents**

The *Contractor* shall supply to the *Superintendent* the documents and number of copies thereof, both stated elsewhere in the *Contract*.

If the *Contractor* submits documents to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*,

- (b) notwithstanding clause 20, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about such documents, the *Superintendent* shall give, within the time stated in *Item 16* the appropriate *direction*, including reasons if the documents are not suitable.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of *the Works*.

#### **8.4 Availability**

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

#### **8.5 Confidential information**

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

#### **8.6 Media**

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

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### **9. Assignment and subcontracting**

#### **9.1 Assignment**

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

#### **9.2 Subcontracting generally**

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a subcontractor to subcontract any *work* described in *Item 17*; or
- (b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed subcontractor.

The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (c) provision that the subcontractor shall not assign nor subcontract without the *Contractor's* written consent; and
- (d) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*.

### **9.3 Selected subcontract work**

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

### **9.4 Novation**

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form included in the invitation to tender, such deed being between the *Principal*, the *Contractor* and the subcontractor or *selected subcontractor* stated in *Item 18* for the particular part of *WUC*.

### **9.5 Contractor's responsibility**

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of subcontractors (including *selected subcontractors*) and employees and agents of subcontractors as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*.

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## **10. Intellectual property rights**

The *Principal* warrants that, unless otherwise provided in the *Contract*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

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## **11. Legislative requirements**

### **11.1 Compliance**

The *Contractor* shall:

- (a) apply for and obtain all *approvals* except those in *Item 19(c)* or directed by the *Superintendent* to be applied for and obtained by or on behalf of the *Principal*; and
- (b) satisfy all *legislative requirements* except those in *Item 19(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor* shall promptly give the *Superintendent* copies of all documents (including *approvals* and other notices) that any *authority* issues to the *Contractor*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract*, shall promptly give the *Superintendent* written notice thereof.

The *Contractor* shall comply with the NSW Government Code of Practice for the Construction Industry.

The *Contractor*:

- (c) acknowledges and agrees that it will, on behalf of the *Principal*, make payment of the long service levies payable in respect of *WUC* and *the Works* under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) in accordance with the requirements of the *Building and Construction Industry Long Service Payments Act 1986* (NSW) including with respect to timing of the payment;
- (d) indemnifies the *Principal* against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the *Principal* suffers, incurs or is liable for, whether as a result of a civil claim, criminal prosecution or otherwise, arising out of, or in any way in connection with, a breach by the *Contractor* of subclause 11.1(c); and
- (e) shall provide evidence of payment of such long service levies referred to in subclause 11.1(c) to the *Superintendent* within 3 *business days* of making such payments.

## 11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
  - (i) to *the Works*;
  - (ii) to so much of *WUC* as is identified in *Item 19(b)*;
  - (iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (iv) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent *Contractor*; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

## 11.3 Work Health and Safety

- (a) Without limiting or otherwise affecting the obligations of the *Contractor* under any other provision of the *Contract*, the *Contractor* shall comply with the *WHS Act* and the



*WHS Regulation*, including to the extent that the *Contractor* is a person conducting a business or undertaking (including to whom any of sections 22, 23, 24, 25 or 26 of the *WHS Act* applies).

- (b) The *Contractor* shall conduct risk assessments as necessary and put in place measures to eliminate or reduce risks to health and safety arising from the carrying out of *WUC*.
- (c) In respect of any risks arising from the carrying out of *WUC*, the *Contractor* shall provide information to the *Principal* about any joint duties owed under the *WHS Act* and shall consult and cooperate with the *Principal* in respect of these risks.
- (d) Without limiting or otherwise affecting the obligations of the *Contractor* under any other provision of the *Contract*, to the extent that Part 6.4 of Chapter 6 of the *WHS Regulation* applies to *WUC* or *the Works*:
  - (i) the *Principal* engages the *Contractor* as principal contractor for *WUC*, *the Works* and the *site*;
  - (ii) the *Principal* authorises the *Contractor* to:
    - A. have management and control of *WUC*, *the Works*, the *site* and any workplace relating to *WUC*; and
    - B. discharge, exercise and fulfil the functions, duties and obligations of a principal contractor under Chapter 6 of the *WHS Regulation* in connection with *WUC*, *the Works* and the *site*;
  - (iii) the *Contractor* accepts the engagement as principal contractor and agrees to discharge, exercise and fulfil the functions, duties and obligations imposed on a principal contractor by the *WHS Act* and *WHS Regulation*; and
  - (iv) to the extent that the *Contractor* is, for any reason, taken or otherwise found not to be the principal contractor for *WUC*, *the Works* or the *site*, the *Contractor* shall discharge, exercise and fulfil the functions, duties and obligations of a principal contractor in respect of *WUC*, *the Works* and the *site* as if the *Contractor* was the principal contractor for *WUC*, *the Works* and the *site*.
- (e) The *Contractor* (to the extent permitted by law) indemnifies the *Principal* against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the *Principal* suffers, incurs or is liable for, whether as a result of a civil claim, criminal prosecution or otherwise, arising out of, or in any way in connection with, a breach by the *Contractor* of this clause 11 or, to the extent that Part 6.4 of Chapter 6 of the *WHS Regulation* applies to *WUC* or *the Works*, any of its obligations as principal contractor under the *WHS Regulation*.
- (f) Except as otherwise provided in subclause 1.1, all terms used in subclauses 11.3(a) to 11.3(e) have the meanings given to them in the *WHS Act* and the *WHS Regulation*.

#### **11.4 The environment**

Without limiting subclauses 11.3, 12.1 or 15.1, the *Contractor* shall:

- (a) ensure that in carrying out *WUC* it complies with all *legislative requirements* relating to the protection of the *environment*, including any *legislative requirement* in respect of *contamination* caused or contributed to by the *Contractor* or its employees, agents or subcontractors;
- (b) ensure that there is no risk to the *environment* arising out of, or in any way in connection with, the performance of *WUC*;

- (c) remediate any *pollution, contamination* or damage to the *environment* arising out of, or in any way in any connection with, the carrying out of *WUC*;
- (d) without limiting subclauses 11.4(a), 11.4(b) and 11.4(c) ensure that:
  - (i) it does not pollute, *contaminate* or damage the *environment* or the *site*; and
  - (ii) its subcontractors comply with the requirements of this subclause 11.4; and
- (e) indemnify the *Principal* against all damage, expense, loss or liability of any nature suffered or incurred by the *Principal* arising out of, or in any way in connection with, any breach by the Contractor of its obligations under this subclause 11.4.

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## **12. Protection of people and property**

### **12.1 Contractor's obligations**

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

### **12.2 Legal challenges**

If a *legal challenge* is commenced:

- (a) the party to the *Contract* receiving notice of the *legal challenge* shall immediately inform the other party and the *Superintendent*;
- (b) the *Principal* will thereupon be entitled by notice in writing to the *Contractor* to suspend the carrying out of *WUC* under subclause 33.1 or, whether or not such a *direction* to suspend has been issued, to terminate the *Contract* under subclause 39.12; and
- (c) if the *legal challenge* relates to an injunction or order from any court or tribunal preventing or restraining the carrying out or the continuance of *WUC* either absolutely or conditionally upon the application of a third party:
  - (i) upon receiving notice of that *legal challenge*, the *Contractor* shall immediately comply with the terms and conditions of such injunction or order; and
  - (ii) if the *Contract* has not been terminated under subclause 39.12, the *Superintendent* may, at any time after the removal of the injunction or order, instruct the *Contractor* to continue with the carrying out of *WUC*.

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### 13. Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

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### 14. Care of the work and reinstatement of damage

#### 14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and *items* to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed *items* accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by subcontractors for carrying out *WUC*.

#### 14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

#### 14.3 Excepted risks

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

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) 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 its subcontractors or either's employees or agents;

- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- (f) *defects* in the design of *WUC*, other than design provided by the *Contractor*.

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## **15. Damage to persons and property other than WUC**

### **15.1 Indemnity by Contractor**

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1;
- (d) damage which is the unavoidable result of the construction of *the Works* in accordance with the *Contract*; and
- (e) claims in respect of the *Principal's* right to have *WUC* carried out.

### **15.2 Indemnity by Principal**

The *Principal* shall indemnify the *Contractor* in respect of damage referred to in paragraph (d) of subclause 15.1 and claims referred to in paragraph (e) of subclause 15.1.

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## **16. Insurance of the Works**

The Alternative in *Item 20(a)* applies.

### ***Alternative 1: Contractor to insure***

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;

- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete the *Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 20(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 20(c)* for consultants' fees;
- (d) value in *Item 20(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 20(e)* of the total of the *items* referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties and all subcontractors whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

***Alternative 2: Principal to insure***

Before the *date of acceptance of tender*, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

**17. Public liability insurance**

The Alternative in *Item 21(a)* applies.

***Alternative 1: Contractor to insure***

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:

- (i) respective rights and interests; and
- (ii) liabilities to third parties,

of the parties, the *Superintendent* and subcontractors from time to time, whenever engaged in *WUC*;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 21(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

***Alternative 2: Principal to insure***

Before the date of acceptance of tender, the *Principal* shall effect in relation to *WUC*, a public liability policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

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**18. Insurance of employees**

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all subcontractors have similarly insured their employees.

---

**19. Inspection and provisions of insurance policies**

**19.1 Proof of insurance**

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

**19.2 Failure to produce proof of insurance**

If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

The party insuring under clause 16 or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent* or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent* and the subcontractor; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### 19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16 or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that subcontractors in respect of their operations similarly inform the parties.

### 19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16:

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

### 19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

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## 20. Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

---

## 21. Superintendent's Representative

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

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

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## 22. Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

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## 23. Contractor's employees and subcontractors

### 23.1 Removal of personnel

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

### 23.2 Industrial relations

The *Contractor* shall in carrying out *WUC*:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant *legislative requirements*, are always observed in full; and
- (c) keep the *Superintendent* fully and promptly informed of industrial relations problems or issues which affect or are likely to affect *WUC*,

to the extent such matters relate to the *Contractor's* or its subcontractors' employees or contractors.



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## **24. Site**

### **24.1 Possession**

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 22*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

### **24.2 Access for Principal and others**

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

### **24.3 Minerals, fossils and relics**

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

---

## **25. Latent conditions**

### **25.1 Scope**

*Latent conditions* are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent *Contractor* at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and

- (c) the *site* and its near surrounds.

## **25.2 Notification**

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

## **25.3 Deemed variation**

The effect of the *latent condition* shall be a deemed *variation*, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2.

---

## **26. Setting out the Works**

### **26.1 Setting out**

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

### **26.2 Errors in setting out**

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the *contract sum*.

### **26.3 Care of survey marks**

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by the *Superintendent* or a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be assessed by the *Superintendent* and added to the *contract sum*.

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## 27. Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* carried out by others,

the *Principal* may have that *work* so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

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## 28. Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

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## 29. Quality

### 29.1 Quality of material and work

Unless otherwise provided the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

### 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and

- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor* and subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

### **29.3 Defective work**

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

### **29.4 Acceptance of defective work**

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

### **29.5 Timing**

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

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## **30. Examination and testing**

### **30.1 Tests**

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

### **30.2 Covering up**

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

### **30.3 Who conducts**

*Tests* shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

### **30.4 Notice**

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

### **30.5 Delay**

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

### **30.6 Completion and results**

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

### **30.7 Costs**

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

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## **31. Working hours**

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

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## **32. Programming**

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *Contract Date*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *construction program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *construction program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *construction program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

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### **33. Suspension**

#### **33.1 Superintendent's suspension**

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (i) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (ii) the *Contractor*, a subcontractor or either's employees or agents;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order or due to a *legal challenge*.

#### **33.2 Contractor's suspension**

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

#### **33.3 Recommencement**

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

#### **33.4 Costs**

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) or paragraph (c) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection or safety necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

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## **34. Time and progress**

### **34.1 Progress**

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

### **34.2 Notice of delay**

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

### **34.3 Claim**

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses (**EOT**), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an **EOT** evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an **EOT** for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

### **34.4 Assessment**

When both non-qualifying and qualifying causes of delay overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each **EOT** the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an **EOT**; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### **34.5 Extension of time**

Within 28 days after receiving the *Contractor's* claim for an **EOT**, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the reasonable **EOT** so assessed. Failure or delay by the *Superintendent* to assess a reasonable **EOT** shall not cause the *date for practical completion* to be set at large.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an **EOT**, the *Superintendent* may in its absolute discretion and for any reason, at any time and from time to time before issuing the *final certificate* direct an **EOT**. The *Superintendent* is not required to exercise its discretion under this paragraph reasonably or for the benefit of the *Contractor*.

### **34.6 Practical completion**

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

### **34.7 Liquidated damages**

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Contractor* shall be indebted to the *Principal* for, and shall pay to the *Principal* as a debt due, liquidated damages at the rate in *Item 24* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor* under subclause 39.4(a).

The parties acknowledge and agree that the amount of liquidated damages in *Item 24* is an agreed genuine pre-estimate of the *Principal's* likely damages and in proportion to the *Principal's* legitimate interests if the *date of practical completion* does not occur by the *date for practical completion*.

The amount payable under this subclause 34.7 will be a debt due from the *Contractor* to the *Principal*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

If this subclause 34.7 (or any part of this subclause 34.7) is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the *Principal* from recovering liquidated damages for the *Contractor's* failure to achieve *practical completion* by the *date for practical completion*, the *Principal* shall be entitled to claim and recover damages from the *Contractor* for such failure under general law, provided however that the *Principal's* entitlement to such damages shall be limited to the amount of liquidated damages that would otherwise have been payable had the *Principal* not been so disentitled from recovering liquidated damages.

Nothing in this subclause 34.7 limits or otherwise affects the *Principal's* rights, or the *Contractor's* liabilities and obligations, under clause 39.

The *Contractor's* liability under this subclause 34.7 in respect of a *separable portion* is limited to the amount stated in *Item 24A* in respect of that *separable portion*.

### **34.8 Not used**

### **34.9 Delay damages**

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, the *Principal* shall pay to the *Contractor* such extra costs and expenses, if any, as are reasonably and necessarily incurred by the *Contractor* as a direct consequence of that delay, as determined by the *Superintendent*, up to and including the maximum daily amount set out in *Item 25*.



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## 35. Defects liability

The *defects liability period* stated in *Item 27* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of *the Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefore (not exceeding that in *Item 27*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

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## 36. Variations

### 36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*:

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

### 36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *construction program* (including the *date for practical completion*); and
- (b) cost (including all time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

### **36.3 Variations for convenience of contractor**

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### **36.4 Pricing**

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a priced *bill of quantities*, *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

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## **37. Payment**

### **37.1 Payment claims**

The *Contractor* shall submit *claims* for payment (each a '*payment claim*')

- (a) on each relevant *progressive payment claim reference date* for *WUC* completed up to the date specified in *Item 7B*;
- (b) on the *practical completion payment claim reference date*; and
- (c) on the *final payment claim reference date* in accordance with subclause 37.4.

Each *payment claim* shall be given in writing to the *Superintendent* and shall include:

- (d) details of the value of *WUC* done;
- (e) details of other moneys then due to the *Contractor* in accordance with the provisions of the *Contract*;
- (f) the documents referred to in subclause 38.1;
- (g) where subclause 37.13(e) applies, the statement and the evidence (if any) required to be provided by the *Contractor* under that paragraph; and

- (h) such other details (including supporting documentation) as may be reasonably required by the *Superintendent*.

### **37.2 Payment schedules and payment**

The *Superintendent* shall, within 10 *business days* after receiving such a *payment claim*, issue to the *Principal* and the *Contractor* a payment schedule setting out:

- (a) the *payment claim* to which it relates;
- (b) the *Superintendent's* determination of the amount which the *Principal* is entitled to retain, deduct, withhold or set-off under the *Contract* or otherwise;
- (c) the *Superintendent's* determination of:
  - (i) the moneys due from the *Principal* to the *Contractor* which the *Principal* proposes to pay; and
  - (ii) if the *Superintendent* determines that no moneys are due from the *Principal* to the *Contractor*, the moneys due from the *Contractor* to the *Principal*; and
- (d) if the amount referred to in subclause 37.2(c)(i) is less than the amount claimed in the relevant *payment claim*, the reasons for the difference and, if it is less because of the withholding, retention, deduction or setting-off of payment for any reason, the reasons for withholding, retaining, deducting or setting-off payment,

(a '*payment schedule*'). The *Superintendent* may, whether or not the *Contractor* submits (or is entitled to submit) a *payment claim* in accordance with subclause 37.1, issue a *payment schedule*. If the *Superintendent*, in a *payment schedule* (other than the *final certificate*):

- (e) determines that moneys are due from the *Principal* to the *Contractor*, the *Principal* shall (subject to subclauses 37.6 and 38.2), within 15 *business days* of the *payment claim* (or if the *Contractor* does not make a *payment claim* and the *Superintendent* nevertheless issues a *payment schedule*, within 20 *business days* of the *payment schedule*) pay to the *Contractor* the amount set out in the *payment schedule* as due from the *Principal* to the *Contractor*; or
- (f) determines that moneys are due from the *Contractor* to the *Principal*, the *Contractor* shall, within 15 *business days* of the *payment claim* (or if the *Contractor* does not make a *payment claim* and the *Superintendent* nevertheless issues a *payment schedule*, within 20 *business days* of the *payment schedule*) pay to the *Principal* the amount set out in the *payment schedule* as due from the *Contractor* to the *Principal*.

