File No: [## insert]

Project ID: [## insert]

Medium Works Contract
(with option for Design)

Project Title: [## insert]

[##]
(**Principal**)

[##]
(**Contractor**)

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| In this document, items highlighted:* ***GREEN*** are to be completed by the agency **before going to tender** and the highlighted text removed;
* ***YELLOW*** are to be completed by the agency using information provided by the tenderer in response to the tender (RFT); and
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| **Revision:** | **Date:** | **Clause reference:** | **Details:** | **Endorsed by:** |
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**Medium Works Contract (with option for Design)**

**Contract Date**

**Parties** [##] (**Principal**) of [##]

 [##] (**Contractor**) of [##]

Background

1. The Principal proposes to engage a contractor to perform the Contractor’s Activities and deliver the Works.
2. The Contractor has represented to the Principal that it has the experience and expertise necessary to perform the Contractor’s Activities and deliver the Works.
3. The Principal and the Contractor promise to perform and complete their respective obligations in accordance with the Contract.

Operative provisions

# Definitions and interpretation

## Definitions

1. In the Contract:
2. **Access Date** has the meaning given in clause 5.1(a).
3. **ACICA** means the Australian Centre for International Commercial Arbitration.
4. **ACICA Mediation Rules** has the meaning given in clause 13.4(b)(i).
5. **Act of Prevention** means any one or more of:
	1. a breach of the Contract by the Principal;
	2. an act or omission of the Principal, a Principal Associate or an Other Contractor, except for acts or omissions that are:
		1. permitted, authorised or required under the Contract; or
		2. in response to or due to a breach of the Contract by the Contractor; or
	3. a Variation Order.
6. **Adjustment Entitlement** means, in respect of an Adjustment Event, any entitlement that the Contractor has to be granted an:
	1. increase to the Contract Sum under clause 10.2;
	2. extension to the Date for Practical Completion under clause 10.3; or
	3. increase to the Contract Sum under clause 10.4.
7. **Adjustment Event** means an event or circumstance identified in the Adjustment Event Table.
8. **Adjustment Event** **Table** means the table set out in clause 10.1(f).
9. **Adjustment Notice** means a notice described in, and which complies with the requirements set out in, clause 10.1(a)(ii).
10. **Approval** means any licence, permit, registration, consent, assessment, approval, authorisation, determination, certificate, accreditation, clearance, permission or the like which is required by an Authority or under any Law to be issued, obtained, held or satisfied to perform the Contractor’s Activities or to occupy or use the Works.
11. **Approved Security** means:
	1. an Unconditional Undertaking;
	2. a bond issued by the government of the Commonwealth of Australia or by any Australian State or Territory government; or
	3. such other form of security as may be approved in writing by the Principal.
12. **Authority** means any:
	1. government of the Commonwealth of Australia or any Australian State or Territory and their departments, authorities, ministers, statutory corporations and instrumentalities, and any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, in Australia; or
	2. person to the extent that it has legally enforceable jurisdiction over the whole or part of the Site, the Contractor’s Activities or the Works.
13. **Background IP** means any Intellectual Property Rights developed by a party independent of the Contract, or prior to the Contract Date, and that are used in the performance of the Contractor's Activities.

**Buildability Problem** means a feature or requirement of the Works as specified in the Delivery Requirements that will result in:

* 1. the work methodologies that are necessary or required for construction of the Works in accordance with the Delivery Requirements not being feasible;
	2. construction of the Works in accordance with the Delivery Requirements not being feasible within the timeframes required by the Contract or for the Contract Sum;
	3. the Works as specified in the Delivery Requirements not being constructible in a safe manner; or
	4. additional work to ensure that the relevant part of the Works is Fit for Purpose.
1. **Business Day** means a day that is not:
	1. a Saturday or Sunday; or
	2. a day that is wholly or partly observed as a public holiday throughout Victoria.

**Claim** includes any claim, action, demand, suit or proceeding (including by way of contribution or indemnity), made in any way in connection with, the Contract, the Contractor’s Activities or the Works or otherwise at Law, including under any statute, in tort or for restitution.

1. **Collateral Warranty** means a warranty in the form and on the terms of the warranty set out in the Schedule of Collateral Documents (or in such other form and on such other terms as may be approved in writing by the Principal).

**Compensable Delay Event** means a Delay Event for which delay costs are indicated to be payable in the Adjustment Event Table.

**Competent Contractor** meansaprudent, qualified, competent and professional contractor experienced in performing activities of a similar nature to the Contractor’s Activities and delivering works of a similar nature to the Works.

**Confidential Information** means any document, drawing, information or communication (whether in written, oral or electronic form) which is in any way connected with the Contractor’s Activities, the Works or the Contract but excludes information which was in the public domain before the Contract Date or comes into the public domain after the Contract Date, except through a disclosure in breach of the Contract.

1. **Consultant Deed of** **Novation** means a deed of novation in the form set out in the Schedule of Collateral Documents (or in such other form as the Principal may approve in writing).
2. **Contamination** means the presence in land, air, soil or water (including groundwater) of any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance at a concentration that:
	1. makes or may make the Environment:
		1. unsafe or unfit for habitation or occupation by persons or animals;
		2. degraded in its capacity to support plant life;
		3. contaminated; or
		4. otherwise environmentally degraded; or
	2. results or may result in a non-compliance with any Law.
3. **Contract** means the contract between the Principal and the Contractor constituted by the Contract Documents.
4. **Contract Date** means the date on which the Contract is executed by the last party to execute the Contract.
5. **Contract Documents** means the documents described in Item 6.
6. **Contract Particulars** means Schedule 1.
7. **Contract Program** has the meaning given in clause 7.1(c).
8. **Contract Sum** means:
	1. the amount specified in Item 7; or
	2. if no amount is specified in Item 7, the amount calculated in accordance with the Pricing Schedule,

and includes all Provisional Sums, as adjusted by the Principal’s Representative in respect of any Adjustment Event.

1. **Contractor** means the person specified in Item 2.
2. **Contractor** **Associate** means any agent or representative of the Contractor and includes the Contractor's Representative and any Subcontractors (and any agent or representative of any Subcontractors), but excludes the Principal, the Principal Associates and Other Contractors.
3. **Contractor’s Activities** means all things and tasks which the Contractor is or may be required to do to comply with its Contract obligations.
4. **Contractor’s Margin** means the percentage specified in Item 34 for preliminaries, overhead costs and profit.
5. **Contractor's Representative** means the person specified in Item 4, or any other person who is appointed to perform that role in accordance with clause 3.3.
6. **Corporations Act** means the *Corporations Act 2001* (Cth).
7. **Date for Practical Completion** means the date or period of time specified in Item 25, as adjusted under the Contract.
8. **Date of Practical Completion** means the date specified in a Notice of Practical Completion as being the date on which Practical Completion was achieved.
9. **Deed of Novation** means a deed of novation in the form set out in the Schedule of Collateral Documents (or in such other form as the Principal may approve in writing).
10. **Defect** means any:
	1. defect, deficiency, error, fault or omission (including shrinkage, expansion, movement, fading or settlement) in:
		1. materials, workmanship, the Contractor’s Activities or the Works (including in any rectification work performed under clause 7.5); or
		2. if the Design Obligations apply, design; or
	2. other aspect of the Contractor’s Activities or the Works which is not in accordance with the requirements of the Contract.
11. **Defects Liability Period** means the period specified in Item 28, commencing on the Date of Practical Completion, and any further period determined in accordance with clause 7.5(e).
12. **Delay Costs Cap** means the amount per Working Day specified in Item 38.
13. **Delay Event** means any of the following:
	1. an Act of Prevention;
	2. a suspension for which the Contractor is entitled to submit an Adjustment Notice under clause 9.4(b);
	3. a suspension for which the Contractor is entitled to submit an Adjustment Notice under clause 9.4(d);
	4. a Latent Condition;
	5. an event in respect of which the Contractor is entitled to Claim an extension of time as set out in the Adjustment Event Table; or
	6. any other event which Item 35 specifies constitutes a Delay Event.
14. **Delivery Requirements** means the documents set out at, identified or otherwise described in Schedule 7.
15. **Design Consultants** means the consultants engaged by the Principal and specified in Item 9 (if any).
16. **Design Obligations** has the meaning given in the Design Schedule.
17. **Design Schedule** means Schedule 5.
18. **Discrepancy** has the meaning given in clause 1.3(a).
19. **Dispute** has the meaning given in clause 13.1.
20. **Dispute Notice** has the meaning given in clause 13.2.
21. **Environment** includes the meaning given at common law and in any Victorian or Commonwealth Legislation including any land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetic.
22. **Excluded Site Conditions** means:
	1. any climatic conditions, including any ground condition at the Site resulting from climatic conditions, wherever occurring; and
	2. the Site Conditions, if any, specified in Item 33.
23. **Fair Jobs Code** has the meaning given in the Schedule of Government Policy Requirements.
24. **Final Payment Claim** has the meaning given in clause 8.2(a)(ii)B,
25. **Fit for Purpose** means fit for the intended purposes, functions and uses as set out in, or reasonably inferred from, the Contract.
26. **FJC Plan Addendum** means the Fair Jobs Code Plan Addendum (if any) set out at Schedule 11.
27. **Force Majeure Event** means the occurrence of any of the following after the Contract Date:
	1. an event named as a cyclone by the Australian Government Bureau of Meteorology, bushfire, landslide, seismic activity, tsunami or mudslide;
	2. a 'terrorist act' as defined in the *Terrorism Insurance Act 2003* (Cth);
	3. war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection or military commotion;
	4. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
	5. a flood which might, at the Contract Date, be expected to occur no more frequently than once in every 100 years; or
	6. a fire or explosion caused by any of the events referred to in paragraphs (a) to (e) above,
	7. and which:
	8. occurs at or in the direct vicinity of the Site;
	9. was not caused by the impacted party; and
	10. prevents, or its effects prevent, the impacted party from performing all or a material part of its obligations in accordance with the Contract,
		1. but excludes pandemics and epidemics.
28. **General Conditions** means:
	1. clauses 1 to 18 (both inclusive);
	2. the Mandatory Government Policy Requirements; and
	3. those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 16.2.
29. **GST** has the meaning given in the GST Act.
30. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
31. **Guarantor** has the meaning given in clause 4.4(b)(ii).
32. **Indemnified Persons** means the Principal and each Principal Associate.
33. **Industrial Action** means employee and industrial relations matters affecting the Site or the Contractor's Activities, including:
	1. a strike, lockout, demarcation, ban, limitation on work or industrial dispute; or
	2. any claim relating to employment or industrial arrangements of the Contractor or a Subcontractor.
34. **Industrial Condition** means an industrial condition which is not:
	1. limited to the Contractor, the Contractor's Associates or the Site; or
	2. caused or contributed to by the Contractor or any Contractor Associate.
35. **Industrial Relations Law** means all workplace, employment or industrial relations related Legislation.
36. **Industrial Relations Management Plan** has the meaning given in clause 6.6(d)(i).
37. **Insolvency Event** means the occurrence of any of the following events in relation to the Contractor or the Guarantor:
	1. it informs the Principal in writing, or its creditors generally, that it is insolvent or unable to proceed with the Contract for financial reasons;
	2. it is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
	3. a receiver, receiver and manager, controller, administrator, liquidator, provisional liquidator, trustee in bankruptcy or similar officer is appointed in respect of the Contractor or any asset of the Contractor or in respect of the Guarantor or any asset of the Guarantor;
	4. an order is made for the administration, dissolution or winding up of the Contractor or the Guarantor or an application is made to a court for the administration, winding up or dissolution of the Contractor or the Guarantor (that is not stayed or dismissed within 20 Business Days after being made) or a resolution is passed for the administration, dissolution or winding up of the Contractor or the Guarantor other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Principal;
	5. a distress, attachment or other execution is levied or enforced upon or against any assets of the Contractor or the Guarantor and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
	6. it enters into, or resolves to enter into, any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved the Principal;
	7. if it is a registered corporation under the Corporations Act, a step is taken under s 601AA, s 601AB or s 601AC of the Corporations Act to cancel its registration;
	8. it ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Principal; or
	9. anything analogous to anything referred to in paragraphs (a) to (h) or which has a substantially similar effect, occurs with respect to the Contractor or the Guarantor under any law of any jurisdiction.
38. **Insurance Schedule** means Schedule 4.
39. **Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other analogous protected right.
40. **Item** means an item in the Contract Particulars.
41. **Key Personnel** means the Contractor's Representative and other persons specified in Item 5.
42. **Latent Condition** means a Site Condition which was not known to the Contractor as at the Contract Date and which differs materially from the Site Conditions that could reasonably have been ascertained or anticipated by a Competent Contractor as at the Contract Date if it had inspected and carefully considered:
	1. all information made available by or on behalf of the Principal for the purpose of tendering;
	2. all relevant information obtainable by the making of reasonable enquiries; and
	3. the Site and its surroundings,
43. but does not include Excluded Site Conditions.
44. **Law** means:
	1. Legislation;
	2. principles of common law and equity established by decisions of courts;
	3. Approvals (including the conditions or requirements, if any, of those Approvals); and
	4. the requirements of any Authority.
45. **Legislation** means:
	1. legislation and delegated legislation;
	2. ordinances, by-laws, regulations and other statutory instruments (however described) issued under the legislation or delegated legislation; and
	3. consolidations, amendments, re-enactments and replacements of legislation or delegated legislation,
46. but excludes Approvals.
47. **LIDP** means the Local Industry Development Plan set out in Schedule 9 (if applicable).
48. **Loss** means any:
	1. loss, damage (including damages at common law or in equity), liability, debt, cost (including legal costs, deductibles or increased premiums), expense, fee, compensation, charge or other amount; or
	2. fine or penalty (to the extent not prohibited by Law),
49. whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.
50. **Mandatory Government Policy Requirements** means those requirements set out in Part A of the Schedule of Government Policy Requirements.
51. **Mediation Period** has the meaning given in clause 13.4(d).
52. **Mediator** has the meaning given in clause 13.4(b)(ii).
53. **Moral Right** has the meaning given in the *Copyright Act 1968* (Cth).
54. **Notice of Practical Completion** means a notice issued by the Principal's Representative stating the date on which Practical Completion was achieved.
55. **OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).
56. **OHS Laws** means the OHS Act, the OHS Regulations and any other Laws concerning health, safety and welfare.
57. **OHS Regulations** means the *Occupational Health and Safety Act Regulations 2017* (Vic).
58. **Other Contractor** means any contractor, consultant, supplier or other person engaged by the Principal to do work, other than the Contractor and its Subcontractors.
59. **Plant, Equipment and Work** means those things used, or work undertaken, by the Contractor to construct the Works but which will not form part of the Works.
60. **Practical Completion** means the point in time when:
	1. the Works are complete except for minor Defects which:
		1. do not prevent the Works from being reasonably capable of being used for the purposes stated in or reasonably able to be inferred from the Contract; and
		2. can be rectified without prejudicing the convenient use or occupation of the Works;
	2. all tests required by the Contract to be carried out and passed to achieve Practical Completion have been carried out and passed;
	3. all documents and information required by the Contract to be provided to the Principal have been so provided, including all Approvals necessary for the use and occupation of the Works; and
	4. without limiting the foregoing, the Contractor has done everything which the Contract requires it to do as a condition precedent to Practical Completion, including those things specified in Item 26.
61. **Pricing Schedule** means Schedule 2.
62. **Principal Associate** means any agent or representative of the Principal and includes the Principal's Representative but excludes the Contractor and the Contractor Associates.
63. **Principal Contractor** has the meaning given in the OHS Regulations.

**Principal's Representative** means the person specified in Item 3, or any other person appointed to perform that role in accordance with clause 3.1.

**Principal Risk** means any one of:

* 1. war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection or military commotion;
	2. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
	3. any negligent act or omission of the Principal, a Principal Associate or an Other Contractor, except to the extent caused by an act or omission of the Contractor or a Contractor Associate; or
	4. any breach of the Contract by the Principal.
1. **Project Material** has the meaning given in clause 15.1(a)(i).
2. **Project Specific Additional Conditions** means the conditions (if any) set out in Schedule 6.
3. **Project Specific Government Policy Requirements** means those requirements set out in Part B of the Schedule of Government Policy Requirements.
4. **Provisional Sum** means an amount payable for the performance of a Provisional Sum Item (inclusive of Contractor’s Margin) as specified in Schedule 3.
5. **Provisional Sum Item** means the items of work specified in Schedule 3.
6. **Public Disclosure Requirements** means the disclosure of any information (including Confidential Information) where the disclosure is:
	1. in accordance with Laws or any policy of the Principal, the State or any Authority;
	2. to comply with the disclosure requirements of the Auditor-General, the Ombudsman, the Independent Broad-based Anti-corruption Commission or the Victorian Information Commissioner;
	3. to satisfy the requirements of Parliamentary accountability or to satisfy any other recognised public requirement;
	4. in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General;
	5. required for the Principal's or the State's reporting requirements; or
	6. to any Principal Associate, any Authority or any person authorised or nominated by the Principal to the extent necessary in relation to the Principal's rights and obligations under the Contract, provided they agree to maintain the confidentiality of any such information.