Any failure by the *Principal* or the *Superintendent* to set off against the amount that would otherwise be payable under a *payment schedule* any amount under subclause 37.6 will not limit or otherwise affect the *Principal's* right to subsequently set off the amount under subclause 37.6.

Neither a *payment claim*, a *payment schedule* (including the *final certificate*) nor a payment of moneys shall be evidence of the value of *work* or an admission of liability or evidence that the subject *WUC* has been carried out satisfactorily. Payment shall be payment on account only.

The *Superintendent* may, in any *payment schedule*, correct any error in, or otherwise modify, any previous *payment schedule*.

### **37.3 Unfixed plant and materials**

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 29* and the *Contractor*:

- (a) provides the additional *security* in *Item 13(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, insured for their full replacement value and labelled the property of the *Principal*, and that upon payment by the *Principal* to the *Contractor* unencumbered title in the subject plant and materials will pass to the *Principal*.

Upon payment to the *Contractor*, the subject plant and materials shall be the unencumbered property of the *Principal*.

### **37.4 Final payment claim and certificate**

On the *final payment claim reference date*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a *payment claim* together with all other claims whatsoever arising out of, or in any way in connection with, the subject matter of the *Contract*.

Within 10 *business days* following receipt of the *final payment claim*, the *Superintendent* shall issue to the *Contractor* a *final certificate* in the form of a *payment schedule* which, in addition to the requirements of subclause 37.2, certifies the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever arising out of, or in any way in connection with the subject matter of the *Contract*.

On and from the date that is 30 *business days* after the expiry of the last *defects liability period* to expire, the *Superintendent* may, whether or not the *Contractor* submits (or is entitled to submit) a *final payment claim* in accordance with this subclause 37.4, issue a *final certificate*.

Subject to subclauses 37.6 and 38.2, if the *Superintendent* in the *final certificate* determines that moneys are due from the *Principal* to the *Contractor*, the *Principal* shall pay the amount set out in the *final certificate* as due from the *Principal* to the *Contractor* within 15 *business days* after receipt of the *final payment claim*.

If moneys are set out in the *final certificate* as due from the *Contractor* to the *Principal*, the *Contractor* shall pay the amount set out in the *final certificate* as due from the *Contractor* to the *Principal* within 5 *business days* after the issue of the *final certificate*.

On the date that is 25 *business days* after the expiry of the last *defects liability period* to expire, the *Contractor* releases the *Principal* from any *claim* in respect of any fact, matter or thing arising out of, or in any way in connection with, *WUC* or the *Contract* which occurred prior to the expiry of the last *defects liability period* to expire, except for any *claim* included in the *final payment claim* which is given to the *Superintendent* in accordance with the terms of this subclause 37.4 and on or before the date that is 25 *business days* after the expiry of the last *defects liability period* to expire.

### **37.5 Interest**

Interest in *Item 30* shall be due and payable after the date of default in payment.

### **37.6 Set off**

The *Principal* may:

- (a) deduct from moneys otherwise due to the *Contractor*:

- (i) any debt or other moneys due from the *Contractor* to the *Principal*; or
- (ii) any *claim* to money which the *Principal* may have against the *Contractor* whether for damages (liquidated or unliquidated) or otherwise,

whether under the *Contract* or on any other legal or equitable basis; and

- (b) without limiting subclause 37.6(a), deduct from moneys otherwise due to the *Contractor* any amount that the *Principal* is obliged to withhold from payment to the *Contractor* under the *Security of Payment Act*.

Nothing in this subclause 37.6 affects the right of the *Principal* to recover from the *Contractor* the whole of the debt or *claim* or any balance that remains owing.

This subclause 37.6 will survive any termination of the *Contract*.

### **37.7 Service of notices under the Security of Payment Act**

The *Contractor* shall:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the *Principal* of whatever nature in relation to the *Security of Payment Act* (including, without limitation, *payment claims* under the *Security of Payment Act*), is provided to the *Superintendent* at the same time; and
- (b) if the *Contractor* becomes aware that a subcontractor is entitled to suspend *work* under the *Security of Payment Act*, promptly and without delay give the *Principal* and the *Superintendent* a copy of any written communication of whatever nature in relation to the *Security of Payment Act* which the *Contractor* receives from a subcontractor.

### **37.8 Role of the Superintendent**

In issuing *payment schedules* under the *Security of Payment Act* (but not in receiving *payment claims* under the *Security of Payment Act*), the *Superintendent* acts as the agent of the *Principal*.

### **37.9 Reference date**

Each *reference date* is, for the purpose of the *Security of Payment Act*, a 'reference date'.

### **37.10 Payment schedules**

The amount (if any) set out in a *payment schedule* (including the *final certificate*) as the amount of payment which the *Principal* proposes to make to the *Contractor* is, for the purposes of sections 8, 9, 10 and 11 of the *Security of Payment Act*, the amount of the "progress payment" (as defined in the *Security of Payment Act*) calculated in accordance with the *Contract* which the *Contractor* is entitled to be paid under the *Contract*.

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

### **37.11 Subcontractor suspension**

If the *Principal* becomes aware that a subcontractor is entitled to suspend *work* under the *Security of Payment Act*, the *Principal* may (in its absolute discretion) pay the subcontractor

such money that is or may be owing to the subcontractor in respect of that *work*, and any amount paid by the *Principal* shall be a debt due from the *Contractor* to the *Principal*.

### **37.12 Indemnity**

The *Contractor* shall indemnify the *Principal* against all damage, expense, loss or liability of any nature suffered or incurred by the *Principal* arising out of, or in any way in connection with:

- (a) a suspension under the *Security of Payment Act* by a subcontractor of *work* which forms part of *WUC*; or
- (b) a failure by the *Contractor* to comply with subclause 37.7.

### **37.13 Payment withholding requests**

- (a) Without limiting subclause 37.6, the *Principal* may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*.
- (b) If the *Principal* withholds from money otherwise due to the *Contractor* any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*, then:
  - (i) the *Principal* may plead and rely upon Division 2A of Part 3 of the *Security of Payment Act* as a defence to any claim for the money by the *Contractor* from the *Principal*; and
  - (ii) the period during which the *Principal* retains money due to the *Contractor* under an obligation under Division 2A of Part 3 of the *Security of Payment Act* will not be taken into account for the purpose of determining:
    - A. any period for which money owed by the *Principal* to the *Contractor* has been unpaid; and
    - B. the date by which payment of money owed by the *Principal* to the *Contractor* shall be made.
- (c) The *Contractor* agrees not to commence proceedings to recover any amount withheld by the *Principal* under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act*.
- (d) Any amount paid by the *Principal* under section 26C of the *Security of Payment Act* will be a debt due from the *Contractor* to the *Principal*.
- (e) If the *Principal* withholds money under a payment withholding request served on the *Principal* under Division 2A of Part 3 of the *Security of Payment Act* and the *Contractor*:
  - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding request relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding request relates has been withdrawn,

then the *Contractor* shall so notify the *Principal* and the *Superintendent* within 5 days of the occurrence of the event in subclause 37.13(e)(i) or 37.13(e)(ii) above (as applicable) by providing to the *Principal* and the *Superintendent* a statement in writing

in the form of a statutory declaration together with such other evidence as the *Principal* or *Superintendent* may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

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## **38. Payment of workers and subcontractors**

### **38.1 Supporting documentation**

The *Contractor* shall submit the *supporting documentation* to the *Principal* and the *Superintendent*:

- (a) on the date specified in *Item 7A* until the issue of the *last certificate of practical completion*;
- (b) within 5 *business days* after the date on which the *last certificate of practical completion* is issued;
- (c) within 25 *business days* after the expiry of the last *defects liability period* to expire; and
- (d) when otherwise requested by the *Principal*.

*Supporting documentation* shall be dated, and completed to, the date of submission of the relevant *supporting documentation* (which shall not be earlier than the relevant times prescribed by this subclause 38.1). The *Contractor* shall not submit *supporting documentation* earlier than the relevant times prescribed by this subclause 38.1.

### **38.2 Entitlement to payment**

Without limiting subclause 37.6 or any claim, right or entitlement the *Principal* may have against the *Contractor*, the parties acknowledge and agree that the *Contractor's* entitlement to payment shall be \$0, except to the extent that the *Contractor* has:

- (a) in respect of all *payment claims* referred to in subclause 37.1(a):
  - (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(a); and
  - (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment or any *reference date* arising under the *Contract*, on the date of submission of the *payment claim*;
- (b) in respect of the *payment claim* referred to in subclause 37.1(b):
  - (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(b); and
  - (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment or any *reference date* arising under the *Contract*, on the date of submission of the *payment claim*; and
- (c) in respect of the *payment claim* referred to in subclause 37.1(c):

- (i) submitted the relevant *supporting documentation* on or before the date required under subclause 38.1(c); and
- (ii) complied with subclauses 5.1, 5.6, 19.1 and 32, and any other provision of the *Contract* (including the *Project Requirements*) the compliance with which is stated to be a condition of, or condition precedent to, any entitlement to payment or any *reference date* arising under the *Contract*, on the date of submission of the *payment claim*.

### **38.3 Direct payment**

Before paying any amount payable by the *Principal* in respect of any *payment claim* (including the *final payment claim*), the *Principal*, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cth)) may pay any unpaid moneys due and payable directly to the relevant worker or subcontractor where:

- (a) permitted by law;
- (b) given a court order in favour of the worker or subcontractor; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker or subcontractor in compliance with a *legislative requirement* shall be deemed to be part satisfaction of the *Principal's* obligation to pay in accordance with subclause 37.2 or subclause 37.4, as the case may be.

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## **39. Default or insolvency**

### **39.1 Preservation of other rights**

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

### **39.2 Contractor's default**

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by certified post, give the *Contractor* a written notice to show cause. Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide *security*;
  - (ii) provide evidence of insurance;
  - (iii) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
  - (iv) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *construction program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *construction program*, failing to proceed with due expedition and without delay; and



- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### **39.3 Principal's notice to show cause**

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions of *Contract*;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

### **39.4 Principal's rights**

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of *WUC* remaining to be completed and suspend payment until it becomes due and payable under or in accordance with subclause 39.6; or
- (b) terminate the *Contract*.

### **39.5 Take out**

The *Principal* may complete *WUC* taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e)) and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
  - (i) take possession of, and use such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor* (including documents, information, materials and the like produced or provided by the *Contractor*); and
  - (ii) contract with such of the subcontractors or require the *Contractor* to novate to the *Principal* or its nominee any or all subcontracts between the *Contractor* and its subcontractors,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out or *WUC* remaining; and

- (c) direct the *Contractor* to take any other action which the *Principal* requires concerning *WUC* taken out or *WUC* remaining.

If the *Principal* takes possession of *construction plant* or other things under subclause 39.5(b), the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *WUC* taken out or *WUC* remaining, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *WUC* taken out or *WUC* remaining.

### **39.6 Adjustment on completion of *WUC* taken out**

When *WUC* is taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e)), the *Superintendent* shall assess the cost thereby incurred or which may be incurred, by the *Principal* in completing the relevant *WUC* and shall certify:

- (a) the amount of the cost, setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*; and
- (c) the difference.

If the cost incurred, or which may be incurred, by the *Principal* (as certified by the *Superintendent* above) is greater than the amount which would have been paid under the *Contract* to the *Contractor* if the relevant *WUC* had been completed by the *Contractor* (without limiting subclause 39.10), the difference shall be a debt due from the *Contractor* to the *Principal*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If the *Contractor* fails to pay the debt, the *Principal* may (in addition to any other rights and entitlements it may have) sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

### **39.7 Principal's default**

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by certified post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide *security*;
  - (ii) produce evidence of insurance;
  - (iii) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 31*; or
  - (iv) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### **39.8 Contractor's notice to show cause**

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions of *Contract*;
- (b) the alleged substantial breach;

- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

### **39.9 Contractor's rights**

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause, the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

### **39.10 Termination**

If the *Contract* is terminated in accordance with subclause 39.4(b) (including in accordance with subclause 39.11(e)) or subclause 39.9 or the whole of *WUC* is taken out of the *Contractor's* hands under subclause 39.4(a) (including in accordance with subclause 39.11(e)), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party (or the party in respect of which the circumstances in subclause 39.11 arose) repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and elected to recover damages.

Additionally, if the *Contract* is terminated under subclause 39.4(b) or the whole of *WUC* remaining to be completed is taken out of the hands of the *Contractor* under subclause 39.4(a) (including in accordance with subclause 39.11(e)):

- (a) the *Principal*:
  - (i) will be entitled to take possession of, and use, or require the *Contractor* to remove from the *site*, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor* (including documents, information, materials and the like produced by the *Contractor*);
  - (ii) will be entitled to require the *Contractor* to novate (on the terms set out in Annexure Part D or such other terms as the *Principal* may reasonably require) to the *Principal* or its nominee any or all subcontracts between the *Contractor* and its subcontractors as required by the *Principal*;
  - (iii) will not be obliged to make any further payments to the *Contractor*, including any money the subject of a *payment claim* or a *payment schedule*;
  - (iv) may direct the *Contractor* to take any other action which the *Principal* requires concerning *WUC* taken out or *WUC* remaining; and

- (b) the *Contractor* shall immediately hand over to the *Principal* all copies of documents provided by the *Principal* or the *Superintendent* to the *Contractor*.

### **39.11 Insolvency**

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cwth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) it enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for its winding up and not stayed within 14 days;
  - (v) a winding up order is made in respect of it;
  - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
  - (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (e) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (f) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of *Contract*.

### **39.12 Termination for legal challenges**

Where the circumstances in subclause 12.2(c) arise, the *Principal* may terminate the *Contract* by written notice to the *Contractor*.

If the *Principal* terminates the *Contract* under this subclause 39.12, the *Contractor* will be entitled to payment of the following amounts as determined by the *Superintendent*:

- (a) the unpaid contract value of all *work* completed in accordance with the *Contract* prior to the date of termination; and
- (b) the reasonable cost of removing from the *site* all *construction plant* and other things used in *WUC*.

The *Contractor* shall take all steps possible to mitigate the costs referred to in subclause 39.12(b).

The amount to which the *Contractor* is entitled under this subclause 39.12 will be full compensation for the termination and the *Contractor* may not make any *claim* against the *Principal* arising out of, or in any way in connection with, such termination, other than for the amount payable under this subclause 39.12.

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## **40. Termination by frustration**

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
  - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
  - (iii) the costs reasonably incurred:
    - A. removing *temporary works* and *construction plant*;
    - B. returning to their place of engagement the *Contractor*, subcontractors and their respective employees engaged in *WUC* at the date of frustration; and
    - C. by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

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## **41. Notification of claims**

### **41.1 Communication of claims**

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

#### **41.2 Liability for failure to communicate**

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of *Contract* but shall neither bar nor invalidate the claim.

#### **41.3 Superintendent's decision**

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

---

## **42. Dispute resolution**

### **42.1 Notice of dispute**

If a difference or *dispute* (together called a ***dispute***) between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a claim:
  - (i) in tort;
  - (ii) under statute;
  - (iii) for restitution based on unjust enrichment or other quantum meruit; or
  - (iv) for rectification or frustration,

or like claim available under the law governing the *Contract*,

then either party shall, by hand or by certified mail, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

### **42.2 Conference**

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each

party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

#### **42.3 Arbitration**

If within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in *Item 32(a)*. The arbitration shall be conducted in accordance with the rules in *Item 32(b)*.

#### **42.4 Summary relief**

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

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### **43. Waiver of conditions**

Except as provided at law or in equity or elsewhere in the *Contract*, none of the provisions of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

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### **44. GST**

#### **44.1 Definitions**

In this clause 44:

- (a) words and expressions that are not defined in the *Contract* but which have a defined meaning in the *GST Law* have the same meaning as in the *GST Law*; and
- (b) *GST Law* has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

#### **44.2 GST exclusive**

Except as otherwise provided under the *Contract*, all consideration payable under the *Contract* in relation to any supply is exclusive of GST.