**Schedule** means a Schedule to the Contract.

**Schedule of Collateral Documents** means the schedule of that name available at <https://www.dtf.vic.gov.au/practitioners-toolkit/practitioners-toolkit-standard-form-contracts> (or any alternative location notified by the Principal to the Contractor), as at the Contract Date.

1. **Schedule of Government Policy Requirements** means the schedule of that name available at <https://www.dtf.vic.gov.au/practitioners-toolkit/practitioners-toolkit-standard-form-contracts> (or any alternative location notified by the Principal to the Contractor), as at the Contract Date.
2. **Secondary Subcontract** means a subcontract between a Subcontractor and a Secondary Subcontractor.
3. **Secondary Subcontractor** means a subcontractor engaged by a Subcontractor in connection with the Contractor's Activities.
4. **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
5. **Security Interest** means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance and contractual right of set off and includes a security interest within the meaning of the *Personal Property Securities Act* 2009 (Cth) (and regulations made under that Act).
6. **Separable Portion** means a portion of the Works specified in the Separable Portion Particulars (if any).
7. **Separable Portion Particulars** means Attachment 1 to the Contract Particulars.
8. **Site** means the site identified in Item 8.
9. **Site Conditions** means physical conditions (including topographical, geological and hydrological conditions), services and obstructions, upon, above or below the surface of the Site or its surroundings and local conditions (including climatic conditions) at, near or relevant to the Site.
10. **Site Information** means any information in respect of Site Conditions that is provided or made available to the Contractor by or on behalf of the Principal prior to the Contract Date.
11. **Social Procurement Commitment Schedule** means the plan (if any) set out at Schedule 10.
12. **Social Procurement Framework** has the meaning given in the Schedule of Government Policy Requirements.
13. **Standard** means any standard, code, specification, guide, manual, policy or procedure that is specified in the Contract Documents or with which:
	1. the Contractor is directed by the Principal to comply;
	2. the Contractor is required by Law to comply; or
	3. a Competent Contractor would comply in performing the Contractor's Activities or delivering the Works.
14. **State** means the Crown in right of the State of Victoria.
15. **State Entity** means the State, Ministers of the Crown and a public body (as that term is defined under the *Financial Management Act 1994* (Vic)).
16. **Subcontract** means an agreement between the Contractor and a Subcontractor, or between Subcontractors, in connection with the Contractor’s Activities.
17. **Subcontractor** means any person engaged by the Contractor or under a contract in connection with the Contractor’s Activities (including a Secondary Subcontractor), which is in a chain of contracts where the Contractor is the ultimate principal, including any consultants.
18. **Subcontractor** **Deed of Novation** means a subcontractor deed of novation in the form set out in the Schedule of Collateral Documents (or in such other form as the Principal may approve in writing).
19. **Tax Invoice** has the meaning given in the GST Act.
20. **Tip Truck Policy** means the Victorian Government Policy established by Instruction for Public Construction in Victoria 7.2.1(h).
21. **Unconditional Undertaking** means an unconditional, irrevocable undertaking which is payable on demand and:
	1. is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc;
	2. specifies a location in Melbourne (or such other place as the Principal may approve) where demand can be given and payment made, without further confirmation from the issuer, on any Business Day;
	3. is governed by and is to be construed according to the Laws applying in Victoria; and
	4. is in the form and on the terms set out in the Schedule of Collateral Documents (or in such other form and on such other terms as may be approved in writing by the Principal).
22. **Variation** means any change to the Contractor’s Activities or the Works including any increase, decrease, omission, addition or change in character or quality.
23. **Variation Order** means a written notice entitled "Variation Order" which is given by the Principal's Representative to the Contractor directing the Contractor to perform a Variation.
24. **Variation Request** has the meaning given in clause 9.1(a).
25. **Wilful Misconduct** means:
	1. any deliberate or intentional breach of the Contract; or
	2. any other intentional act or omission of any person done or omitted to be done after having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from the act or omission, excluding acts or omissions done by a person in good faith.
26. **Working Day** means:
	1. a day specified in Item 37; or
	2. if nothing is specified in Item 37, a day:
		1. which is noted as a working day in; and
		2. on which the Contractor is present on Site and performing Contractor’s Activities in accordance with,

the Contract Program.

1. **Works** means all of the physical things which the Contractor must design (if and to the extent required by the Contract), construct and complete in accordance with the requirements of the Contract.

## Interpretation

1. In the Contract:

### headings are for convenience only and do not affect interpretation;

1. and unless the context indicates a contrary intention:

### an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

### "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a document (including the Contract) or instrument is to that document or instrument as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to:

#### a party, clause, section, Schedule or Attachment is a reference to a party, clause, section, Schedule or Attachment to or of the Contract, and a reference to the Contract includes all Schedules; and

#### a section means a section of the Schedule in which it appears;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### "**includes**" in any form is not a word of limitation;

### a reference to "or" is to the inclusive use of the word "or";

### a reference to "**$**" or "**dollar**" is to Australian currency;

### if the day on or by which anything is to be done under the Contract is not a Business Day, that thing must be done no later than the next Business Day;

### a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### where there is a reference to an Authority, institute, association or other body referred to in the Contract which:

#### is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, the Contract is deemed to refer to that other entity; or

#### ceases to exist, the Contract is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity;

### each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision; and

### a reference to time is a reference to time in Melbourne, Victoria, Australia.

## Discrepancies

### If either party identifies any ambiguity, discrepancy or inconsistency (**Discrepancy**) in or between any one or more of the Contract Documents, then that party must promptly give written notice of the Discrepancy to the other party.

### As soon as practicable after a notice is given under clause 1.3(a), the Principal's Representative will direct the Contractor how to resolve the Discrepancy, which will be to apply either:

#### if the Discrepancy is between two or more of the Contract Documents, the order of precedence in which those Contract Documents appear in Item 6; or

#### if the Discrepancy is in one of the Contract Documents, the higher, greater or more onerous standard, quality, quantum, scope or requirement specified in that Contract Document.

## Principal rights

### Unless the Principal or the Principal's Representative is expressly required under the Contract to act reasonably in exercising a right, power or remedy, the Principal and the Principal's Representative (as applicable) can exercise any right, power or remedy in its absolute and unfettered discretion.

### Unless otherwise expressly stated in the Contract, nothing in the Contract gives rise to any duty on the part of the Principal or the Principal’s Representative to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under the Contract.

### Without limiting clause 1.4(a), the term "may", when used in the context of a right exercisable by the Principal or the Principal's Representative means that the Principal or the Principal's Representative (as applicable) has no obligation to do so.

### A statement in the Contract providing that the Principal will or must use or exercise "best endeavours" or "reasonable endeavours" or must "act reasonably" or "act in good faith" in relation to an outcome means that the Principal or Principal Associate (as applicable) must take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities, but does not mean that the Principal or Principal Associate:

#### guarantees the relevant outcome will be brought about; or

#### is required to:

##### exercise a right of any Authority, or to influence, over-ride, interfere with or direct any other Authority in the proper exercise and performance of its legal, statutory or executive duties and functions;

##### exercise a power or discretion or otherwise act in a manner that the Principal regards as not in the public interest;

##### develop or implement new policy or a change in policy; or

##### procure any new Legislation or a change in Legislation.

## Proportionate liability

1. To the extent permitted by Law, the operation of Part IVAA of the *Wrongs Act 1958* (Vic) is excluded in relation to all and any rights of either party under the Contract, whether such rights are sought to be enforced in contract, tort or otherwise.

# Contractor's primary obligations and warranties

## Primary obligations

### The Contractor must:

### perform the Contractor’s Activities in accordance with the Contract Documents and all:

#### applicable Laws;

#### applicable Standards;

#### Project SpecificAdditional Conditions (if any); and

#### directions given by the Principal or the Principal's Representative; and

### at all times during the performance of the Contractor’s Activities, be:

#### suitably qualified and experienced; and

#### to the extent required by Law, licensed and registered to perform the Contractor’s Activities.

## Design obligations

### If Item 9 specifies that the Design Schedule:

### applies, then:

#### the parties must comply with their respective obligations under the Design Schedule;

#### without limiting clause 2.2(a)(i), the Contractor must comply with the Design Obligations; and

#### the Contractor's Activities include the Design Obligations; or

### does not apply, then despite any other provision of the Contract, the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim against the Principal arising out of or in connection with a Buildability Problem.

## Contractor warranties

### The Contractor:

### warrants that before the Contract Date it:

#### did everything that would be expected of a Competent Contractor in assessing the risks which it is assuming under the Contract;

#### satisfied itself that the Contract Sum and Date for Practical Completion make all due allowance for the allocation of risk under, and the performance and completion of the Contractor’s Activities and the Works in accordance with, the Contract; and

#### accessed, carefully considered and satisfied itself in relation to the Mandatory Government Policy Requirements and those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 16.2; and

#### thoroughly examined and carefully checked the Delivery Requirements and satisfied itself that there are no Discrepancies in or between any one or more of the Delivery Requirements or between any of the Delivery Requirements and any other Contract Document;

### warrants that, except for any Provisional Sums, rates and prices specified in the Contract are exclusive of any amount for Contractor’s Margin; and

### acknowledges that in entering into the Contract the Principal has relied on, and would not have entered into the Contract but for, the warranties, acknowledgements, representations and agreements made or given by the Contractor under the Contract.

# Participants and roles

## Principal's Representative

### The Principal must ensure that at all times there is a natural person appointed by it as the Principal's Representative who, as at the Contract Date, is the person specified in Item 3.

### The Principal's Representative:

#### can give all directions, exercise all rights and perform all functions of the Principal under the Contract as agent for the Principal (and not as an independent certifier or valuer);

#### may delegate its functions to another person by notice to the Contractor; and

#### may give a direction orally but will as soon as practicable confirm that direction in writing.

### The Principal may at any time and from time to time, by notice to the Contractor:

#### replace the Principal's Representative with another person appointed in that capacity;

#### delegate the exercise of any rights of the Principal under the Contract to a person other than the Principal's Representative; and

#### vary or terminate any delegation of rights.

## Contractor's Representative

### The Contractor must ensure that:

#### at all times there is a natural person appointed by it as the Contractor's Representative who, as at the Contract Date, is the person specified in Item 4; and

#### the Contractor's Representative is present on Site at such times as are necessary to ensure the Contractor is complying with its obligations under the Contract.

### A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

### The Contractor's Representative:

#### may delegate its functions (and the Contractor may delegate the Contractor's Representative's functions) to another person with the prior written approval of the Principal's Representative; and

#### acts as agent of the Contractor and all acts and omissions of the Contractor's Representative will be deemed to be acts or omissions of the Contractor.

## Key Personnel

1. The Contractor must:

### employ the Key Personnel in the roles specified in Item 5;

### subject to clause 3.3(c), not replace Key Personnel without the prior written approval of the Principal's Representative; and

### if any of the Key Personnel die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative who are of at least equivalent experience, ability and expertise.

## Removal of persons

1. The Principal's Representative may at any time direct the Contractor to remove any person from the Site or the Contractor’s Activities who, in the reasonable opinion of the Principal's Representative, is incompetent or negligent or if the Principal's Representative reasonably considers that the person's behaviour is consistent with misconduct.

## Subcontractors

1. The Contractor:

### must not, without the prior written approval of the Principal's Representative, subcontract any work specified in Item 10 (except to the relevant Subcontractor specified in Item 11 (if any));

### is not relieved of any of its obligations or liabilities (whether under the Contract or otherwise at Law) as a result of any subcontracting;

### remains responsible (and will be vicariously liable to the Principal) for the acts, defaults and omissions of any Subcontractor in connection with the Contractor’s Activities;

### must:

#### ensure that all Subcontracts to which it is a party; and

#### use reasonable endeavours to ensure that all other Subcontracts,

#### include provisions which:

#### impose obligations that are consistent with and give effect to:

##### clauses 14 and 15;

##### the Mandatory Government Policy Requirements; and

##### the Project Specific Government Policy Requirements that are incorporated in and form part of the Contract;

#### may be reasonably necessary to enable the Contractor to fulfil its obligations to the Principal and are otherwise compatible and consistent with the Contract;

#### are consistent with the Security of Payment Act;

#### require Subcontractors to procure and maintain insurances in accordance with the Insurance Schedule;

#### bind the Subcontractor to participate in any novation required by the Principal under clause 12;

#### require the Subcontractor to warrant that labour engaged by it in connection with the performance of the Contractor's Activities will be engaged in such a manner which allows the Contractor to comply with its obligations under the Contract; and

#### require the Subcontractor to comply with Industrial Relations Laws; and

### must ensure that all Subcontracts comply with the unfair contract terms law as set out under the Australian Consumer Law.

## Subcontractor warranties

### As a condition precedent to Practical Completion, the Contractor must procure and provide the Principal with:

#### each of the warranties identified or described in Item 12; and

#### any other warranties given by a Subcontractor under its Subcontract.

### The warranties referred to in:

#### clause 3.6(a)(i) must be in the form and on the terms of the approved Collateral Warranty; and

#### clause 3.6(a) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of the warranties.

## Meetings

### The Contractor must attend meetings in accordance with Item 13, and at such other times as the Principal's Representative may reasonably direct, to discuss issues arising out of or in relation to the Contractor’s Activities or the Works.

### The Principal's Representative may invite to any meeting convened under this clause 3.7 any persons it considers appropriate to attend, and the Contractor must:

#### ensure that the Contractor's Representative and any other Contractor Associate requested by the Principal's Representative, attends; and

#### conduct meetings in accordance with, and comply with the requirements set out in, Item 13.

## Reporting

### The Contractor must submit written reports regarding the Contractor's performance under the Contract to the Principal's Representative at the intervals specified in Item 14 and otherwise as directed by the Principal.

### Reports must be in the form required by, and as a minimum include details relating to those matters specified in, Item 14 (or otherwise as directed by the Principal's Representative from time to time, acting reasonably).

# Performance security

## Form

1. The Contractor must, within 10 Business Days after the Contract Date, provide security to the Principal in the form of Approved Security and in the amount specified in Item 15.

## Release

1. Subject to any other rights or remedies of the Principal under the Contract or otherwise at Law (including the right of set off in clause 8.8), the Principal must release:

### within 10 Business Days after the issue of a Notice of Practical Completion (or if there are Separable Portions, the last Notice of Practical Completion to be issued), the amount of Approved Security then held as specified in Item 16; and

### within 20 Business Days after the last to occur of:

#### the expiry of the Defects Liability Period (or if there are Separable Portions, the expiry of the last Defects Liability Period); and

#### the Contractor having rectified all Defects notified during the Defects Liability Period (or if there are Separable Portions, Defects Liability Periods, as the case may be), in accordance with the Contract and to the satisfaction of the Principal's Representative (acting reasonably),

#### the balance of the Approved Security then held.

## Interest on Approved Security

1. The Principal:

### is not obliged to pay the Contractor interest on the Approved Security or the proceeds of the Approved Security if it is converted into cash; and

### does not hold the proceeds or money referred to in clause 4.3(a) on trust for the Contractor.

## Deed of guarantee and indemnity

### This clause 4.4 only applies if Item 17 specifies that it applies.

### The Contractor must, on the Contract Date, provide the Principal's Representative with a deed of guarantee and indemnity:

#### in the form set out in the Schedule of Collateral Documents (or such other form as may be approved in writing by the Principal); and

#### duly executed by the person specified in Item 18 (**Guarantor**).

# Site access, management and conditions

## Principal obligation

### Subject to clause 5.2, the Principal must give the Contractor access to the Site (or parts thereof, if it is specified in Item 19 that access will be staged) sufficient to allow the Contractor to perform the Contractor’s Activities, on the last to occur of the following (each an **Access Date**):

#### the Contractor having provided:

##### evidence of insurance in accordance with clause 11.3;

##### Approved Security in accordance with clause 4.1; and

##### an Industrial Relations Management Plan in accordance with clause 6.6(d)(i); and

#### the date or dates specified in Item 19.

### Any failure by the Principal to give access in accordance with clause 5.1(a) will not be a breach of the Contract but the Contractor may submit an Adjustment Notice in respect of that failure no later than the date for submission specified in the Adjustment Event Table.

## Conditions of access

### The Contractor acknowledges and agrees that the Principal:

#### is not obliged to give the Contractor sole access to the Site;

#### may engage Other Contractors; and

#### any Principal Associates, Other Contractors and other persons authorised by the Principal or the Principal's Representative may, at any time after reasonable notice to the Contractor, have access to any part of the Site for any purpose.

### The Principal must ensure that while the Contractor has control of the Site, any persons authorised by the Principal who have access to the Site comply with the Contractor's health and safety requirements relevant to the Contractor's role as Principal Contractor of the Site.

### The Contractor must, when accessing the Site (or any part of the Site):

#### comply with the conditions of access specified in Item 20;

#### minimise disruption and inconvenience to the Principal and any Principal Associates, Other Contractors and authorised persons;

#### co-operate with the Principal, Principal Associates and any Other Contractors; and

#### interface and co-ordinate the Contractor’s Activities with the work being carried out by any Principal Associates or Other Contractors.