#### **44.3 Increase in Consideration**

If GST is payable in respect of any supply made by a supplier under the *Contract* (***GST Amount***), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

#### **44.4 Payment of GST**

Subject to subclause 44.5, the recipient will pay the *GST Amount* at the same time and in the same manner as the consideration for the supply is to be provided under the *Contract*.

#### **44.5 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the *GST Amount* under subclause 44.4.

#### **44.6 Reimbursements**

If the *Contract* requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **44.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under the *Contract*:

- (a) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- (b) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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### **45. Personal Property Securities Act**

#### **45.1 Further Assurances**

By signing the *Contract*, the *Contractor* acknowledges and agrees that if the *Contract* and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the *PPS Law* (***Security Interest***), the *Contractor* shall do anything (including amending the *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:

- (a) ensuring that the *Security Interest* is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;
- (b) 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
- (c) enabling the *Principal* to exercise rights in connection with the *Security Interest* and the *Contract*.

#### **45.2 Contracting out of PPS Act**

If Chapter 4 of the *PPS Act* applies to the enforcement of the *Security Interest*, the *Contractor* agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the *Security Interest*.

#### **45.3 Acknowledgments and undertakings**

The *Contractor*:

- (a) acknowledges that the *Security Interests* created under the *Contract* relate to collateral and all proceeds in respect of that collateral (until the *Principal* is paid in full for the collateral);



- (b) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the *PPS Law* in respect of the *Security Interest*; and
- (c) undertakes it will not register a financing change statement without the prior written consent of the *Principal*.

#### **45.4 Requests for information**

The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the *PPS Law*.

The *Contractor* agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

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#### **46. Civil Liability Act**

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under, out of or in any way in connection with, the *Contract*, the *Works* or *WUC* whether such rights, obligations or liabilities are sought to be enforced in contract, in tort (including negligence) or otherwise.

The *Contractor* further agrees that in any subcontract or consultancy agreement which it enters into in connection with the carrying out of *WUC* it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities which are sought to be enforced in contract, in tort (including negligence) or otherwise.

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#### **47. No Fetter**

The *Contract* shall not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the *Principal* to exercise any of its functions and powers under any *legislative requirement* and no exercise of any such functions or powers shall entitle the *Contractor* to make any *claim* against the *Principal*.

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#### **48. Disclosure**

The *Contractor* acknowledges and agrees that the *Principal* may disclose the *Contract* (and information concerning the terms of the *Contract*) and other information under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009* (NSW);
- (b) the *Ombudsman Act 1974* (NSW);
- (c) the *Freedom of Information Act 1982* (Cth);
- (d) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
- (e) any other *legislative requirement*.

Where the *Principal* has received a request for access to a document created by, or in the possession of, the *Contractor* or any subcontractor that relates to the *Contract*, the *Principal*

may at any time by written notice require the *Contractor* to provide, or to procure the relevant subcontractor to procure, the document to the *Principal* and the *Contractor* shall, at no cost to the *Principal*, promptly comply with the notice.

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## **49. NSW Guidelines**

### **49.1 Definitions and application**

In this clause 49, **NSW Guidelines** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement, and words and expressions that are defined in the *NSW Guidelines* have, unless the context otherwise indicates, the same meaning as in the *NSW Guidelines*. The *NSW Guidelines* are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### **49.2 Primary obligation**

The *Contractor* shall at all times comply with, and meet any obligations imposed by, the *NSW Guidelines*.

The *Contractor* shall notify the Construction Compliance Unit and the *Principal* of any alleged breaches of the *NSW Guidelines* and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. Where the *Contractor* is authorised to engage a subcontractor, and it does so, the *Contractor* shall ensure that any subcontract imposes on the subcontractor equivalent obligations to those in this clause 49 (under a heading "NSW Guidelines"), including that the subcontractor must comply with, and meet any obligations imposed by, the *NSW Guidelines*. The *Contractor* shall not appoint or engage another party in relation to *the Works* where that appointment or engagement would breach a sanction imposed on the other party in relation to the *NSW Guidelines*.

### **49.3 Access and information**

The *Contractor* shall:

- (a) maintain adequate records of compliance with the *NSW Guidelines* by it, its subcontractors and their respective related entities; and
- (b) allow, and take reasonable steps to facilitate, New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) to:
  - (i) enter and have access to sites and premises controlled by the *Contractor*, including the site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to *the Works*;
  - (v) have access to personnel; and
  - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the *NSW Guidelines*, by the *Contractor*, its subcontractors and their respective related entities.

The *Contractor*, and its related entities, shall agree to, and comply with, a request from New South Wales Government authorised personnel (including personnel of the Construction

Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### 49.4 **Sanctions**

The *Contractor* warrants that at the time of entering into the *Contract*, neither it, nor any of its related entities, are subject to a sanction in connection with the *NSW Guidelines* that would have precluded it from tendering for work to which the *NSW Guidelines* apply. If the *Contractor* does not comply with, or fails to meet any obligation imposed by, the *NSW Guidelines*, a sanction may be imposed against it in connection with the *NSW Guidelines*.

Where a sanction is imposed:

- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (b) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to:
  - (i) record and disclose details of non-compliance with the *NSW Guidelines* and the sanction; and
  - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the *Contractor*, or its related entities, in respect of work to which the *NSW Guidelines* apply.

#### 49.5 **Compliance**

The *Contractor* bears the cost of ensuring its compliance with the *NSW Guidelines*, including in respect of any positive steps it is obliged to take to meet its obligations under the *NSW Guidelines*. The *Contractor* is not entitled to make a *claim* for reimbursement or an extension of time from the *Principal* or the State of New South Wales, and otherwise is not entitled to make any *claim*, for such costs or extension of time. Compliance with the *NSW Guidelines* does not relieve the *Contractor* from responsibility to perform *WUC*, *the Works* or any other obligation under the *Contract*, or from liability for any *defect* in *the Works* or from any other legal liability, whether or not arising from its compliance with the *NSW Guidelines*.

Where a change in the *Contract* or *the Works* is proposed, and that change would, or would be likely to, affect compliance with the *NSW Guidelines*, the *Contractor* shall immediately notify the *Principal* of the change, or likely change and specify:

- (a) the circumstances of the proposed change;
- (b) the extent to which compliance with the *NSW Guidelines* will, or is likely to be, affected by the change; and
- (c) what steps the *Contractor* proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan),
- (d) and the *Principal* will direct the *Contractor* as to the course it must adopt within 10 *business days* after receiving notice.

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# Annexure Part A

## Annexure to The Australian Standard General Conditions of *Contract AS4000 – 1997*

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

### Item

- |    |  |  |
|----|--|--|
| 1. | <i>Principal</i><br>(subclause 1.1)  | Waverley Council ABN 12 502 583 608                  |
| 2. | <i>Principal's address</i>   | 55 Spring Street, Bondi Junction NSW 2022            |
| 3. | <i>Contractor</i><br>(subclause 1.1)   | Ford Civil Contracting Pty Ltd ACN 002 542 814       |
| 4. | <i>Contractor's address</i>  | 9 Hattersley Street, Arncliffe NSW 2205              |
| 5. | <i>Superintendent</i><br>(subclause 1.1)   | Rodhan Haughton                                      |
| 6. | <i>Superintendent's address</i>  | 55 Grafton Street, Bondi Junction, NSW 2022          |
| 6A | SP Sums<br>(subclause 1.1)   | Refer to <i>separable portions</i> .                 |
| 7. | (a) <i>Date for practical completion</i><br>(subclause 1.1)                            |  |
|    | OR   |  |
|    | (b) <i>Period of time for practical completion</i><br>(subclause 1.1)                  | Refer to <i>separable portions</i> .                 |
| 7A | <i>Progressive payment claim reference date</i> (subclause 1.1)                        | The last <i>business day</i> of the month.           |
| 7B | Date to which <i>WUC</i> is to be included in <i>payment claim</i> (subclause 37.1(a)) | The last <i>business day</i> of each relevant month. |
| 8. | Governing law<br>(paragraphs (f) and (h) of subclause 1.2)                             | New South Wales                                      |

9.	(a) Currency (paragraph (g) of subclause 1.2)	Australian Dollars.
	(b) Place for payments (paragraph (g) of subclause 1.2)	<i>Principal's address.</i>
	(c) Place of business of bank (subclause 1.1)	The place nearest to where the <i>site</i> is located.
9A	<i>Provisional sums</i> (subclause 1.1)	Refer to <i>separable portions</i> .
10.	<i>Bills of quantities</i> (subclause 2.2)	
	(a) Alternative applying (subclause 2.2)	Alternative 2.
	(b) If Alternative 2 applies, is the <i>bill of quantities</i> to be priced? (subclause 2.2)	No
	(c) Lodgement time (subclause 2.3(b))	Not applicable.
11.	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5(b))	Not applicable.
12.	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	15%
13.	<i>Contractor's security</i>	
	(a) Form (clause 5)	Refer to <i>separable portions</i> .
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	Refer to <i>separable portions</i> .
	(c) Not used	
	(d) Time for provision (except for retention moneys) (clause 5)	Refer to <i>separable portions</i> .
	(e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	Refer to <i>separable portions</i> .
	(f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	Refer to <i>separable portions</i> .

14.	Not used		
15.	<i>Principal</i> -supplied documents (subclause 8.2)	Document	No. of copies
		1. Specifications listed in section 2 of Annexure Part F – 1 electronic copy.	
		2. Drawings listed in section 3 of Annexure Part F – 1 electronic copy.	
16.	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	10 <i>business days</i> .	
17.	Subcontract <i>work</i> requiring approval (subclause 9.2)	All <i>work</i> .	
18.	Novation (subclause 9.4)	Subcontractor	Particular part of <i>WUC</i>
		Nil.	
		<i>Selected subcontractor</i>	Particular part of <i>WUC</i>
		Nil.	

19. *Legislative requirements*

- (a) Excepted *legislative requirements*  
(subclause 11.1)

Payment of the following fees:

(a) the following Ausgrid contestable asset relocation fees:

- offer for asset relocation;
- contestable process facilitation;
- Ausgrid administration;
- Ausgrid access permit; and
- Ausgrid inspections;

(b) the following Sydney Water fees:

- water main shutdown Fees;
- WSC/Sydney Water conditions for shutdown; and
- sewer connection fees; and

(c) spotter fees from any utility *authority*.

- (b) Identified *WUC*  
(subclause 11.2(a)(ii))

Nil.

- (c) Excepted *approvals*  
(subclause 11.1)

1. The *REF*.

2. Ausgrid ASP3 design *approval*.

3. RMS traffic control signal design *approval*;

4. Waverley traffic committee signage and line-marking *approval*.

20. Insurance of *the Works*  
(clause 16)

- (a) Alternative applying  
If Alternative 1 applies

Alternative 1.

- (b) Provision for demolition and  
removal of debris

15% of the *contract sum*.

- (c) Provision for consultants'  
fees

10% of the *contract sum*.

- (d) Value of materials or things  
to be supplied by the  
*Principal*

\$1,000,000

- (e) Additional amount or  
percentage

15% of the total of paragraphs (a) to (d) in clause 16.

21. Public liability insurance (clause 17)
- (a) Alternative applying If Alternative 1 applies Alternative 1.
- (b) Amount per occurrence shall be not less than \$20,000,000.
22. Time for giving possession (subclause 24.1) Refer to *separable portions*.
23. *Qualifying Causes of Delay*. Causes of delay for which *EOTs* will be granted (subclauses 1.1 and 34.3)
1. *Variations* directed under subclause 36.1.
  2. Breach of *Contract* by the *Principal*.
  3. State-wide industrial action which is not confined to, or caused or contributed to by any act or omission of, the *Contractor* or its *subcontractors* and which directly prevents *WUC* from proceeding.
  4. Community action (other than *legal challenges*) which:
    - (a) is not confined to, or caused or contributed to by any act or omission of, the *Contractor* or its *subcontractors* and which directly prevents *WUC* from proceeding; and
    - (b) directly prevents the *Contractor* from accessing the *site*.
  5. Refer to *separable portions* for additional *Qualifying Causes of Delay*.
24. Liquidated damages, rate (subclause 34.7) Refer to *separable portions*.
- 24 A Limit of liquidated damages (subclause 34.7) Refer to *separable portions*.
25. Maximum daily amount of delay damages (subclause 34.9) Refer to *separable portions*.
26. Other *compensable causes* (subclauses 1.1 and 34.9)
1. Community action (other than *legal challenges*) which:
    - (a) is not confined to, or caused or contributed to by any act or omission of, the *Contractor* or its *subcontractors* and which directly prevents *WUC* from proceeding; and
    - (b) directly prevents the *Contractor* from accessing the *site*.
  2. Refer to *separable portions* for additional *compensable causes*.
27. *Defects liability period* (clause 35) 12 months.
28. Not used



- |     |  |  |
|-----|--|--|
| 29. | Unfixed plant and materials for which payment claims may be made<br>(subclause 37.3) | <ul style="list-style-type: none"> <li>1. Lighting equipment.</li> <li>2. Pavers.</li> <li>3. Bluestone products.</li> <li>4. Strata cells.</li> </ul> |
| 30. | Interest rate on overdue payments<br>(subclause 37.5)                                | 0% per annum.  |
| 31. | Time for <i>Principal</i> to rectify inadequate possession<br>(subclause 39.7)       | 14 days.   |
| 32. | Arbitration<br>(subclause 42.3)  |  |
|     | (a) Person to nominate an arbitrator   | The Chair of the Resolution Institute.   |
|     | (b) Rules for arbitration  | The Resolution Institute Arbitration Rules 2016.   |

## Separable portions

This section should only be completed if the *Contract* provides for *separable portions*.

Complete a separate page for each *separable portion* which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

	<i>Separable portion</i> (subclause 1.1)	No. 1
	Description of <i>separable portion</i> (subclause 1.1)	Stage 1 services investigations and the procurement of long lead items for the <i>SP2 Works</i> . Refer to Annexure Part F for further description.
<i>Item</i>		
6A.	<i>SP1 Sum</i> (subclause 1.1)	\$1,413,112.24 (ex GST)
7.	(a) <i>Date for practical completion</i> (subclause 1.1)	
	OR	
	(b) <i>Period of time for practical completion</i> (subclause 1.1)	14 calendar weeks after the <i>Contract Date</i> .
9A.	<i>Provisional sums</i> (subclause 1.1)	Nil.
13.	<i>Contractor's security</i>	
	(a) <i>Form</i> (clause 5)	Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the <i>Principal</i> , with no expiry date), given by a bank or other financial institution approved in writing by the <i>Principal</i> , each for 50% of the amount identified in <i>Item 13(b)</i> .
	(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	5% of <i>SP1 Sum</i> .
	(c) <i>Not used</i>	
	(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	Within 28 calendar days after the <i>Contract Date</i> .

(e)	Additional <i>security</i> for unfixed plant and materials (subclause 5.4 and 37.3)	The full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and materials.
(f)	<i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>certificate of practical completion</i> (subclause 5.4)	50% of the amount identified in <i>Item 13(b)</i> .
22.	Time for giving access (subclause 24.1)	Within 7 days of the <i>Contract Date</i> .
23.	Additional <i>Qualifying Causes of Delay</i> . Causes of delay for which <i>EOTs</i> will be granted (subclauses 1.1 and 34.3)	<p>1. In respect of the <i>SP1 Activities</i>, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:</p> <p>(a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the <i>SP1 Activities</i>, 6 days; and</p> <p>(b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the <i>SP1 Activities</i>, 6 days referred to above in paragraph (a).</p> <p>2. In respect of the <i>SP1 Activities</i>, a failure of the <i>Principal</i> to review the pedestrian traffic management and control plans (not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors) that are a complete and full submission of pedestrian traffic management and control plans for the <i>Principal's</i> review, within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p>
24.	Liquidated damages, rate (subclause 34.7)	\$5,000 per day.
24A	Limit of liquidated damages (subclause 34.7)	5% of <i>SP1 Sum</i> .
25.	Maximum daily amount of delay damages (subclause 34.9)	\$19,100 per day.

26. Other compensable causes  
(subclauses 1.1 and 34.9)

In respect of the *SP1 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review, within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

*Separable portion*  
(subclause 1.1)

No. 2

Description of *separable portion*  
(subclause 1.1)

Stage 2 – Spring Street, between Newland and Denison Streets, and Denison Street between Spring and Oxford Streets. Refer to Annexure Part F for further description.