### The Contractor must not use the Site, or allow it to be used, for camping, residential purposes or any other purpose not connected with the Contractor’s Activities or the Works.

## Working hours

1. Unless otherwise agreed in writing by the Contractor's Representative and the Principal's Representative, the hours during which the Contractor may perform the Contractor’s Activities at the Site are as specified in Item 21.

## Environment

### Without limiting its other obligations under the Contract, the Contractor must:

#### comply with all environmental obligations imposed on the Contractor under any applicable Law, including:

##### procedures specified in documentation relating to environmental management included in the Contract Documents; and

##### the obligation to minimise the risks of harm to human health or the Environment from the Contractor’s Activities or the Works;

#### supervise and monitor the performance of all environmental obligations imposed on the Contractor under the Contract and any applicable Law;

#### not cause or contribute to:

##### any breach of any applicable Law by the Principal or any Principal Associate or Other Contractor; or

##### the discharge, release or emission of any Contamination into the Environment; and

#### report to the Principal's Representative on all matters relating to the performance or non-performance (as the case may be) of the Contractor's environmental obligations under the Contract upon request by the Principal's Representative including if the Contractor receives any notice from an Authority under any applicable Law.

### If the Contractor fails to comply with any of its environmental obligations under the Contract, the Principal may take whatever action it deems necessary at the time (acting reasonably) to remedy such failure and any cost incurred by the Principal in so doing will be a debt due and payable by the Contractor to the Principal.

### If Item 22 specifies that this clause 5.4(c) applies, then despite any other provision of the Contract, the Contractor acknowledges and agrees that for the period during which it has access to the Site (or any part thereof) under clause 5.1, it:

#### has management or control of the Site for the purposes of the *Environment Protection Act 2017* (Vic); and

#### must comply with all obligations imposed on a person with management or control of land under any applicable Law.

## Site security and cleanliness

1. The Contractor must:

### at all times keep the Site, the Works and the Environment clean and tidy (and as a condition precedent to Practical Completion, remove all rubbish, materials, Plant, Equipment and Work from the Site); and

### take all measures necessary to protect, or to prevent or minimise risks to, the Works, other property and the health and safety of people.

## Site Information and Site Conditions

### The Contractor acknowledges and agrees that:

#### the Site Information was provided for the Contractor's information only and does not form part of the Contract; and

#### the Principal does not warrant, guarantee or make any representation about the completeness, accuracy or adequacy of the Site Information.

### To the extent permitted by Law, the Contractor is not entitled to make (and the Principal will not be liable upon) any Claim in connection with any Site Information.

### Subject only to clause 9.3, the Contractor accepts all risk arising out of or in connection with the Site Conditions.

# Works

## Approvals

1. The Contractor must:

### apply for and obtain all Approvals (other than Approvals (if any) that Item 23 specifies will be obtained by the Principal), give all notices and pay all fees and other amounts necessary to perform the Contractor’s Activities; and

### promptly give the Principal's Representative copies of all relevant documents (including Approvals and other notices) that any Authority issues to the Contractor in connection with the Contractor’s Activities.

## Set out

1. The Contractor must set out the Works in accordance with the Contract and carry out any survey which may be necessary for that purpose.

## Quality of work and materials

1. The Contractor must:

### perform the Contractor’s Activities in a proper and workmanlike manner, exercising all due skill, care and diligence; and

### ensure that materials, plant, equipment and items supplied under the Contract by the Contractor are new (unless otherwise specified) and Fit for Purpose.

## Inspections and tests

### The Principal’s Representative may at any time and from time to time inspect the Contractor's Activities and the Works.

### The Contractor must:

#### allow (and procure that any relevant Subcontractor allows) the Principal's Representative and any other person authorised by the Principal's Representative to enter any part of the Site (or any areas off-Site where Contractor’s Activities are being performed) to inspect or test any part of the Contractor’s Activities or the Works; and

#### carry out:

##### all inspections and tests required by the Contract; and

##### any additional inspections and tests directed by the Principal's Representative (acting reasonably).

### If any additional inspection or test directed by the Principal's Representative under clause 6.4(b)(ii)B does not disclose a Defect, the Contractor may submit an Adjustment Notice in respect of that inspection or test no later than the date for submission specified in the Adjustment Event Table.

### The Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with any inspection or test other than under clause 6.4(c).

## Principal Contractor

### If the Principal is the "owner" of the Site (or any part thereof) for the purposes of Part 5.1 of the OHS Regulations, the Principal hereby appoints the Contractor as the Principal Contractor for the Contractor’s Activities and authorises the Contractor to manage and control the Site to the extent necessary to discharge the duties imposed on a Principal Contractor under the OHS Laws.

### The Contractor:

#### accepts its appointment as a Principal Contractor under clause 6.5(a);

#### acknowledges that it has management and control of the Site for the period of appointment as Principal Contractor; and

#### must comply with all obligations imposed on a Principal Contractor by the OHS Laws at its own cost.

### Regardless of whether the Principal Contractor appointment under clause 6.5(a) is valid for the purpose of any applicable OHS Laws, the Contractor agrees to comply with all obligations imposed on a Principal Contractor under any applicable OHS Laws as if the Contractor had been validly engaged as the Principal Contractor in respect of the Contractor’s Activities.

### To the extent the Contractor’s Activities are to be performed at a workplace where the Principal is not the "owner" of the Site (or any part thereof) for the purposes of Part 5.1 of the OHS Regulations, the Contractor agrees that, upon request by the Principal’s Representative, it will accept from the owner an appointment as the Principal Contractor and will discharge the duties imposed on a Principal Contractor under the OHS Laws, provided the Contractor is granted authorisation to manage and control the Site to the extent necessary to discharge those duties.

## Industrial Relations

### Without limiting clause 2.3, the Contractor warrants that:

#### before the Contract Date, it informed itself of all matters relevant to the engagement of labour in connection with the Contractor's Activities and the Works; and

#### all labour engaged by the Contractor or a Subcontractor in connection with the performance of the Contractor's Activities will be engaged in such a manner which allows the Contractor to comply with its obligations under the Contract.

### The Contractor acknowledges and agrees that it is responsible for, at its own cost:

#### management of employee and industrial relations matters in connection with the Contractor's Activities including the resolution of all Industrial Actions and all employment and industrial relations matters pertaining to the Contractor; and

#### prompt payment of all salaries, wages, commissions, allowances and other remuneration to employees and for the deduction and payment of the applicable taxes, levies and charges and for the remittance of such sums to tax or other Authorities.

### The Contractor must:

#### comply with and ensure that all Subcontractors comply with all Industrial Relations Laws and upon request, provide the Principal with such evidence of its compliance as the Principal reasonably requires;

#### comply with and ensure that all Subcontractors or other persons engaged in the performance of the Contractor's Activities comply with, to the extent relevant, the Industrial Relations Management Plan and upon request, provide the Principal with such evidence of its compliance as the Principal reasonably requires;

#### cooperate with and ensure that all Subcontractors cooperate with any Other Contractors in order to maintain, to the extent permitted by Legislation, a stable industrial relations environment;

#### upon request by the Principal, attend meetings convened by the Principal for the purpose of discussing employment or industrial relations matters relevant or relating to the Contractor's Activities or the Site;

#### include in each report submitted in accordance with clause 3.8, details of the Contractor's compliance with the Industrial Relations Management Plan;

#### immediately advise the Principal in writing of any act, fact or circumstance associated with the activities of the Contractor or any other person relevant to the ability of the Contractor to perform the Contractor's Activities in a manner consistent with this clause 6.6; and

#### in relation to the Contractor's Activities, if a sham contracting arrangement is proven to have been entered into, either pay the amount of the underpayment or otherwise ensure that it is paid by the relevant Subcontractor.

### The Contractor must ensure that:

#### before accessing the Site, it prepares and submits to the Principal an industrial relations management plan that:

* + - * 1. demonstrates (at a minimum) how employment and industrial relations issues and risks related to the Contractor's Activities and the Works will be managed;
				2. meets the requirements of the Contract; and
				3. is acceptable to the Principal,

#### (**Industrial Relations Management Plan**); and

#### the Industrial Relations Management Plan is periodically reviewed and amended (if necessary) and resubmitted to the Principal, until the issue of the Notice of Practical Completion (or if there are Separable Portions, the issue of the last Notice of Practical Completion).

# Progress and Practical Completion

## Program

### Within 5 Business Days after the Contract Date, the Contractor must give the Principal's Representative a program which must:

#### be based on and substantially consistent with the initial program submitted by the Contractor with its tender for the Contractor's Activities (as may be updated before the Contract Date with the approval of the Principal) (if any); and

#### otherwise contain the details, and be in the form, required by the Contract Documents or the Principal's Representative.

### The Principal's Representative may (acting reasonably) review and comment on or reject a program submitted or resubmitted by the Contractor within 5 Business Days after receipt.

### A program which has been submitted by the Contractor under clause 7.1(a) (or resubmitted in accordance with clause 7.1(d)(i)) and has not been rejected by the Principal's Representative under clause 7.1(b) will be the "Contract Program" for the purposes of the Contract.

### The Contractor must:

#### amend and resubmit a program rejected by the Principal's Representative, whereupon clause 7.1(b) will reapply;

#### not, without reasonable cause, depart from the Contract Program; and

#### update the Contract Program at the intervals specified in Item 24, and whenever directed by the Principal's Representative to do so, to take account of delays or other changes, and provide the updated Contract Program to the Principal's Representative.

### Any comment on or review or rejection of a program by the Principal's Representative (or failure to do any one of those things) will not:

#### relieve the Contractor of any of its obligations under the Contract (including the obligation to achieve Practical Completion by the Date for Practical Completion); or

#### evidence or constitute a direction by the Principal's Representative to accelerate, disrupt, prolong or vary any of the Contractor’s Activities, extend the Date for Practical Completion or affect the time for the performance of the Principal's or the Principal's Representative's obligations.

### A Contract Program may be used by the Principal's Representative to monitor progress and assess Claims.

## Progress and acceleration

### The Contractor must regularly and diligently progress the Contractor’s Activities and achieve Practical Completion by the Date for Practical Completion.

### Where the Contractor is entitled to Claim an extension of time under clause 10 for a delay in the performance of the Contractor's Activities, the Principal's Representative may direct the Contractor to accelerate the performance of the Contractor's Activities so as to overcome or minimise that delay, to the extent the Contractor can reasonably and practicably do so.

### The Contractor must comply with a direction given under clause 7.2(b), and:

#### will no longer be entitled to an extension of time under clause 10 to the extent the delay can reasonably and practicably be overcome or minimised; and

#### subject to clause 7.2(c)(i), may submit an Adjustment Notice in respect of the direction under clause 7.2(b) no later than the date for submission specified in the Adjustment Event Table.

## Practical Completion

### The Contractor must promptly notify the Principal's Representative in writing when it considers that Practical Completion has been achieved.

### Within:

#### 5 Business Days after the Contractor’s notice under clause 7.3(a) is given, the Contractor must arrange a joint inspection of the Works with the Principal, the Principal’s Representative and any invitee of the Principal; and

#### 10 Business Days after the Contractor’s notice under clause 7.3(a) is given, the Principal's Representative must either:

##### if Practical Completion has been achieved, give the Contractor a Notice of Practical Completion stating the date on which Practical Completion was achieved; or

##### give the Contractor a written notice setting out the reasons why Practical Completion has not been achieved.

### If at any time the Principal's Representative considers (acting reasonably) that Practical Completion has been achieved, it may issue a Notice of Practical Completion (regardless of whether a notice has been given by the Contractor under clause 7.3(a)).

### A Notice of Practical Completion will not constitute approval of the Contractor’s Activities or the Works and does not constitute an admission or evidence that the Contractor’s Activities or the Works comply with the Contract.

## Liquidated damages

### If the Contractor does not achieve Practical Completion by the Date for Practical Completion, it must pay the Principal liquidated damages at the rate specified in Item 27 for every day after the Date for Practical Completion until the Date of Practical Completion or the date on which the Contract is terminated or the Principal takes the relevant Contractor’s Activities out of the hands of the Contractor, whichever first occurs. The amount payable under this clause 7.4(a) will be a debt due and payable by the Contractor to the Principal.

### The parties acknowledge and agree that the liquidated damages under clause 7.4(a) are a genuine pre‑estimate of the Principal's damages if Practical Completion occurs after the Date for Practical Completion, have been agreed in good faith, are reasonable and are not intended as a penalty.

### Despite clause 7.4(b), if all or any part of this clause 7.4 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the Principal from receiving the amount of liquidated damages payable under clause 7.4(a), the Principal will be entitled to recover common law damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion, but the Contractor's liability for such damages will be no greater than the liability it would have had if clause 7.4(a) had not been void, invalid, unenforceable or otherwise inoperative.

## Defects

### Subject to clause 7.5(b)(ii), the Contractor must correct all Defects.

### At any time before the expiry of the Defects Liability Period (including any separate Defects Liability Period arising in accordance with clause 7.5(c)(ii)) the Principal's Representative may, if it discovers or believes there is a Defect, give written notice to the Contractor specifying the Defect and doing one or more of the following:

#### requiring the Contractor to rectify the Defect (or any part) within such time as the Principal's Representative directs; or

#### advising the Contractor that the Principal accepts the relevant work (or any part), despite the Defect.

### If a direction is given under clause 7.5(b)(i):

#### the Contractor must rectify the Defect:

##### within the time specified in the Principal's Representative's direction; and

##### if after Practical Completion, at times and in a manner which cause as little inconvenience to the occupants of the Site or users of the Works as is reasonably possible; and

#### the rectification work required by that direction will be subject to a separate Defects Liability Period commencing on the date on which the rectification work is completed, as determined by the Principal’s Representative, and ending on the last to expire of:

##### 12 months; and

##### the original Defects Liability Period,

* + 1. except that the Contractor will not be subject to a Defects Liability Period beyond the date that is 12 months after the original Defects Liability Period.

### If the Contractor does not comply with clause 7.5(c)(i), the Principal may rectify, or engage a third party to rectify, the Defect and the cost incurred by the Principal in so doing will be a debt due and payable by the Contractor to the Principal.

### If the Principal's Representative gives the Contractor a direction under clause 7.5(b)(ii), the amount determined by the Principal's Representative (acting reasonably) which represents the cost of rectifying the Defect will be a debt due and payable by the Contractor to the Principal.

### Neither the Principal’s rights nor the Contractor’s liability, whether under the Contract or otherwise according to Law and whether before or after the expiration of the Defects Liability Period, will be affected or limited by the rights conferred on the Principal or the Principal's Representative by this clause 7.5 or by:

#### the failure of the Principal or the Principal's Representative to exercise any such rights; or

#### any direction of the Principal's Representative under this clause 7.5 or any other provision of the Contract.

## Separable Portions

1. If Separable Portions are specified in the Contract, then:

### the terms:

#### Practical Completion;

#### Date for Practical Completion;

#### Date of Practical Completion;

#### Notice of Practical Completion;

#### Defect; and

#### Defects Liability Period; and

### clauses 5.5, 7.2, 7.3, 7.4, 7.5, 7.7, 9.6, 10.3, 10.4 and 11.1,

### apply separately to each Separable Portion and references therein to the Works and to the Contractor’s Activities will mean so much of the Contractor's Activities and the Works as are comprised in the relevant Separable Portion.

## Use of partly completed works

### The Principal may, after written notice to the Contractor, use or occupy (or arrange for Other Contractors to use or occupy) any part of the Works that the Principal’s Representative considers to be usable notwithstanding that such part (or some other part) of the Works has not achieved Practical Completion.

### The use or occupation of any part of the Works by the Principal (or an Other Contractor) in a proper and normal manner under this clause 7.7 will not limit or affect the Contractor's rights and obligations under the Contract.

# Payment

## Payment obligation

1. Subject to clause 8.8 and to any other right to set off which the Principal may have, the Principal will pay the Contractor:

### the Contract Sum; and

### any other amounts which are payable by the Principal to the Contractor under the Contract.

## Payment claims

### The Contractor must:

#### until Practical Completion or termination of the Contract (whichever is earlier), at the times specified in Item 29; and

#### unless terminated earlier, within 20 Business Days (or such longer period as may be agreed in writing by the Principal's Representative) after:

##### the date on which a Notice of Practical Completion is given under clause 7.3(b)(ii)A; and

##### the expiry of the Defects Liability Period (**Final Payment Claim**),

##### give the Principal's Representative claims for payment for:

#### the part of the Contract Sum that equates to the part of the Contractor's Activities performed as at the date of the payment claim; and

#### any other amounts which are then payable by the Principal to the Contractor under the Contract.

### Payment claims must be in a form acceptable to, or otherwise as required by, the Principal's Representative from time to time, include supporting documentation and set out:

#### particulars of the part of the Contract Sum claimed;

#### particulars of any other amounts claimed under the Contract; and

#### any other information that the Principal's Representative requests.

### Each payment claim must include a statutory declaration (together with any supporting evidence that may reasonably be required by the Principal's Representative) regarding payment to employees and Subcontractors engaged by the Contractor, that is in the form set out in the Schedule of Collateral Documents (or such other form as is required by the Principal's Representative, acting reasonably) and signed by a person authorised to do so on behalf of the Contractor.

### The payment claim under clause 8.2(a)(ii)A must comply with clauses 8.2(b) and 8.2(c) and must include all amounts which the Contractor claims from the Principal for the part of the Contract Sum that equates to the part of the Contractor's Activities performed as at the date of the payment claim and all other amounts payable under the Contract in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract which occurred prior to the date on which a Notice of Practical Completion is given under clause 7.3(b)(ii)A.

### After the time for submitting the payment claim under clause 8.2(a)(ii)A has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract which occurred prior to the date on which a Notice of Practical Completion is given under clause 7.3(b)(ii)A, except for any Claim included in a payment claim under clause 8.2(a)(ii)A which is given to the Principal's Representative within the time required by clause 8.2(a)(ii)A, and in accordance with the terms of clause 8.2(d).

### The Final Payment Claim must comply with clauses 8.2(b) and 8.2(c) and must include all amounts which the Contractor claims from the Principal on account of the Contract Sum and all other amounts payable under the Contract in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract which occurred during the Defects Liability Period.

### After the time for submitting a Final Payment Claim has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract which occurred during the Defects Liability Period, except for any Claim included in a Final Payment Claim which is given to the Principal's Representative within the time required by clause 8.2(a)(ii)B, and in accordance with the terms of clause 8.2(f).

## Payment statements

### The Principal's Representative must, within 10 Business Days after receipt of a payment claim, issue a payment statement identifying the payment claim to which it relates (if any) and setting out:

#### the amount then due and payable by the Principal to the Contractor on account of the Contract Sum and any other amounts payable under the Contract, and which the Principal proposes to pay to the Contractor (or the amount payable by the Contractor to the Principal); and

#### if the amount payable to the Contractor in clause 8.3(a)(i) is less than the amount claimed in the payment claim, or there is an amount payable to the Principal, the reason for this (including the reason for any retention, deduction, withholding or set off).

### If the Contractor does not submit a payment claim in accordance with clause 8.2, the Principal's Representative may nevertheless issue a payment statement.

## Tax invoice and payment

### The Contractor must, within 5 Business Days after receipt of a payment statement, give the Principal's Representative a Tax Invoice for the amount stated in the payment statement as then payable by the Principal to the Contractor.

### Subject to the provisions of the Contract, within 10 Business Days after receipt of a payment statement under clause 8.3(a), the Principal must pay the Contractor the amount stated in the payment statement as then payable by the Principal to the Contractor.

### If a payment statement states that an amount is due from the Contractor to the Principal, the Contractor must pay that amount to the Principal within 10 Business Days after the issue by the Principal's Representative of the payment statement.

## No admission

### Payment is on account only and neither a payment statement nor a payment of moneys will be an admission or evidence that the subject Contractor’s Activities or Works have been carried out in accordance with the Contract.

### Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set off will not prejudice the Principal's right to subsequently exercise the right to retain, deduct, withhold or set off any amount.

### At any time and from time to time, the Principal's Representative may by a further payment statement correct any error discovered in any payment statement.

## Unfixed goods and materials

1. Unfixed goods and materials will not be included in a payment statement unless the Contractor:

### provides the Principal with additional Approved Security equal to the amount claimed for the unfixed goods and materials;

### satisfies the Principal's Representative that the subject goods and materials have been paid for, insured, properly stored and protected, and labelled the property of the Principal; and

### provides such evidence as the Principal's Representative may require that on payment by the Principal to the Contractor of the amount claimed in respect of the subject goods and materials, title in the goods and materials will vest in the Principal free of any Security Interest.

## Interest

### If a party fails to pay an amount that is due and payable by that party to the other party within the time required under the Contract, then the first mentioned party must pay interest on that amount:

#### on and from the date that is 10 Business Days after the payment due date until the date on which payment is made; and

#### calculated at the rate specified in Item 30,

### provided that, where the first mentioned party is the Principal:

#### the Contractor must first have provided the Principal with a notice of demand; and

#### the amount that is due and payable is not the subject of a dispute or difference between the parties.

### Subject to clause 12, the amount specified in clause 8.7(a) will be a party's sole entitlement in respect of the other party's failure to pay an amount by its due date.

## Set off

1. The Principal may deduct from moneys otherwise due to the Contractor:

### any debt or other moneys due from the Contractor to the Principal (including liquidated damages payable under clause 7.4(a)); and

### any Claim to money which the Principal asserts in good faith against the Contractor whether under the Contract or otherwise at Law or arising out of or in connection with the Contractor’s Activities or the Works.

## GST

### Subject to clause 8.9(b), where any supply arises out of or in connection with the Contract, the Contractor’s Activities or the Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.

### Where an amount is payable to the Supplier for a supply arising out of or in connection with the Contract, the Contractor’s Activities or the Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 8.9(a).

### As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a Tax Invoice to the recipient in respect of that supply.

### If the amount paid to the Supplier in respect of GST (whether because of an adjustment or otherwise) is:

#### more than the GST on the supply, then the Supplier must refund the excess to the recipient; or

#### less than the GST on the supply, then the recipient must pay the deficiency to the Supplier.

### Subject to clause 1.1, in this clause 8.9 terms defined in the GST Act have the meaning given to them in GST Act.

## Security of Payment Act

### In receiving payment claims and issuing payment statements under the Security of Payment Act, the Principal's Representative acts as the agent of the Principal.

### To the extent permitted by and for the purposes of the Security of Payment Act:

#### the times prescribed in clause 8.2(a) are "reference dates" (as defined in the Security of Payment Act);

#### a payment statement issued under clause 8.3 is also a “payment schedule” (as defined in the Security of Payment Act); and

#### any amount set out in a payment statement under clause 8.3 is, for the purposes of the Security of Payment Act, the amount of the "progress payment" (as defined in the Security of Payment Act) which the Contractor is entitled to be paid under the Contract.

### The parties agree that clause 13 is a method for resolving disputes for the purposes of section 10A(3)(d) of the Security of Payment Act.

### Any adjudication application by the Contractor under the Security of Payment Act must be made to one of the authorised nominating authorities specified in Item 31.

### The Contractor must give copies of any notice given by a Subcontractor under the Security of Payment Act (including notice of a Subcontractor's intention to suspend work under the Security of Payment Act but excluding any "payment claim" or "payment schedule") to the Principal's Representative within 2 Business Days after receipt by the Contractor.

### The Principal may, if it becomes aware that a Subcontractor is entitled to suspend work under the Security of Payment Act, pay the Subcontractor moneys owing to the Subcontractor and the amount so paid will be a debt due and payable by the Contractor to the Principal.

# Adjustment Events

## Variations

### At any time before the Date of Practical Completion, the Principal's Representative may give the Contractor written notice of a proposed Variation (**Variation Request**).

### The Contractor must, within 5 Business Days after receipt of a Variation Request (or such longer period as may be agreed by the Principal's Representative), give the Principal's Representative an Adjustment Notice in respect of the proposed Variation which states the impacts (if any) of the proposed Variation on:

#### the Contract Sum;

#### the then current Contract Program;

#### the Date for Practical Completion; and

#### any of the Contractor’s other obligations and warranties under the Contract.

### The Principal's Representative must, within 10 Business Days after receipt of an Adjustment Notice under clause 9.1(b), assess and make a determination in respect of that Adjustment Notice in accordance with clauses 10.1(c) and 10.1(d) and either:

#### issue a Variation Order directing the Contractor to perform the Variation in accordance with the determination of the Principal's Representative; or

#### notify the Contractor that the Principal does not wish to proceed with the proposed Variation in which event the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with the proposed Variation (including the Variation Request and the Contractor's Adjustment Notice),

#### and if the Principal's Representative does not respond to an Adjustment Notice within the time specified in this clause 9.1(c), clause 9.1(c)(ii) will be deemed to apply in respect of that Adjustment Notice.

### Whether or not a Variation Request and Adjustment Notice under clause 9.1(b) have been given, the Principal's Representative may, at any time before the Date of Practical Completion, give the Contractor a Variation Order.

### If the Principal issues a Variation Order under clause 9.1(d), the Contractor may submit an Adjustment Notice in respect of the Variation Order no later than the date for submission specified in the Adjustment Event Table.

### The Contractor must perform a Variation the subject of a Variation Order.

### No Variation or Variation Order will invalidate or constitute a repudiation of the Contract.

### If the Contractor requests the Principal's Representative to direct a Variation for the convenience of the Contractor, the Principal's Representative:

#### may issue a Variation Order (but is under no obligation to do so); and

#### if it does not expressly approve the request in writing within 5 Business Days after the request is made, will be deemed to have rejected the request.

### A Variation Order given in response to a request by the Contractor under clause 9.1(h) will not, unless it is otherwise expressly stated in that Variation Order, entitle the Contractor to submit an Adjustment Notice in respect of that Variation Order or otherwise make any Claim against the Principal arising out of or in connection with the Variation the subject of that Variation Order.

### If a Variation Order omits, or reduces the cost of performing, any part of the Contractor’s Activities or the Works, the Contract Sum will be decreased by an amount determined by the Principal’s Representative in accordance with clause 10.2 and the Principal may carry out, or engage others to carry out, any work omitted from, or the subject of any reduction in, the Contractor’s Activities or the Works by way of Variation.

### If, in the Contractor's opinion, a direction of the Principal's Representative (other than a Variation Order) constitutes a direction to perform a Variation then the Contractor must, within 5 Business Days after receiving and before complying with the direction, give written notice of its opinion to the Principal's Representative.

### The Principal's Representative may, within 5 Business Days after receipt of a notice under clause 9.1(k), do any of the following:

#### request that the Contractor submit an Adjustment Notice under clause 9.1(b) in respect of the direction, in which case clauses 9.1(b) and 9.1(c) will apply;

#### issue a Variation Order in respect of the direction, in which case clause 9.1(e) will apply;

#### withdraw the direction; or

#### inform the Contractor that the Principal does not consider the direction requires the performance of a Variation, in which case the Contractor must comply with that direction,

* 1. but if the Principal's Representative does not respond to a notice under clause 9.1(k) within the time prescribed by this clause 9.1(l), the direction the subject of the Contractor's notice will be deemed to be withdrawn.

### To the extent permitted by Law, the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with a direction referred to in clause 9.1(k) unless:

#### the Contractor has complied with the requirements of clause 9.1(k); and

#### clause 9.1(l)(i) or clause 9.1(l)(ii) applies.

## Provisional Sums

### This clause 9.2 applies if Item 32 specifies that it applies.

### The Contractor acknowledges and agrees that:

#### Provisional Sum Items form part of the Contractor’s Activities;

#### each Provisional Sum is included in the Contract Sum;

#### for each Provisional Sum Item, the Principal's Representative will give the Contractor a direction to either:

##### perform the Provisional Sum Item;

##### omit the Provisional Sum Item from the Contractor's Activities; or

##### perform only part of a Provisional Sum Item and omit the balance from the Contractor's Activities;

#### it must not commence performing a Provisional Sum Item unless it is directed to do so by the Principal's Representative;

#### if the Principal's Representative has not given the Contractor a direction in respect of a Provisional Sum Item under clause 9.2(b)(iii) by the Date for Practical Completion, then the Provisional Sum Item will be deemed to be omitted from the Contractor's Activities; and

#### a direction omitting or requiring the performance of a Provisional Sum Item is not a direction to carry out a Variation.

### If the Principal's Representative directs the Contractor to perform a Provisional Sum Item (or any part) in accordance with clause 9.2(b)(iii), then the Contractor must:

#### perform that Provisional Sum Item (or relevant part); and

#### give the Principal's Representative written notice not later than 5 Business Days after the date on which the Provisional Sum for that Provisional Sum Item (or if only part of the Provisional Sum Item is directed to be performed, so much of the Provisional Sum as is referable to that part) has been expended or accounted for.

### If a Provisional Sum Item (or any part) is omitted from the Contractor's Activities in accordance with clause 9.2(b)(iii) or 9.2(b)(v):

#### the Contract Sum will be reduced by the amount of the Provisional Sum for that Provisional Sum Item (or if only part of a Provisional Sum Item is omitted, by so much of the Provisional Sum as is referable to that part);

#### the Principal may itself carry out or engage another contractor to carry out the relevant Provisional Sum Item (or relevant part); and

#### the Contractor will not be entitled to make any Claim arising out of or in connection with the omission of the Provisional Sum Item (or relevant part).

### If, where the Contractor performs a Provisional Sum Item (or relevant part) in accordance with clause 9.2(b)(iii):

#### the Contractor considers that it has incurred costs exceeding the relevant Provisional Sum (or relevant part), it may submit an Adjustment Notice in respect of that excess no later than the date for submission specified in the Adjustment Event Table; or

#### the Principal’s Representative considers that the costs incurred by the Contractor are less than the relevant Provisional Sum (or relevant part), the Contract Sum will be decreased by the amount so determined by the Principal’s Representative.

## Latent Conditions

### If the Contractor considers that it has encountered a Latent Condition it must give written notice to the Principal's Representative not later than 5 Business Days after the Latent Condition is encountered (and, if possible, before the Latent Condition is disturbed).

### A notice under clause 9.3(a) must specify:

#### the Latent Condition encountered and how it satisfies the definition of a Latent Condition;

#### the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;

#### the time the Contractor anticipates will be required to deal with the Latent Condition and any expected delay in achieving Practical Completion; and

#### any other details reasonably required by the Principal's Representative.

### The Principal's Representative must, within 10 Business Days after receipt of a notice under clause 9.3(a):

#### notify the Contractor if it agrees that a Latent Condition has been encountered; and

#### regardless of whether or not it agrees that a Latent Condition has been encountered, direct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Latent Condition (or the Site Condition the subject of the Contractor’s notice under clause 9.3(a), as the case may be).

### If the Principal's Representative:

#### in accordance with clause 9.3(c)(i) agrees that a Latent Condition has been encountered, then the Contractor may submit an Adjustment Notice in respect of the Latent Condition no later than the date for submission specified in the Adjustment Event Table; or

#### does not agree that a Latent Condition has been encountered, then the Contractor must comply with any direction given by the Principal's Representative under clause 9.3(c)(ii).

### If the Principal's Representative considers that a direction under clause 9.3(c)(ii) has resulted in a reduction in the cost to the Contractor of performing the Contractor's Activities or the Works, then the Contract Sum will be decreased by the amount determined by the Principal’s Representative in accordance with clause 10.2.

### The Contractor is not entitled to include in an Adjustment Notice submitted under clause 9.3(d)(i), or otherwise to make a Claim for, any costs in connection with a Latent Condition that are incurred earlier than 5 Business Days before the date on which the Contractor gave notice under clause 9.3(a).

## Suspension

### The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to recommence, performance of all or a part of the Contractor’s Activities.

### Unless the suspension arises as a result of the Contractor's failure to perform its obligations under the Contract, the Contractor may submit an Adjustment Notice in respect of the suspension no later than the date for submission specified in the Adjustment Event Table.

### The Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with the suspension, except to the extent permitted by clause 9.4(b).

### The Contractor may suspend the performance of the Contractor’s Activities in accordance with the Security of Payment Act and in that event, the Contractor may submit an Adjustment Notice in respect of the suspension no later than the date for submission specified in the Adjustment Event Table.

### If the Contractor's Activities are suspended under this clause 9.4 and the Principal's Representative considers that the Contractor has incurred less cost than otherwise would have been incurred because of the suspension, then the Contract Sum will be reduced by an amount determined by the Principal’s Representative in accordance with clause 10.2.

## Force Majeure

### If either party considers that a Force Majeure Event has occurred, then that party must give written notice of the Force Majeure Event to the other party as soon as practicable and in any event no later than 5 Business Days after becoming aware of the Force Majeure Event.

### If a notice of Force Majeure Event is given under clause 9.5(a):

#### the Contractor must promptly take proper and reasonable steps (including expending money, rescheduling labour and resources and implementing appropriate temporary measures) to remedy, avoid or minimise the consequences of the Force Majeure Event notified under clause 9.5(a);

#### the obligations of each party under the Contract which are prevented by the Force Majeure Event will be suspended to the extent of such prevention from the date on which notice of the Force Majeure Event is given under clause 9.5(a); and

#### during the period of suspension under clause 9.5(b)(ii), the failure of a party to perform obligations which are so suspended under clause 9.5(b)(ii) will not be a breach of the Contract by that party.

### The Principal’s Representative must, once the Force Majeure Event (and its effects) no longer prevents the Principal or the Contractor (as the case may be) from performing the obligations suspended, give written notice to the Contractor lifting the suspension under clause 9.5(b)(ii).

### The Contractor may submit an Adjustment Notice in respect of a Force Majeure Event no later than the date for submission specified in the Adjustment Event Table.

## Delay Events

### The Contractor:

### will not be entitled to Claim, and the Principal will not be liable to direct, any extension of time to the Date for Practical Completion unless the Contractor:

#### has been or will be delayed in achieving Practical Completion by the Date for Practical Completion by a Delay Event; and

#### has submitted an Adjustment Notice in respect of the Delay Event no later than the date for submission specified in the Adjustment Event Table;

### must take all reasonable steps to overcome, mitigate or minimise delay caused by a Delay Event; and

### where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Delay Event, is not entitled to an extension of time to the extent that the delays are concurrent.