*Item*

6A. *SP2 Sum*  
(subclause 1.1) \$4,802,025.38 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) *Period of time for practical completion*  
(subclause 1.1)

22 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP2 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP1 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. Temporary power to street lights	\$50,000
2. ASP2 Private Connections	\$100,000
3. LV feeder cables to MSB	\$20,000
4. Telstra infrastructure <i>work</i> Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such Telstra infrastructure <i>work</i> ; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP2 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP2 Sum</i> but not part of this <i>provisional sum</i> ).	\$80,000
5. (Non-Telstra) Telco Pit Cover adjustments / replacements Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP2 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP2 Sum</i> but not part of this <i>provisional sum</i> ).	\$32,500
6. Undergrounding of existing overhead communications cable (of any <i>authority</i> ) fixed to existing Ausgrid poles (those such poles that are to be removed) where such undergrounding is a requirement of Ausgrid. Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such required undergrounding; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Ausgrid and any other <i>authority</i> (on the basis that such <i>WUC</i> is allowed for in the	\$150,000

<i>SP2 Sum but not part of this provisional sum).</i>	
<b>Total</b>	<b>\$432,500</b>

13. *Contractor's security*

- (a) Form (clause 5)
 

Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*, with no expiry date), given by a bank or other financial institution approved in writing by the *Principal*, each for 50% of the amount identified in *Item 13(b)*.
- (b) Amount or maximum percentage value of this *separable portion* (clause 5)
 

5% of *SP2 Sum*.
- (c) Not used.
- (d) Time for provision (except for retention moneys) (clause 5)
 

Within 28 calendar days after the date which is the latter of:

  - (a) the date of issue of the *SP2 Notice to Proceed*; and
  - (b) the *date for practical completion* for the *SP1 Works*.
- (e) Additional *security* for unfixed plant and materials (subclause 5.4 and 37.3)
 

The full amount of payment claimed by the *Contractor* for the unfixed plant and materials.
- (f) *Contractor's security* in excess of which is to be released upon the issue of the *certificate of practical completion* (subclause 5.4)
 

50% of the amount identified in *Item 13(b)*.

22. Time for giving access (subclause 24.1)

- Within 7 days after the date which is the latter of:
- (a) the date of issue of the *SP2 Notice to Proceed*; and
  - (b) the *date for practical completion* for the *SP1 Works*.

23.	<p><i>Additional Qualifying Causes of Delay.</i>  Causes of delay for which <i>EOTs</i> will be granted  (subclauses 1.1 and 34.3)</p>	<p>1. In respect of the <i>SP2 Activities</i>, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:</p> <p>(a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the <i>SP2 Activities</i>, 6 days; and</p> <p>(b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the <i>SP2 Activities</i>, 6 days referred to above in paragraph (a).</p> <p>2. Delay by RMS in respect of the RMS traffic control signal design <i>approval</i>, not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the <i>authority</i> and the purpose of the <i>approval</i> that is delayed, and where such <i>approval</i> has not been obtained in respect of the <i>SP2 Activities</i>, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the <i>SP2 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP1 Works</i>, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p> <p>3. In respect of the <i>SP2 Activities</i>, a failure of the <i>Principal</i> to review the pedestrian traffic management and control plans (not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors) that are:</p> <p>(a) a complete and full submission of pedestrian traffic management and control plans for the <i>Principal's</i> review; and</p> <p>(b) submitted after the latter of the date of issue of the <i>SP2 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP1 Works</i>,</p> <p>within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p>
24.	<p>Liquidated damages, rate  (subclause 34.7)</p>	\$5,000 per day.
24A	<p>Limit of liquidated damages  (subclause 34.7)</p>	5% of <i>SP2 Sum</i> .



25. Maximum daily amount of delay damages (subclause 34.9) \$19,100 per day.
26. Other *compensable causes* (subclauses 1.1 and 34.9)
1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP2 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP2 Notice to Proceed* and the *date for practical completion* for the *SP1 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
  2. In respect of the *SP2 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:
    - (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
    - (b) submitted after the latter of the date of issue of the *SP2 Notice to Proceed* and the *date for practical completion* for the *SP1 Works*,  
  
within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

*Separable portion*  
(subclause 1.1)

No. 3

Description of *separable portion*  
(subclause 1.1)

Stage 3 – Spring Street, between Newland Street and Bronte Road. Refer to Annexure Part F for further description.

*Item*

6A. *SP3 Sum*  
(subclause 1.1) \$4,144,728.06 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) Period of time for *practical completion*  
(subclause 1.1)

24 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP3 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP2 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. Seating outside Eastgate shopping centre	\$500,000
2. Telstra infrastructure work Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such Telstra infrastructure work; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of work with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP3 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP3 Sum</i> but not part of this <i>provisional sum</i> ).	\$80,000
3. (Non-Telstra) Telco Pit Cover adjustments / replacements Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of work with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP3 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP3 Sum</i> but not part of this <i>provisional sum</i> ).	\$32,500
<b>Total</b>	<b>\$612,500</b>

13. *Contractor's security*

- (a) Form  
(clause 5)

Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*, with no expiry date), given by a bank or other financial institution approved in writing by the *Principal*, each for 50% of the amount identified in *Item* 13(b).

- |     |  |  |
|-----|--|--|
| (b) | Amount or maximum percentage value of this <i>separable portion</i> (clause 5)   | 5% of <i>SP3 Sum</i> .   |
| (c) | Not used   |  |
| (d) | Time for provision (except for retention moneys) (clause 5)  | Within 28 calendar days after the date which is the latter of:<br>(a) the date of issue of the <i>SP3 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP2 Works</i> . |
| (e) | Additional <i>security</i> for unfixed plant and materials (subclause 5.4 and 37.3)  | The full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and materials.   |
| (f) | <i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>certificate of practical completion</i> (subclause 5.4) | 50% of the amount identified in <i>Item 13(b)</i> .  |

- |     |   |  |
|-----|---|--|
| 22. | Time for giving access (subclause 24.1) | Within 7 days after the date which is the latter of:<br>(a) the date of issue of the <i>SP3 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP2 Works</i> . |
|-----|---|--|

23.	<p><i>Additional Qualifying Causes of Delay.</i>  Causes of delay for which <i>EOTs</i> will be granted  (subclauses 1.1 and 34.3)</p>	<p>1. In respect of the <i>SP3 Activities</i>, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:</p> <p>(a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the <i>SP3 Activities</i>, 6 days; and</p> <p>(b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the <i>SP3 Activities</i>, 6 days referred to above in paragraph (a).</p> <p>2. Delay by RMS in respect of the RMS traffic control signal design <i>approval</i>, not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the <i>authority</i> and the purpose of the <i>approval</i> that is delayed, and where such <i>approval</i> has not been obtained in respect of the <i>SP3 Activities</i>, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the <i>SP3 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP2 Works</i>, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p> <p>3. In respect of the <i>SP3 Activities</i>, a failure of the <i>Principal</i> to review the pedestrian traffic management and control plans (not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors) that are:</p> <p>(a) a complete and full submission of pedestrian traffic management and control plans for the <i>Principal's</i> review; and</p> <p>(b) submitted after the latter of the date of issue of the <i>SP3 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP2 Works</i>,</p> <p>within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p>
24.	<p>Liquidated damages, rate  (subclause 34.7)</p>	<p>\$5,000 per day.</p>
24A	<p>Limit of liquidated damages  (subclause 34.7)</p>	<p>5% of <i>SP3 Sum</i>.</p>
25.	<p>Maximum daily amount of delay damages  (subclause 34.9)</p>	<p>\$19,100 per day</p>

26. Other compensable causes  
(subclauses 1.1 and 34.9)

1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP3 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP3 Notice to Proceed* and the *date for practical completion* for the *SP2 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

2. In respect of the *SP3 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:

- (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
- (b) submitted after the latter of the date of issue of the *SP3 Notice to Proceed* and the *date for practical completion* for the *SP2 Works*,

within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

*Separable portion*  
(subclause 1.1)

No. 4

Description of *separable portion*  
(subclause 1.1)

Stage 4 – Bronte Road, between Ebley and Oxford Streets.  
Refer to Annexure Part F for further description.

*Item*

6A. *SP4 Sum*  
(subclause 1.1) \$2,792,402.53 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) *Period of time for practical completion*  
(subclause 1.1)

27 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP4 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP3 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. Electronic Sign	\$10,000
2. Telstra infrastructure <i>work</i>  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such Telstra infrastructure <i>work</i> ; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ).	\$90,000
3. (Non-Telstra) Telco Pit Cover adjustments / replacements  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ).	\$37,500
4. Ausgrid protection <i>work</i> to pits that require pit cover <i>work</i>  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such Ausgrid protection <i>work</i> to pits that require pit cover <i>work</i> ; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Ausgrid (on the basis that such <i>WUC</i> is	\$15,000



allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP4 Sum</i> but not part of this <i>provisional sum</i> ).	
<b>Total</b>	<b>\$152,500</b>

13. *Contractor's security*

- (a) Form (clause 5) Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*, with no expiry date), given by a bank or other financial institution approved in writing by the *Principal*, each for 50% of the amount identified in *Item 13(b)*.
- (b) Amount or maximum percentage value of this *separable portion* (clause 5) 5% of *SP4 Sum*.
- (c) Not used
- (d) Time for provision (except for retention moneys) (clause 5) Within 28 calendar days after the date which is the latter of:  
(a) the date of issue of the *SP4 Notice to Proceed*; and  
(b) the *date for practical completion* for the *SP3 Works*.
- (e) Additional *security* for unfixed plant and materials (subclause 5.4 and 37.3) The full amount of payment claimed by the *Contractor* for the unfixed plant and materials.
- (f) *Contractor's security* in excess of which is to be released upon the issue of the *certificate of practical completion* (subclause 5.4) 50% of the amount identified in *Item 13(b)*.

22. Time for giving access (subclause 24.1)

- Within 7 days after the date which is the latter of:  
(a) the date of issue of the *SP4 Notice to Proceed*; and  
(b) the *date for practical completion* for the *SP3 Works*.

23.	<p><i>Additional Qualifying Causes of Delay.</i>  Causes of delay for which <i>EOTs</i> will be granted  (subclauses 1.1 and 34.3)</p>	<p>1. In respect of the <i>SP4 Activities</i>, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:</p> <p>(a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the <i>SP4 Activities</i>, 12 days; and</p> <p>(b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the <i>SP4 Activities</i>, 12 days referred to above in paragraph (a).</p> <p>2. Delay by RMS in respect of the RMS traffic control signal design <i>approval</i>, not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the <i>authority</i> and the purpose of the <i>approval</i> that is delayed, and where such <i>approval</i> has not been obtained in respect of the <i>SP4 Activities</i>, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the <i>SP4 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP3 Works</i>, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p> <p>3. In respect of the <i>SP4 Activities</i>, a failure of the <i>Principal</i> to review the pedestrian traffic management and control plans (not caused by the <i>Contractor</i>, its subcontractors or their respective employees, agents or contractors) that are:</p> <p>(a) a complete and full submission of pedestrian traffic management and control plans for the <i>Principal's</i> review; and</p> <p>(b) submitted after the latter of the date of issue of the <i>SP4 Notice to Proceed</i> and the <i>date for practical completion</i> for the <i>SP3 Works</i>,</p> <p>within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the <i>Contractor's</i> obligation to comply with subclauses 34.2 and 34.3.</p>
24.	Liquidated damages, rate (subclause 34.7)	\$5,000 per day.
24A	Limit of liquidated damages (subclause 34.7)	5% of <i>SP4 Sum</i> .

25. Maximum daily amount of delay damages (subclause 34.9) \$19,100 per day.
26. Other *compensable causes* (subclauses 1.1 and 34.9)
1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP4 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP4 Notice to Proceed* and the *date for practical completion* for the *SP3 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
  2. In respect of the *SP4 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:
    - (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
    - (b) submitted after the latter of the date of issue of the *SP4 Notice to Proceed* and the *date for practical completion* for the *SP3 Works*,within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

*Separable portion*  
(subclause 1.1)

No. 5

Description of *separable portion*  
(subclause 1.1)

Stage 5 – Oxford Street East, between Grosvenor Street and Bondi Road. Refer to Annexure Part F for further description.

*Item*

6A. *SP5 Sum*  
(subclause 1.1) \$6,001,116.18 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) *Period of time for practical completion*  
(subclause 1.1)

31 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP5 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP4 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. Hydrant cover adjustments beyond existing spindle length	\$3,300
2. Telstra infrastructure <i>work</i>  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such Telstra infrastructure <i>work</i> ; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ).	\$90,000
3. (Non-Telstra) Telco Pit Cover adjustments / replacements  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ).	\$72,500
4. Ausgrid protection <i>work</i> to pits that require pit cover <i>work</i>  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such Ausgrid protection <i>work</i> to pits that require pit cover <i>work</i> ; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Ausgrid	\$85,000

(on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP5 Sum</i> but not part of this <i>provisional sum</i> ).	
<b>Total</b>	<b>\$250,800</b>

13. *Contractor's security*

- |   |   |
|---|---|
| (a) Form<br>(clause 5)  | Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the <i>Principal</i> , with no expiry date), given by a bank or other financial institution approved in writing by the <i>Principal</i> , each for 50% of the amount identified in <i>Item 13(b)</i> . |
| (b) Amount or maximum percentage value of this <i>separable portion</i><br>(clause 5)   | 5% of <i>SP5 Sum</i> .  |
| (c) Not used  |   |
| (d) Time for provision (except for retention moneys)<br>(clause 5)  | Within 28 calendar days after the date which is the latter of:<br>(a) the date of issue of the <i>SP5 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP4 Works</i> .  |
| (e) Additional <i>security</i> for unfixed plant and materials<br>(subclause 5.4 and 37.3)  | The full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and materials.  |
| (f) <i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>certificate of practical completion</i><br>(subclause 5.4) | 50% of the amount identified in <i>Item 13(b)</i> .   |

22. Time for giving access  
(subclause 24.1)

- Within 7 days after the date which is the latter of:
- (a) the date of issue of the *SP5 Notice to Proceed*; and
- (b) the *date for practical completion* for the *SP4 Works*.

23. *Additional Qualifying Causes of Delay.*  
Causes of delay for which *EOTs* will be granted (subclauses 1.1 and 34.3)
1. In respect of the *SP5 Activities*, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:
    - (a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the *SP5 Activities*, 12 days; and
    - (b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the *SP5 Activities*, 12 days referred to above in paragraph (a).
  2. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP5 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP5 Notice to Proceed* and the *date for practical completion* for the *SP4 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
  3. In respect of the *SP5 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:
    - (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
    - (b) submitted after the latter of the date of issue of the *SP5 Notice to Proceed* and the *date for practical completion* for the *SP4 Works*,  
  
within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
24. Liquidated damages, rate (subclause 34.7) \$5,000 per day.
- 24A. Limit of liquidated damages (subclause 34.7) 5% of *SP5 Sum*.
25. Maximum daily amount of delay damages (subclause 34.9) \$19,100 per day.

26. Other compensable causes  
(subclauses 1.1 and 34.9)

1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP5 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP5 Notice to Proceed* and the *date for practical completion* for the *SP4 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

2. In respect of the *SP5 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:

- (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
- (b) submitted after the latter of the date of issue of the *SP5 Notice to Proceed* and the *date for practical completion* for the *SP4 Works*,

within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.



*Separable portion*  
(subclause 1.1)

No. 6

Description of *separable portion*  
(subclause 1.1)

Stage 6 – Oxford Street, between Denison Street and St James Road. Refer to Annexure Part F for further description.

*Item*

6A. *SP6 Sum*  
(subclause 1.1) \$2,979,694.86 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) Period of time for *practical completion*  
(subclause 1.1)

22 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP6 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP5 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. LV feeder cables to MSB	\$10,000
2. Telstra infrastructure <i>work</i> Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such Telstra infrastructure <i>work</i> ; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP6 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP6 Sum</i> but not part of this <i>provisional sum</i> ).	\$30,000
3. (Non-Telstra) Telco Pit Cover adjustments / replacements Note that this <i>provisional sum</i> : (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP6 Sum</i> but not part of this <i>provisional sum</i> ); and (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP6 Sum</i> but not part of this <i>provisional sum</i> ).	\$20,000
<b>Total</b>	<b>\$60,000</b>

13. *Contractor's security*

- (a) Form  
(clause 5)

Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*, with no expiry date), given by a bank or other financial institution approved in writing by the *Principal*, each for 50% of the amount identified in *Item 13(b)*.