# Adjustment Entitlements

## Adjustment principles

### The Contractor is not entitled to make any Claim in respect of an Adjustment Event unless:

#### it has an express right under the Contract to submit an Adjustment Notice for that Adjustment Event; and

#### it has submitted an Adjustment Notice for that Adjustment Event in accordance with the Contract which:

##### identifies the clause giving rise to the entitlement to submit an Adjustment Notice and the relevant Adjustment Event;

##### is submitted to the Principal's Representative no later than the date for submission specified in the Adjustment Event Table for the relevant Adjustment Event;

##### includes and clearly identifies all Adjustment Entitlements that are claimed in respect of the Adjustment Event;

##### includes documentary evidence substantiating:

###### the occurrence of the Adjustment Event (or if the Principal or Principal's Representative has agreed that there has been an Adjustment Event, identifying that agreement); and

###### the Claim or Claims made by the Contractor in respect of the Adjustment Event (in accordance with and to the extent permitted by this clause 10);

##### where clause 9.6 applies:

###### provides detailed particulars of the Delay Event;

###### states the number of days by which the Delay Event has delayed or will delay the achievement of Practical Completion by the Date for Practical Completion and for which the Contractor claims an extension of time; and

###### clearly demonstrates how the Delay Event affects activities that are on the critical path for achieving Practical Completion by the Date for Practical Completion in the then current Contract Program and that the Delay Event has delayed or will delay Practical Completion by the number of days claimed;

##### identifies the steps that have been (and if relevant, are continuing to be) taken by the Contractor to overcome, minimise or mitigate:

###### the costs of; and

###### any delay arising from,

* + - 1. the Adjustment Event;

##### is in the form set out in Schedule 8; and

##### otherwise contains all information required by the Contract in respect of that Adjustment Event or that is reasonably required by the Principal’s Representative from time to time,

* 1. in which case the Contractor's only entitlement in respect of that Adjustment Event will be as set out in the Adjustment Event Table.

### To the extent permitted by Law and despite anything to the contrary in the Contract, the Contractor will not be entitled to (and the Principal will not be liable upon any Claim for) an increase to the Contract Sum or an extension to the Date for Practical Completion in respect of any act, omission, event, circumstance or thing unless the Principal's Representative has notified the Contractor that it has an Adjustment Entitlement under clause 10.1(c) in respect of that act, omission, event, circumstance or thing.

### The Principal's Representative must:

#### within the time specified in the Contract for the relevant Adjustment Event; or

#### if no time is specified, within 20 Business Days after submission of the Adjustment Notice,

#### assess the Contractor's Claims and provide written notice to the Contractor as to whether or not it has a valid Adjustment Entitlement in accordance with the Contract and if so, its determination of that Adjustment Entitlement in accordance with clauses 10.2 to 10.4 (inclusive).

### In making a determination under clause 10.1(c), the Principal's Representative may:

#### make an assessment in respect of the Adjustment Entitlement that is different to the Contractor's Claims;

#### take into account the extent to which the Contractor has or may have contributed to the Adjustment Event or its consequences; and

#### take into account any failure by the Contractor to take reasonable steps to minimise or mitigate:

##### the costs of; and

##### any delay arising from,

#### the Adjustment Event.

### The table at clause 10.1(f) (**Adjustment Event Table**) identifies, in respect of each Adjustment Event:

#### whether the Adjustment Entitlement is one or more of:

* + - 1. an increase to the Contract Sum under clause 10.2;
			2. an extension to the Date for Practical Completion under clause 10.3; or
			3. an increase to the Contract Sum under clause 10.4; and

#### the time for submitting an Adjustment Notice.

### Where the Adjustment Event Table includes a:

#### "✓", the Contractor has the relevant Adjustment Entitlement for that Adjustment Event; or

#### "x", the Contractor does not have the relevant Adjustment Entitlement for that Adjustment Event:

| **No.** | **Adjustment Event** | **Time for submission of an Adjustment Notice** | **Adjustment Entitlement**  |
| --- | --- | --- | --- |
| **Adjustment to the Contract Sum for direct costs calculated in accordance with clause 10.2** | **Extension of time determined in accordance with clause 10.3** | **Adjustment to Contract Sum for delay costs calculated in accordance with clause 10.4** |
|  | (**Site access**) Principal fails to give access in accordance with clause 5.1(a)  | Within 10 Business Days after the Access Date | 🗶 | ✓ | ✓ |
|  | (**Defects**) Contractor conducts an additional inspection or test directed by the Principal's Representative under clause 6.4(b)(ii)B that does not disclose a Defect | Within 10 Business Days after the date on which the inspection or test is conducted | ✓ | 🗶 | 🗶 |
|  | (**Acceleration**) Where the Adjustment Notice is submitted in accordance with clause 7.2(c)(ii) accelerating the Contractor's Activities under clause 7.2(b)  | Within 10 Business Days after the date on which the Principal's Representative's request is given under clause 7.2(b)  | ✓ | 🗶 | 🗶 |
|  | (**Variation**) Requirement under clause 9.1(b) for Contractor to submit Adjustment Notice after issue of a Variation Request under clause 9.1(a)  | Within 5 Business Days after receipt of a Variation Request under clause 9.1(a)  | ✓ | ✓ | ✓ |
| 1.
 | (**Variation**) Contractor receipt of a Variation Order under clause 9.1(d) (including a Variation Order given in response to a request by the Contractor under clause 9.1(h) and that expressly states the Contractor may submit an Adjustment Notice) or receipt of a deemed Variation Order under clause 11.1(c)  | Within 10 Business Days after the date on which the Variation Order is given  | ✓ | ✓ | ✓ |
|  | (**Provisional Sum**) Contractor incurs costs exceeding the Provisional Sum | Within 10 Business Days after the date on which notice is given under clause 9.2(c)(ii) | ✓ | 🗶 | 🗶 |
|  | (**Latent Conditions**) Principal's Representative has given notice under clause 9.3(c)(i) agreeing that a Latent Condition has been encountered, dealing with the Latent Condition pursuant to a direction given under clause 9.3(c)(ii)  | Within 10 Business Days after the date on which the Principal’s Representative gives notice under clause 9.3(c)(i) | ✓ | ✓ | ✓ |
|  | (**Suspension**) Principal’s Representative directs a suspension under clause 9.4(a) and the Contractor is permitted to submit an Adjustment Notice under clause 9.4(b) | Within 10 Business Days after the date on which the Principal's Representative gives the Contractor a direction under clause 9.4(a) to recommence performance of the suspended Contractor’s Activities | ✓ | ✓ | 🗶 |
|  | (**Suspension**) Contractor suspends the Contractor’s Activities under clause 9.4(d)  | Within 10 Business Days after the date on which the Contractor recommences performance of the suspended Contractor’s Activities | 🗶 | ✓ | 🗶 |
|  | (**Force Majeure Event**) A Force Majeure Event occurs  | Within 10 Business Days after the date on which notice is given by the Principal’s Representative under clause 9.5(c) lifting a suspension of obligations under clause 9.5(b)(ii) | 🗶 | ✓ | 🗶 |
|  | (**Industrial Condition**) An Industrial Condition occurs on or before the Date for Practical Completion | Within 10 Business Days after the date on which the Contractor first became aware of the Industrial Condition (or the date on which a Competent Contractor could reasonably have first become aware of the Industrial Condition, whichever is earlier) | 🗶 | ✓ | 🗶 |
| 1.
 | (**Acts of Prevention**) An Act of Prevention occurs, other than Acts of Prevention the subject of another item in the Adjustment Event Table  | Within 10 Business Days after the date on which the Contractor first became aware of the Act of Prevention (or the date on which a Competent Contractor could reasonably have first become aware of the Act of Prevention, whichever is earlier) | 🗶 | ✓ | ✓ |
|  | (**Delay Events**) An event specified in Item 35 to constitute a Delay Event (excluding Compensable Delay Events) occurs  | Within 10 Business Days after the date on which the Contractor first became aware of the Delay Event (or the date on which a Competent Contractor could reasonably have first become aware of the Delay Event, whichever is earlier) | 🗶 | ✓ | 🗶 |
|  | (**Delay Events**) A Delay Event specified in Item 36 to constitute a Compensable Delay Event occurs  | Within 10 Business Days after the date on which the Contractor first became aware of the Delay Event (or the date on which a Competent Contractor could reasonably have first become aware of the Delay Event, whichever is earlier) | 🗶 | ✓ | ✓ |

## Adjustments to Contract Sum for direct costs

### If the Contractor is entitled to an adjustment to the Contract Sum for direct costs incurred due to the Adjustment Event, the Principal's Representative will adjust the Contract Sum by the direct costs incurred or saved by the Contractor as a direct result of the Adjustment Event, determined as follows:

#### if applicable rates or prices are specified in the Contract, by using those rates and prices; or

#### if there are no applicable rates or prices specified in the Contract, by the Principal's Representative assessing the direct costs reasonably incurred or saved by the Contractor including labour, plant, materials and preliminaries (but not including anything included in the definition of Contractor’s Margin),

* 1. to which (except in relation to any Provisional Sums):

#### where there is an increase to the Contract Sum, must be added a further amount calculated by applying the Contractor’s Margin to the total of the direct costs determined by the Principal's Representative; or

#### where there is a reduction to the Contract Sum, must be added a further amount calculated by applying 50% of the Contractor's Margin to the total of the direct costs determined by the Principal's Representative.

### The direct costs calculated under this clause 10.2 will exclude any costs incurred or likely to be incurred by the Contractor on account of any delay in achieving Practical Completion.

## Adjustments to the Date for Practical Completion

### If, in respect of any Delay Event, the Contractor has been or will be delayed in achieving Practical Completion by the Date for Practical Completion by the Delay Event, the Principal's Representative must, within 20 Business Days after receipt of the relevant Adjustment Notice for that Delay Event, determine the number of days by which the Delay Event has delayed or will delay the Contractor in achieving Practical Completion by the Date for Practical Completion, and extend the Date for Practical Completion by that period.

### The Principal may, whether or not the Contractor has given an Adjustment Notice in accordance with clause 9.6 or is otherwise entitled to make a Claim for an extension of time, at any time and from time to time, extend the Date for Practical Completion.

### The Principal is not obliged to exercise its discretion under clause 10.3(b) for the benefit of the Contractor and a delay or failure by the Principal's Representative to grant an extension of time in accordance with clause 10.3(a), or at all, will not cause the Date for Practical Completion to be set at large.

## Adjustments to the Contract Sum for delay costs

### If, in respect of any Compensable Delay Event, the Contractor:

#### has been granted an extension of time to the Date for Practical Completion in respect of that Compensable Delay Event; and

#### has otherwise complied with the requirements of the Contract for relief in respect of the Compensable Delay Event,

#### the Principal's Representative must increase the Contract Sum by the value of the extra direct costs reasonably and actually incurred by the Contractor on account of the delay for each Working Day by which the Date for Practical Completion is extended due to the Compensable Delay Event, except that those costs must not:

#### exceed the Delay Costs Cap per Working Day;

#### include any amount for profit or loss of profit or offsite overheads; or

#### include any direct costs other than those that are incurred due to the delay in achieving Practical Completion.

# Risk, indemnities and insurance

## Damage

### The Contractor bears the risk of loss of or damage to the Works (including unfixed items the value of which has been included in a payment statement) and Plant, Equipment and Work:

#### until the Date of Practical Completion; and

#### arising from any Defect or any act, default or omission of the Contractor, from the Date of Practical Completion until the expiry of the Defects Liability Period,

### except to the extent caused by a Principal Risk.

### During the period for which the Contractor bears the risk of loss or damage under clause 11.1(a), the Contractor must:

#### promptly replace or otherwise make good any loss of, or rectify any damage to, the Works (including any unfixed items the value of which has been included in a payment statement) and Plant, Equipment and Work, at its own cost; and

#### if any loss or damage arises from a Principal Risk, only comply with clause 11.1(b)(i) if and to the extent directed by the Principal’s Representative.

### A direction under clause 11.1(b)(ii) will be deemed to constitute a Variation Order and the Contractor may submit an Adjustment Notice in respect of the replacement, making good or rectification works directed by the Principal’s Representative no later than the date for submission specified in the Adjustment Event Table.

## Indemnity

### The Contractor indemnifies each Indemnified Person from and against any Claim or Loss suffered or incurred by the Indemnified Person arising out of or in connection with any:

#### negligent act or omission of the Contractor;

#### failure to comply with any OHS Law (including any failure to comply with clause 6.5);

#### failure to comply with clause 14;

#### failure to comply with a Mandatory Government Policy Requirement which the Schedule of Government Policy Requirements states is a failure to which this clause 11.2(a)(iv) applies;

#### failure to comply with clause 15 (including any infringement or alleged infringement of Intellectual Property Rights);

#### loss of or damage to property of the Principal (whether owned, leased, licensed or controlled by the Principal), including the Site and any other property in or upon which the Contractor’s Activities are being carried out, which arises out of or in connection with the Contractor’s Activities or the Works;

#### liability to or Claim by any person in respect of personal injury, illness or death, or loss of or damage to property, which arises out of or in connection with the Contractor’s Activities or the Works; or

#### Wilful Misconduct, fraud or criminal conduct by the Contractor.

### The Contractor's liability under clause 11.2(a) will be reduced only to the extent that the Claim or Loss was caused:

#### in respect of the Principal, by a negligent act or omission of the Principal or a breach of the Contract by the Principal; or

#### in respect of an Indemnified Person, by:

##### a fraudulent or negligent act or omission; or

##### the Wilful Misconduct.

### The Principal holds on trust for each Indemnified Person the benefit of:

#### each indemnity, release and exclusion of liability given by the Contractor under the Contract in favour of the relevant Indemnified Person; and

#### each right in the Contract to the extent that such right is expressly stated to be for the benefit of the Principal or another Indemnified Person.

### The Contractor acknowledges the existence of such trusts and consents to the Principal exercising rights in relation to, or otherwise enforcing, such indemnities, releases, limitations and rights on behalf of Indemnified Persons.

### The parties agree that the Principal does not require the consent of any Indemnified Person to amend or waive any provision of the Contract.

## Insurance

### From the Contract Date, the Contractor must cause to be effected and maintained each of the insurances identified in Schedule 4, which insurances must cover the parties named in, and be for the amounts and periods specified in, Schedule 4.

### The Contractor must produce evidence satisfactory to the Principal's Representative of the Contractor's compliance with its obligations under this clause 11.3, including by providing certified copies of each insurance policy or, if copies cannot reasonably be provided, certificates of currency (together with policy schedules):

#### before commencing the Contractor's Activities; and

#### thereafter:

##### within 5 Business Days after being requested by the Principal's Representative to do so; and

##### without limiting clause 11.3(b)(i), as a condition precedent to Site access under clause 5.1(a)(i)A.

### If the Contractor fails to comply with clause 11.3(b) the Principal may, without limiting its other rights, effect and maintain any insurance for which the Contractor is responsible (including paying premiums) and the costs incurred by the Principal in doing so will be a debt due and payable by the Contractor to the Principal.

### The Contractor must:

#### immediately notify the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required under this clause 11.3 and keep the Principal informed of all material developments concerning the claim or potential claim;

#### comply with the terms of each insurance policy required under this clause 11.3;

#### not do, permit to be done or omit to do anything which prejudices any insurance policy;

#### maintain the insurance policies required under this clause 11.3 for the durations specified in Schedule 4; and

#### effect the insurance policies required under this clause 11.3 with an insurer, and on terms, both approved in writing by the Principal.

### If Schedule 4 requires an insurance policy to be effected in the names of more than one insured, the Contractor must ensure that the policy includes a clause by which the insurer agrees:

#### that the term 'insured' and all insuring agreements and endorsements (with the exception of the overall limit of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

#### to waive all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;

#### that any failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

#### that any non‑disclosure, misrepresentation (whether fraudulent or otherwise), breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim on the policy; and

#### that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

### Where the Contractor is not required to effect and maintain insurances covering public liability or loss or damage in relation to the Works under clause 11.3(a) and Schedule 4, the Principal must obtain either or both of a policy of insurance covering public liability and loss or damage in relation to the Works (as applicable).

### The Principal must, prior to the commencement of the Contractor’s Activities:

#### effect and maintain any insurance policy that it is required to obtain in accordance with clause 11.3(f); and

#### ensure that such policy covers the relevant parties and is for the applicable amounts and periods specified in Schedule 4.

# Default and termination

## Contractor default

1. The Principal may, if the Contractor breaches the Contract, give written notice to the Contractor:

### stating that it is a notice under this clause 12.1;

### specifying the breach relied on; and

### requiring the Contractor to remedy the breach, or otherwise overcome the effects of the breach to the satisfaction of the Principal (acting reasonably), within 10 Business Days after receipt of the notice (or such longer period specified by the Principal's Representative).

## Termination for Contractor default or insolvency

### If:

#### an Insolvency Event occurs in respect of the Contractor (or if the Contractor comprises two or more persons, in respect of any one of those persons) or the Guarantor;

#### the Contractor does not remedy or otherwise overcome the effects of the breach the subject of a notice under clause 12.1 to the satisfaction of the Principal (acting reasonably) within the period specified in clause 12.1(c) (or such longer period agreed by the parties);

#### the Contractor fails to comply with clause 14; or

#### the Contractor fails to comply with its privacy obligations in accordance with the Mandatory Government Policy Requirements,

#### the Principal may, without prejudice to any other right it may have, by written notice to the Contractor:

#### take out of the hands of the Contractor the whole or any part of the Contractor’s Activities remaining to be completed, on and from the date specified in the notice; or

#### terminate the Contract on the date specified in the notice (or such later date agreed by the parties).

### If the Principal exercises a right under clause 12.2(a)(v):

#### the Contract Sum will be reduced by the amount that would have been paid to the Contractor if it had completed those Contractor’s Activities, as determined by the Principal’s Representative in accordance with clause 10.2; and

#### the Contractor will not be entitled to any further payment in respect of the Contractor’s Activities taken out of the hands of the Contractor unless payment becomes due to the Contractor under clause 12.6.

## Principal default

### If the Principal breaches the Contract by failing to pay the Contractor an amount that is due and payable to the Contractor under the Contract, the Contractor may give written notice to the Principal:

#### stating that it is a notice under this clause 12.3(a);

#### specifying the breach relied on; and

#### requiring the Principal to remedy the breach within 10 Business Days after receipt of the notice.

### If, within the time specified in a notice under clause 12.3(a) (or such longer period agreed by the parties), the Principal fails to remedy the breach the subject of that notice, the Contractor may, by written notice to the Principal, suspend the whole or any part of the Contractor’s Activities.

## Termination for Principal default

1. If the Principal:

### remedies a breach the subject of a notice under clause 12.3(a), the Contractor must promptly recommence the performance of the whole or any part of the Contractor's Activities suspended under clause 12.3(b); or

### fails to remedy the breach the subject of a notice under clause 12.3(a) within 20 Business Days from the notice of suspension under clause 12.3(b) (or such longer period agreed by the parties), the Contractor may, by written notice to the Principal, terminate the Contract.

## Termination for convenience

### The Principal may:

#### at any time, for its convenience and for any reason, terminate the Contract by giving the Contractor not less than 20 Business Days' prior written notice; and

#### thereafter, complete any uncompleted part of the Contractor’s Activities, either itself or by engaging another contractor.

### Termination under clause 12.5(a)(i) will:

#### take effect on the date specified in the notice given under clause 12.5(a)(i); and

#### be without prejudice to either party's right to recover damages in respect of any prior breach of the Contract by the other party.

## Procedure when the Principal takes over work

### If the Principal takes the whole or any part of the Contractor’s Activities out of the hands of the Contractor under clause 12.2(a)(v), the Principal:

#### may complete those Contractor’s Activities either itself or by engaging another contractor; and

#### without payment of compensation:

##### may take possession of the Site and such Plant, Equipment and Work as is reasonably required by the Principal to complete those Contractor’s Activities;

##### must maintain any such Plant, Equipment and Work (excluding fair wear and tear); and

##### subject to clause 12.6(c), must, on completion of the Contractor’s Activities taken out of the Contractor's hands, return to the Contractor any such Plant, Equipment and Work that is surplus.

### The Principal’s Representative must, on completion of the Contractor’s Activities taken out of the Contractor's hands under clause 12.2(a)(v), determine the cost reasonably incurred by the Principal in completing those Contractor’s Activities and the difference between that amount and the amount that would have been paid to the Contractor if it had completed those Contractor’s Activities will be a debt due and payable by the Contractor to the Principal.

### If the Contractor is indebted to the Principal under clause 12.6(b), the Principal may retain Plant, Equipment and Work taken under clause 12.6(a) until the debt is satisfied and if, after reasonable notice, the Contractor fails to pay the debt:

#### the Principal may sell the Plant, Equipment and Work and apply the proceeds to the satisfaction of the debt and the costs of sale; and

#### any excess will be paid to the Contractor.

## Entitlements on termination

### If the Principal terminates the Contract under clause 12.2, or if the Contractor repudiates the Contract and the Principal otherwise terminates the Contract, the Principal will be entitled to:

#### take over and use, or require the Contractor to remove from the Site, Plant, Equipment and Work and all materials, equipment and other things intended for the Works;

#### require a novation to the Principal or its nominee of any or all Subcontracts between the Contractor and its Subcontractors, for which purpose the Contractor:

##### must execute (and ensure that the relevant Subcontractor executes) a Subcontractor Deed of Novation within 5 Business Days of receipt from the Principal; and

##### irrevocably appoints the Principal to be the Contractor's attorney with authority to execute any Subcontractor Deed of Novation and such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and

#### recover from the Contractor all Losses suffered or incurred by the Principal arising out of or in connection with the termination,

and to the extent permitted by the Security of Payment Act, the Principal will not be obliged to make any further payments to the Contractor (including any amount the subject of a payment claim or a payment statement).

### If the Contract is terminated under clause 12.4, or if the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

#### be entitled to claim damages; and

#### not be entitled to a quantum meruit.

### If the Principal terminates the Contract under clause 12.5, the Contractor will be entitled to payment of the following amounts, as determined by the Principal's Representative:

#### for work carried out before the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;

#### the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:

##### the value of the goods or materials is not included in the amount payable under clause 12.7(c)(i); and

##### ownership in the goods and materials will vest in the Principal on payment, free of any Security Interest; and

#### the reasonable cost of removing from the Site all labour and Plant, Equipment and Work used in the Contractor’s Activities.

### The Contactor must take all steps possible to mitigate the costs referred to in clauses 12.7(c)(ii) and 12.7(c)(iii). In no case will the total amount payable to the Contractor under clause 12.7(c), when added to other amounts already paid or payable to the Contractor under the Contract, be more than the Contract Sum.

### The amounts to which the Contractor is entitled under clause 12.7(c) will be a limitation on the Principal's liability to the Contractor arising out of or in connection with the termination of the Contract under clause 12.5 and to the extent permitted by Law, the Contractor will not be entitled to make (and the Principal will not be liable upon) any Claim arising out of or in connection with the termination of the Contract, other than for the amount payable under clause 12.7(c).

### If the Contract is terminated, for any reason:

#### the Principal may, without payment of compensation, take possession of, and the Contractor must hand over, all documents relevant to the Contractor’s Activities or the Works (including Design Documents (if applicable) and any other documents prepared by the Contractor); and

#### the Contractor must:

##### cease work within the time directed by the Principal's Representative;

##### take such action as is necessary to make the Site safe, and secure the Works, prior to de-mobilisation from Site; and

##### subject to clause 12.7(a)(i), demobilise and remove from the Site all labour and Plant, Equipment and Work used in the Contractor’s Activities.

## Survival

1. This clause 12 will survive the termination or expiration of the Contract.

# Dispute Resolution

## Dispute

1. Any dispute or difference arising out of or in connection with the Contract or its subject matter or the conduct of either party prior to the Contract (including any question relating to the existence, validity or termination of the Contract) (**Dispute**), must be resolved in accordance with this clause 13.

## Notice of Dispute

#### If a Dispute arises then a party must, if it wishes to pursue the Dispute, give notice in writing to the other party specifying:

### the Dispute;

### particulars of the Dispute; and

### the position which the party believes is correct, including reasons,

### (**Dispute Notice**).

## Negotiation

1. If a Dispute Notice is given, then:

### the parties must procure that their authorised representatives meet and undertake genuine and good faith negotiations within 20 Business Days after the date on which the Dispute Notice is given (or any longer period agreed by the parties in writing), with a view to resolving the Dispute; and

### any agreement reached between the authorised representatives in resolution of the Dispute must be in writing and signed by or on behalf of each party and will thereuponbe final and binding on the parties.

## Mediation

### If:

#### a Dispute which has been referred for negotiation under clause 13.3 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 13.3(a); and

#### Item 39 states that this clause 13.4 applies,

#### then the Dispute must, if either party wishes to pursue its resolution (and whether or not clause 13.3 has been complied with), be referred to mediation.

### If a Dispute is referred to mediation under clause 13.4(a), the mediation will be administered by ACICA and must be conducted in Melbourne, Australia:

#### in accordance with ACICA’s mediation rules current at the date on which the Dispute is referred to mediation (**ACICA Mediation Rules**) and otherwise in accordance with clause 13.4; and

#### by the person:

##### specified in Item 40;

##### if no person is specified in Item 40, agreed by the parties within 5 Business Days after the date on which the Dispute is referred to mediation; or

##### if no person is specified in Item 40 or agreed in accordance with clause 13.4(b)(ii)B (or the person specified or agreed is or becomes unavailable or declines to accept an appointment), appointed by ACICA,

##### (**Mediator**).

### Each party must bear its own costs of complying with this clause 13.4 and the parties must equally bear the costs of the Mediator.

### Each party must use its best endeavours to ensure that the mediation occurs as soon as reasonably practicable and in any event not more than 50 Business Days from the date on which the Dispute Notice is given under clause 13.2 (or such later time as is agreed by the parties in writing) (**Mediation Period**).

### If, by the expiration of:

#### if a Dispute has been referred for negotiation under clause 13.3 and Item 39 does not state that clause 13.4 applies - the period for negotiation referred to in clause 13.3(a); or

#### if a Dispute has been referred for negotiation under clause 13.3 and Item 39 states that clause 13.4 applies - the Mediation Period,

#### the Dispute the subject of the relevant a Dispute Notice remains unresolved (in whole or in part), then either party may refer the Dispute to arbitration.

## Arbitration

### If a Dispute is referred to arbitration in accordance with clause 13.4(e), the arbitration will be conducted in accordance with the rules specified in Item 41 (unless other rules are agreed by the parties in writing within 5 Business Days of referral of the Dispute to arbitration) and the:

#### seat of the arbitration will be Melbourne, Australia;

#### language of the arbitration will be English; and

#### number of arbitrators will be one.

### To the extent that the *Commercial Arbitration Act 2011* (Vic) applies to an arbitration commenced under this clause 13, the parties agree that either party may, under section 34A of the *Commercial Arbitration Act 2011* (Vic), bring an appeal to the Supreme Court of Victoria on a question of law arising out of the arbitrator's award.

### Despite clause 8.7, the arbitrator may award whatever interest the arbitrator considers reasonable.

### If one party has overpaid the other, whether under a payment statement or otherwise and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

## General

### To the extent permitted by Law, an arbitrator will not have power to apply or to have regard to the provisions of Part IVAA of the *Wrongs Act 1958* (Vic) which might, in the absence of this clause 13.6(a), have applied to any Dispute referred to arbitration under this clause 13.

### The law governing the arbitration agreement in this clause 13 is the law applying in the State of Victoria.

### This clause 13 does not prejudice any right a party may have to seek urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights or property.

### Despite the existence of a Dispute, each party must continue to comply with, and perform its obligations under, the Contract.

## Survival

1. This clause 13 will survive the termination or expiration of the Contract.

# Confidentiality

### Subject to clauses 14(b) and 14(c), the Principal and the Contractor must not, without the other's prior written consent, make public or disclose to any person any Confidential Information of the other party.

### The Contractor may disclose Confidential Information if such disclosure is required:

#### by Law or pursuant to any government policy, court order or the listing rules of the Australian Stock Exchange;

#### to enable the Contractor to perform the Contractor’s Activities, provided that the person to whom the information is disclosed agrees to maintain the confidentiality of such information;

#### to obtain legal or other advice from its advisers provided the adviser to whom the information is disclosed agrees to maintain the confidentiality of such information; or

#### to be made to a court in the course of proceedings to which the disclosing party is a party.

### The Principal or any representative or nominee of the Principal may:

#### disclose any information (including any Confidential Information) if such disclosure is required by or is consistent with the Public Disclosure Requirements; and

#### publish (on the Internet or otherwise) the name of the Contractor and the Contract Sum together with the conditions of the Contract (including the Schedules).

### If directed by the Principal to do so, the Contractor must immediately return to the Principal (or if so directed, delete or destroy), any Confidential Information in the custody or control of the Contractor, unless otherwise required by Law.

### Without limiting clause 14(a), the Contractor must:

#### not, without the prior written consent of the Principal:

##### disclose any information concerning the Contract or the Contract Documents for distribution through any communications media; or

##### make any public disclosures, announcements or statements (including on any website) in relation to the Contract or the Contract Documents; and

#### refer to the Principal any enquiries from any media concerning the Contract or the Contract Documents.

### This clause 14 will survive the termination or expiration of the Contract.

# Intellectual Property

## Warranty and indemnity

### The Contractor:

### warrants that:

#### any designs, materials and documents (including any Design Documents) provided by the Contractor (**Project Material**);

#### the use or enjoyment by the Principal (or any nominee or sublicensee of the Principal) of the Project Material or the Works;

#### the exercise of any rights under clause 15.2(a)(i) and the use of the Contractor's Background IP under clause 15.2(a)(ii); and

#### the performance of the Contractor's Activities,

* 1. will not:

#### infringe the rights (including Intellectual Property Rights and Moral Rights) of any person; or

#### breach any Laws (including any Laws in respect of Intellectual Property Rights and Moral Rights);

### warrants that it owns Intellectual Property Rights in the Project Material and the Contractor's Background IP or, to the extent that it does not, is entitled to grant the licence under clause 15.2(a); and

### indemnifies the Principal from and against any Claim or Loss (including any third party Claim against the Principal) arising out of or in connection with any:

#### actual or alleged infringement of any Intellectual Property Right or Moral Right; or

#### breach of any Law (including any Law in respect of Intellectual Property Rights and Moral Rights),

#### which arises out of or in connection with:

#### the use or enjoyment by the Principal (or any nominee or sublicensee of the Principal) of the Project Materials or the Works;

#### the exercise of any rights under clause 15.2(a)(i) or the use of the Contractor's Background IP under clause 15.2(a)(ii); or

#### the performance of the Contractor's Activities.

## Licence

### The Contractor grants to the Principal (or must procure the grant to the Principal of) an irrevocable, non-exclusive, perpetual, transferrable, royalty-free worldwide licence:

#### to exercise all rights of the owner of the Intellectual Property Rights in the Project Material, including to use, re-use, reproduce, communicate to the public, modify, adapt and update the Project Material; and

#### to use the Contractor's Background IP to obtain the benefit of the Project Material and the Works, including to use, re-use, reproduce, communicate to the public, modify, adapt and update the Project Material and the Works.

### The licence under clause 15.2(a):

#### arises immediately upon the creation of the Project Material and, in respect of the Contractor's Background IP, on the Contract Date;

#### includes an unlimited right to sublicense;

#### without limitation, extends to:

##### any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the Works;

##### in respect of the Project Material, use in any way for any other project delivered by, on behalf of or for the benefit of the Principal or the State; and

##### in respect of the Contractor's Background IP, the use, re-use, reproduction, communication, modification, adaptation or update of the Project Material; and

#### will survive the termination or expiration of the Contract.

### The Principal grants the Contractor a non-exclusive, royalty-free licence to use the Principal's Background IP only to the extent necessary for the Contractor to perform the Contractor's Activities.

## Moral Rights

### The Contractor must:

#### ensure that it obtains an irrevocable and unconditional written consent (on terms reasonably required by the Principal), for the benefit of the Principal and the Contractor, from the author of any work forming part of any Project Materials or the Works to the Principal and its sub-licensees doing or authorising the doing of an act or making or authorising the making of an omission (whether occurring before or after this consent is given), anywhere in the world which, but for the consent, infringes or may infringe that author's Moral Rights in the work (including the right to make any adaptation or distortion of the work, and to subject the work to any treatment, with or without attribution to the author);

#### ensure that no person creates Project Material or any part of the Works before that person has duly completed and executed a Moral Rights consent;

#### not (and must not encourage or permit anyone else to) coerce any person to complete or execute a Moral Rights consent; and

#### within 5 Business Days of a Moral Rights consent being executed in accordance with clause 15.3(a) (and in any event as a condition precedent to the achievement of Practical Completion), provide the Moral Rights consent to the Principal’s Representative.

### Where used in this clause 15.3, the term "work" has the meaning given in section 189 of the *Copyright Act 1968* (Cth).

# Government requirements and collateral documents

## Mandatory Government Policy Requirements

1. The Contractor:

### acknowledges and agrees that the Mandatory Government Policy Requirements are incorporated in and form part of the Contract; and

### must comply with the Mandatory Government Policy Requirements.

## Project Specific Government Policy Requirements

### The Contractor:

#### acknowledges and agrees that the Project Specific Government Policy Requirements specified in Item 42 are incorporated in and form part of the Contract; and

#### must comply with the Project Specific Government Policy Requirements specified in Item 42.

### If Item 42 specifies that:

#### the Local Jobs First Policy provisions apply, then the LIDP is as set out at Schedule 9;

#### the Social Procurement Framework provisions apply, then:

##### the Social Procurement Commitment Scheduleis as set out at Schedule 10; and

##### the clause alternative applying and the reporting frequencies for the purposes of that clause are as specified in Items 43 and 44;

#### the Fair Jobs Code provisions apply, then:

##### the FJC Plan Addendum is as set out at Schedule 11; and

##### the clause alternative applying and the reporting frequencies for the purposes of that clause are as specified in Items 45 and 46; and

#### the Tip Truck Policy provisions apply, then whether an adjustment is required and, if so, the percentage to be applied for the purposes of that clause are as specified in Item 47.