- |     |  |  |
|-----|--|--|
| (b) | Amount or maximum percentage value of this <i>separable portion</i> (clause 5)   | 5% of <i>SP6 Sum</i> .   |
| (e) | Not used   |  |
| (d) | Time for provision (except for retention moneys) (clause 5)  | Within 28 calendar days after the date which is the latter of:<br>(a) the date of issue of the <i>SP6 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP5 Works</i> . |
| €   | Additional <i>security</i> for unfixed plant and materials (subclause 5.4 and 37.3)  | The full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and materials.   |
| (f) | <i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>certificate of practical completion</i> (subclause 5.4) | 50% of the amount identified in <i>Item 13(b)</i> .  |
- 
- |     |   |  |
|-----|---|--|
| 22. | Time for giving access (subclause 24.1) | Within 7 days after the date which is the latter of:<br>(a) the date of issue of the <i>SP6 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP5 Works</i> . |
|-----|---|--|

23. *Additional Qualifying Causes of Delay.*  
Causes of delay for which *EOTs* will be granted  
(subclauses 1.1 and 34.3)
1. In respect of the *SP6 Activities*, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:
    - (a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the *SP6 Activities*, 6 days; and
    - (b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the *SP6 Activities*, 6 days referred to above in paragraph (a).
  2. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP6 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
  3. In respect of the *SP6 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:
    - (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
    - (b) submitted after the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works*,  
  
within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
24. Liquidated damages, rate  
(subclause 34.7) \$5,000 per day.
- 24A. Limit of liquidated damages  
(subclause 34.7) 5% of *SP6 Sum*.
25. Maximum daily amount of delay  
damages  
(subclause 34.9) \$19,100 per day.

26. Other compensable causes  
(subclauses 1.1 and 34.9)

1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP6 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

2. In respect of the *SP6 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:

- (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
- (b) submitted after the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works*,

within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

*Separable portion*  
(subclause 1.1)

No. 7

Description of *separable portion*  
(subclause 1.1)

Stage 7 – Oxford Street, west of St James Road. Refer to Annexure Part F for further description.

*Item*

6A. *SP7 Sum*  
(subclause 1.1) \$1,545,239.29 (ex GST)

7. (a) *Date for practical completion*  
(subclause 1.1)

OR

(b) *Period of time for practical completion*  
(subclause 1.1)

18 calendar weeks from the date which is the latter of:

(a) the date of issue of the *SP7 Notice to Proceed*; and

(b) the *date for practical completion* for the *SP6 Works*.

9A. *Provisional sums*  
(subclause 1.1)

<b>Work or item</b>	<b>Provisional Sum (ex GST)</b>
1. Hydrant cover adjustments beyond existing spindle length	\$1,200
2. Telstra infrastructure work  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such Telstra infrastructure work; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with Telstra (on the basis that such <i>WUC</i> is allowed for in the <i>SP7 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP7 Sum</i> but not part of this <i>provisional sum</i> ).	\$30,000
3. (Non-Telstra) Telco Pit Cover adjustments / replacements  Note that this <i>provisional sum</i> :  (a) includes the <i>work</i> in carrying out such (Non-Telstra) Telco Pit Cover adjustments / replacements; but  (b) excludes <i>WUC</i> in the <i>Contractor</i> liaising, coordinating and managing of <i>work</i> with the <i>authorities</i> (on the basis that such <i>WUC</i> is allowed for in the <i>SP7 Sum</i> but not part of this <i>provisional sum</i> ); and  (c) excludes <i>WUC</i> in relation to installing paver infill to pit covers and reinstating of surrounding pavers to match such pit covers (on the basis that such <i>WUC</i> is allowed for in the <i>SP7 Sum</i> but not part of this <i>provisional sum</i> ).	\$7,500
<b>Total</b>	<b>\$38,700</b>

13. *Contractor's security*

- (a) Form  
(clause 5)

Two unconditional undertakings in the form set out in Annexure Part C (or such other form as may be approved in writing by the *Principal*, with no expiry date), given by a bank or other financial institution approved in writing by the *Principal*, each for 50% of the amount identified in *Item 13(b)*.

- |     |  |  |
|-----|--|--|
| (b) | Amount or maximum percentage value of this <i>separable portion</i> (clause 5)   | 5% of <i>SP7 Sum</i> .   |
| (c) | Not used   |  |
| (d) | Time for provision (except for retention moneys) (clause 5)  | Within 28 calendar days after the date which is the latter of:<br>(a) the date of issue of the <i>SP7 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP6 Works</i> . |
| (e) | Additional <i>security</i> for unfixed plant and materials (subclause 5.4 and 37.3)  | The full amount of payment claimed by the <i>Contractor</i> for the unfixed plant and materials.   |
| (f) | <i>Contractor's security</i> in excess of which is to be released upon the issue of the <i>certificate of practical completion</i> (subclause 5.4) | 50% of the amount identified in <i>Item 13(b)</i> .  |
| 22. | Time for giving access (subclause 24.1)  | Within 7 days after the date which is the latter of:<br>(a) the date of issue of the <i>SP7 Notice to Proceed</i> ; and<br>(b) the <i>date for practical completion</i> for the <i>SP6 Works</i> .           |



23. *Additional Qualifying Causes of Delay.*  
Causes of delay for which *EOTs* will be granted (subclauses 1.1 and 34.3)
1. In respect of the *SP7 Activities*, inclement weather (and any subsequent de-watering, clean up or re-establishment of any environmental controls (which were in place immediately before the inclement weather and have been directly affected by such inclement weather) which is required as a direct consequence of such inclement weather) but:
    - (a) only where the total number of days of delay due to such inclement weather is in excess of, in respect of the *SP7 Activities*, 6 days; and
    - (b) only in respect of any such inclement weather to the extent it occurs after the initial period of, in respect of the *SP7 Activities*, 6 days referred to above in paragraph (a).
  2. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP7 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP7 Notice to Proceed* and the *date for practical completion* for the *SP6 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
  3. In respect of the *SP7 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:
    - (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
    - (b) submitted after the latter of the date of issue of the *SP7 Notice to Proceed* and the *date for practical completion* for the *SP6 Works*,  
  
within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.
24. Liquidated damages, rate (subclause 34.7) \$5,000 per day.
- 24A. Limit of liquidated damages (subclause 34.7) 5% of *SP7 Sum*.
25. Maximum daily amount of delay damages (subclause 34.9) \$19,100 per day.

26. Other compensable causes  
(subclauses 1.1 and 34.9)

1. Delay by RMS in respect of the RMS traffic control signal design *approval*, not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors and which delay is unusual or unreasonable having regard to the nature of the *authority* and the purpose of the *approval* that is delayed, and where such *approval* has not been obtained in respect of the *SP7 Activities*, on or before the date which is 28 calendar days after the date which is the latter of the date of issue of the *SP7 Notice to Proceed* and the *date for practical completion* for the *SP6 Works*, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

2. In respect of the *SP7 Activities*, a failure of the *Principal* to review the pedestrian traffic management and control plans (not caused by the *Contractor*, its subcontractors or their respective employees, agents or contractors) that are:

- (a) a complete and full submission of pedestrian traffic management and control plans for the *Principal's* review; and
- (b) submitted after the latter of the date of issue of the *SP7 Notice to Proceed* and the *date for practical completion* for the *SP6 Works*,

within 7 calendar days of the date of submission of such pedestrian traffic management and control plans, but without limiting clause 34 including the *Contractor's* obligation to comply with subclauses 34.2 and 34.3.

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# Annexure Part B

**Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997**

## **DELETIONS, AMENDMENTS AND ADDITIONS**

As marked-up in the body of the General Conditions of Contract and Annexures in the document provided to the *Contractor* with the executed version of the *Contract*.

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## Annexure Part C

### Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

#### Approved form of unconditional undertaking

(subclause 1.1 - *security*)

At the request of ..... (the *Contractor*) and in consideration of ..... (the *Principal*) accepting this undertaking in respect of the *Contract* for .....  
.....(the *financial institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of ..... (\$.....)

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

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

Provided always that the *financial institution* may at any time without being required so to do pay to the *Principal* the sum of ..... (\$..... ) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *financial institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 19....

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# Annexure Part D

## Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

### Deed of novation

(subclause 39.10(a))

This Deed made the ..... day of ..... 20 ...  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Subcontractor* warrants to the *Incoming Contractor* that:
  - (a) the subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Subcontractor* indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved in accordance with to the provisions of AS 4903-2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

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

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director  
.....  
Name (please print)

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

.....  
Secretary/Director

.....  
Director

.....  
Name (please print)

.....  
Name (please print)

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# Annexure Part E

## Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

### Subcontractor statement

(subclause 38.1)

#### STATUTORY DECLARATION

I \_\_\_\_\_

(authorised officer)

OF \_\_\_\_\_

do solemnly and sincerely declare that, in relation to the contract between

\_\_\_\_\_ ACN \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ ACN \_\_\_\_\_ (**Contractor**) for the \_\_\_\_\_ (**Contract**):

1. I hold the position of \_\_\_\_\_ of the Contractor.
2. I am in a position to know the facts contained herein and I am duly authorised to bind the Contractor by the terms of this declaration.
3. All subcontractors, consultants and suppliers who have at any time been engaged by the Contractor in connection with the work under the Contract have been paid all amounts which as at the date of this declaration are due and payable to them in respect of the work under, or in connection with, the Contract.
4. All workers (including employees and contractors) who have at any time been engaged by the Contractor in connection with the work under the Contract:
  - (a) have been paid all remuneration and benefits which as at the date of this declaration are due and payable to them in respect of their employment or under, or in connection with, the Contract; and
  - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment or work in respect of, or in connection with, the Contract in accordance with to any award, enterprise agreement, Act or Regulation.
5. The Contractor has been paid all that is due and payable to it under the Contract as at the date of this declaration, except for any amounts claimed in any payment claim with which this declaration is provided.
6. The Contractor has paid all relevant fees and maintains all insurance policies the Contractor is required to maintain under the Contract.
7. The Contractor is solvent and able to meet its debts as and when they fall due.
8. The Contractor has been informed (by statutory declaration in equivalent terms to this declaration) by each of its subcontractors, consultants and suppliers engaged by the Contractor in connection with the work under the Contract that all their respective employees, secondary subcontractors, suppliers and consultants have been paid all remuneration and other amounts or benefits due and payable to them in connection with the work under the Contract.
9. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
  - (a) under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation;
  - (b) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
  - (c) under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation.
10. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.



11. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors, consultants and suppliers in connection with the Contract were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the *Workers Compensation Act 1987* (NSW), the *Payroll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW) ("Acts"); and
  - (b) given by the subcontractors, consultants and suppliers in their capacity as 'subcontractors' as defined in the Acts.
12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, consultants and suppliers, as referred to in this declaration.

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

**SUBSCRIBED AND DECLARED AT \_\_\_\_\_ in the State of New South Wales,**

**THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_**

**BEFORE ME**

(Signature) \_\_\_\_\_

(Justice of the Peace/Solicitor)

**SIGNED FOR AND ON BEHALF OF THE CONTRACTOR**  
**Certificate under section 34(1)(c) of Oaths Act 1900 (NSW)**

I \_\_\_\_\_,  
*[Name of the person before whom the declaration is made]*

a \_\_\_\_\_,  
*[Qualification of the person before whom the declaration is made]*

certify the following matters concerning the making of this statutory declaration by the person who made it:

*\*Cross out any text that does not apply*

1. \*I saw the face of the person or \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2. \*I have known the person for at least 12 months or \*I have confirmed the person's identity using an identification document and the document I relied on was

\_\_\_\_\_  
*[describe identification document relied on]*

\_\_\_\_\_  
*[Signature of person before whom the declaration is made]*

Date: \_\_\_\_\_

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

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

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

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

Subcontractor: ..... ABN: .....

*(Business Name)*

of .....

*(Address of subcontractor)*

has entered into a contract with ..... ABN: .....

*(Business name of principal contractor)*

**(Note 2)**

Contract number/identifier .....

**(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive,

**(Note 4)**

subject of the payment claim dated: ...../...../.....

**(Note 5)**

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

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

- (f) Signature ..... Full name .....
- (g) Position/Title ..... Date ...../...../.....

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

#### Notes

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

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

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

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

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

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

#### Statement Retention

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

### **Offences in respect of a false Statement**

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

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

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

### **Further Information**

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

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# Annexure Part F

## Annexure to the Australian Standard General Conditions of Contract AS4000 – 1997

### ***Project Requirements***

(subclause 1.1)

#### **Section 1 – Scope of the Works**

##### **1.1 Scope**

The *WUC* includes all supply of materials and equipment, construction, installation of equipment, testing, commissioning, and preparation and supply of operation and maintenance manuals and as-built drawings, required to complete the construction of *the Works*.

The *Works* and *WUC* includes:

- the upgrade of the current road corridor to include a separated Cycleway;
- all activities associated with the demolition and construction of the Cycleway, including kerbs, gutters, separated Cycleway, medians, tree pits, garden beds, roadway, footpath and driveway pavement, etc.;
- the coordination with all third parties and *authorities* for *the Works*, including:
  - JCDecaux in relation to any bus stop related *work*, any adjustments to existing levels or the construction of new service pit covers, etc.;
  - Telstra in relation to any Telstra infrastructure *work*;
  - Ausgrid in relation to any Ausgrid infrastructure *work*; and
  - any other utility *authority* in relation to other infrastructure *work*;
- the supply, salvage and installation of all relevant hardscape and softscape landscaping, including all relevant signage, wayfinding tools, pavers, Multi-function Poles (**MFPs**), light poles, traffic signals, etc.; and
- the setting out, supply and application of new or existing pavement and road marking materials.

The scope of *the Works* and *WUC* is described in this section 1 of these *Project Requirements*, including as referred to or described in:

- in the specifications referred to in section 2 of these *Project Requirements*;
- subject to section 3.1 of these *Project Requirements*, in the drawings referred to in section 3 of these *Project Requirements*; and
- In the clarifications referred to in section 4 of these *Project Requirements*.

For the avoidance of doubt (except to the extent otherwise expressly stated):

- the *Contractor* shall ensure that all provisions of these *Project Requirements* are satisfied;
- without limiting the above, where these *Project Requirements* provides that a particular act or thing is to be done or must be done, is not to be done or must not be done, or otherwise specifies particular requirements, those acts or things must be done or must not be done (as applicable), and those requirements must be satisfied, by the *Contractor* at the *Contractor's* cost and risk (except to the extent otherwise provided in the *Contract*); and
- where these *Project Requirements* provides that the *Contractor* is to give or submit a notice, document or any other information, such notice, document or other information must be given or submitted by the *Contractor* to the *Superintendent*.

Without limiting or otherwise affecting this paragraph, but subject to the *Contractor's* entitlements under subclause 25.3 and clause 34 of the General Conditions of Contract in respect of *latent conditions*:

- the *Principal* does not warrant, guarantee, make any representation or assume any duty of care or other responsibility to the *Contractor* with respect to the suitability, completeness, accuracy or adequacy of the *services overlay plans*;
- the *Contractor* warrants that:
  - it has not relied upon and will not rely upon the suitability, completeness, accuracy or adequacy of the *services overlay plans*; and
  - it enters into the *Contract* based on its own investigations, interpretations, deductions, information and determinations;
- the *Contractor* acknowledges that it is aware that:
  - the *Principal* has entered into the *Contract* relying upon the warranties in this paragraph;
  - the *Principal* would not have entered into the *Contract* but for those warranties; and
  - the *services overlay plans* were provided to the *Contractor* for the information only of the *Contractor* and do not form part of the *Contract*; and
- the *Contractor* will not be entitled to make, and the *Principal* will not be liable in respect of, any *claim* arising out of, or in any way in connection with:
  - any error in or omission from the *services overlay plans*;
  - any use of or reliance upon the *services overlay plans* by the *Contractor*;
  - any other fact, matter or thing arising out of, or in any way in connection with, the *services overlay plans*; or
  - any failure by the *Principal* to make available to the *Contractor* any other document or information for the purposes of *WUC* or the *Contract*, including in relation to conditions on, in, under or in the vicinity of the *site*.

In the paragraph above, the '*services overlay plans*' means the overlay plans provided by the *Principal* to the *Contractor* in tender addendum 20.

## 1.2 Principal supplied / provided items

The *Principal* shall supply the multipole MFPs, inclusive of street lights (SL1, SL2 and SL5) and traffic signal, as noted on drawings EL312 and EL133, in respect of:

- *SP2*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP2 Notice to Proceed* and the *date for practical completion* for the *SP1 Works*;
- *SP3*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP3 Notice to Proceed* and the *date for practical completion* for the *SP2 Works* ;
- *SP4*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP4 Notice to Proceed* and the *date for practical completion* for the *SP3 Works* ;
- *SP5*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP5 Notice to Proceed* and the *date for practical completion* for the *SP4 Works* ;
- *SP6*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works* ; and
- *SP7*, within 4 calendar weeks from the date which is the latter of the date of issue of the *SP7 Notice to Proceed* and the *date for practical completion* for the *SP6 Works* .