## Collateral documents

1. The Contractor acknowledges and agrees that documents set out in the Schedule of Collateral Documents that are referred to in the Contract are incorporated in and form part of the Contract.

# Notices

## Service of notices

1. Each communication (including each notice, consent, approval, request and demand) under or in connection with the Contract must:

### be given to a party by hand delivery, courier service, prepaid express post or email (except for notices under clauses 12 and 13 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post);

### be delivered to the address or other details for the party set out in Item 48 (or as otherwise notified by that party to the other party from time to time under this clause 17); and

### must be in legible writing and in English.

## Receipt of notices

1. Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with the Contract is taken to be given by the sender and received by the recipient:

### in the case of delivery by hand or courier service, on delivery;

### in the case of prepaid express post sent to an address in the same country, on the 3rd Business Day after the date of posting;

### in the case of prepaid express post sent to an address in another country, on the 5th Business Day after the date of posting; or

### in the case of email, whether or not containing attachments, on the earlier of:

#### the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;

#### receipt by the sender of an automated message confirming delivery; and

#### the time of receipt as acknowledged by the recipient (either orally or in writing),

### provided that if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

## Notices sent by more than one method of communication

1. In the case of notices under clauses 12 and 13, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 17.1(a), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:

### the date the notice sent by email is taken to be received; or

### the date the notice delivered by hand or sent by prepaid express post is taken to be received,

1. as determined in accordance with clause 17.2.

# General

## Governing law

1. The Contract is governed by and must be construed according to the law applying in Victoria.

## Jurisdiction

1. Subject to clause 13.5, each party irrevocably:

### submits to the non‑exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to the Contract; and

### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.2(a).

## Amendments

1. The Contract may only be varied by agreement executed by the Principal (or by the Principal's Representative on its behalf) and the Contractor.

## Waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.

### A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

### No waiver of a right under the Contract or at Law means any other right under the Contract or at Law is waived or can in any way be interpreted to suggest that that right will be waived again.

## Further acts and documents

1. Each party must promptly do all further acts and execute and deliver all further documents (including in form and content) required by Law or reasonably requested by the other party, to give effect to the Contract.

## Assignment

### The Principal may, at any time and without the Contractor's consent, novate the Contract or assign any payment or other right, benefit or interest under the Contract to a State Entity by written notice to the Contractor.

### If the Principal gives notice under clause 18.6(a), the Contractor must do all things and execute all documents as the Principal reasonably requires to give effect to such novation or assignment, including, in the case of a novation, executing a Deed of Novation within 5 Business Days of receipt from the Principal.

### The Contractor must not assign, transfer, mortgage, pledge, charge or otherwise encumber the Contract or any payment or any other right, benefit or interest of the Contractor under the Contract without the prior written consent of the Principal.

## No representation or reliance

### The Contractor acknowledges that neither the Principal nor any of the Principal Associates have made any representation or inducement to the Contractor to enter into the Contract, except for representations expressly set out in the Contract.

### The Contractor acknowledges and confirms that it does not enter into the Contract in reliance on any representation or other inducement by the Principal or its Associates, except for representations expressly set out in the Contract.

## Expenses

1. Except as otherwise provided in the Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract.

## Entire agreement

1. To the extent permitted by law, in relation to its subject matter, the Contract:

### constitutes the entire agreement and understanding of the parties; and

### supersedes any prior agreement or understanding of the parties (whether written or otherwise).

## Survival

1. All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract will survive the rescission, termination or expiration of the Contract.

## Severance

1. Any provision of the Contract, which is illegal, void or unenforceable, will be ineffective to the extent only of such illegality, voidness or unenforceability, and such illegality, voidness or unenforceability will not invalidate any of the other provisions of the Contract.

## Electronic signature

1. Each party warrants that immediately prior to entering into the Contract, it has unconditionally consented to:

### the requirement for a signature under any Law being met; and

### any other party to the Contract executing it,

1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

## Electronic exchange

1. Without limitation, the parties agree that the Contract may be exchanged by hand, post or any electronic method that evidences that party's execution of the Contract, including by a party forwarding a copy of its executed counterpart by hand, post or electronic means to the other party.

## Counterparts

1. The Contract may be executed in any number of counterparts by or on behalf of a party and by the parties on separate counterparts. Each counterpart constitutes an original of the Contract, and all together constitute one agreement.
2. - Contract Particulars

|  |  |  |
| --- | --- | --- |
|  | 1. Principal:(Clause 1.1)
 | 1. [## Insert relevant Principal contracting entity and ABN, if applicable]
 |
| 1.
 | 1. Contractor:(Clause 1.1)
 | 1. **Name:**
 | 1. [## Insert Contractor name]
2. [***Guidance Note: The Contractor must be a legal entity (i.e. not a trust).***]
 |
| 1. **ABN:**
 | 1. [## Insert Contractor ABN]
 |
| 1. **ACN:**
 | 1. [## Where Contractor is a company, insert ACN, otherwise insert "Not applicable"]
 |
| 1.
 | 1. Principal's Representative: (Clauses 1.1 and 3.1)
 | 1. [## Insert Principal's Representative's name]
 |
| 1.
 | 1. Contractor's Representative: (Clauses 1.1 and 3.2)
 | 1. [## Insert Contractor's Representative's name]
2. [***Guidance Note: This item is typically bid back by tenderers in response to the RFT.***]
 |
| 1.
 | 1. Key Personnel: (Clauses 1.1 and 3.3)
2. [***Guidance Note: These items are typically bid back by tenderers in response to the RFT.]***
 | 1. **Name**
 | 1. **Role**
 |
| 1. [## Insert name of key personnel]
 | 1. [## Insert description of key personnel's role]
2. [***Guidance Note: If no minimum roles are specified by the Agency, proposed roles should be bid back by tenderers. Examples include Site Manager, Construction Manager Commercial Manager, OHS Manager, Environment Manager, Design Manager, Quality Manager.***]
 |
|  |  |
|  |  |
|  |  |
| 1.
 | 1. Contract Documents:(Clauses 1.1, 1.3 and 2.1)
 | 1. 1. the General Conditions, including:
2. 1.1 the Mandatory Government Policy Requirements; and
3. 1.2 those of the Project Specific Government Policy Requirements incorporated in the Contract in accordance with clause 16.2,
4. but excluding the Schedules;
5. 2. the Project SpecificAdditional Conditions
6. 3. the Delivery Requirements:
7. 3.1 ……………………………………………..
8. 3.2 ……………………………………………..
9. 3.3 ……………………………………………..;
10. 4. the documents in the Schedule of Collateral Documents that are incorporated in the Contract in accordance with clause 16.3; and
11. 5. all remaining Schedules.
 |
| 1.
 | 1. Contract Sum: (Clause 1.1)
 | 1. Means:
2. 1. $ [## Insert fixed lump sum] (excl. GST); or
3. 2. if no fixed lump sum is inserted in item 1, the amount calculated in accordance with the Pricing Schedule.
 |
| 1.
 | 1. Site:(Clause 1.1)
 | [## insert address or description of Site i.e. by reference to a Site plan attached as a separate Schedule to the Contract] |
| 1.
 | 1. Does the Design Schedule apply:(Clauses 1.1 and 2.2)
 | 1. [ ]  Yes [ ]  No
2. If Yes, Design Consultants to be novated to the Contractor (if any) are:
3. 1. ……………………………………………………..…..
4. 2. ………………………………………………………....
5. 3. …………………………………………………………
 |
| 1.
 | 1. Contractor's Activities which must not be subcontracted without approval, other than to a relevant Subcontractor specified in Item 11:(Clause 3.5(a))
 | 1. *(If nothing is stated, all of the Contractor's Activities.)*
 |
| 1.
 | 1. Subcontractors to whom Contractor's Activities may be subcontracted:(Clause 3.5(a))
 | 1. **Subcontractor**
 | 1. **Contractor's Activities**
 |
| 1. [## Insert name of Subcontractor]
 | 1. [## Insert description of relevant part of the Contractor's Activities]
2. [***Guidance Note: These will generally be Subcontractors listed in the Contractor's response to the RFT***]
 |
|  |  |
|  |  |
| 1.
 | 1. Subcontractor warranties:(Clause 3.6)
 | 1. **Subcontractor required to provide warranty**
 | 1. **Description of required warranty**
 |
|  |  |
|  |  |
|  |
| 1.
 | 1. Meetings:(Clauses 3.7(a) and 3.7(b)(ii))
 | 1. **Description**
 | 1. **Frequency**
 | 1. **Requirements**
 |
|  |  |  |
|  |  |  |
|  |  |  |
|  |
| 1.
 | 1. Reports:(Clause 3.8(a))
 | 1. **Description**
 | 1. **Frequency** *(if nothing is stated, monthly on the last Business Day of the month)*
 | 1. **Requirements**
 |
|  |  |  |
|  |  |  |
|  |  |  |
| 1. [## insert details of required reports, including the timing and frequency of submission (e.g. monthly on the last Business Day of the month) and required contents]
 |
| 1.
 | 1. Amount of Approved Security:(Clause 4.1)
 | 1. *(If nothing is stated, 5% of the Contract Sum (as at the Contract Date).)*
 |
| 1.
 | 1. Amount of Approved Security to be released within 10 Business Days after Notice of Practical Completion: (Clause 4.2(a))
 | 1. *(If nothing is stated, 50%)*
 |
| 1.
 | 1. Requirement for deed of guarantee and indemnity:(Clause 4.4)
 | 1. Does Clause 4.4 apply:
2. [ ]  Yes [ ]  No
 |
| 1.
 | 1. Guarantor:(Clause 4.4)
 | 1. [## insert]
 |
| 1.
 | 1. Date/s by which the Principal must give the Contractor sufficient access to the Site:(Clause 5.1(a)(ii))
 | 1. If Site access is not staged: [## insert] days after the Contract Date
2. **OR**
3. If Site access is staged:

|  |  |  |
| --- | --- | --- |
| 1. Stage 1
 | 1. [## insert description of area of Site comprising stage]
 | 1. [## insert] days after the Contract Date
 |
| 1. Stage 2
 | 1. [## insert description of area of Site comprising stage]
 | 1. [## insert] days after the Contract Date
 |
| 1. Stage 3
 | 1. [## insert description of area of Site comprising stage]
 | 1. [## insert] days after the Contract Date
 |

 |
| 1.
 | 1. Conditions of access to the Site:(Clause 5.2(c)(i))
 | 1. If Site access is not staged, the conditions are:

[## insert]**OR**If Site access is staged, the conditions are:Stage 1: [## insert]Stage 2: [## insert]1. Stage 3: [## insert]
 |
| 1.
 | 1. Working hours:(Clause 5.3)
 | 1. [## insert hours during which works may be undertaken on Site.]
2. **OR**, if Separable Portions apply, see the Separable Portions Particulars.
 |
| 1.
 | 1. Does clause 5.4(c) apply:(Clause 5.4(c))
 | 1. [ ]  Yes [ ]  No
 |
| 1.
 | 1. Approvals to be obtained by the Principal (if any):(Clause 6.1(a))
 |  |
| 1.
 | 1. Intervals for updating Contract Program:(Clause 7.1(d)(iii))
 | 1. [## insert]*(If nothing is stated, monthly)*
 |
| 1.
 | 1. Date for Practical Completion:(Clauses 1.1 and 7.2)
 | 1. [## insert date or period of time after the Contract Date for Practical Completion]
2. **OR**, if Separable Portions apply, see the Separable Portions Particulars.
 |
| 1.
 | 1. Conditions precedent to Practical Completion:(Clause 1.1)
 | [## insert] |
| 1.
 | 1. Liquidated damages rate:(Clause 7.4(a)
 | 1. $ [## insert] per day
2. **OR**, if Separable Portions apply, see the Separable Portions Particulars.
 |
| 1.
 | 1. Defects Liability Period:(Clauses 1.1 and 7.5)
 | 1. [## insert duration of defects liability period] commencing on the Date of Practical Completion
2. *(If nothing is stated, 12 months.)*
3. **OR**, if Separable Portions apply, see the Separable Portions Particulars.
 |
| 1.
 | Time for submission of payment claims by the Contractor:(Clause 8.2(a)(i)) | 1. [insert] day of each month*(If nothing is stated, the 5th day of each month for Contractor's Activities performed to the end of the preceding month)*
 |
| 1.
 | Interest rate:(Clause 8.7(a)(ii)) | 1. If Contract Sum is less than $3M, the *Fair Payments Policy* applies and the interest rate is: Simple interest calculated on a daily basis at the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic)
2. If the Contract Sum is greater than $3M, the *Fair Payments Policy* does not apply and the interest rate is: [insert]%*(if nothing stated, 8%)*
 |
| 1.
 | Authorised nominating authorities: (Clause 8.10(d)) | 1. Adjudicate Today Pty Limited;2. Australian Solutions Centre Pty Ltd;3. Resolution Institute;4. Rialto Adjudications Pty Ltd;5. RICS Dispute Resolution Service; or6. such other entity authorised pursuant to the *Building and* Construction *Industry Security of Payment Act 2002 (Vic).* |
| 1.
 | Provisional Sums:(Clause 9.2) | 1. Does clause 9.2 apply:
2. [ ]  Yes [ ]  No
 |
| 1.
 | Excluded Site Conditions:(Clauses 1.1 and 9.3)  | 1. *(If nothing is stated, insert "there are no additional Excluded Site Conditions")*
 |
| 1.
 | Contractor's Margin:(Clauses 1.1 and 10) | 1. [*insert percentage*] %
2. *(if nothing stated 10 %)*
3. [***Guidance Note: This item is typically bid back by tenderers in their response to the RFT.***]
 |
| 1.
 | 1. Delay Events - other:(Clause 1.1)
 | *(if nothing stated, not applicable)* |
| 1.
 | 1. Compensable Delay Events - other:(Clause 1.1))
 | 1. *(if nothing stated, not applicable)*
 |
| 1.
 | 1. Working Day means:(Clause 1.1)
 | 1. [## insert working days or insert "None specified",]
 |
| 1.
 | 1. Delay Costs Cap:(Clauses 1.1 and 10.4)
 | 1. $ [*insert*] per Working Day
2. **OR**, if Separable Portions apply, see the Separable Portions Particulars.
 |
| 1.
 | Does clause 13.4 (Mediation) apply:(Clause 13.4) | 1. [ ]  Yes [ ]  No
 |
| 1.
 | Mediator:(Clause 13.4(b)(ii)) | [## insert] |
| 1.
 | Rules for the conduct of an arbitration:(Clause 13.5(a)): | [## insert]………………………………………………………………1. *(If nothing is stated, the ACICA rules of arbitration current at the date on which the Dispute is referred to arbitration)*
 |
| 1.
 | Project Specific Government Policy Requirements – clauses incorporated in the Contract: (Clause 16.2) | [## list applicable clauses] |
| 1.
 | If Item 42 states that the Social Procurement Framework provisions apply - Alternative applying:(Clause 16.2(b)(i)) | 1. If applicable, the alternative applying is:
2. [ ]  **Alternative 1**: Social Procurement Framework without the Building Equality Policy
3. [ ]  **Alternative 2**: Social Procurement Framework plus Building Equality Policy
4. [ ]  **Alternative 3**: Building Equality Policy only
 |
| 1.
 | If Item 42 states that the Social Procurement Framework provisions apply - frequency for submission of Social Procurement Performance Reports:(Clause 16.2(b)(i)) | [## insert]1. *(If nothing stated, six monthly)*
 |
| 1.
 | If Item 42 states that the Fair Jobs Code provisions apply - alternative applying:(Clause 16.2(b)(iii)) | 1. [ ]  **Alternative 1** – Fair Jobs Code Pre-Assessment Certificate with related requirements
2. [ ]  **Alternative 2** – Fair Jobs Code Pre-Assessment Certificate with related requirements and FJC Plan with related requirements
3. *(If nothing stated, Alternative 1 applies)*
 |
| 1.
 | If Item 42 states that the Fair Jobs Code provisions apply - intervals for submission of FJC Plan Addendum Performance Reports:(Clause 16.2(b)(iii)) | 1. Required frequency of submission of FJC Plan Addendum Performance Reports: [## insert]*(If nothing stated, six monthly)*
2. Other reporting dates for the Fair Jobs Code[## insert]*(If nothing stated, there are no other reporting dates)*
 |
| 1.
 | If Item 42 states that the Tip Truck Policy provisions apply - adjustment details:(Clause 16.2(b)(iv)) | 1. Does an adjustment apply to account for project specific requirements:
2. [ ]  Yes [ ]  No
3. If YES, then payments to the Tip Truck Owner Driver must be increased by the following percentage:
4. [## insert] %
 |
| 1.
 | Details for giving notices:(Clause 17) | 1. Principal
 |
| 1. Attention:
 | 1. [insert]
 |
| 1. Address (for hand delivery or delivery by courier or post, not a PO box):
 | 1. [insert]
 |
| 1. Email address:
 | 1. [insert]
 |
| 1. Principal's Representative
 |
| 1. Address (for hand delivery or delivery by courier or post, not a PO box):
 | 1. [insert]
 |
| 1. Email address:
 | 1. [insert]
 |
| 1. Contractor
 |
| 1. Attention:
 | 1. [insert]
 |
| 1. Address (for hand delivery or delivery by courier or post, not a PO box):
 | 1. [insert]
 |
| 1. Email address:
 | 1. [insert]
 |
| 1. Contractor's Representative
 |
| 1. Address (for hand delivery or delivery by courier or post, not a PO box):
 | 1. [insert]
 |
| 1. Email address:
 | 1. [**insert]**
 |