Any delay by the *Principal* in supplying the multipole MFPs in accordance with the previous paragraph shall not be a breach of the *Contract* but shall be a *qualifying cause of delay* and *compensable cause*.

Luminaires, controls and other related elements shall be supplied and installed by the *Contractor*.

The *Principal* shall obtain a quotation from Telstra for Telstra to carry out any *work* required on Telstra infrastructure. Telstra is a *selected subcontractor* under the *Contract*. The *Contractor* shall subcontract such *work* required on Telstra infrastructure to Telstra.

Subject to the *Principal* being required, in accordance with the previous paragraph, to obtain a quotation from Telstra for Telstra to carry out any *work* required on Telstra infrastructure, without limiting clause 9 or any other term of the General Conditions of Contract, the *Contractor* is responsible for the:

- coordination of the Telstra infrastructure *work* and with *the Works*;
- carrying out of the Telstra infrastructure *work* required as part of *the Works*;

- coordination of all *WUC* in relation to utilities with other *authorities* and service providers and with *the Works*; and
- carrying out of all *work* in relation to utilities required as part of *the Works*.

The *Principal* shall procure JCDecaux (or an alternative) to remove the existing bus shelter/s and install the new bus shelter/s. Without limiting clause 9, subclause 24.2 or any other term of the General Conditions of Contract, the *Contractor* is responsible for the:

- coordination of JCDecaux (or the alternative) for this *work* and with *the Works*;
- installation of the bus shelter/s footings; and
- installation of the power and communications conduits from the MSB to each bus shelter/s (the conduit must have a draw wire). The MSB design and related shop drawings shall accommodate separate metering for the power supply to the bus shelter/s.

On the latter of:

- the *Contractor* completing the *work* described in the paragraph immediately above; and
- the date which is 10 calendar weeks from the date which is the latter of the date of issue of the *SP6 Notice to Proceed* and the *date for practical completion* for the *SP5 Works*,

the *Principal* shall have engaged JCDecaux so as to enable the *Contractor* to coordinate the installation of the bus shelter/s.

Any delay by the *Principal* in engaging JCDecaux so as to enable the *Contractor* to coordinate the installation of the bus shelter/s in accordance with the previous paragraph shall not be a breach of the *Contract* but shall be a *qualifying cause of delay* and *compensable cause*.

### 1.3 Approvals Required

Without limiting subclause 11.1 or any other term of the General Conditions of Contract, the *Contractor* shall obtain all *approvals*, including:

- from Roads, Maritime and Services;
- from the *Principal* when it is exercising any of its functions and powers under any *legislative requirement*;
- from any service providers, including Ausgrid, Telstra, Sydney Water, etc.;
- from Rail Corporation; and
- any other *approvals* required for construction of *the Works* to commence.

The *Principal* shall waive construction zone / parking fees in connection with *WUC* and *the Works*, including the standard restoration charges associated with road/footpath opening permits from the *Principal*. Without limiting subclause 11.1 or any other term of the General Conditions of Contract, the *Contractor* shall apply for and obtain all necessary approvals and permits from all relevant *authorities*, and this includes paying the associated fees and charges.

### 1.4 Documentation Package

In respect of each *separable portion*, the *Contractor* shall submit all of the following documents in relation to that *separable portion* at least 1 week before any construction of *the Works* for that *separable portion* is commenced:

- Pedestrian Traffic Management and Control Plans for every stage of the construction of *the Works*;
- Stage Specific Inspection Test Plan Schedules;
- Construction Traffic Management Plan;
- construction staging and sub-staging plans, substantially in accordance with the construction staging and sub-staging plans submitted by the *Contractor* in its tender submission;
- Project Management Plan;
- Environmental Management Plan;

- Site-Specific Work Health and Safety Plan;
- Quality Assurance Plan;
- Site-Specific Environmental Plan;
- Environmental Management Plan;
- Safe Work Method Statements;
- Road Occupancy Permits / licences;
- detailed *construction program* that complies with the requirements of clause 32 of the General Conditions of Contract;
- evidence of insurances in accordance with subclause 19.1 of the General Conditions of Contract; and
- any other documentation deemed necessary by the *Superintendent* or required by any of the specifications (including the 'preliminaries section' of any such specifications) referred to in section 2 of these *Project Requirements*.

The submitted documentation may be reviewed by the *Superintendent* and any comments by the *Superintendent* on the documents, must be addressed by the *Contractor* and resubmitted to the *Superintendent* in revised documentation.

The *Contractor*:

- acknowledges that these *Project Requirements* do not prescribe any method of working for *WUC (work method)*;
- is solely responsible for developing a *work method* in respect of *WUC*; and
- shall ensure that the *work method* it uses will ensure it complies with its obligations under the *Contract*.

The *Contractor* bears all the risks and costs involved in the selection of the *work method*. The fact that the proposed *work method* is impractical or impossible or the *Contractor*, with or without the approval of the *Superintendent*, uses another *work method* will not:

- entitle the *Contractor* to make any *claim* against the *Principal*;
- without limiting the previous sentence, be a *qualifying cause of delay*, a *compensable cause* or otherwise give rise to any entitlement to an *EOT* under clause 34 or any entitlement under subclause 34.9 of the General Conditions of Contract; or
- cause the *Contract* to be frustrated.

Neither the *Principal* nor the *Superintendent* assumes or owes any duty of care or other responsibility to the *Contractor* in relation to any work method or any other documents or materials prepared, proposed or used by the *Contractor* in connection with *WUC* or the *Contract* (including under this section 1.4 of these *Project Requirements*), and shall not be required to check such work method or any such other documents or materials for suitability, errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*.

No review of, comment upon or approval or rejection of, or failure to review, comment upon, approve or reject, any work method or any other documents or materials prepared or used by the *Contractor* in connection with *WUC* or the *Contract* or any other *direction* (including approval) by or on behalf of the *Superintendent* or the *Principal* about such work method, other documents or materials shall:

- relieve the *Contractor* from, or otherwise limit, alter or affect, the *Contractor's* liabilities or responsibilities under the *Contract* or otherwise at law or in equity; or
- prejudice the *Principal's* rights against the *Contractor* whether under the *Contract* or otherwise at law or in equity.

## 1.5 Separable Portions

### (a) *SP1 Activities*

The *SP1 Activities* include:



- in respect of Stage 1, the early works investigations, geotechnical investigations and service verification, including:
  - the completion of the initial services verification in accordance with the Civil Engineering drawings in section 3.4 of these *Project Requirements*, along the full extent of the Cycleway; and
  - an initial survey through the use of a Ground Penetrating Radar Scan (this *WUC* is to be carried out outside of normal working hours to minimise impacts to businesses and traffic); and
- in respect of Stage 2 (Denison Street, between Oxford Street and Spring Street, and Spring Street West, between Denison Street and Newland Street):
  - the Preliminaries only and procurement of long lead items associated with this Stage 2 (such *WUC* being a part of the *SP1 Activities*).

The *Contractor* shall undertake any non-destructive works in accordance with the Civil Engineering drawings in section 3.4 of these *Project Requirements* (any *work* of this nature shall be reinstated within the next 24 hours). Without limiting subclause 8.1 or any other term of the General Conditions of Contract, any discrepancies between the conditions on the *site* and the early works investigation outlined in the Civil Engineering drawings in section 3.4 of these *Project Requirements* must be reported to Council within two weeks of the *Contract Date*.

**(b) SP2 Activities**

The *SP2 Activities* include the completion of *WUC* in relation to Stage 2 (Denison Street, between Oxford Street and Spring Street, and Spring Street West, between Denison Street and Newland Street):

- including the procurement of lighting long lead items associated with *the Works* included in Stages 3 – 7 inclusive; but
- excluding the Preliminaries and long lead items that are included within the *SP1 Activities*.

**(c) SP3 Activities**

The *SP3 Activities* include the completion of *WUC* in relation to Stage 3 (Spring Street East, between Newland Street and Bronte Road), excluding the lighting long lead items that are included within the *SP2 Activities*.

**(d) SP4 Activities**

The *SP4 Activities* include the completion of *WUC* in relation to Stage 4 (Bronte Road, between Ebley Street and Oxford Street), excluding the lighting long lead items that are included within the *SP2 Activities*.

**(e) SP5 Activities**

The *SP5 Activities* include the completion of *WUC* in relation to Stage 5 (Oxford Street East, between Grosvenor Street and Bondi Road), excluding the lighting long lead items that are included within the *SP2 Activities*.

**(f) SP6 Activities**

The *SP6 Activities* include the completion of *WUC* in relation to Stage 6 (Oxford Street, between Denison Street and St James Road), excluding the lighting long lead items that are included within the *SP2 Activities*.

**(g) SP7 Activities**

The *SP7 Activities* include the completion of *WUC* in relation to Stage 7 (Oxford Street, between St James Road and York Road intersection to Centennial Park), excluding the lighting long lead items that are included within the *SP2 Activities*.

**(h) Sub-stages**

The *Contractor* shall also arrange and manage the *WUC* and *the Works* in relation to each *separable portion*, in sub-stages within each of the Stages listed above in order to minimise impacts to the accessibility of pedestrians, vehicles and to and from business shopfronts.

Refer to sections 2 and 3 of these *Project Requirements* in relation to further details, requirements and specifications of each *separable portion* described in this section 1.5 of these *Project Requirements*.

The boundaries of the Stages referred above in this section 1.5 of these *Project Requirements* are set out in the Staging Plan included at the end of these *Project Requirements*. The Staging Plan is referenced as Fig 1.1 of the CTMP Version 2 prepared by Bitzios Consulting.

**1.6 Project Management**

The *Contractor* shall liaise with the *Superintendent* on a regular basis to provide progress reports. The *Superintendent* may, from time to time, facilitate and assist the *Contractor* including in respect of co-ordinating input from internal stakeholders and external community stakeholders. Contributing internal stakeholders may include the *Principal's* Civil Engineering Team, Open Space and Urban Design Teams. Consultation with internal stakeholders may take place in project meetings and *site* visits as required by the *Superintendent*.

Without limiting section 1.4 of these *Project Requirements*, the *Contractor* shall submit a Project Management Plan inclusive of, Site Management Plan, Site-Specific Work Health and Safety Plan, Quality Assurance Plan and Environmental Management Plan to the *Superintendent*.

**1.7 Reporting Requirements**

Refer to the Preliminaries section of the specifications in section 2 of these *Project Requirements*.

**1.8 Working Hours**

Construction hours shall be between 7am to 5pm (Monday to Friday) and Saturdays (8am to 3pm). No works are to carried out on public holidays or Saturdays and Sundays that form part of public holiday weekends.

Night works will be permitted on occasion to minimise day-time impacts. Night works will be restricted based on permit applications made to Council or the RMS by the *Contractor*.

**1.9 Fees**

The *Principal* (as an *authority*) shall waive, for the *Contractor*, its fees in respect of construction zone parking (in connection with *WUC* and *the Works*) within the barricaded perimeter of the particular sub-stage (as set out in further detail in these *Project Requirements*) being constructed at the given time, including the standard restoration charges associated with road/footpath opening permits from the *Principal*.

**Section 2 – Specifications**

The following technical specifications listed are those independent of the consultant's drawings set. Refer to the additional technical specifications on the project drawings (listed in section 3 of these *Project Requirements*).

CONSULTANT	TITLE	REVISION	DATE
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Spackman Mossop Michaels	West Bondi Junction Cycleway and Streetscape Upgrade Oxford Street West, Denison Street and Spring Street Technical Specification	C – Revised for Tender	11 July 2018
Tract Consultants	Bondi Junction Cycleway – East Technical Specification	1 - Draft Tender Issue	June 2018
Lighting, Art and Science	Bondi Junction Cycleway Lighting & Electrical Services Specification L151V	T2 – Draft Tender	29 June 2018

### **Section 3 - Drawings**

<b>3.1 SPACKMAN MOSSOP MICHAELS</b>	
West Bondi Junction Cycleway Oxford Street West, Denison Street And Spring Street Landscape Documentation Issue D Dated 05 June 2018 (unless nominated otherwise below)	
<b>SHEET</b>	<b>TITLE</b>
<b>GENERAL (000)</b>	
001	COVER SHEET
002	SCHEDULES – 1 OF 4 (latest version – RFT addendum 4 mark up, 28.06.18)
003	SCHEDULES – 2 OF 4 (latest version – RFT addendum 4 mark up, 28.06.18)
004	SCHEDULES – 3 OF 4 (latest version – RFT addendum 4 mark up, 28.06.18)
005	SCHEDULES – 4 OF 4
006	LEGEND – 1 OF 1
<b>SURVEY (100)</b>	
101	SURVEY PLAN
102	SURVEY PLAN
103	SURVEY PLAN
104	SURVEY PLAN
105	SURVEY PLAN
106	SURVEY PLAN
107	SURVEY PLAN
107A	SURVEY PLAN
108	SURVEY PLAN
109	SURVEY PLAN
110	SURVEY PLAN
111	SURVEY PLAN
112	SURVEY PLAN
113	SURVEY PLAN
114	SURVEY PLAN
115	SURVEY PLAN
<b>DEMOLITION PLANS (200)</b>	
201	DEMOLITION PLAN
202	DEMOLITION PLAN
203	DEMOLITION PLAN
204	DEMOLITION PLAN
205	DEMOLITION PLAN
206	DEMOLITION PLAN

207	DEMOLITION PLAN
207A	DEMOLITION PLAN
208	DEMOLITION PLAN
209	DEMOLITION PLAN
210	DEMOLITION PLAN
211	DEMOLITION PLAN
212	DEMOLITION PLAN
213	DEMOLITION PLAN
214	DEMOLITION PLAN
215	DEMOLITION PLAN
<b>GENERAL ARRANGEMENT PLANS (300)</b>	
301	GENERAL ARRANGEMENT PLAN
302	GENERAL ARRANGEMENT PLAN
303	GENERAL ARRANGEMENT PLAN
304	GENERAL ARRANGEMENT PLAN
305	GENERAL ARRANGEMENT PLAN
306	GENERAL ARRANGEMENT PLAN
307	GENERAL ARRANGEMENT PLAN
307A	GENERAL ARRANGEMENT PLAN
308	GENERAL ARRANGEMENT PLAN
309	GENERAL ARRANGEMENT PLAN
310	GENERAL ARRANGEMENT PLAN
311	GENERAL ARRANGEMENT PLAN
312	GENERAL ARRANGEMENT PLAN
313	GENERAL ARRANGEMENT PLAN
314	GENERAL ARRANGEMENT PLAN
315	GENERAL ARRANGEMENT PLAN
<b>SETOUT PLANS (400)</b>	
401	SETOUT PLAN
402	SETOUT PLAN
403	SETOUT PLAN
404	SETOUT PLAN
405	SETOUT PLAN
406	SETOUT PLAN
407	SETOUT PLAN
407A	SETOUT PLAN
408	SETOUT PLAN
409	SETOUT PLAN
410	SETOUT PLAN
411	SETOUT PLAN
412	SETOUT PLAN
413	SETOUT PLAN
414	SETOUT PLAN
415	SETOUT PLAN
<b>SIGNS AND LINE MARKING PLANS (500)</b>	
501	SIGNS AND LINE MARKING PLAN
502	SIGNS AND LINE MARKING PLAN
503	SIGNS AND LINE MARKING PLAN
504	SIGNS AND LINE MARKING PLAN
505	SIGNS AND LINE MARKING PLAN
506	SIGNS AND LINE MARKING PLAN
507	SIGNS AND LINE MARKING PLAN

507A	SIGNS AND LINE MARKING PLAN
508	SIGNS AND LINE MARKING PLAN
509	SIGNS AND LINE MARKING PLAN
510	SIGNS AND LINE MARKING PLAN
511	SIGNS AND LINE MARKING PLAN
512	SIGNS AND LINE MARKING PLAN
513	SIGNS AND LINE MARKING PLAN
514	SIGNS AND LINE MARKING PLAN
515	SIGNS AND LINE MARKING PLAN
<b>PLANTING PLANS (600)</b>	
601	PLANTING PLAN
602	PLANTING PLAN
603	PLANTING PLAN
604	PLANTING PLAN
605	PLANTING PLAN
606	PLANTING PLAN
607	PLANTING PLAN
607A	PLANTING PLAN
608	PLANTING PLAN
609	PLANTING PLAN
610	PLANTING PLAN
611	PLANTING PLAN
612	PLANTING PLAN
613	PLANTING PLAN
614	PLANTING PLAN
615	PLANTING PLAN
<b>STONE LAYOUT PLANS (700)</b>	
701	STONE LAYOUT PLAN
702	STONE LAYOUT PLAN
703	STONE LAYOUT PLAN
704	STONE LAYOUT PLAN
705	STONE LAYOUT PLAN
706	STONE LAYOUT PLAN
707	STONE LAYOUT PLAN
707A	STONE LAYOUT PLAN
708	STONE LAYOUT PLAN
709	STONE LAYOUT PLAN
710	STONE LAYOUT PLAN
711	STONE LAYOUT PLAN
712	STONE LAYOUT PLAN
713	STONE LAYOUT PLAN
714	STONE LAYOUT PLAN
715	STONE LAYOUT PLAN
<b>DETAILS (800)</b>	
801	DETAILS – SECTIONS & ELEVATIONS 1 OF 2
802	DETAILS – SECTIONS & ELEVATIONS 2 OF 2
803	DETAILS – PAVEMENTS 1 OF 2
804	DETAILS – PAVEMENTS 2 OF 2
805	DETAILS – KERB & GUTTERS 1 OF 1
806	DETAILS – RAMPS 1 OF 1
807	DETAILS – FURNITURES AND FIXTURES 1 OF 5
808	DETAILS – FURNITURES AND FIXTURES 2 OF 5
809	DETAILS – FURNITURES AND FIXTURES 3 OF 5
810	DETAILS – FURNITURES AND FIXTURES 4 OF 5

811	DETAILS – FURNITURES AND FIXTURES 5 OF 5
812	DETAILS – TREE PITS 1 OF 2 (latest version – RFT addendum 8 mark up, 11.07.18)
813	DETAILS – TREE PITS 2 OF 2
814	DETAILS – PLANTING 1 OF 1

### **3.2 TRACT CONSULTANTS**

East Bondi Junction Separated Cycleway

Issue 4 Dated 01 June 2018 (unless nominated otherwise below)

<b>SHEET</b>	<b>TITLE</b>
<b>GENERAL DRAWINGS (000)</b>	
007	PIT SCHEDULE
008	PIT SCHEDULE (Rev 5, 29.06.18)
009	PEDESRIAN RAMPS & PLANT SCHEDULE
010	GENERAL NOTES
011	DEMOLITION PLAN LEGEND AND NOTES
012	GENERAL ARRANGEMENT PLAN LEGEND AND NOTES
<b>SURVEY DRAWINGS (100)</b>	
116	EXISTING SURVEY SHEET 16 OF 24
117	EXISTING SURVEY SHEET 17 OF 24
118	EXISTING SURVEY SHEET 18 OF 24
119	EXISTING SURVEY SHEET 19 OF 24
120	EXISTING SURVEY SHEET 20 OF 24
121	EXISTING SURVEY SHEET 21 OF 24
122	EXISTING SURVEY SHEET 22 OF 24
123	EXISTING SURVEY SHEET 23 OF 24
124	EXISTING SURVEY SHEET 24 OF 24
<b>DEMOLITION DRAWINGS (200)</b>	
216	DEMOLITION PLAN SHEET 16 OF 24
217	DEMOLITION PLAN SHEET 17 OF 24
218	DEMOLITION PLAN SHEET 18 OF 24
219	DEMOLITION PLAN SHEET 19 OF 24
220	DEMOLITION PLAN SHEET 20 OF 24
221	DEMOLITION PLAN SHEET 21 OF 24
222	DEMOLITION PLAN SHEET 22 OF 24
223	DEMOLITION PLAN SHEET 23 OF 24
224	DEMOLITION PLAN SHEET 24 OF 24
<b>GENERAL ARRANGEMENT PLANS (300)</b>	
316	GENERAL ARRANGEMENT PLAN SHEET 16 OF 24
317	GENERAL ARRANGEMENT PLAN SHEET 17 OF 24
318	GENERAL ARRANGEMENT PLAN SHEET 18 OF 24 (Rev 5, 29.06.18)
319	GENERAL ARRANGEMENT PLAN SHEET 19 OF 24
320	GENERAL ARRANGEMENT PLAN SHEET 20 OF 24
321	GENERAL ARRANGEMENT PLAN SHEET 21 OF 24
322	GENERAL ARRANGEMENT PLAN SHEET 22 OF 24
323	GENERAL ARRANGEMENT PLAN SHEET 23 OF 24
324	GENERAL ARRANGEMENT PLAN SHEET 24 OF 24

<b>SETOUT PLANS (400)</b>	
416	SETOUT PLAN SHEET 16
417	SETOUT PLAN SHEET 17
418	SETOUT PLAN SHEET 18
419	SETOUT PLAN SHEET 19
420	SETOUT PLAN SHEET 20
421	SETOUT PLAN SHEET 21
422	SETOUT PLAN SHEET 22
423	SETOUT PLAN SHEET 23
424	SETOUT PLAN SHEET 24
425	INTERSECTION LAYOUT – GRAY STREET
426	INTERSECTION LAYOUT – SPRING STREET
427	INTERSECTION LAYOUT – SPRING STREET
428	INTERSECTION LAYOUT – SPRING STREET
429	INTERSECTION LAYOUT – GROSVENOR STREET
430	INTERSECTION LAYOUT – OXFORD STREET BUS ISLAND
431	INTERSECTION LAYOUT – OXFORD STREET BUS ISLAND
<b>PLANTING PLANS (600)</b>	
616	PLANTING PLAN SHEET 16 OF 24
617	PLANTING PLAN SHEET 17 OF 24
618	PLANTING PLAN SHEET 18 OF 24
619	PLANTING PLAN SHEET 19 OF 24
620	PLANTING PLAN SHEET 20 OF 24
621	PLANTING PLAN SHEET 21 OF 24
622	PLANTING PLAN SHEET 22 OF 24
623	PLANTING PLAN SHEET 23 OF 24
624	PLANTING PLAN SHEET 24 OF 24
<b>DETAILS (800)</b>	
850	DETAILS
851	DETAILS
852	DETAILS
853	DETAILS
854	DETAILS
855	DETAILS
856	DETAILS
857	DETAILS
858	DETAILS

### **3.3 BITZIOS CONSULTING**

East Bondi Junction Streetscape

Job Number: P2996

100% Design Signage And Linemarking Plan

Issue 002 Dated 01 June 2018

<b>SHEET</b>	<b>TITLE</b>
1	PROJECT COVER SHEET
2	PROJECT LAYOUT
100	SIGNAGE AND LINEMARKING
101	SIGNAGE AND LINEMARKING
102	SIGNAGE AND LINEMARKING
103	SIGNAGE AND LINEMARKING

104	SIGNAGE AND LINEMARKING
105	SIGNAGE AND LINEMARKING
106	SIGNAGE AND LINEMARKING
107	SIGNAGE AND LINEMARKING
108	SIGNAGE AND LINEMARKING
109	SIGNAGE AND LINEMARKING
110	SIGNAGE AND LINEMARKING

### **3.4 WOOLACOTTS CONSULTING ENGINEERS**

East Bondi Junction Separated Cycleway

Zones 1 And 2

Issue A Dated 01 June 2018

<b>SHEET</b>	<b>TITLE</b>
C100	STANDARD NOTES AND DRAWING LIST
C101	DETAILS – SHEET 1
C102	DETAILS – SHEET 2
C103	DETAILS – SHEET 3
C104	DETAILS – SHEET 4
C105	DETAILS – SHEET 5
C200	CIVIL WORKS PLAN – SHEET 1
C201	CIVIL WORKS PLAN – SHEET 2
C202	CIVIL WORKS PLAN – SHEET 3
C203	CIVIL WORKS PLAN – SHEET 4
C204	CIVIL WORKS PLAN – SHEET 5
C205	CIVIL WORKS PLAN – SHEET 6
C206	CIVIL WORKS PLAN – SHEET 7
C207	CIVIL WORKS PLAN – SHEET 8
C208	CIVIL WORKS PLAN – SHEET 9
C209	CIVIL WORKS PLAN – SHEET 10
C210	CIVIL WORKS PLAN – SHEET 11
C211	CIVIL WORKS PLAN – SHEET 12
C212	CIVIL WORKS PLAN – SHEET 13
C213	CIVIL WORKS PLAN – SHEET 14
C214	CIVIL WORKS PLAN – SHEET 15
C215	CIVIL WORKS PLAN – SHEET 16
C216	CIVIL WORKS PLAN – SHEET 17
C217	CIVIL WORKS PLAN – SHEET 18
C218	CIVIL WORKS PLAN – SHEET 19
C219	CIVIL WORKS PLAN – SHEET 20
C220	CIVIL WORKS PLAN – SHEET 21
C221	CIVIL WORKS PLAN – SHEET 22
C222	CIVIL WORKS PLAN – SHEET 23
C300	CROSS SECTIONS – SHEET 1
C301	CROSS SECTIONS – SHEET 2
C302	CROSS SECTIONS – SHEET 3
C303	CROSS SECTIONS – SHEET 4
C304	CROSS SECTIONS – SHEET 5
C305	CROSS SECTIONS – SHEET 6
C306	CROSS SECTIONS – SHEET 7
C307	CROSS SECTIONS – SHEET 8
C308	CROSS SECTIONS – SHEET 9
C309	CROSS SECTIONS – SHEET 10
C310	CROSS SECTIONS – SHEET 11
C311	CROSS SECTIONS – SHEET 12



C312	CROSS SECTIONS – SHEET 13
C313	CROSS SECTIONS – SHEET 14
<p>East Bondi Junction Separated Cycleway Zones 1 And 2 Issue C Dated 13 February 2019</p>	
C400	SERVICES INVESTIGATION PLAN – SHEET 1
C401	SERVICES INVESTIGATION PLAN – SHEET 2
C402	SERVICES INVESTIGATION PLAN – SHEET 3
C403	SERVICES INVESTIGATION PLAN – SHEET 4
C404	SERVICES INVESTIGATION PLAN – SHEET 5
C405	SERVICES INVESTIGATION PLAN – SHEET 6
C406	SERVICES INVESTIGATION PLAN – SHEET 7
C407	SERVICES INVESTIGATION PLAN – SHEET 8
C408	SERVICES INVESTIGATION PLAN – SHEET 9
C409	SERVICES INVESTIGATION PLAN – SHEET 10
C410	SERVICES INVESTIGATION PLAN – SHEET 11
C411	SERVICES INVESTIGATION PLAN – SHEET 12
C412	SERVICES INVESTIGATION PLAN – SHEET 13
<p>East Bondi Junction Separated Cycleway Zones 1 And 2 Issue A Dated 14 February 2019</p>	
C413	SERVICES INVESTIGATION PLAN – SHEET 14
C414	SERVICES INVESTIGATION PLAN – SHEET 15
C415	SERVICES INVESTIGATION PLAN – SHEET 16
C416	SERVICES INVESTIGATION PLAN – SHEET 17
C417	SERVICES INVESTIGATION PLAN – SHEET 18
C418	SERVICES INVESTIGATION PLAN – SHEET 19
C419	SERVICES INVESTIGATION PLAN – SHEET 20
C420	SERVICES INVESTIGATION PLAN – SHEET 21

### **3.5 LIGHTING, ART & SCIENCE**

Bondi Junction Cycleway  
Proposed Lighting  
Project No. L151V  
Issue T1 Dated 01 June 2018

<b>SHEET</b>	<b>TITLE</b>
EL-100	LEGEND, DRAWING LIST AND LOCATION PLAN
EL-101	LIGHTING & ELECTRICAL LAYOUT – SHEET 1
EL-102	LIGHTING & ELECTRICAL LAYOUT – SHEET 2
EL-103	LIGHTING & ELECTRICAL LAYOUT – SHEET 3
EL-104	LIGHTING & ELECTRICAL LAYOUT – SHEET 4
EL-105	LIGHTING & ELECTRICAL LAYOUT – SHEET 5
EL-106	LIGHTING & ELECTRICAL LAYOUT – SHEET 6
EL-107	LIGHTING & ELECTRICAL LAYOUT – SHEET 7
EL-108	LIGHTING & ELECTRICAL LAYOUT – SHEET 8
EL-109	LIGHTING & ELECTRICAL LAYOUT – SHEET 9
EL-110	LIGHTING & ELECTRICAL LAYOUT – SHEET 10
EL-111	LIGHTING & ELECTRICAL LAYOUT – SHEET 11
EL-112	LIGHTING & ELECTRICAL LAYOUT – SHEET 12
EL-113	LIGHTING & ELECTRICAL LAYOUT – SHEET 13
EL-114	LIGHTING & ELECTRICAL LAYOUT – SHEET 14

EL-115	LIGHTING & ELECTRICAL LAYOUT – SHEET 15
EL-116	LIGHTING & ELECTRICAL LAYOUT – SHEET 16
EL-117	LIGHTING & ELECTRICAL LAYOUT – SHEET 17
EL-118	LIGHTING & ELECTRICAL LAYOUT – SHEET 18
EL-119	LIGHTING & ELECTRICAL LAYOUT – SHEET 19
EL-120	LIGHTING & ELECTRICAL LAYOUT – SHEET 20
EL-121	LIGHTING & ELECTRICAL LAYOUT – SHEET 21
EL-122	LIGHTING & ELECTRICAL LAYOUT – SHEET 22
EL-123	LIGHTING & ELECTRICAL LAYOUT – SHEET 23
EL-130	COMPLIANCE STATEMENT
EL-131	AUSGRID CHANGES
EL-132	MULTIFUNCTION POLE SCHEDULE – WEST PORTION
EL-133	MULTIFUNCTION POLE SCHEDULE – EAST PORTION
EL-200	LIGHTING DETAILS – SHEET 1
EL-201	LIGHTING DETAILS – SHEET 2
EL-202	LIGHTING DETAILS – SHEET 3

### **3.6 THE TRANSPORT PLANNING PARTNERSHIP**

Traffic Control Signals

<b>SHEET</b>	<b>TITLE</b>	<b>TCS No.</b>	<b>DATE</b>
-	TRAFFIC SIGNALS AT YORK ROAD AND OXFORD STREET BONDI JUNCTION	1517	-
-	TRAFFIC SIGNALS AT NELSON STREET AND OXFORD STREET BONDI JUNCTION	0726	-
-	TRAFFIC SIGNALS AT NEWLAND STREET AND SPRING STREET BONDI JUNCTION	2479	-
-	TRAFFIC SIGNALS AT SPRING STREET WEST OF BRONTE ROAD BONDI JUNCTION	3942	-

### **3.7 BITZIOS CONSULTING**

Traffic Control Signals

<b>SHEET</b>	<b>TITLE</b>	<b>TCS No.</b>	<b>DATE</b>
1	TRAFFIC SIGNALS AT OXFORD STREET (MR000) EAST OF GROSVENOR STREET BONDI JUNCTION	0000 – A	11/04/18
10	TRAFFIC SIGNALS AT OXFORD STREET (MR000) HOLLYWOOD AVENUE AND ADELAIDE AVENUE BONDI JUNCTION	1038 – A	31/05/18
18	TRAFFIC SIGNALS AT OXFORD STREET (MR000) AND BRONTE ROAD AND GROSVENOR STREET BONDI JUNCTION	0369 - A	30/05/18

### **3.7 TENCO ENGINEERS**

MFP Generic Foundation Design Tables

SHEET	TITLE	DATE
S-000 - D	GENERAL NOTES 300 SERIES	24/03/16
S-001 - D	PILE DETAILS 300 SERIES	24/03/16
S-002 - D	PILE TABLES 300 SERIES	24/03/16
S-000 - D	GENERAL NOTES 300 SERIES MINI	24/03/16
S-001 - D	PILE DETAILS 300 SERIES MINI	24/03/16
S-002 - D	PILE TABLES 300 SERIES MINI	24/03/16
N/A	MULTIPOLE DATA SHEET – TYPICAL MOUNTING DETAIL / 300 SERIES	
2366435 – D	300 SERIES FOUNDATION M24	23/03/10
N/A	MULTIPOLE DATA SHEET – TYPICAL MOUNTING DETAIL / 300 SERIES MINI	
2366504 - D	M24 FOUNDATION BOLTS	06/04/11

### **3.8 ADVANCED CONSULTING SERVICES**

Approved ASP3 Designs

SHEET	TITLE	DATE
1 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
2 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
3 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
4 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
5 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
6 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
7 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET, DENISON STREET AND SPRING STREET, BONDI JUNCTION	02.09.18
1 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
2 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
3 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
4 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
5 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
6 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18
7 of 7 – Amd 0	REMOVAL OF AUSGRID STREET LIGHTING ASSETS ON OXFORD STREET FROM BRONTE ROAD TO SYD EINFELD DRIVE, BONDI JUNCTION	30.07.18

### **Section 4 – Clarifications**

The *Project Requirements* are amended by the following clarifications to the *Project Requirements*.

Item	Construction Related Items
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1.	During construction of <i>the Works</i> , the Contractor shall maintain pedestrian access to and from all shopfronts affected by <i>WUC</i> or <i>the Works</i> . Such pedestrian access shall be installed in accordance with all disability access standards and codes (including the Disability (Access to Premises–Building) Standards 2010 and Australian Standard AS1428.1-2001), shall be safe and sturdy, with no trip hazards and with handrails as shown in image 1 of this section 4 of these <i>Project Requirements</i> . This information shall be included and reflected in the Contractor's Construction Traffic Management Plan (refer to section 1.4 (Documentation Package) of these <i>Project Requirements</i> ).
2.	All temporary kerbside barricades shall be concrete barriers and/or RMS approved water filled plastic barriers, correctly installed and maintained with holes to receive posts and chain mesh fencing (see image 2). Any noisy and dusty <i>work</i> are required to have an approved barrier (see image 3).
3.	The <i>Contractor</i> shall engage a suitably qualified consultant to review the <i>Contractor's</i> work methodology, identify safe limits of <i>work</i> , monitor the <i>work</i> and provide a report upon completion of <i>work</i> in relation to vibration monitoring. The <i>Contractor</i> shall prevent any damage to any adjacent and buried structures including the Rail Corp Tunnel and Westfield Tunnels across Oxford Street.
4.	During any excavation, if the unused tram line is uncovered, the <i>Contractor</i> shall notify the <i>Principal</i> immediately and any <i>work</i> shall only be undertaken in a manner so as not to disturb the unused tram line.
5.	A permanent <i>site</i> compound may be established for the duration of <i>the Works</i> along St James Reserve in a location approved by the <i>Superintendent</i> . The <i>Contractor</i> shall be required to make good this designated area post-construction of <i>the Works</i> .
<b>Item</b>	<b>Working Hours</b>
1.	All <i>work</i> in front of JAX Tyres shall only be night <i>work</i> so as to allow for continuous business operation by JAX Tyres during the day.
<b>Item</b>	<b>Community Liaison</b>
1.	The <i>Contractor</i> shall assign a community liaison officer to <i>the Works</i> , who will be the direct contact between the <i>Contractor</i> and any other stakeholder affected by <i>the Works</i> . All information regarding contact between the <i>Contractor</i> and any other stakeholder affected by <i>the Works</i> shall be submitted to the <i>Principal</i> on a monthly basis. The <i>Contractor's</i> community liaison officer shall be required to notify all relevant stakeholders affected by <i>the Works</i> about any changes to undergrounding electricity prior to that <i>work</i> occurring.
<b>Item</b>	<b>Scope Clarifications</b>
1.	A number of street furniture items including new bin enclosures have been installed post-tender survey being completed. These street furniture items are to be salvaged and reinstated in a location of similar proximity approved by the <i>Superintendent</i> .
2.	All pavers specified in the <i>Project Requirements</i> shall have a P4 slip resistance rating with accordance to Australian Standard AS4586.
<b>Item</b>	<b>Contractor's Scope Assumptions</b>
	Without limiting any other part of these <i>Project Requirements</i> , and without limiting any provision of the <i>Contract</i> including in relation to clause 25 (including the requirement to provide the requisite notices), the following assumptions apply to the scope of <i>the Works</i> and <i>WUC</i> :
1.	The <i>Contractor</i> has assumed that all pits that are unidentified in these <i>Project Requirements</i> (eg. with no nomenclature under the drawings referred to in section 3 of these <i>Project Requirements</i> ) have pavers installed to infill lids and that these pits are telecommunication pits with alteration works to be undertaken by others.
2.	The <i>Contractor</i> has allowed in the scope of <i>the Works</i> and <i>WUC</i> for: <ul style="list-style-type: none"> <li>• sewer pipe and outfall connections to be a maximum of 1.4 metres deep for the water bubbler;</li> <li>• certified recycled road base (RMS spec 3051 edition 5) in lieu of quarry materials; and</li> <li>• full (FSL) Latticecrete (including to joints) to all mortar beds in locations subject to vehicular loading (eg. all paved vehicle ramps, all paved vehicle crossovers and areas where the cycleway is flush with adjacent pavers). Refer to marked up plans attached to tender addendum 19 for Western portion of <i>the Works</i> that require full (FSL) Latticecrete to mortar beds. For the Eastern portion of <i>the Works</i>, the <i>Contractor</i></li> </ul>

	has allowed for 60m2 of paving to be installed with full (FSL) Latticrete mortar on Oxford Street Mall / Bronte Road (footpath section) adjacent to the intersection.
3.	<p>In respect of the <i>SP1 Activities</i> for Stage 1 (early works investigations, geotechnical investigations and service verification) identified in section 1.5(a) of these <i>Project Requirements</i>, the <i>Contractor</i> has allowed in the scope of <i>the Works</i> and <i>WUC</i> for:</p> <ul style="list-style-type: none"> <li>• asphalt for all temporary kerb reinstatement;</li> <li>• rock level investigation to 4 no. locations only (e.g. not every pot hole location);</li> <li>• pot holing based on OTR ground conditions;</li> <li>• service investigation and pot holing for known services (proof excavation along the alignment of stormwater lines is excluded);</li> <li>• checking levels of existing stormwater drainage at design outfall locations where within pot holing locations only.</li> </ul> <p>In respect of the <i>SP1 Activities</i> for Stage 1 (early works investigations, geotechnical investigations and service verification) identified in section 1.5(a) of these <i>Project Requirements</i>, where additional pot holing <i>work</i> is required due to obstruction at light pole locations, the following relevant rate (ex GST) applies for each relevant additional pot holing:</p> <ul style="list-style-type: none"> <li>• pot holing face of kerb to property boundary distance 2-3m - \$4,872 each;</li> <li>• pot holing face of kerb to property boundary distance 3-5m - \$7,308 each; and</li> <li>• pot holing face of kerb to property boundary distance 5-7m - \$9,744 each.</li> </ul>
4.	<p>In respect of any electrical <i>work</i>, the <i>Contractor</i> has:</p> <ul style="list-style-type: none"> <li>• assumed any substation and electrical cable easement is free from any other utility service;</li> <li>• excluded any outage/commissioning outside of normal working hours under the <i>Contract</i> from the scope of <i>the Works</i> and <i>WUC</i>;</li> <li>• excluded any isolation of utility services to enable any Ausgrid outage (if required) from the scope of <i>the Works</i> and <i>WUC</i>; and</li> <li>• allowed for standard sized pit covers for those pit covers that require replacement scope of <i>the Works</i> and <i>WUC</i> (accurate sizing and part numbering to be added to pit schedule by the <i>Principal</i>).</li> </ul>
5.	<p>The following <i>work</i> is excluded from the scope of <i>the Works</i> and <i>WUC</i>:</p> <ul style="list-style-type: none"> <li>• trimming any existing trees to remain (if required) and any associated arborist reports;</li> <li>• any <i>work</i> associated with the existing gas utility service;</li> <li>• provision of temporary water supply during shutdowns associated with the possible requirement for hydrant pit replacement (e.g. hydrant pit replacement may be required if there is insufficient adjustment on the existing spindle);</li> <li>• soil testing and classification;</li> <li>• <i>work</i> associated with any existing service (other than the <i>work</i> identified in these <i>Project Requirements</i> including the drawings referred to in section 3 of these <i>Project Requirements</i>);</li> <li>• archaeological investigations (if required);</li> <li>• environmental consultant fees (if required);</li> <li>• hire of electricity generators in relation to <i>WUC</i> which requires a shutdown of electricity and, in relation to that shutdown, Ausgrid specifically requires the <i>Contractor</i> to provide temporary electricity by the use of generators as part of a condition of an <i>approval</i> or consent provided by Ausgrid in relation to that electricity supply shutdown;</li> <li>• if the EPA levy and landfill fee increases after 30 June 2019, the value of that increase is excluded; and</li> <li>• supply and install of JC Decaux free standing advertising sign.</li> </ul>
6.	<p>Where any additional carting and tipping of ENM, CT1, GSW, GSW Asbestos or RSW is required to be carried out in respect of a <i>variation</i> (including a deemed <i>variation</i> under subclause 25.3 of the General Conditions of Contract in respect of a <i>latent condition</i>), the following relevant rate (ex GST) applies to each tonne of relevant classification which is carted and tipped by the <i>Contractor</i> as additional <i>work</i> the subject of the relevant <i>variation</i>:</p> <ul style="list-style-type: none"> <li>• carting and tipping ENM - \$12 per tonne;</li> <li>• carting and tipping CT1 - \$56 per tonne;</li> <li>• carting and tipping GSW - \$198 per tonne;</li> <li>• carting and tipping GSW Asbestos - \$232 per tonne; or</li> </ul>

	<ul style="list-style-type: none"> <li>• carting and tipping RSW - \$359 per tonne.</li> </ul>																																																					
7	<p>Where any additional excavation of rock is required to be carried out in respect of a <i>variation</i> (including a deemed <i>variation</i> under subclause 25.3 of the General Conditions of Contract in respect of a <i>latent condition</i>), the following relevant rate (ex GST) applies to each cubic metre of relevant classification of rock which is excavated, carted and tipped by the <i>Contractor</i> as additional <i>work</i> the subject of the relevant <i>variation</i>:</p> <table border="1"> <thead> <tr> <th rowspan="2">Item</th> <th rowspan="2">Quantity</th> <th colspan="3">Extra Over Excavation for Excavation in Rock</th> </tr> <tr> <th>3-5T Excavator</th> <th>8-13T Excavator</th> <th>20-30T Excavator</th> </tr> </thead> <tbody> <tr> <td>Box out excavation</td> <td>&lt; 10m3</td> <td>\$ 280.00</td> <td>\$ 200.00</td> <td>\$ 140.00</td> </tr> <tr> <td>Box out excavation</td> <td>&gt;10m3 but &lt; 50m3</td> <td>\$ 230.00</td> <td>\$ 160.00</td> <td>\$ 110.00</td> </tr> <tr> <td>Box out excavation</td> <td>&gt;50m3</td> <td>\$ 180.00</td> <td>\$ 120.00</td> <td>\$ 80.00</td> </tr> <tr> <td>Storm Water Trenching &amp; Pits</td> <td>&lt; 10m3</td> <td>\$ 430.00</td> <td>\$ 380.00</td> <td>\$ 320.00</td> </tr> <tr> <td>Storm Water Trenching &amp; Pits</td> <td>&gt;10m3 but &lt; 50m3</td> <td>\$ 380.00</td> <td>\$ 330.00</td> <td>\$ 270.00</td> </tr> <tr> <td>Storm Water Trenching &amp; Pits</td> <td>&gt;50m3</td> <td>\$ 330.00</td> <td>\$ 280.00</td> <td>\$ 220.00</td> </tr> <tr> <td>Other services trenches</td> <td>&lt; 10m3</td> <td>\$ 450.00</td> <td>\$ 400.00</td> <td>N/A</td> </tr> <tr> <td>Other services trenches</td> <td>&gt;10m3 but &lt; 50m3</td> <td>\$ 400.00</td> <td>\$ 370.00</td> <td>N/A</td> </tr> <tr> <td>Other services trenches</td> <td>&gt;50m3</td> <td>\$ 350.00</td> <td>\$ 320.00</td> <td>N/A</td> </tr> </tbody> </table> <p>Within this item 7, 'rock' means inground material under the Site that:</p> <ul style="list-style-type: none"> <li>• cannot be effectively excavated using excavators with a rock bucket attachment (including tiger teeth); and</li> <li>• requires excavators with ripper or hammer attachments in order to remove such material.</li> </ul>	Item	Quantity	Extra Over Excavation for Excavation in Rock			3-5T Excavator	8-13T Excavator	20-30T Excavator	Box out excavation	< 10m3	\$ 280.00	\$ 200.00	\$ 140.00	Box out excavation	>10m3 but < 50m3	\$ 230.00	\$ 160.00	\$ 110.00	Box out excavation	>50m3	\$ 180.00	\$ 120.00	\$ 80.00	Storm Water Trenching & Pits	< 10m3	\$ 430.00	\$ 380.00	\$ 320.00	Storm Water Trenching & Pits	>10m3 but < 50m3	\$ 380.00	\$ 330.00	\$ 270.00	Storm Water Trenching & Pits	>50m3	\$ 330.00	\$ 280.00	\$ 220.00	Other services trenches	< 10m3	\$ 450.00	\$ 400.00	N/A	Other services trenches	>10m3 but < 50m3	\$ 400.00	\$ 370.00	N/A	Other services trenches	>50m3	\$ 350.00	\$ 320.00	N/A
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Image 1 – pedestrian access ramp and bridge to shopfront





Image 2 – kerbside concrete barrier



Image 3 – approved noise barrier



# Staging Plan

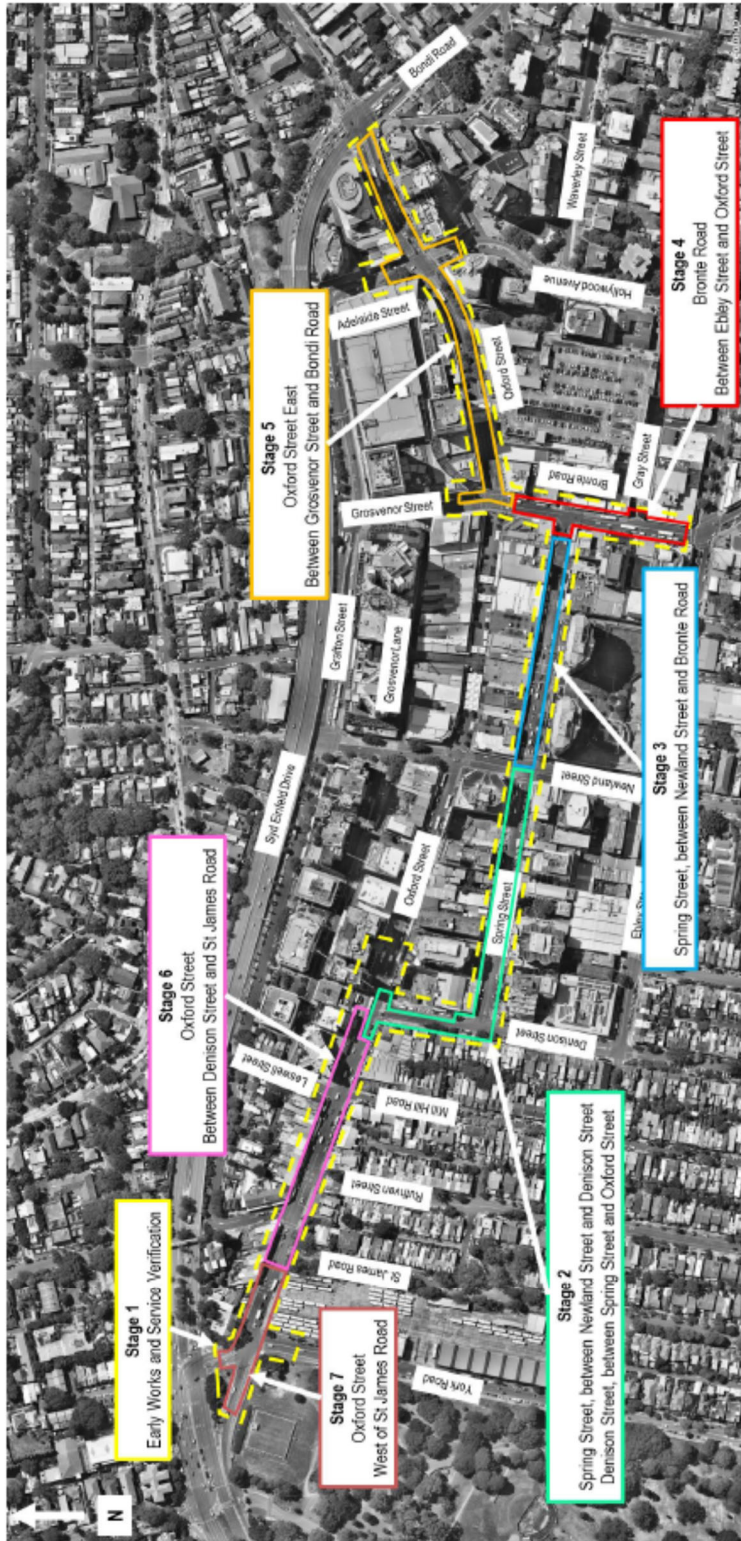


Figure 1.1: Layout of the Site



## **Standards Australia**

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body.

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