Attachment 1 - Separable Portion Particulars

**Separable Portion 1**

|  |  |
| --- | --- |
| 1. **Separable Portion Details**
 | 1. This Separable Portion is comprised of the following portion of the Works:
2. [## insert description with such references to the Delivery Requirements as are appropriate for this purpose.]
 |
| 21. | 1. Working hours:(Clause 5.3)
 | 1. [## insert hours during which works may be undertaken on Site.]
 |
| 25. | 1. Date for Practical Completion:(Clauses 1.1 and 7.2)
 | 1. [## insert date or period of time, after the Contract Date, for the achievement of Practical Completion of the Separable Portion]
 |
| 27. | 1. Liquidated damages rate:(Clause 7.4(a)
 | 1. $ [## insert] per day
 |
| 28. | 1. Defects Liability Period:(Clauses 1.1 and 7.5)
 | 1. [## insert duration of defects liability period] commencing on [## insert either “the Date of Practical Completion” OR “the Date of Practical Completion for the last Separable Portion to achieve Practical Completion.]
2. *(If nothing is stated, 12 months.)*
 |
| 39. | 1. Delay Costs Cap:(Clauses 1.1 and 10.4)
 | 1. $ [*insert*]per Working Day
 |

 **Separable Portion 2**

|  |  |
| --- | --- |
| 1. **Separable Portion Details**
 | 1. This Separable Portion is comprised of the following portion of the Works:
2. [## insert description with such references to the Delivery Requirements as are appropriate for this purpose.]
 |
| 21. | 1. Working hours:(Clause 5.3)
 | 1. [## insert hours during which works may be undertaken on Site.]
 |
| 25. | 1. Date for Practical Completion:(Clauses 1.1 and 7.2)
 | 1. [## insert date or period of time after the Contract Date for the achievement of Practical Completion of the Separable Portion]
 |
| 27. | 1. Liquidated damages rate:(Clause 7.4(a)
 | 1. $ [## insert] per day
 |
| 28. | 1. Defects Liability Period:(Clauses 1.1 and 7.5)
 | 1. [## insert duration of defects liability period] commencing on [## insert either “the Date of Practical Completion” OR “the Date of Practical Completion for the last Separable Portion to achieve Practical Completion.]
2. *(If nothing is stated, 12 months.)*
 |
| 39. | 1. Delay Costs Cap:(Clauses 1.1 and 10.4)
 | 1. $ [*insert*]per Working Day
 |

1. - Pricing Schedule
	1. General
		* 1. The rates and prices in this Pricing Schedule will be used:
				1. if no fixed lump sum is specified in Item 7, to calculate the Contract Sum; and
				2. for the purposes of valuing adjustments to the Contract Sum.
			2. In accordance with clause 2.3(b), the Contractor warrants that the rates and prices in this Pricing Schedule do not include any amount for Contractor’s Margin.
			3. If there are no applicable rates or prices in this Pricing Schedule for the purposes of calculating the Contract Sum, the Principal’s Representative will determine the relevant rates and prices by assessing the direct costs reasonably incurred by the Contractor including labour, plant and materials (but excluding anything included in the definition of Contractor’s Margin).
			4. Where the Contract Sum is calculated using the rates and prices in accordance with this Pricing Schedule, an amount must be added for the Contractor’s Margin, calculated as a percentage of the total amount otherwise calculated in accordance with this Pricing Schedule.
	2. Unit rates

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. **No.**
 | 1. **Description**
 | 1. **Unit**
 | 1. **Quantity**
 | 1. **Per unit rate (excl. GST)**
 |
| 1 |  | [e.g. 'Item', 'm2', 'm3'] | [insert quantity] | $[insert] |
|  | [add rows as required] |  |  |  |

* 1. Labour rates

All rates in the table below are inclusive of all employment related on costs, including costs and expenses in respect of shift penalties, allowances, payroll taxes, leave (including annual, sick, personal and long service leave), workers compensation, superannuation and all other consequential and incidental costs to the Contractor from the employment of the labour.

| 1. **No.**
 | 1. **Description**
 | 1. **Unit**
 | 1. **Quantity**
 | 1. **Per unit rate (excl. GST)**
 |
| --- | --- | --- | --- | --- |
| 1 | [Insert description of labour, e.g.: Project Manager, Concrete worker, Quality Manager etc] | [e.g. hours/day] | [insert quantity] | $[insert] |
|  | [add rows as required] |  |  |  |

* 1. Plant and Equipment rates

| 1. **No.**
 | 1. **Description**
 | 1. **Unit**
 | 1. **Quantity**
 | 1. **Per unit rate (excl. GST)**
 |
| --- | --- | --- | --- | --- |
| 1 | [Insert description of plant and equipment costs, e.g.: excavator, crane 150t, light vehicle 4x4, bobcat] | [e.g. hours/day'] | [insert quantity] | $[insert] |
|  | [add rows as required] |  |  |  |
|  |  |  |  |  |

1. - Provisional Sums

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item No.** | **Provisional Sum Item** | **Description of Provisional Sum Item** | **Direct Cost** | **Contractor’s Margin** | **Provisional Sum (excl. GST)** |
| [insert] | [insert] | [insert] | $[insert] | $[insert] | $[insert] |
| [insert] | [insert] | [insert] | $[insert] | $[insert] | $[insert] |
| **Total** |  |  |  |  | $[insert] |

1. - Insurance Schedule
2. **Contractor insurance obligations**

|  |  |  |
| --- | --- | --- |
| 1.
 | **Public Liability Insurance** | Is the Contractor responsible for obtaining a policy of insurance covering public liability? Yes [ ]  No [ ] *(If nothing is stated, “Yes” applies.)*If "Yes":The Contractor must obtain a policy of insurance covering liability to third parties as follows:* + 1. **Amount**: not less than $ [## insert] in respect of any one occurrence
1. *(If nothing stated, the above amount is $20M.)*
	* 1. **Excess**: must not exceed $ [## insert]
2. *(If nothing stated, the above amount is $5,000.)*
	* 1. **Period for maintenance**: before commencing the Contractor's Activities until completion of all Contractor's Activities.
		2. **Covered parties**: the Contractor, all Subcontractors and the Principal for its vicarious liability.
 |
|  | **Works Insurance** | Is the Contractor responsible for obtaining a policy of insurance covering loss or damage in relation to the Works? Yes [ ]  No [ ] *(If nothing is stated, “Yes” applies.)*If "Yes":The Contractor must obtain a policy of insurance covering loss of or damage to the Works resulting from any cause whatsoever as follows:* + 1. **Amount**: not less than 100% of the Contract Price.
		2. **Excess**: not exceed $ [## insert].
1. *(If nothing stated, the above amount is $5,000.)*
	* 1. **Period for maintenance**: before commencing the Contractor’s Activities until completion of all Contractor’s Activities.
		2. **Covered parties:** the Principal, the Contractor and all Subcontractors
 |
|  | **Professional Indemnity Insurance** | If it is specified in Item 9 that the Design Schedule applies, the Contractor must obtain a policy of professional indemnity insurance as follows: * + 1. **Amount**: $ [## insert] in respect of any one claim *(if nothing stated, $5M)*
		2. **Period for maintenance**: before commencing the Contractor’s Activities until [## insert] years after completion of all Contractor’s Activities *(if nothing stated, 11 years)*
 |
|  | **Workers' compensation Insurance** | The Contractor must insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law as follows:* + 1. **Period for maintenance**: before commencing the Contractor’s Activities until completion of all Contractor’s Activities.
		2. **Covered parties**: Where permitted by Law, the insurance must extend to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.
 |

1. **Principal insurance obligations**

|  |  |  |
| --- | --- | --- |
|  | **Public Liability Insurance** | [##insert details]  |
|  | **Works Insurance** | [##insert details] |

1. - Design Schedule
	* 1. Definitions
2. Capitalised terms used in this Schedule 5 have the meanings given to them in clause 1.1 of the Contract (as the context requires) unless defined below:
3. **Design Documents** means all design documents (including drawings, designs, specifications, manuals, samples, models, calculations, patterns and the like) and other information which are required by the Contract to be created by the Contractor to perform the Contractor's Activities (or any part), including to construct the Works and the Plant, Equipment and Work.
4. **Design Obligations** means all tasks necessary to design and specify the Works (or parts of the Works) and Plant, Equipment and Work which the Delivery Requirements expressly or impliedly require the Contractor to design and specify, including the preparation of Design Documents.
	* 1. Contractor's warranties
			1. The Contractor warrants that:
				1. without limiting clause 2.3, before the Contract Date it carefully examined and satisfied itself that the Delivery Requirements are sufficiently detailed to enable it to prepare the Design Documents and carry out the Contractor's Activities and are suitable, appropriate and adequate for the intended purposes of the Works as stated in or reasonably able to be inferred from the Contract;
				2. any Design Documents it prepares, and if constructed in accordance with the Design Documents, the Works, will:

meet the requirements set out in or reasonably inferred from the Contract; and

be Fit for Purpose.

* + - 1. The Contractor acknowledges and agrees that:
				1. the warranties given in clause 2.3 and in this paragraph 1.2; and
				2. the Contractor's obligations and liabilities arising out of the Contract (including the Design Obligations),
	1. remain unaffected notwithstanding that design work has been carried out by or on behalf of the Principal and included in the Delivery Requirements or other Contract Documents.
		1. Design Obligations
			1. The Contractor must perform the Design Obligations and prepare Design Documents required for the performance of the Contractor's Activities.
			2. The Contractor must ensure that the Design Documents comply with the Mandatory Government Policy Requirements (where applicable).
		2. Design Document review
			1. The Contractor must prepare and submit Design Documents to the Principal's Representative for review, progressively and by the times or within the periods required by the Principal's Representative.
			2. The Principal's Representative may, after the submission or resubmission of a Design Document:
				1. review the Design Document; and
				2. within 10 Business Days after its submission, reject the Design Document (or any part) if it does not comply with the requirements of the Contract, stating the nature of the non-compliance.
			3. The Contractor must amend and resubmit to the Principal's Representative any Design Document that is rejected under paragraph 1.4(b)(ii) within 10 Business Days after the date of such rejection, whereupon paragraph 1.4 will re-apply.
			4. The Contractor must not commence performance of any part of the Contractor’s Activities to which any Design Document submitted or resubmitted to the Principal's Representative applies unless the Principal's Representative:
				1. has had the period referred to in paragraph 1.4(b)(ii) to review the Design Document; and
				2. has not rejected the Design Document.
			5. The Contractor must construct the Works in accordance with Design Documents that have:
				1. been submitted to the Principal's Representative; and
				2. not been rejected under paragraph 1.4(b)(ii),
	2. and must not amend any such Design Document unless the Contractor submits the proposed amendments to the Principal's Representative, in which case paragraph 1.4(b) will re-apply.
		+ 1. Neither the Principal nor the Principal's Representative assumes or owes any duty of care or other responsibility to the Contractor to review a Design Document submitted by the Contractor, or in reviewing a Design Document, to identify any issues including errors, omissions or non-compliances with the Contract.
			2. No review or rejection of, or comment upon a Design Document submitted by the Contractor (or a failure to do any of those things), or any other direction by the Principal's Representative in connection with the Design Document, will:
				1. constitute a direction to carry out a Variation under clause 9.1, unless it is in the form of a Variation Order;
				2. relieve the Contractor from or alter any of its liabilities or obligations, or any of the warranties given by the Contractor, whether under the Contract or otherwise according to any Law; or
				3. limit or otherwise affect the Principal's rights against the Contractor, whether under the Contract or otherwise according to any Law.
		1. Novated Design Consultants
1. The Contractor agrees that it will accept a novation of the agreements between the Principal and the Design Consultants named in Item 9 (if any) and must:
	* + 1. execute a Consultant Deed of Novation (completed with all relevant particulars) for each of those Design Consultants;
			2. deliver those deeds to the Principal no later than 2 Business Days after the Contract Date; and
			3. thereafter, ensure the novated Design Consultants complete the design of the Works.
2. - Project Specific Additional Conditions
3. ***[##insert, if any.]***
4. - Delivery Requirements

***[##insert]***

1. - Adjustment Notice

|  |
| --- |
| **ADJUSTMENT NOTICE** |
| **Date:** | [*insert details*] |
| **To:** | [*insert details*] (**Principal’s Representative**) |
| **From:** | [*insert details*] (**Contractor**) |
| **Contract**: | the Contract in respect of [*insert description of Contract]* entered into between [*insert full name of Principal*] (**Principal**) and the Contractor dated [*insert date*] |
| **Works:** | [*insert project name and address*] |
| Unless the context requires otherwise, capitalised terms used in this Adjustment Notice have the meanings given to them in the Contract.

|  |
| --- |
| **Section 1 - Details of relevant Adjustment Event** |
| *Details (include:** *description of the relevant Adjustment Event by reference to the Adjustment Event Table; and*
* *reference to the clause giving rise to the entitlement to submit an Adjustment Event Notice)*
 |  |
| *Has a determination already been made as to the occurrence of an Adjustment Event? If so, provide details of that determination.* |  |
| **Section 2 - Claim or Claims made in respect of Adjustment Event**  |
| *Is a Claim made for:* |
| *(1) an adjustment to the Contract Sum for* ***direct costs*** *and* ***Contractor’s Margin****?*  | Yes 🞏 No 🞏 |
| *If yes, state the amount and provide a detailed breakdown of the Claim as follows:**Amount claimed:*Direct costs: $ …………(excl. GST)Plus Contractor's Margin: $ …………(excl. GST)Total: $ …………(excl. GST)*Applicable rates and prices used:**…………………………………………………………………….**…………………………………………………………………….**Detailed breakdown of amount claimed:**…………………………………………………………………….**…………………………………………………………………….* |
| *(2) an* ***extension of time*** *to the Date for Practical Completion?* | Yes 🞏 / No 🞏 |
| *If yes:**(i) state the number of days by which the Delay Event has delayed or will delay the achievement of Practical Completion by the Date for Practical Completion and for which an extension of time is sought:* *…………………………………………….…………………….**(ii) provide detailed particulars of the Delay Event …………………………………………….…………………….**(iii) demonstrate how the Delay Event affects the critical path for achieving Practical Completion by the Date for Practical Completion in the current Contract Program and that the Delay Event has delayed or will delay Practical Completion by the number of days claimed*  *…………………………………………….…………………….**(iv) identify the steps that have been (and if relevant, are continuing to be) taken to overcome, minimise or mitigate the costs of and any delay arising from the Adjustment Event* *…………………………………………….…………………….* |
| *(3) any* ***delay costs****?* | Yes 🞏 / No 🞏 |
| *If yes, provide detailed calculations of the extra direct costs reasonably and actually* *incurred by the Contractor**…………………………………………………………………….**…………………………………………………………………….* |
| **Section 3 – Details of mitigating factors**  |
| *Provide details of reasonable steps taken to overcome, minimise or mitigate (i) the costs of, and (ii) any delay arising from, the Adjustment Event* | *…………………………………………………………………….**…………………………………………………………………….* |
| **Section 4 – Signed by** |
| Signed for and on behalf of the Contractor by:Name: *[##insert name]*Position: *[##insert name]*Date: *[##insert date]* |
| **Section 5 – Attachments** |
| ***Attached*** *to this Adjustment Notice are the following documents:**(Note: The attached documents should demonstrate:* * *the occurrence of the Adjustment Event (or if the Principal or Principal's Representative has agreed that there has been an Adjustment Event, they should identify that agreement); and*
* *the Claim or Claims made in respect of the Adjustment Event (in accordance with and to the extent permitted by clause 10).*
 | *[##insert list of documents]**…………………………………………….…………………….**…………………………………………….…………………….**…………………………………………….…………………….* |

 |

1. - Local Industry Development Plan

[***##To be inserted if Item 42 specifies that the Local Jobs First Policy provisions apply.]***

1. - Social Procurement Commitment Schedule

[***##To be inserted if Item 42 specifies that the Social Procurement Framework provisions apply.]***

1. - FJC Plan Addendum

[***##To be inserted if Item 42 specifies that the Fair Jobs Code provisions apply.]***

**Executed** as an agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** by a duly authorised officer of [**##insert**] for and on behalf of the **State of Victoria**: |  |  |  |
|  |  |  |  |
| Signature of authorised signatory |  | Name of authorised signatory (print) |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by [**##insert Contractor’s name**]in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |