

Early Contract Involvement Contract

Contract 4 in the Commonwealth
Model Contract Series



The Commonwealth

Model Contracts for Infrastructure, Extractives and Energy Industries in Commonwealth Countries

The Commonwealth Secretariat recognises the need for standardised contracts within the infrastructure, extractives and energy industries across its member countries.

The lack of uniformity in these contracts has led to inefficiencies, imbalances and loopholes that do not serve the best interests of the member countries. To address this issue, the Secretariat is developing model contracts that foster fairness, balance and sustainability in investment relationships, while protecting the interests of governments and citizens.

The core purpose of this standardisation is to consolidate a comprehensive array of infrastructure contracts, facilitating easy access for relevant stakeholders. By providing a singular point of access, it eliminates redundancy and ambiguity, allowing government officials and authorised parties to efficiently source and acquire requisite contracts. This strategic initiative is poised to revolutionise and improve the procurement process within Commonwealth member countries.

This series of model contracts will serve as valuable resources for government lawyers, aiding them in drafting and reviewing foreign investment projects and related contracts. By promoting fairness, balance and sustainability, these model contracts will contribute to the overall development and economic wellbeing of Commonwealth member countries.

Moreover, the establishment of this central repository underlines the commitment of Commonwealth member countries to fostering a conducive environment for sustainable investments.

To deliver this suite of model contracts, the Commonwealth Secretariat has constituted a working group comprising of officials nominated by 19 member countries who are leveraging their expertise, and working with a designated expert, to conclude the project.

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Early Contractor Involvement Contract

This agreement sets out contractual terms on which a contractor will engage in a two-phase project delivery under an Early Contractor Involvement (ECI) model. During the initial Planning Phase, the contractor provides design input, planning, programming and cost planning activities, with the objective of achieving Delivery Phase Approval. If approved, the contract transitions to a Delivery Phase where the contractor designs (to the extent required) and constructs the Works. This model has been adapted from materials developed by the Australian Government.

PROJECT NUMBER: [## INSERT PROJECT NUMBER]
PROJECT NAME: [## INSERT PROJECT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]

EARLY CONTRACTOR INVOLVEMENT CONTRACT

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FORMAL AGREEMENT

The Contract is made on [## INSERT] day of [## INSERT]

Parties

The contractor specified in the Contract Particulars (Contractor)

1. [##INSERT] and the Contractor promise to carry out and complete their respective obligations in accordance with the:
 - (a) attached Conditions of Contract; and
 - (b) other documents referred to in the definition of "Contract" in clause 1.1 of the Conditions of Contract.
2. The parties acknowledge (without limiting any provision of the Contract) that the Contract:
 - (a) provides for the design and delivery of the Works under an ECI delivery model, a key purpose of which is to provide for early involvement of the Contractor in the design, planning, programming and cost planning of the Works and to maximise the achievement of the ECI Objectives;
 - (b) involves two phase delivery comprising:
 - (i) an initial contract in the Planning Phase; and
 - (ii) subject to the achievement of Delivery Phase Approval, a new contract for the Delivery Phase;
 - (c) in the Planning Phase, requires the Contractor to carry out the ECI Activities;
 - (d) if Delivery Phase Approval is achieved, provides for the parties to proceed to the Delivery Phase during which the Contractor will design (to the extent required by the Contract) and construct, commission, complete and handover the Works in accordance with the Contract;
 - (e) in consideration of the Contractor undertaking the Contractor's Activities, provides for [## INSERT] to pay the Contractor:
 - (i) in the Planning Phase, the Planning Phase Price; and
 - (ii) (if applicable) in the Delivery Phase, the Delivery Phase Price; and
 - (f) if Delivery Phase Approval is not achieved, allows [## INSERT] to proceed to have the Works executed by a third party.
3. This Formal Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.

Initialled for and on behalf of the Contractor:

Initialled for and on behalf of [## INSERT]:

Despite any other provision of the Contract, the parties agree that where:

- (a) [Relevant Legislation] applies; and
 - (b) to the extent that the Contract provides that the total of all securities held by [## INSERT] shall exceed 2.5% of the Contract Price after Completion,
4. the amount of the excess does not relate to the need to correct defects identified in the Defects Liability Period, but instead to the recovery by [## INSERT] of any costs, damages, liabilities or other amounts which may become payable to [##

INSERT] by [## INSERT] under or in connection with the Contract, the Contractor's performance of the Contract or any breach of Contract by the Contractor.]

SIGNED as an agreement

Signed for and on behalf of the [## INSERT] in the presence of:

Signature of Witness

Signature of Authorised Officer

Name of Witness in full

Name of Authorised Officer in full

[OR - AUTHORISED SIGNATORY OF COMPANY]

Signed for and on behalf of the **Contractor** by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

Full name of authorised signatory

[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. INSERT APPROPRIATE EXECUTION CLAUSE FOR CONTRACTOR]

CONDITIONS OF CONTRACT

1. GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

1.1 Glossary of Terms

Unless the context otherwise indicates, whenever used in the Contract, each word or phrase in the headings in clause 1.1 has the meaning given to it under the relevant heading.

Accredited Building Surveyor

A person who meets all requirements of a "building surveyor" in accordance with and as defined in the Building Works Manual.

Act of Prevention

Any one of:

- (a) a breach of the Contract by [## INSERT];
- (b) any other act or omission of [## INSERT], the Contract Administrator or an Other Contractor engaged by [## INSERT]; or
- (c) a Variation the subject of a direction by the Contract Administrator, except where the Variation is instructed in the circumstances described in clause 9.9(b),

but excluding any act or omission of any person specified in paragraph (b) in accordance with or otherwise permitted by the Contract.

Approval

Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any [## INSERT], State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Contractor's Activities or the Works or under any applicable Statutory Requirement, which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities or the Works; or
- (b) occupy, use, maintain or operate the completed Works.

Approved Security

An unconditional undertaking (duly stamped) in the form set out in the Schedule of Collateral Documents and otherwise on terms and given by a financial institution (including an [## INSERT] Prudential Regulation Authority-regulated insurer) approved by [## INSERT].

Asbestos

Has the meaning given in [## INSERT RELEVANT REGULATIONS].

Asbestos Management Plan

Asbestos Management Plan available at [## INSERT LINK].

Asbestos Related Activities

Any activity relating to Asbestos, including the:

- (a) management, handling, removal of Asbestos; or
- (b) the remediation of an Asbestos affected area including the enclosure or sealing of an affected area.

Award Date

The date on which the Formal Agreement, to which these Conditions of Contract are attached, has been completed and signed by [## INSERT] and the Contractor.

Building Works Manual

The Building Works Manual - [LINK - Rename as Appropriate Throughout].

Change of Control

In relation to the Contractor, where a person who did not (directly or indirectly) effectively Control the Contractor at the Award Date, either alone or together with others, acquires Control of the Contractor.

Claim

Includes any claim for an increase in the Contract Price, for payment of money (including damages) or for an extension of time:

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

Collateral Warranty

A warranty in the form set out in the Schedule of Collateral Documents.

[## INSERT]

[Details of State]

Procurement Rules

[## INSERT] Procurement Rules.

[## INSERT] Risk

Any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;

- (b) the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any subcontractor or any of their employees or agents.

Completion

The point in time when, in respect of the Works or a Stage:

- (a) the Works are, or the Stage is, complete except for minor Defects:
 - (i) which do not prevent the Works or the Stage from being reasonably capable of being used for the intended purpose of the Works or the Stage; and
 - (ii) which can be corrected without prejudicing the convenient occupation, use, operation and maintenance of the Works or the Stage;
- (b) those inspections and tests which are required by the Contract to be carried out and passed before the Works or the Stage reach Completion have been carried out and passed;
- (c) the Contractor has satisfied all Contractor HOTO Obligations and other obligations (including applicable Contractor Estate Information Obligations) which must be satisfied to achieve "Handover/Takeover (HOTO)" under and in accordance with the HOTO Requirements;
- (d) all documents and other information required for the occupation, use, operation and maintenance of the Works or the Stage (including as part of the HOTO Process) have been submitted to the Contract Administrator in accordance with the Contract; and
- (e) without limiting the foregoing, the Contractor has done everything which the Contract requires it to do as a condition precedent to Completion, including those things specified in the Contract Particulars.

Confidential Information

- (a) Means, subject to paragraph (b):
 - (i) the Contract;
 - (ii) the Project Documents;
 - (iii) any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by [## INSERT], the Contract Administrator or anyone on [## INSERT] behalf, whether or not owned by [## INSERT], which is in any way connected with the Contractor's Activities or the Works which:
 - A. by its nature is confidential; or

- B. the Contractor knows or ought to know is confidential; and
 - (iv) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
- (b) Excludes any document, drawing, information or communication (whether in written, oral or electronic form) given to the Contractor by [## INSERT], the Contract Administrator or anyone on [## INSERT] behalf, whether or not owned by [## INSERT], which:
- (i) is in the possession of the Contractor without restriction in relation to its disclosure or use before the date of its receipt from [## INSERT], the Contract Administrator or anyone on [## INSERT] behalf;
 - (ii) is in the public domain otherwise than due to a breach of clause 20; or
 - (iii) has been independently developed or acquired by the Contractor.

Consolidated Group

A Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in the *[Relevant Legislation - Amend to Local Nomenclature if Required]*.

Construction Risks Insurance

A policy of insurance covering the respective rights, interests and liabilities of [## INSERT], the Contractor and all subcontractors arising out of or in connection with the works in progress and insuring at minimum all the things referred to in clause 5.1 for which the Contractor bears the risk of loss or damage.

Consultant Deed of Covenant

A consultant deed of covenant in the form set out in the Schedule of Collateral Documents.

Consultant Design Certificate

A consultant design certificate in the form set out in the Schedule of Collateral Documents.

Contamination

The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

Contract

The contractual relationship between the parties constituted by:

- (a) for the Planning Phase:

- (i) the Formal Agreement;
 - (ii) these Conditions of Contract;
 - (iii) the Contract Particulars;
 - (iv) the Special Conditions;
 - (v) the ECI Brief; and
 - (vi) the other documents (if any) specified in the Contract Particulars; and
- (b) if clause 2.10(b) applies, for the Delivery Phase, a new contract as referred to in clause 2.10(b)(i)B on the terms of:
- (i) the documents referred to in paragraph (a) as amended by the Delivery Phase Terms; and
 - (ii) the Works Description.

Contract Administrator

The person specified in the Contract Particulars or any other person nominated by [## INSERT] from time to time under clause 3.2 to replace that person.

Contract Administrator's Office

The office provided by the Contractor pursuant to clause 8.26.

Contract Particulars

Means:

- (a) in the Planning Phase, the particulars annexed to these Conditions of Contract and entitled "Contract Particulars"; and
- (b) in the Delivery Phase, the Contract Particulars (Delivery Phase).

Contract Particulars (Delivery Phase)

The particulars referred to in paragraph (a) of the definition of "Delivery Phase Terms".

Contract Price

Subject to this Contract, the sum of:

- (a) the Planning Phase Price; and
- (b) if clause 2.10(b) applies, the Delivery Phase Price.

Contractor

The person specified in the Contract Particulars.

Contractor Design Certificate

A contractor design certificate in the form set out in the Schedule of Collateral Documents.

Contractor Estate Information Obligation

Means:

- (a) the requirements set out in Annexure 1; and
- (b) any task, function, requirement or obligation relating to the assessment, creation, recording, updating and management of Estate Information which Estate Information Management Requirement allocates, or would reasonably be inferred as allocating, to the Contractor including (as applicable to the Contractor's Activities) those allocated to a Data Supplier.

Contractor HOTO Obligation

Any task, function, requirement or obligation relating to the HOTO Process (including commissioning of the Works or a Stage) required to be performed by the Contractor under this Contract or which a HOTO Requirement allocates, or would reasonably be inferred as allocating, to the Contractor, including those that the HOTO Plan and Checklist expressly allocates to the "Contractor Representative" (as that term is used in the HOTO Plan and Checklist).

Contractor's Activities

All things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations.

Contractor's Representative

The person specified in the Contract Particulars or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.6.

Control

Includes:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Correctly Rendered Invoice

An invoice which is:

- (a) rendered in accordance with all of the requirements of the PT PCP Subcontract; and
- (b) for amounts that are correctly calculated and due for payment and payable under the PT PCP Subcontract.

Data Provision Checklist

The worksheets contained within the excel workbook titled "Data Provision Checklist" available at [## INSERT LINK].

Data Supplier

Any person identified as a "Data Supplier" or "Estate Data Supplier" in the Estate Information Management Requirements, including a contract administrator, designer, contractor, subcontractor or any person engaged by [## INSERT] to design, construct or otherwise provide services in relation to the Works or a Stage.

Date for Completion

In respect of the Works or a Stage, the Indicative Date for Completion as adjusted (if at all) in accordance with clause 2.9 and specified in the Contract Particulars (Delivery Phase), as may be adjusted in the Delivery Phase in accordance with the Contract.

Date for Delivery Phase Approval

The date set out in the Contract Particulars, as adjusted (if at all) under clause 2.11(b).

Date of Completion

The date of Completion set out in a Notice of Completion.

Date of Delivery Phase Approval

The date of a notice issued by [## INSERT] under clause 2.10(a)(i)A.

Deed of Guarantee and Undertaking

A deed of guarantee and undertaking in the form set out in the Schedule of Collateral Documents.

Defect

Any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of the Contract.

Defects Liability Period

The period which commences on the Date of Completion of the Works or a Stage and which continues for the period specified in the Contract Particulars, as may be extended by clause 9.11.

Asbestos Register

The document or documents specified in the Contract Particulars, as amended or replaced from time to time.

Environmental Management System

The environmental management system applicable to the Site (if any).

Environmental Plan

The environmental plan applicable to the Site (if any).

Environmental Requirements

[Applicable Environmental Requirements].

Estate

The properties owned, leased or otherwise occupied by [## INSERT] from time to time.

Estate Information Management Requirements

[Applicable Information Management Requirements].

Delivery Phase

The period (if any) following the Date of Delivery Phase Approval during which Contractor's Activities are performed.

Delivery Phase Approval

Means:

- (a) the Design Consultant has finalised the Planning Phase Design Documentation necessary for inclusion in the Works Description under and in accordance with the Design Services Contract;
- (b) the Contract Administrator has approved the final:
 - (i) Delivery Phase Program under clause 2.5(c)(iii); and
 - (ii) cost plan under clause 2.6(d)(iii);
- (c) the Delivery Phase Terms have been agreed and executed by the Contractor in accordance with clause 2.9;
- (d) all necessary parliamentary, government and departmental approvals to proceed to the Delivery Phase have been obtained, including under or in connection with the *[Relevant Act]*.
- (e) all Planning Phase Milestones have been achieved and the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable to the Planning Phase, including satisfying all conditions precedent to Delivery Phase Approval specified in the Contract;
- (f) [## INSERT] has determined (in its absolute discretion) to proceed with the Contractor from the Planning Phase to the Delivery Phase; and
- (g) any additional requirements specified in the Contract Particulars have been met.

Delivery Phase Price

The Indicative Delivery Phase Price as adjusted (if at all) in accordance with clause 2.9 and specified in the Contract Particulars (Delivery Phase), as may be adjusted in the Delivery Phase in accordance with the Contract.

Delivery Phase Program

The program prepared by the Contractor in accordance with clause 2.5 in respect of the carrying out of the Contractor's Activities during the Delivery Phase as approved by the Contract Administrator under clause 2.5(c)(iii) and updated in accordance with clause 10.2.

Delivery Phase Terms

The formal written agreement between the parties (if any) in respect of the Delivery Phase which:

- (a) sets out amended and restated Contract Particulars;
- (b) amends the Contract by inserting the Works Description; and
- (c) if applicable, amends the other documents forming part of the Contract,

for the purposes of the Delivery Phase, such agreement to be substantially in the form set out in the Schedule of Collateral Documents.

Design Consultant

The design consultant specified in the Contract Particulars.

Design Documentation

Means:

- (a) in the Planning Phase, the Planning Phase Design Documentation; and
- (b) in the Delivery Phase, all design documentation (including documents, drawings, specifications, reports, models, samples and calculations, equipment technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards) in computer readable and written forms necessary for the Contractor to complete the Works which is not fully designed and documented in the Works Description.

Design Services Contract

The contract between [## INSERT] and the Design Consultant.

direction

Any agreement, approval, authorisation, certificate, consent, decision, demand, determination, direction, explanation, failure to consent, instruction, notice, notification, order, permission, rejection, request or requirement.

ECI

Early contractor involvement.

ECI Activities

That part of the Contractor's Activities which must be performed by the Contractor during the Planning Phase, including, without limitation, those things or tasks more particularly described in the ECI Brief.

ECI Brief

The document specified in the Contract Particulars.

ECI Objectives

Means the following objectives:

- (a) achieving value for money, time and cost savings, efficiencies and innovation in the planning, design and delivery of the Works;

- (b) improved buildability, quality, constructability, maintainability and operability outcomes for the Works;
- (c) the development of:
 - (i) a high quality design solution which is fully consulted, co-ordinated and properly documented at each design milestone; and
 - (ii) Design Documentation that is free from errors and omissions;
- (d) maximising the achievement of ESD and WOL outcomes for the Works;
- (e) effective and compliant work, health and safety management throughout the lifecycle of the planning, delivery and operation of the Works;
- (f) effective risk management and risk mitigation; and
- (g) the other objectives set out in the Contract Particulars.

EMOS Contractor

The person specified in the Contract Particulars or any other person nominated by [## INSERT] from time to time to replace that person.

Employers' Liability Insurance

A policy of insurance covering the liability of the Contractor to its employees at common law for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Environment

Includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a), (b) or (c).

Environmental Clearance Certificate

The Environmental Clearance Certificate issued by [## INSERT] relating to the Contractor's Activities or the Works and any conditions incorporated in that certificate.

Environmental Harm

Any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident

Any Environmental Harm or Contamination arising out of or in connection with the Contractor's Activities or the Works.

Environmental Management Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from an environmental perspective to:

- (a) ensure compliance with the Environmental Requirements and Statutory Requirements; and
- (b) maximise the achievement of the Environmental Objectives, the ESD Principles and the WOL Objectives.

The Environmental Management Plan must address, at a minimum:

- (c) all Environmental Requirements;
- (d) without limiting paragraph (c), all Statutory Requirements;
- (e) all Environmental Objectives;
- (f) without limiting paragraph (e), all ESD Principles and WOL Objectives;
- (g) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's key people under clause 3.6(a)) regarding the Environment;
- (h) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, [## INSERT] and Other Contractors regarding the Environment during the Contractor's Activities and the Works;
- (i) the training and awareness programmes provided to Contractor and subcontractor personnel regarding the Environment;
- (j) the procedure for preparing (including tailoring) and finalising the Environmental Management Plan under clause 9.2;
- (k) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on the Environment associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
- (l) the procedure for regularly reviewing, updating and amending the Environmental Management Plan under clause 9.2 (including as a result of any complaint, incident (including Environmental Incidents), near misses and other situations or accidents on [## INSERT] property or the Site during the Contractor's Activities and the Works);
- (m) the procedure for ensuring subcontractor compliance with the Environmental Management Plan;

- (n) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Environmental Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents (including Environmental Incidents), near misses and other situations or accidents regarding the Environment during the Contractor's Activities and the Works;
- (o) the additional matters specified in the Contract Particulars; and
- (p) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Environmental Objectives

The following objectives:

- (a) to encourage best practice environmental management through the planning, development, implementation and continuous improvement of environmental management procedures during the Contractor's Activities and the Works;
- (b) to prevent and minimise adverse impacts on the Environment;
- (c) to recognise and protect any special environmental characteristics of the Site (including cultural heritage significance); and
- (d) the additional objectives specified in the Contract Particulars.

Environmental Requirements

Includes the:

- (a) Environmental Clearance Certificate;
- (b) Environmental Requirements; and
- (c) additional requirements specified in the Contract Particulars.

Errors and Omissions Insurance

A policy of insurance to cover civil liabilities (not covered under Public Liability Insurance, products liability or umbrella liability insurance) whether arising in tort, contract or under statute, incurred by the Contractor or its subcontractors other than in a professional capacity or the capacity of a corporate director or officer, in carrying out the Contractor's Activities.

ESD

Ecologically sustainable development.

ESD and WOL Manager

The person specified in the Contract Particulars or any other person from time to time appointed as the ESD and WOL Manager for the Contractor's Activities in accordance with clause 3.6.

ESD and WOL Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Works from an ESD and WOL perspective to:

- (a) ensure compliance with Statutory Requirements; and
- (b) maximise the achievement of the ESD Principles and the WOL Objectives.

The ESD and WOL Plan must address, at a minimum:

- (c) all matters in Procurement Guidance;
- (d) all Statutory Requirements;
- (e) all ESD Principles and WOL Objectives;
- (f) the roles and responsibilities of all Contractor and subcontractor personnel (including the ESD and WOL Manager and the Contractor's key people under clause 3.6(a)) regarding ESD and WOL;
- (g) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, [## INSERT] and Other Contractors regarding ESD and WOL during the Contractor's Activities and the Works;
- (h) the training and awareness programmes provided to Contractor and subcontractor personnel regarding ESD and WOL;
- (i) the procedure for preparing (including tailoring) and finalising the ESD and WOL Plan under clause 9.2;
- (j) the procedure for regularly reviewing, updating and amending the ESD and WOL Plan under clause 9.2;
- (k) the procedure for ensuring subcontractor compliance with the ESD and WOL Plan;
- (l) the procedure for regularly auditing or other monitoring of Contractor and subcontractor compliance with the ESD and WOL Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding ESD and WOL during the Contractor's Activities and the Works;
- (m) the additional matters specified in the Contract Particulars; and
- (n) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

ESD Principles

Means:

- (a) efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
- (b) increased energy and water conservation and efficiency;
- (c) sustainable development and use of renewable and alternative energy and water resources;
- (d) reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
- (e) improvements to interior and exterior environments leading to increased productivity and better health;
- (f) efficiency in resource and materials utilisation, especially water resources;
- (g) selection of materials and products based on their life-cycle environmental impacts;
- (h) increased use of materials and products with recycled content;
- (i) recycling of construction waste and building materials after demolition;
- (j) reduction in harmful waste products produced during construction;
- (k) use, operation and maintenance practices that reduce or minimise harmful effects on people and the natural environment;
- (l) maintaining the cultural, economic, physical and social wellbeing of people and communities;
- (m) the principles described in Procurement Guidance; and
- (n) the additional principles specified in the Contract Particulars.

Estate Information

Information and data created in connection with and relating to the design and construction of the Works or a Stage or otherwise relating to each element of the Works or a Stage and that part of the Estate upon which they are constructed.

Estate Information Provision Plan

The plan prepared by the Contractor and finalised under clause 9.2 in accordance with and for the purposes of the Estate Information Management Requirements (and whether referred to as the "Data Provision Plan", "Estate Information Provision Plan" or otherwise), which must:

- (a) set out in adequate detail all procedures the Contractor will implement to manage the assessment, provision, creation, recording and updating of Estate Information in accordance with this Contract;
- (b) be prepared in accordance with the Data Provision Checklist;
- (c) meet all applicable Estate Information Management Requirements;

- (d) meet all applicable HOTO Requirements;
- (e) include a program for the provision of all Estate Information in accordance with the Contract, including to provide for the deliverables and timeframes as required in [## INSERT RELEVANT REGULATIONS]' and
- (f) include any other materials required by the:
 - (i) Contract;
 - (ii) Contract Administrator; or
 - (iii) EMOS Contractor.

Executive Negotiators

The representatives of the parties specified in the Contract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Expert Determination Agreement

An expert determination agreement on the terms set out in the Schedule of Collateral Documents.

Fee Payment Schedule

The schedule specified in the Contract Particulars, as adjusted from time to time in accordance with clause 12.22, and which sets out:

- (a) the instalments in which the Contract Price (or any part of the Contract Price) will be payable; and
- (b) if applicable, the milestones which must be achieved for each instalment to become payable (failing which the Contractor's entitlement to be paid the relevant instalment of the Contract Price will not arise until such time as the applicable milestone is achieved).

Financial Representative

Means:

- (a) in relation to the Contractor, the Contractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the Contractor; and
- (b) in relation to a subcontractor, the subcontractor's chief financial officer, financial controller or other officer or employee with primary responsibility for managing the financial affairs of the subcontractor.

GEMS

The Garrison and Estate Management System established and managed by [## INSERT] to record and manage Estate Information including to define the classifications, attributes and formats for recording data for each element on the Estate.

[GST/VAT/Applicable Tax]

The tax payable on taxable supplies under the

[GST/VAT/Applicable Tax] Legislation.

[GST/VAT/Applicable Tax] Group

A GST group formed in accordance with **[GST/VAT/Applicable Tax] Legislation.**

[GST/VAT/Applicable Tax] Legislation

[Applicable Taxation Act] and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Hazardous Substances

Has the meaning in the Special Conditions (if any).

HOTO Plan and Checklist

The worksheets contained within the excel workbook titled "HOTO Plan & Checklist" available at: [## INSERT LINK]

HOTO Process

The process for handover and takeover of the Works or a Stage to enable the occupation, use, operation and maintenance of the Works or the Stage by [## INSERT] and Other Contractors including the:

- (a) commissioning of the Works or the Stage (including the inspection and testing process);
- (b) handover of the Works or the Stage to [## INSERT]; and
- (c) occupation, use, operation and maintenance of the Works or the Stage by [## INSERT] and Other Contractors,

in accordance with the HOTO Requirements.

HOTO Requirements

The requirements published at [## INSERT LINK] in respect of commissioning, handover and takeover of projects on the Estate, as amended or replaced from time to time.

Indicative Date for Completion

In respect of the Works or a Stage, the relevant date specified in the Contract Particulars.

Indicative Delivery Phase Price

The amount specified in the Contract Particulars.

Information Security Requirements [Adapt as Relevant]

Means the:

- (a) [## INSERT] Government's Information Security Requirements [## INSERT LINK]
- (b) [## INSERT] Government's Information Security Manual available at [## INSERT LINK].

Insolvency Event

Any one of the following:

- (a) the Contractor becomes, is declared to be, is taken under any applicable law (including the *[Relevant Act(s)]* to be, admits to or informs [## INSERT] in writing or its creditors generally that the Contractor is insolvent, an insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with the Contract for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Contractor;
- (d) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt; or
 - (iv) applies for, agrees to, enters into, calls a meeting for the consideration of, executes or is the subject of an order or declaration in respect of:
 - A. a moratorium of any debts; or
 - B. a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with creditors,

by which his or her assets are subjected conditionally or unconditionally to the control of a creditor or trustee;

- (e) where the Contractor is a corporation, any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) a liquidator or provisional liquidator is appointed in respect of a corporation;
 - (iii) the corporation entering a deed of company arrangement with creditors;
 - (iv) a controller, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (each as defined [Relevant Act] is appointed to the corporation;
 - (v) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (vi) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of [##

INSERT] under a solvent scheme of arrangement pursuant to [Relevant Act]

- (vii) a winding up order or deregistration order is made in respect of the corporation;
 - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
 - (ix) as a result of the operation of [Relevant Act] the corporation is taken to have failed to comply with a statutory demand (as defined in [Relevant Act] or
 - (x) a mortgagee of any property of the corporation takes possession of that property;
- (f) the [Relevant Body] issues a notice to any creditor of a person under the [Relevant Act] requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice; or
- (g) anything analogous to anything referred to in paragraphs (a) to (f) or which has a substantially similar effect, occurs with respect to a person or corporation under any law of any jurisdiction.

Intellectual Property Rights

All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

IT Equipment

Any software, hardware or telecommunications equipment:

- (a) produced; or
- (b) provided, or required to be provided, to [## INSERT] or the Contract Administrator,

under, for the purpose of, arising out of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor.

Latent Condition

Any ground condition at the Site, excluding a ground condition resulting from inclement weather wherever occurring, which differs materially from that which should have been anticipated at the Date of Delivery Phase Approval by a prudent, competent and experienced contractor if it had carried out the ECI Activities and done those things that the Contractor is deemed to have done under clause 7.1.

Local Industry Capability Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must be based on the draft Local Industry Capability Plan prepared by the Contractor and lodged as part of its tender for the Works.

Long Service Leave Legislation

Means:

- (a) *[Specific Legislation - detailed as appropriate]; and*
- (b) any legislation in any [## INSERT STATE/PROVINCE/TERRITORY as relevant] of [## INSERT] addressing long service leave in the building and construction industry.

Material Change

Any actual, potential or perceived material change to the circumstances of the Contractor, including any change:

- (a) arising out of or in connection with:
 - (i) a Change of Control;
 - (ii) an Insolvency Event; or
 - (iii) the Contractor's financial viability, availability, capacity or ability to perform the Contractor's Activities and otherwise meet its obligations under the Contract; or
- (b) which affects the truth, completeness or accuracy of:
 - (i) if the Contractor lodged a registration of interest, the registration of interest;
 - (ii) if the Contractor lodged a tender, the tender; or
 - (iii) any other information, documents, evidence or clarifications provided by the Contractor to [## INSERT] arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Contract, the Contractor's Activities or the Works.

Method of Work Plan for Airfield Activities

Has the meaning in the Special Conditions (if any).

Moral Rights

The right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *[Relevant Copyright Act]*.

NATA

National Association of Testing Authorities [State - Rename Entity if Required].

National Construction Code [## INSERT or DELETE AS RELEVANT]

The National Construction Code that applies in the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] where the Works are located, as amended or replaced from time to time,

produced and maintained by the [State - remove reference if not applicable] Building Codes Board on behalf of [## INSERT] Government and each [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] Government.

Notice of Completion

A notice under clause 13.2(b)(i) by the Contract Administrator stating that Completion of the Works or a Stage has been achieved.

Other Contractor

Any contractor, consultant, artist, tradesperson or other person (including the Design Consultant and the EMOS Contractor) engaged to do work other than the Contractor and its subcontractors.

Outline Cost Plan

The outline cost plan set out in Annexure 3.

Outline Delivery Phase Program

The outline program in respect of the carrying out of the Contractor's Activities during the Delivery Phase referred to in the Contract Particulars.

Pandemic

The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Adjustment Event

Means any of the following events which arise as a direct result of the Pandemic and first occurs after the Date of Delivery Phase Approval:

- (a) a change in Statutory Requirements (including a change in border requirements or quarantine requirements);
- (b) a change in:
 - (i) the availability of local labour required for the Works; or
 - (ii) the ability to transport unfixed goods and materials to the Site where such unfixed goods and materials are located outside of the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] in which the Site is located;
- (c) closure (or reopening) of a subcontractor's factory, or any other location where subcontracted activities are being carried out, in respect of the supply of goods or materials required for the Works; or
- (d) such other events as may be specified in the Contract Particulars,

in each case which impacts the performance or progress of the Contractor's Activities at the Site.

Payment Times Procurement Connected Policy (or PT PCP)

The Payment Times Procurement Connected Policy available at [LINK - Rename / Adjust Nomenclature to Local Context if Required].

Personal Information

[Insert appropriate definition of personal information according to national legislation].

Planning Phase

The period:

- (a) commencing on the Award Date; and
- (b) ending on the earlier of:
 - (i) the Date of Delivery Phase Approval; and
 - (ii) the date on which [## INSERT] gives the Contractor a notice under clause 2.10(a)(ii).

Planning Phase Design Documentation

Means:

- (a) as at the Award Date, the documents described in the Contract Particulars which were produced by the Design Consultant under the Design Services Contract prior to the Award Date; and
- (b) all subsequent design documentation which the Design Consultant produces in accordance with the Design Services Contract prior to the expiry of the Planning Phase, and which is provided by the Design Consultant or the Contract Administrator to the Contractor from time to time.

Planning Phase Material Variation

During the Planning Phase, a change to the ECI Activities which has a material effect on the:

- (a) scope of the ECI Activities; and
- (b) resources required for, and the costs of, performing the ECI Activities,

which a prudent, competent and experienced contractor would not have anticipated as at the Award Date.

Planning Phase Milestone

Each milestone for the Planning Phase, as set out in the Contract Particulars.

Planning Phase Milestone Date

In respect of a Planning Phase Milestone, the date for the achievement of that Planning Phase Milestone as set out in the Contract Particulars.

Planning Phase Price

The amount specified in the [Contract Particulars](#) as adjusted, from time to time, by any additions or deductions required to be made under the [Contract](#).

Planning Phase Program

The program in respect of the carrying out of the ECI Activities prepared and updated by the Contractor in accordance with clauses 2.4 and 10.2.

Plant, Equipment and Work

Those things used, or work undertaken, by the Contractor to construct the Works but which will not form part of the Works.

Privacy [Legislation]

[Applicable Privacy Act]

Professional Indemnity Insurance

A policy of insurance to cover claims made against the insured for:

- (a) civil liability for breach of professional duty (whether owed in contract or otherwise); and
 - (b) unintentional breaches of third party intellectual property,
- by the Contractor or its subcontractors in carrying out the Contractor's Activities.

Project Documents

Means:

- (a) all documents prepared by the Contractor in performing the ECI Activities;
- (b) Design Documentation prepared by the Contractor under clause 6.2;
- (c) Project Plans;
- (d) Approvals;
- (e) IT Equipment to the extent relating to software;
- (f) the documents which the Contractor is obliged to maintain under clause 12.19; and
- (g) without limiting paragraphs (a) - (f), any other data, documents, drawings, records, programs and information (including Estate Information and information relating to the Contractor's compliance with the WHS Legislation) and material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to [## INSERT] or the Contract Administrator,

under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor (including by subcontractors).

Project Lifecycle and HOTO Plan

The plan prepared by the Contractor in accordance with, and for the purposes of, the HOTO Requirements and finalised under clause 9.2, which must:

- (a) be prepared in accordance with the HOTO Plan and Checklist;
- (b) meet all applicable HOTO Requirements and Statutory Requirements; and
- (c) include any other matters required by the:

- (i) Contract; or
- (ii) Contract Administrator.

Project Plans

The:

- (a) Project Lifecycle and HOTO Plan;
- (b) Environmental Management Plan;
- (c) ESD and WOL Plan;
- (d) Estate Information Provision Plan;
- (e) Local Industry Capability Plan;
- (f) Quality Plan;
- (g) Site Management Plan;
- (h) Work Health and Safety Plan; and
- (i) additional plans specified in the Contract Particulars and finalised by the Contractor under clause 9.2(a)(ii),

as updated or amended under clause 9.2.

Provisional Sum Work

The work or goods so specified in the Contract Particulars for which the sum of money specified in the Contract Particulars is included in the Delivery Phase Price.

PT PCP Evaluation Questionnaire

A questionnaire substantially in the form set out in Appendix C of the Payment Times Procurement Connected Policy.

PT PCP Policy Team

The relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.

PT PCP Purpose

Means:

- (a) the review, evaluation, monitoring, assessment and reporting on the Payment Times Procurement Connected Policy, including the compliance by those [## INSERT] suppliers and their subcontractors that are Reporting Entities; or
- (b) improving payment times to PT PCP Subcontractors.

PT PCP Remediation Plan

A written remediation plan substantially in the form set out in Appendix D of the Payment Times Procurement Connected Policy.

PT PCP Subcontract

A subcontract between a Reporting Entity and another party (Other Party) where:

- (a) the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Contract;
- (b) both parties are carrying on business in [## INSERT]; and
- (c) the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than, or is reasonably estimated to not exceed, 1,000,000 ([GST/VAT/Applicable Tax] inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to 1,000,000 ([GST/VAT/Applicable Tax] inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

- (d) subcontracts entered into prior to the Reporting Entities' tender response for the Contractor's Activities and the Works;
- (e) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
- (f) subcontracts for the purposes of:
 - (i) procuring and consuming goods or services overseas; or
 - (ii) procuring real property, including leases and licences.

PT PCP Subcontractor

The party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

Payment Times Reporting Legislation

[Relevant Act] as amended or replaced from time to time, and includes a reference to any subordinate legislation made under the Act.

Public Liability Insurance

A policy of liability insurance covering the:

- (a) Contractor and all subcontractors for their respective liabilities; and
- (b) [## INSERT] for all legal liabilities arising out of or in connection with any act, error, omission, negligence or breach of contract by the Contractor (or any subcontractor),

to third parties and to each other, for loss of, loss of use of or damage to property and death of or injury to any person, arising out of or in connection with the Contractor's Activities or the Works.

This policy is not required to cover liabilities or losses insured under Construction Risks Insurance, Workers Compensation Insurance, Employers' Liability Insurance, Professional Indemnity Insurance or Errors and Omissions Insurance.

Quality Manager

The person specified in the Contract Particulars or any other person from time to time appointed as the Quality Manager for the Contractor's Activities in accordance with clause 3.6.

Quality Objectives

Means to:

- (a) encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Contractor's Activities and the Works;
- (b) prevent and minimise adverse quality impacts during the Contractor's Activities and the Works (including Defects before, at and after Completion);
- (c) optimise the value for money achieved by [## INSERT] in respect of the Contractor's Activities and the Works; and
- (d) achieve the additional objectives specified in the Contract Particulars.

Quality Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from a quality perspective.

The Quality Plan must address, at a minimum:

- (a) all Statutory Requirements;
- (b) all Quality Objectives;
- (c) the Contractor's quality assurance procedure, system or framework (which may or may not be a certified quality assurance procedure, system or framework);
- (d) the roles and responsibilities of all Contractor and subcontractor personnel (including the Quality Manager and the Contractor's key people under clause 3.6(a)) regarding quality;
- (e) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, [## INSERT] and Other Contractors regarding quality generally during the Contractor's Activities and the Works;
- (f) the training and awareness programmes provided to Contractor and subcontractor personnel regarding quality;
- (g) the procedure for preparing (including tailoring) and finalising the Quality Plan under clause 9.2 (including how the Contractor will ensure maximum consistency between the Contractor's quality assurance procedure, system or framework and the Quality Plan);
- (h) the procedure for regularly reviewing, updating and amending the Quality Plan under clause 9.2;
- (i) the procedure for ensuring subcontractor compliance with the Quality Plan;

- (j) the procedure for regularly identifying, controlling and monitoring possible and actual impacts on quality associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Works;
- (k) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Quality Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints regarding quality during the Contractor's Activities and the Works;
- (l) the additional matters specified in the Contract Particulars; and
- (m) any other matters required by:
 - (i) the Contract; or
 - (ii) the Contract Administrator.

Related Body Corporate

Has the meaning given to it in *[Relevant Act - Amend or Remove if not Applicable, or if alternate Nomenclature is required]*.

Relevant Approval

An approval referred to in paragraph (d) of the definition of "Delivery Phase Approval".

Reporting Entity

Has the meaning given in the *[Relevant Act]*.

Reporting Entity Subcontractor

Any person that:

- (a) is a Reporting Entity; and
- (b) provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed [4,000,000] [## INSERT RELEVANT AMOUNT] ([GST/VAT/Applicable Tax] inclusive),

and **Reporting Entity Subcontract** has a corresponding meaning.

Schedule of Collateral Documents

The schedule of proforma contracts and other documents applicable::

- (a) posted on the Relevant Website, as amended from time to time by [## INSERT]; and
- (b) which as at the Award Date include the contracts and other documents specified in the Contract Particulars.

Security of Payment Legislation

Means: [insert legislation]

Security or Confidentiality Incident

Means:

- (a) a "Security Incident" as defined in [## INSERT RELEVANT REGULATIONS] insofar as the relevant approach, event or action arises out of or in any way in connection with this Contract or the carrying out of the Contractor's Activities or otherwise relates to the Contractor or any Related Body Corporate of the Contractor; or
- (b) any other incident or circumstance involving Confidential Information (including any Sensitive and Classified Information) having been held, disclosed, accessed or used in a way that is inconsistent with the terms of the Contract.

Sensitive and Classified Information

Means:

- (a) any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Contractor by [## INSERT], the Contract Administrator or anyone on [## INSERT] behalf, whether or not owned by [## INSERT]:
 - (i) marked as "sensitive information", "for official use only" or "OFFICIAL: Sensitive";
 - (ii) identified at the time of issue or communication as "Sensitive Information";
 - (iii) marked with a national security classification or as "Classified Information";
 - (iv) identified at the time of issue or communication as "Classified Information"; or
 - (v) the Contractor knows or ought to know is subject to, or ought to be treated as, sensitive or classified information in accordance with any Statutory Requirement (including the Information Security Requirements); and
- (b) everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) referred to in paragraph (a) above, including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Significant Event

Means:

- (c) any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its subcontractors (or any officers, employees or agents of any of them) that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (d) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its subcontractors (or any officers, employees or agents of any of them) that may adversely impact on compliance with [## INSERT] policy and legislation or [## INSERT] reputation.

Site

The site or sites for the Works described in the Contract Particulars.

Site Management Plan

The plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities and the Works on and near the Site. The Site Management Plan must address, at a minimum:

- (a) all Statutory Requirements;
- (b) the roles and responsibilities of all Contractor and subcontractor personnel (including the Contractor's Representative and the Contractor's key people under clause 3.6(a)) regarding management of the Contractor's Activities and the Works on and near the Site;
- (c) the procedure for consultation, co-operation and co-ordination of activities with the Contract Administrator, [## INSERT] and Other Contractors regarding the occupation, use, operation and maintenance of [State Property]] and the Site (including for the purpose of military activities, expeditions and exercises) during the Contractor's Activities and the Works;
- (d) procedures for access to:
 - (i) [State Property]; and
 - (ii) the Site,

by Contractor and subcontractor personnel, visitors, pedestrians and vehicles, including procedures for:

- (iii) ensuring security (including identification and pass procedures and any physical security measures);
- (iv) minimising disruption and inconvenience to [## INSERT] and Other Contractors;
- (v) vehicle and traffic management; and
- (vi) noise management;
- (e) without limiting paragraph (d), Site inductions, training and other awareness programmes provided to Contractor and subcontractor personnel in respect of [## INSERT] property and the Site;

- (f) procedures for:
 - (i) establishing the Site (including site amenities, laydown areas and parking zones);
 - (ii) cleaning, maintenance, waste management and debris control on [## INSERT] property and the Site; and
 - (iii) any dangerous or prohibited substances, material or goods (including [## INSERT] property) on the Site relevant to the Contractor's Activities and the Works;
- (g) if the Contractor's Activities or the Works are to be carried out on or in the vicinity of an airfield, the procedure for preparation and approval of a Method of Work Plan for Airfield Activities;
- (h) the procedure for preparing (including tailoring) and finalising the Site Management Plan under clause 9.2;
- (i) the procedure for regularly reviewing, updating and amending the Site Management Plan under clause 9.2 (including as a result of any Site management complaint, incident, near-miss and other situation or accident on [## INSERT] property or the Site during the Contractor's Activities and the Works);
- (j) the procedure for ensuring subcontractor compliance with the Site Management Plan;
- (k) the procedure for regularly identifying, controlling and monitoring possible and actual Site management impacts on [## INSERT] property and the Site associated with the Contractor's Activities and the Works, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such identification, control and monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on [## INSERT] property and the Site during the Contractor's Activities and the Works;
- (l) the procedure for managing the effects of the Pandemic on the carrying out of the Contractor's Activities [## INSERT or DELETE as relevant];
- (m) the procedure for regular auditing or other monitoring of Contractor and subcontractor compliance with the Site Management Plan, including the procedures for recording, reporting, responding to and finalising:
 - (i) matters arising out of or in connection with such audits or other monitoring; and
 - (ii) complaints, incidents, near-misses and other situations or accidents on [## INSERT] property and the Site during the Contractor's Activities and the Works;
- (n) to the extent that the Contractor's Activities include any demolition, procedures for obtaining approval from the Contract Administrator prior to undertaking such

- demolition and otherwise complying with any applicable Statutory Requirements or Contractor HOTO Obligation in relation to such demolition;
- (o) the additional matters specified in the Contract Particulars; and
 - (p) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

STR Special Conditions

The special conditions as set out in Annexure 2.

Stage

A stage of the Works specified in the Contract Particulars.

Statutory Requirements

Means:

- (a) any law applicable to the Contractor's Activities or the Works, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
- (b) Approvals (including any condition or requirement under an Approval);
- (c) Environmental Requirements; and
- (d) Information Security Requirements.

Strategic Notice Event

Means:

- (a) a Material Change; or
- (b) a Significant Event.

Strategic Notice Event Remediation Plan

The plan (if any) prepared by the Contractor and finalised under clause 21.3.

Subcontractor Deed of Covenant

A subcontractor deed of covenant in the form set out in the Schedule of Collateral Documents.

Subcontractor Design Certificate

A subcontractor design certificate in the form set out in the Schedule of Collateral Documents.

Table of Variation Rates and Prices

The table specified in the Contract Particulars, containing rates and prices to be used for the purposes of valuing Variations under clause 11.3.

Variation

Unless otherwise stated in the Contract, means:

- (a) during the Planning Phase, a Planning Phase Material Variation; and
- (b) during the Delivery Phase, any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WHS Legislation

Means any of the following:

- (a) *[Relevant Work Health and Safety Legislation]*; and
- (b) any corresponding WHS law as defined in [Relevant Act(s)]

WOL

Whole of life.

WOL Cost

The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to [## INSERT] arising out of or in connection with the Works over the whole life of the Works, including the costs of designing and constructing the Works prior to Completion, decommissioning, remediation and disposal costs (including waste disposal) and occupying, using, operating and maintaining the Works after Completion.

WOL Objectives

Means balancing the:

- (a) WOL Cost;
- (b) useful life of the Works;
- (c) reliability and availability of the Works throughout their useful life;
- (d) operability and maintainability of the Works throughout their useful life;
- (e) value for money achieved by [## INSERT] from the design, construction, use, occupation, operation and maintenance of the Works;
- (f) opportunity to reduce resource use during the occupation, use, operation and maintenance of the Works throughout their useful life and the achievement of the other requirements of the Smart Infrastructure Handbook; and
- (g) achievement of the additional matters specified in the Contract Particulars.

Work Health and Safety Plan

The plan prepared by the Contractor and finalised under clause 9.2 (which is either Contract specific or Site specific) and which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and the Works from a work health and safety perspective to ensure compliance with all Statutory Requirements (including the WHS Legislation) and the Asbestos Management Plan, including the obligations in clause 8.16(t). The Work Health and Safety Plan must address, at a minimum:

- (a) the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Contractor's Activities and the Works;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking (PCBU) at the workplace where the Contractor's Activities and the Works are being undertaken regarding consulting, co-operating and co-ordinating activities where the PCBU(s) at the workplace and the Contractor owe a work health and safety duty in relation to the same work health and safety matter (including procedures for information sharing and communication);
- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur at a workplace where the Contractor's Activities and the Works are carried out, including:
 - (i) incident (including notifiable incident) reporting procedures;
 - (ii) preventative and corrective action procedures; and
 - (iii) record-keeping and reporting requirements, including reporting to the Contract Administrator with respect to incidents and accidents under clause 8.16(b);
- (d) any Site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (f) if the Contract requires the Contractor to design any part of the Works, the procedures for:
 - (i) conducting design risk assessments to ensure compliance with Statutory Requirements (including the WHS Legislation), including regarding design changes relevant to work health and safety;
 - (ii) carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation; and
 - (iii) ensuring the results of such calculations, analysis, testing or examinations are provided to [## INSERT], including as a condition precedent to Completion and prior to the expiry of the Defects Liability Period;
- (g) procedures and arrangements for the management of work health and safety generally, including:
 - (i) details of the Contractor's work health and safety policy;
 - (ii) details of any work health and safety management system (whether certified or uncertified);
 - (iii) inductions, training and other awareness programmes regarding work health and safety and any workplace specific work health and safety induction, training and other awareness programmes; and

- (iv) emergency procedures, emergency management planning, the use of emergency equipment and the establishment of workplace specific first aid facilities;
- (h) procedures for ensuring the provision of written assurances to the Contract Administrator under clause 8.16(h) regarding compliance with the WHS Legislation by the Contractor, subcontractors and Other Contractors;
- (i) procedures for the preparation, finalisation and regular reviewing of the Work Health and Safety Plan under clause 9.2 (including as a consequence of any review of hazards, risks and control measures regarding the Contractor's Activities, the Works and any notifiable incident or systemic risk management failure);
- (j) procedures for the management of subcontractors, including:
 - (i) inductions, training and other awareness programmes (in addition to those referred to in paragraph (g)(iii));
 - (ii) the subcontractor's development and provision of safe work method statements, job safety assessments or equivalent documentation;
 - (iii) ensuring subcontractors comply with their obligation to consult, co-operate and co-ordinate activities (including the information-sharing and communication of information); and
 - (iv) ensuring subcontractor compliance with the Contractor's Work Health and Safety Plan;
- (k) details of the project and Contract specific hazards and risks identified by the Contractor and the Contractor's approach to the management of these hazards and risks including how the Contractor will identify hazards and eliminate or minimise risks so far as is reasonably practicable:
 - (i) prior to commencing the Contractor's Activities and the Works; and
 - (ii) during the delivery of the Contractor's Activities and the Works;
- (l) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning Hazardous Substances, including, where they are used or handled in the delivery of the Contractor's Activities, incorporated into the Works, stored by the Contractor at the workplace or transported by the Contractor to or from the workplace;
- (m) the actions the Contractor will take to proactively identify and manage risks to ensure it avoids systematic work health and safety risk management failures occurring during the delivery of the Contractor's Activities and the Works;
- (n) the procedures the Contractor will adopt to audit or otherwise monitor and verify its (and its subcontractors') compliance with the Work Health and Safety Plan and the WHS Legislation (including details of the regularity, form and content of such audit, monitoring and verification activities);
- (o) the procedures the Contractor will adopt to ensure it provides to [## INSERT], when conducting handover and takeover activities, all information regarding hazards and risks present in or arising out of or in connection with the use of the

Works including for the purpose for which they were designed or manufactured (including the supply of information in accordance with clause 8.16(r));

- (p) the approach the Contractor will adopt in identifying, controlling and managing work health and safety hazards and risks concerning high risk construction as defined in regulation 291 of [## INSERT] WHS Legislation (as applicable);
- (q) any additional matters specified in the Contract Particulars; and
- (r) any other matters required by the:
 - (i) Contract; or
 - (ii) Contract Administrator.

Workers Compensation Insurance

A policy of insurance prescribed by Statutory Requirements in the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside to insure against or make provision for the liability of the Contractor to its employees for death or injuries arising out of or in connection with their employment.

Works

The physical works, a brief description of which is set out in the Contract Particulars, which the Contractor must design (to the extent required by the Contract), construct, commission, complete and handover to [## INSERT] in accordance with the Contract.

Works Description

The document or documents described as such and set out in the Delivery Phase Terms.

1.2 Interpretation

In the Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of the Contract;
- (d) references to any party to the Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Attachment, Schedule, or exhibit is a reference to a party, clause, Annexure, Attachment, Schedule or exhibit of or to the Contract;
- (f) references to the Contract and any deed, agreement or instrument are deemed to include references to the Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:

- (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
- (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "[Currency]" or "[Currency Symbol]" is to [## INSERT] currency;
- (k) amounts expressed in [currency] are exclusive of [GST/VAT/Applicable Tax];
- (l) where under the Contract:
 - (i) a direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 12.5), within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (m) for the purposes of clauses 10.8, 10.9 and 10.10:
 - (i) any extension of time stated in days; or
 - (ii) any reference to "day",
 will exclude public holidays and include only those days which are stated in the Contractor's then current program under clause 10.2 as working days;
- (n) for the purposes of clauses 12.4, 12.5, 18.14 and 21, to the extent that the Contractor's Activities are carried out in the [## INSERT]Capital Territory, "business day" has the same meaning as defined in [insert legislation]
- (o) other than as set out in paragraphs (l), (m) and (n) references to "day" are references to calendar days;
- (p) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (q) the word "subcontractor" will include subcontractors, suppliers and consultants and the word "subcontract" will include a contract with a subcontractor;
- (r) where a clause contains two options, the option specified in the Contract Particulars will apply;
- (s) derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1;
- (t) unless agreed or notified in writing by the Contract Administrator or the date of the standard or reference document is specified in the Works Description, a reference to Standards [## INSERT] standards, overseas standards or other similar reference documents in the Works Description is a reference to the edition last published prior to the submission of the relevant Design Documentation. If requested by the Contract Administrator, the Contractor must make copies of all Standards [## INSERT] standards, overseas standards or other similar reference documents referred to in the Works Description and Design Documentation available to the Contract Administrator;
- (u) for the purposes of clauses 7.4(a)(ii), 7.5(c)(ii), 8.4(c)(ii), 8.21(d)(ii), 8.29(d)(i)B, 9.5 and 18.3(e)(ii), a reference to "extra costs" includes a reference to extra costs reasonably incurred by the Contractor as a direct result of the applicable event delaying the Contractor;

- (v) requirements contained in the ECI Brief and the Works Description (as the case may be), whether or not they include the expression "the Contractor must" or any equivalent expression, will be deemed to be requirements to be satisfied by the Contractor, unless stated otherwise; and
- (w) where an absolute discretion is conferred on [## INSERT] or the Contract Administrator:
 - (i) neither [## INSERT] nor the Contract Administrator is required to exercise such discretion for the benefit of the Contractor; and
 - (ii) the exercise or failure to exercise such discretion is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

1.3 Miscellaneous

- (a) The Contract is subject to and is to be construed in accordance with the laws of the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] specified in the Contract Particulars.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
 - (ii) otherwise, both parties agree in writing.
- (c) The Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.
- (e) Any provision in 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 other provision of the Contract.
- (f) The Contractor must indemnify [## INSERT] against:
 - (i) any liability to or claim by a third party including a subcontractor or Other Contractor; and
 - (ii) all costs, expenses, losses, damages and liabilities suffered or incurred by [## INSERT],caused by any breach by the Contractor of a term of the Contract.
- (g) All obligations to indemnify under the Contract survive termination of the Contract on any basis.
- (h) If a document referred to as being available on the Relevant Website is not so available, the Contract Administrator may provide such document to the Contractor by other means.

2. ENGAGEMENT AND ECI ACTIVITIES

2.1 Engagement

The Contractor must:

- (a) immediately commence to carry out the Contractor's Activities in accordance with the Contract; and
- (b) unless otherwise stated, carry out the Contractor's Activities at its cost.

2.2 Contractor's Obligations During the Planning Phase

The Contractor must, in the Planning Phase:

- (a) perform the ECI Activities:
 - (i) under and in accordance with:
 - A. this clause 2 and the ECI Brief;
 - B. the other requirements of the Contract; and
 - C. any directions of the Contract Administrator;
 - (ii) in an open and transparent manner;
 - (iii) with the degree of care, skill and diligence that would be reasonably expected from a prudent, competent and experienced contractor engaged to perform activities similar to the ECI Activities; and
 - (iv) so as to maximise achievement of the ECI Objectives;
- (b) exercise a duty of utmost good faith to [## INSERT] in performing the ECI Activities;
- (c) provide the Contract Administrator with all information and documents relating to the ECI Activities required by the Contract or the Contract Administrator and otherwise keep the Contract Administrator fully and regularly informed about all matters affecting and relating to the performance of the ECI Activities; and
- (d) use its best endeavours to achieve each Planning Phase Milestone by the relevant Planning Phase Milestone Date and otherwise perform the ECI Activities in accordance with any timeframe specified in the Contract.

2.3 Contractor's Obligations with Respect to the Design Consultant

The Contractor must:

- (a) fully co-operate with the Design Consultant and carefully co-ordinate and integrate the ECI Activities with the activities carried out by the Design Consultant;
- (b) provide recommendations, advice and comments to the Contract Administrator and the Design Consultant in respect of the progressive development of the planning and design of the Works so as to maximise achievement of the ECI Objectives;
- (c) meet regularly and consult with the Contract Administrator and the Design Consultant to review the progress of the planning and design of the Works against the ECI Objectives, including in the context of any recommendations, advice and comments made in accordance with paragraph (b) and the outcome of the ECI Activities;
- (d) submit written reports to the Contract Administrator as part of each Planning Phase Milestone (or at such other times as requested by the Contract

Administrator) recording all recommendations made in accordance with paragraph (b), consultations with the Contract Administrator and Design Consultant under paragraph (c) and the outcome of any activities performed by the Contractor in accordance with the ECI Brief; and

- (e) provide all reasonable assistance to the Design Consultant to allow the Design Consultant to develop the design of the Works and perform its other services.

2.4 Planning Phase Program

The Contractor must:

- (a) within 14 days of the Award Date, prepare a Planning Phase Program which must be based on and substantially consistent with:
 - (i) the initial program in relation to the Planning Phase lodged by the Contractor in its tender for the Contractor's Activities (as may be updated prior to the Award Date with the approval of [## INSERT]); and
 - (ii) the program for the performance of the services by the Design Consultant as notified by the Contract Administrator; and
- (b) otherwise comply with clause 10.2 in respect of the Planning Phase Program.

2.5 Delivery Phase Program

(a) The Contractor must:

- (i) within 28 days of the Award Date, prepare a Delivery Phase Program (based on the Outline Delivery Phase Program); and
- (ii) regularly review and update the Delivery Phase Program throughout the Planning Phase (at a minimum, as a condition precedent to achieving each Planning Phase Milestone),

in each case, so that the Delivery Phase Program complies with the requirements of the Contract.

(b) The Delivery Phase Program must:

- (i) be prepared by reference to the latest Planning Phase Design Documentation and be reconciled against, and so as to show all deviations from, the Outline Delivery Phase Program;
- (ii) be prepared so as to maximise:
 - A. all opportunities for time savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract; and
 - B. opportunities for staging and sequencing the Works so as to:
 - 1) avoid disruptions to [## INSERT] (and, if applicable, Other Contractors); and
 - 2) enable [## INSERT] to have use of facilities forming part of the Works safely and as soon as possible;
- (iii) include a proposed Date for Completion of the Works or each Stage, provided that (unless otherwise agreed in writing by the Contract Administrator, in its absolute discretion) no proposed Date for Completion can be after the latest Indicative Date for Completion;

- (iv) be in a format compatible with the software specified in the Contract Particulars; and
 - (v) include all such other matters as the Contract Administrator may require in writing.
- (c) The Contractor must:
- (i) submit each Delivery Phase Program to the Contract Administrator;
 - (ii) if the Delivery Phase Program is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended Delivery Phase Program to the Contract Administrator (within the time required by the Contract Administrator);
 - (iii) obtain the Contract Administrator's written approval to the final Delivery Phase Program as a condition precedent to Delivery Phase Approval; and
 - (iv) in the process of preparing and updating the Delivery Phase Program, co-operate with the Design Consultant, [## INSERT], the Contract Administrator and all other people nominated by the Contract Administrator (including any third party engaged in accordance with paragraph (d)), including for the purpose of furthering the considerations referred to in paragraph (b)(ii).
- (d) To assist the Contract Administrator in reviewing the Delivery Phase Program, the Contract Administrator or any other person on behalf of [## INSERT] may engage a third party to perform an external review of the Delivery Phase Program (at the Contractor's cost if the review demonstrates that the draft program does not meet the requirements of the Contract).

2.6 Cost Planning

- (a) The Contractor must:
- (i) within 28 days of the Award Date, prepare a cost plan (based on the Outline Cost Plan); and
 - (ii) update the cost plan throughout the Planning Phase (at a minimum, as a condition precedent to achieving each Planning Phase Milestone),
- in each case, so that the cost plan complies with the requirements of the Contract.
- (b) The Contractor must:
- (i) ensure that each cost plan is prepared by reference to the latest Planning Phase Design Documentation and is reconciled against, and so as to show all deviations from, the Outline Cost Plan;
 - (ii) adopt an "open book" approach to the process of preparing each cost plan and allow the Contract Administrator to access any quotations, correspondence, trade estimates, information from previous projects or other relevant information as may be requested by the Contract Administrator or which would otherwise facilitate and expedite the cost planning process;
 - (iii) ensure that each cost plan is prepared so as to:
 - A. maximise value for money for [## INSERT]; and
 - B. without limiting subparagraph A, maximise all opportunities for cost savings which a prudent, competent

and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract; and

- (iv) without limiting the foregoing, use its best endeavours to ensure that the proposed Delivery Phase Price does not exceed the Indicative Delivery Phase Price.
- (c) Each cost plan prepared by the Contractor must include:
- (i) a detailed breakdown of the proposed Delivery Phase Price by reference to each line item of the work comprising the Contractor's Activities including, where the proposed Delivery Phase Price differs from the Indicative Delivery Phase Price, details of and a validation of such difference including by reference to the matters set out in paragraph (b); and
 - (ii) all such other matters as the Contract Administrator may require in writing.
- (d) The Contractor must:
- (i) submit each cost plan to the Contract Administrator;
 - (ii) if any cost plan submitted by the Contractor is rejected by the Contract Administrator (in the Contract Administrator's absolute discretion), submit an amended cost plan to the Contract Administrator (within the time required by the Contract Administrator);
 - (iii) obtain the Contract Administrator's written approval to the final cost plan as a condition precedent to Delivery Phase Approval; and
 - (iv) in the process of preparing a cost plan (or amended cost plan), cooperate with [## INSERT], the Contract Administrator and all other people nominated by the Contract Administrator, including any third party engaged in accordance with paragraph (e).
- (e) To assist the Contract Administrator in reviewing a cost plan, the Contract Administrator or any other person on behalf of [## INSERT] may engage a third party to perform an external audit of the cost plan (at the Contractor's cost if the audit demonstrates that the cost plan does not meet the requirements of the Contract).

2.7 Other Planning Phase Obligations

In addition to the Contractor's other obligations under this clause 2, the Contractor must do all such things or tasks as may be necessary to:

- (a) assist [## INSERT] to achieve all Relevant Approvals including to provide such information and assistance as the Contract Administrator may require in writing for the purpose of obtaining the Relevant Approvals; and
- (b) otherwise achieve Delivery Phase Approval and provide [## INSERT] with such other assistance as the Contract Administrator may require in connection with the Contractor's Activities or the Works,

before the Date for Delivery Phase Approval.

2.8 Site Access During the Planning Phase

- (a) [## INSERT] will use its reasonable endeavours to provide the Contractor with such access to the Site during the Planning Phase as may be reasonably necessary for the carrying out of the relevant ECI Activities.
- (b) The Contractor acknowledges and agrees that, without limiting paragraph (a), Site access during the Planning Phase will be contingent upon:
 - (i) [## INSERT] having a right of access to the Site;
 - (ii) any Approvals required for Site access having been obtained;
 - (iii) the Environmental Management Plan, Site Management Plan and Work Health and Safety Plan having been finalised under clause 9.2;
 - (iv) the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(f) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances required under clause 5.4(a)(i);
 - (v) the Contractor having submitted a request in writing to the Contract Administrator during the Planning Phase for access to the Site setting out:
 - A. the areas of the proposed access;
 - B. the timing of the proposed access;
 - C. the reasons why the proposed access is necessary to enable the Contractor to commence and progress the ECI Activities; and
 - D. the mitigation measures that the Contractor proposes to put in place to avoid any disruption or inconvenience that may be caused to [## INSERT]h, Other Contractors and any other person authorised by [## INSERT] or the Contract Administrator to occupy, use, operate, maintain or access the Site if the Contractor is given the proposed access;
 - (vi) the Contractor's request under subparagraph (v) being approved by the Contract Administrator in writing; and
 - (vii) the Contractor having otherwise satisfied the conditions precedent to access specified in the Contract Particulars.

2.9 Negotiations Prior to Delivery Phase Approval

- (a) The Contractor must:
 - (i) as part of the process of preparing the final Delivery Phase Program for approval under clause 2.5(c)(iii) and final cost plan for approval under clause 2.6(d)(iii); and
 - (ii) in any event by no later than the Date for Delivery Phase Approval, undertake genuine and good faith negotiations with [## INSERT] to reach agreement, in [## INSERT] absolute discretion, as to:
 - (iii) the Delivery Phase Price;
 - (iv) the Date for Completion of the Works or each Stage; and

- (v) any other amendments to the Contract Particulars or other documents forming part of the Contract,
- having regard to:
- (vi) the Indicative Delivery Phase Price and the Indicative Date for Completion of the Works or each Stage;
 - (vii) any change in the scope, cost of and resources required for the Delivery Phase arising out of the design development, cost planning and programming carried out in the Planning Phase;
 - (viii) the requirements of any Relevant Approval to the extent such requirements arose or were imposed after the Award Date; and
 - (ix) the considerations in clauses 2.5(b)(ii) and 2.6(b)(iii).
- (b) If agreement on all the matters in paragraph (a) is reached by the Date for Delivery Phase Approval, then:
 - (i) [## INSERT] will record that agreement in the Delivery Phase Terms; and
 - (ii) the Contractor must execute the Delivery Phase Terms on the date required by [## INSERT], provided that the Delivery Phase Terms are subject to, and will only take effect upon, execution by [## INSERT] and Delivery Phase Approval being achieved in accordance with clause 2.10(a)(i).
 - (c) Notwithstanding anything else in the Contract, the parties must not execute the Delivery Phase Terms until all Relevant Approvals have been obtained.

2.10 Delivery Phase Approval

- (a) [## INSERT] must:
 - (i) if Delivery Phase Approval is achieved:
 - A. issue a written notice to the Contractor stating that Delivery Phase Approval has been achieved; and
 - B. execute and date the Delivery Phase Terms on the same date that the notice is issued under subparagraph A; and
 - (ii) if Delivery Phase Approval has not been achieved or [## INSERT] has elected (in its absolute discretion and for any reason) not to proceed to the Delivery Phase with the Contractor, issue a written notice so advising the Contractor, in which case clause 2.12 will apply.
- (b) If [## INSERT] issues a notice under paragraph (a)(i)A, then:
 - (i) the parties will, immediately upon the issue of the notice, be deemed to have:
 - A. terminated the Contract; and
 - B. entered into a new contract on the same terms as the Contract as amended by the Delivery Phase Terms (and from that point (other than in subparagraph A) a reference to "Contract" will be a reference to that new contract on those amended terms), under which the Contractor will design (to the extent required by the Contract), construct, commission, complete and handover the Works;

- (ii) [## INSERT] must give the Contractor sufficient access to the Site to allow it to commence execution of the Works on the later of:
 - A. the date for access to the Site specified in the Contract Particulars;
 - B. the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.4(f) that the Contractor has caused to be effected and maintained or otherwise have the benefit of the insurances then required under clause 5.4;
 - C. the Project Plans having been finalised under clause 9.2; and
 - D. the satisfaction of the conditions precedent to access specified in the Contract Particulars,
 and, subject to other provisions of the Contract affecting access, continue to allow the Contractor to have sufficient access to the Site to enable it to carry out the Contractor's Activities; and
- (iii) the Contractor must immediately commence to carry out the remainder of the Contractor's Activities in accordance with the Contract.

2.11 Phased Engagement

- (a) The Contractor acknowledges and agrees that:
 - (i) [## INSERT] may, in its absolute discretion, issue a notice under clause 2.10(a)(ii) if Delivery Phase Approval has not been achieved by the Date for Delivery Phase Approval;
 - (ii) it will have no entitlement to design, construct, commission, complete or handover the Works during the Delivery Phase (and there will be no contract between the parties in respect of such matters) unless [## INSERT] issues a notice under clause 2.10(a)(i)A;
 - (iii) the splitting of the Contractor's Activities into the Planning Phase and the Delivery Phase is solely for the benefit of [## INSERT] including, without limiting the other elements required to achieve Delivery Phase Approval, to:
 - A. enable all Relevant Approvals to be obtained;
 - B. enable [## INSERT] to be satisfied (in its absolute discretion) that it will maximise value for money for [## INSERT] to have the Contractor proceed with the Delivery Phase;
 - C. give [## INSERT] an opportunity to elect (in its absolute discretion and for any reason) not to proceed with the Contractor from the Planning Phase to the Delivery Phase; and
 - D. reach agreement in relation to the matters contemplated in clause 2.9 (in its absolute discretion),
 and the rights and obligations of the parties and the functions of the Contract Administrator are to be construed accordingly; and
 - (iv) as a result of the matters described above, there may be periods of inactivity of various durations in and between the Planning Phase and the Delivery Phase. Such periods of inactivity will not amount to a

suspension under clause 10.11 and to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with such periods of inactivity.

- (b) [## INSERT] may, in [## INSERT] absolute discretion, at any time and from time to time, by written notice to the Contractor unilaterally extend the Date for Delivery Phase Approval.
- (c) Neither an extension under paragraph (b), nor the issue of a notice under clause 2.10(a)(ii), will:
 - (i) limit or affect the Contractor's obligations or liabilities under this Contract or prejudice the right of [## INSERT] to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Contractor breaches the Contract, whether under the Contract or otherwise according to law; or
 - (ii) entitle the Contractor to bring a Claim against [## INSERT].
- (d) The Contractor acknowledges that any Act of Prevention which prevents Delivery Phase Approval being achieved by the Date for Delivery Phase Approval will not:
 - (i) entitle the Contractor to bring a Claim against [## INSERT]; or
 - (ii) limit or affect any right of [## INSERT] or the Contract Administrator, including the right of [## INSERT] to elect not to proceed with the Contractor to deliver the Works or to issue a notice under clause 2.10(a)(ii),whether on the basis that the obligation to finalise, agree, achieve or obtain the relevant matter has become an obligation to finalise, agree, achieve or obtain the relevant matter within a reasonable time or on any other basis at law or in equity.
- (e) The Contractor acknowledges that:
 - (i) an absolute discretion in the Contract Administrator or [## INSERT] under clause 2 is not required to be exercised for the benefit of the Contractor;
 - (ii) neither the Contract Administrator nor [## INSERT] is bound to exercise any such absolute discretion in any particular manner or having regard to any particular consideration notwithstanding that such considerations might be stated in the Contract;
 - (iii) no provision of clause 2 conferring such an absolute discretion gives the Contractor any rights (including any right to make any Claim arising out of the exercise or failure to exercise the discretion); and
 - (iv) the exercise or failure to exercise such an absolute discretion is not capable of being the subject of a dispute or difference for the purpose of clause 15 or otherwise subject to review.
- (f) The Contractor acknowledges that none of:
 - (i) Delivery Phase Approval being achieved;
 - (ii) the issuance by [## INSERT] of a notice under clause 2.10(a);
 - (iii) any review of, comment upon, approval of, consent to or rejection of, or failure to review, comment upon, approve, consent to or reject, or

any negotiation in respect of, any matter relevant to achieving Delivery Phase Approval (including any cost plan prepared in accordance with clause 2.6) or any obligation of the Contractor during the Planning Phase including in respect of the performance of the Contractor's obligations under this clause 2; and

- (iv) the carrying out of the ECI Activities or any other fact, matter or thing during the Planning Phase,

will:

- (v) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract (whether in respect of the Planning Phase or the Delivery Phase) or otherwise at law or in equity;
- (vi) prejudice [## INSERT] rights against the Contractor under the Contract (whether in respect of the Planning Phase or the Delivery Phase) or otherwise at law or in equity; or
- (vii) constitute an admission by [## INSERT] that the Contractor has duly performed and discharged its obligations under the Contract during the Planning Phase.

2.12 Failure to Achieve Delivery Phase Approval

If [## INSERT] issues a notice under clause 2.10(a)(ii), then:

- (a) the Contractor will:
 - (i) have no entitlement to design, construct, commission, complete or handover any part of the Works;
 - (ii) be entitled to payment of the Planning Phase Price due and payable for the Contractor's Activities completed in accordance with the Contract before issue of the relevant notice; and
 - (iii) not be entitled to payment of any portion of the Delivery Phase Price or to make any Claim (to the extent permitted by law) against [## INSERT] arising out of, or in any way in connection with, the relevant notice, this Contract, the Contractor's Activities or the Works other than for the amount payable under subparagraph (ii);
- (b) the Contractor must:
 - (i) comply with clause 20.4, including by handing over to the Contract Administrator copies (or, where required by the Contract Administrator, originals) of all Project Documents prepared by the Contractor to the date of issue of the relevant notice (whether complete or not);
 - (ii) immediately take all steps necessary to novate to [## INSERT] (or its nominee) any of the subcontractors required by the Contract Administrator to be novated; and
 - (iii) co-operate with [## INSERT] and any third parties required by the Contract Administrator and take all other steps necessary to ensure that [## INSERT] is able to re-tender or procure the execution of the Works under paragraph (c)(i); and
- (c) [## INSERT] may:

- (i) re-tender the execution of the Works (whether with or without obtaining a tender from the Contractor) or procure the execution of the Works in any other manner which [## INSERT] may determine; and
- (ii) without limiting the licence granted under clause 6.8, use the Project Documents for the purposes of re-tendering or procuring the execution of the Works under subparagraph (i).

3. PERSONNEL

3.1 Contract Administrator

- (a) The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of [## INSERT] (and not as an independent certifier, assessor or valuer).
- (b) The Contractor must:
 - (i) comply with any direction by the Contract Administrator given or purported to be given under a provision of the Contract; and
 - (ii) not comply with any direction of [## INSERT] other than as expressly stated in the Contract.
- (c) Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of Contract Administrator

- (a) [## INSERT] may at any time replace the Contract Administrator, in which event [## INSERT] will appoint another person as the Contract Administrator and notify the Contractor of that appointment.
- (b) Any substitute Contract Administrator appointed under clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

3.3 Parties' Conduct

Without limiting any of the rights or obligations of [## INSERT] and Contractor under the Contract, [## INSERT] and Contractor must co-operate with each other in carrying out their obligations under the Contract.

3.4 Contract Administrator's Representative

- (a) The Contract Administrator may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract; and
 - (ii) revoke any appointment under subparagraph (i) by notice in writing to the Contractor.
- (b) As at the Award Date, the Contract Administrator is deemed to have appointed the persons specified in the Contract Particulars to carry out the functions specified in the Contract Particulars.
- (c) All references in the Contract to the Contract Administrator include a reference to a representative appointed under clause 3.4.

3.5 Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

3.6 Key People for the Contractor's Activities

The Contractor must:

- (a) employ those people specified in the Contract Particulars, including the Contractor's Representative, ESD and WOL Manager and Quality Manager in the jobs specified in the Contract Particulars;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

3.7 Removal of Persons

- (a) The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.
- (b) The Contractor must ensure that this person is not again involved in the Contractor's Activities.

3.8 Industrial Relations

In carrying out the Contractor's Activities, the Contractor must:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
- (d) comply with all other requirements of the Contract relating to industrial relations.

3.9 Monthly Meeting

- (a) The Contractor must:
 - (i) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
 - (ii) discuss the report it has prepared under clause 3.10 and such other matters as the Contract Administrator may from time to time require;
 - (iii) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
 - (iv) if it requires instructions from [## INSERT], make all necessary recommendations with respect to the instructions required.
- (b) The Contract Administrator must:
 - (i) before each meeting:
 - A. prepare an agenda for the meeting; and
 - B. issue an agenda for the meeting; and
 - (ii) after each meeting:

- A. prepare minutes of the meeting; and
- B. issue minutes of the meeting.

3.10 Contractor's Monthly Report

At least 7 days prior to each meeting under clause 3.9, the Contractor must provide the Contract Administrator with a monthly report in such form as the Contract Administrator requires from time to time and which must include at a minimum:

- (a) detailed particulars of the progress of the Contractor's Activities and the Works including:
 - (i) key activities, meetings and other events in the previous month;
 - (ii) if the Contract requires the Contractor to design any part of the Works, the status of all Design Documentation (including any dispensations being pursued);
 - (iii) the status of all Approvals;
 - (iv) photographs of the Contractor's Activities and the Works; and
 - (v) any deviations from the then current Planning Phase Program or Delivery Phase Program (as the case may be);
- (b) detailed particulars of all:
 - (i) payment claims, payment statements and payments;
 - (ii) Variation Price Requests, responses, Variation Orders, Contractor requests for Variations under clause 11.7 and proposed adjustments to the Contract Price;
 - (iii) written claims and notices given and received under clause 10 in respect of delays and extensions of time and extensions of time to the Date for Completion;
 - (iv) other Claims made by the Contractor (including in respect of Latent Conditions, Statutory Requirements and the resolution of ambiguities under clause 6.11);
 - (v) calls, attendances, recommendations and actions taken in respect of all Defects (in accordance with clause 9.14);
 - (vi) disputes under clause 15; and
 - (vii) notices under clause 16.1 or 16.2;
- (c) detailed particulars of any risks, opportunities, issues or matters which in the Contractor's opinion:
 - (i) are significantly impacting; or
 - (ii) have the potential to significantly impact,

the Contractor's Activities or the Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters. In reporting on such risks, opportunities, issues or matters, the Contractor must have regard to and incorporate as appropriate the risks, opportunities and issues identified by it in its tender for the Contractor's Activities;
- (d) confirmation of compliance with the WHS Legislation and detailed particulars of all work health and safety matters arising out of or in connection with clause 8.16, including:

- (i) the Work Health and Safety Plan (including all reviews, updates and amendments to the Work Health and Safety Plan in accordance with clause 9.2);
- (ii) details of all proactive risk management measures implemented by the Contractor to prevent systemic work health and safety issues, incidents or accidents during the Contractor's Activities and the Works;
- (iii) details of lead indicator data, including:
 - A. inductions, training and other work health and safety awareness programmes conducted;
 - B. Site audits and verification activities (including copies of Site audit reports and verification activity reports); and
 - C. inspections of Plant, Equipment and Work;
- (iv) without limiting the Contractor's obligations to notify the Contract Administrator under:
 - A. clause 8.16(b)(i) and (c), summary data regarding notifiable incidents; and
 - B. clause 8.16(b)(ii) and (b)(iii), details of all incidents and accidents and the preventative, corrective and remedial action which has been, is being or is proposed to be taken in respect of such incidents and accidents;
- (v) relevant statistics and other information regarding lost time injury days; and
- (vi) all other work health and safety matters required by the Contract or the Contract Administrator;
- (e) confirmation of compliance with, and (as applicable) an update in respect of:
 - (i) the WHS Accreditation Scheme;
 - (ii) quality assurance requirements, including the Quality Plan;
 - (iii) ESD and WOL requirements, including the ESD and WOL Plan;
 - (iv) Site-related requirements, including the Site Management Plan;
 - (v) commissioning and handover requirements, including the Project Lifecycle and HOTO Plan and Annexure 1;
 - (vi) environmental requirements, including the Environmental Management Plan;
 - (vii) local industry participation requirements, including the Local Industry Capability Plan;
 - (viii) information security requirements, including clause 20; and
 - (ix) any other security requirements,
 together with detailed particulars of all matters relevant to the items described in subparagraphs (i) - (ix);
- (f) in respect of Hazardous Substances (if any) any information as required by the Special Conditions; and
- (g) any other matters required by the Contract Administrator.

4. SECURITY

4.1 Form

The Contractor must, as a condition precedent to Delivery Phase Approval, provide security to [## INSERT]:

- (a) in the form of Approved Security; and
- (b) in the amounts specified in the Contract Particulars for the Works or a Stage.

4.2 Release of Security

Subject to any other rights or remedies of [## INSERT] under the Contract or otherwise at law or in equity (including the right of set-off in clause 12.15), [## INSERT] must:

- (a) within 14 days of the issue of a Notice of Completion for the Works or a Stage, release from the security held under clause 4.1, 50% of the security held for the Works or the Stage under clause 4.1;
- (b) within 14 days of the expiration of the Defects Liability Period for the Works or a Stage (excluding any extensions under clause 9.11), release such amount of the security under clause 4.1 then held for the Works or the Stage, as the Contract Administrator determines to be reasonable, having regard to the work to which any remaining Defects Liability Period applies, to ensure [## INSERT] interests are not prejudiced; and
- (c) release the balance of the security then held under clause 4.1 following the latest of:
 - (i) the expiry of the last Defects Liability Period; or
 - (ii) the Contractor has complied with all its obligations under the Contract.

4.3 Interest

(a) [## INSERT]:

- (i) is not obliged to pay the Contractor interest on:
 - A. the Approved Security; or
 - B. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
- (b) If [## INSERT] makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
- (i) [## INSERT] will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which [## INSERT] is entitled at the time of such call; and
 - (ii) the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to [## INSERT] at the time such amounts become payable.

4.4 Deed of Guarantee and Undertaking

Clause 4.4 does not apply unless the Contract Particulars state that it applies.

The Contractor must provide to [## INSERT] a Deed of Guarantee and Undertaking duly executed by the Contractor and the Related Body Corporate of the Contractor specified in the Contract Particulars as a condition precedent to Delivery Phase Approval.

5. RISKS AND INSURANCE

5.1 Risk of Works

Except to the extent that it arises from a [## INSERT] Risk, the Contractor will bear the risk of and indemnify [## INSERT] against:

- (a) any loss of or damage to:
 - (i) the Works or a Stage;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by [## INSERT] to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss of or damage to the Works or a Stage, a Notice of Completion is issued for the Works or the Stage; and
 - (v) otherwise, a Notice of Completion is issued for the Works or the last Stage to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works or the Stage, any loss of or damage to the Works or the Stage arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Works or the Stage.

5.2 Other Risks

Except to the extent that it arises from a [## INSERT] Risk, the Contractor will bear the risk of and indemnify [## INSERT] against:

- (a) any loss of or damage to property of [## INSERT] (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by or arising out of or in connection with the Contractor's Activities or the Works, provided that the Contractor's responsibility to indemnify [## INSERT] will be reduced to the extent that an act or omission of [## INSERT], the Contract Administrator or an Other Contractor contributed to the loss, damage, injury or death.

5.3 Reinstatement

- (a) During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:
 - (i) subject to subparagraph (ii), promptly replace or otherwise make good any loss of, or repair the damage to, the Works or the Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
 - (ii) where the loss or damage arises from a [## INSERT] Risk, only comply with subparagraph (i) to the extent directed by the Contract Administrator.
- (b) If paragraph (a)(i) applies, the Contractor will bear the cost of such replacement, making good or repair. If paragraph (a)(ii) applies, the replacement, making good or repair directed by the Contract Administrator will

be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) cause to be effected and maintained or otherwise have the benefit of the following insurance:
 - (i) from the Award Date:
 - A. Public Liability Insurance;
 - B. Workers Compensation Insurance;
 - C. if the Contractor's Activities are performed, or the Contractor's employees perform work, are employed or normally reside, in any jurisdiction outside [## INSERT], Employers' Liability Insurance;
 - D. whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - E. such other insurances on such terms as are specified in the Contract Particulars; and
 - (ii) as a condition precedent to Delivery Phase Approval:
 - A. Construction Risks Insurance; and
 - B. such other insurances on such terms as are specified in the Contract Particulars,
- each of which must be:
- (iii) for the amounts specified in the Contract Particulars;
 - (iv) with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (v) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (b) in relation to Construction Risks Insurance and Public Liability Insurance, ensure that each of these policies name [## INSERT] as a party (within the definition of 'Insured') to whom the benefit of the insurance cover extends;
 - (c) in relation to the Workers Compensation Insurance and Employers' Liability Insurance ensure that:
 - (i) to the extent permitted by law the insurance extends to provide indemnity to [## INSERT] as the Contractor's principal in respect of any statutory and common law liability to the Contractor's employees; and
 - (ii) each of its subcontractors has Workers Compensation Insurance to the extent required by law, and Employers' Liability Insurance (if the relevant Contractor's Activities are performed or the subcontractor's employees perform work, are employed or normally reside in any jurisdiction outside [## INSERT]), covering the subcontractor in respect of its statutory and common law liability to its employees, in the same manner as the Contractor is required to do under subparagraph (i);

- (d) in relation to the Public Liability Insurance, ensure the insurance is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
- (e) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
 - (i) has a retroactive date of no later than the commencement of the Contractor's Activities; and
 - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
- (f) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
 - (i) it has complied with clause 5.4; and
 - (ii) each insurance required under clause 5.4 is current and complies with clause 5.4,as required by the Contract Administrator from time to time;
- (g) ensure that:
 - (i) if the insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy, the Contractor as soon as possible informs [## INSERT] in writing that the notice has been given and effects replacement insurance as required by the Contract and informs [## INSERT] in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and
 - (ii) if the Contractor cancels, rescinds or fails to renew any required insurance policy, the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs [## INSERT] in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
- (h) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) complies at all times with the terms of each insurance policy;
 - (iii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iv) punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contract Administrator copies of receipts for payment of premiums upon request by the Contract Administrator;
 - (v) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;

- (vi) immediately notifies the Contract Administrator (in writing) if the Contractor fails to renew any required insurance policy or pay a premium;
 - (vii) does not cancel or allow an insurance policy to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (viii) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
 - (ix) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies;
 - (x) does everything reasonably required by [## INSERT] and the Contract Administrator to enable [## INSERT] to claim and to collect or recover money due under any of the insurances in respect of which it is required to have the benefit of coverage under this Contract; and
 - (xi) maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
- (i) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause 5.4 for the amounts specified in the Contract Particulars; and
 - (j) bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under this clause 5.4. Any excess borne by [## INSERT] will be a debt due from the Contractor to [## INSERT].

For the purpose of paragraph (f), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirement) and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause 5.4.

The obtaining of insurance as required under clause 5.4 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

5.5 Failure to Insure

- (a) If the Contractor fails to comply with clause 5.4, [## INSERT] may (in its absolute discretion and without prejudice to any other rights it may have) take out the relevant insurance and the cost of such insurances will be a debt due from the Contractor [## INSERT].
- (b) The Contractor must take all necessary steps to assist [## INSERT] in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "all necessary steps" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of [## INSERT].

5.6 Period of Insurance

The insurance which the Contractor is required to cause to be effected and maintained or otherwise have the benefit of under clause 5.4 must be maintained:

- (a) in the case of Construction Risks Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
- (b) in the case of Public Liability Insurance:
 - (i) if Delivery Phase Approval is achieved:
 - A. written on an occurrence basis, until the completion of the Contractor's Activities; or
 - B. written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
 - 1) end of the last Defects Liability Period;
 - 2) date upon which all Defects have been rectified in accordance with the Contract; and
 - 3) completion of the Contractor's Activities; or
 - (ii) if [## INSERT] issues a notice under clause 2.10(a)(ii):
 - A. written on an occurrence basis, until the completion of the Contractor's Activities; or
 - B. written on a claims made basis, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
 - 1) last day of the Planning Phase; and
 - 2) completion of the Contractor's Activities;
- (c) in the case of Workers Compensation Insurance and Employers' Liability Insurance:
 - (i) if Delivery Phase Approval is achieved, until the latest of the:
 - A. end of the last Defects Liability Period;
 - B. date upon which all Defects have been rectified in accordance with the Contract; and
 - C. completion of the Contractor's Activities; or
 - (ii) if [## INSERT] issues a notice under clause 2.10(a)(ii), until the latest of the:
 - A. last day of the Planning Phase; and
 - B. completion of the Contractor's Activities; and
- (d) in the case of Professional Indemnity Insurance or Errors and Omissions Insurance:
 - (i) if Delivery Phase Approval is achieved, until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
 - A. end of the last Defects Liability Period;

- B. date upon which all Defects have been rectified in accordance with the Contract; and
 - C. completion of the Contractor's Activities; or
- (ii) if [## INSERT] issues a notice under clause 2.10(a)(ii), until the expiration of the run-off period specified in the Contract Particulars following the latest of the:
- A. last day of the Planning Phase; and
 - B. completion of the Contractor's Activities.

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform [## INSERT] in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required under clause 5.4 or any claim actually made against the Contractor or [## INSERT] which may be covered by an insurance policy required by clause 5.4;
- (b) keep [## INSERT] informed of all significant developments concerning the claim, except in circumstances where [## INSERT] is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and [## INSERT] in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy required by the Contract or any claim actually made against the Contractor, the subcontractor or [## INSERT] which may be covered by an insurance policy required by the Contract,

provided that, in respect of Professional Indemnity Insurance, the Contractor:

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify [## INSERT] if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

5.8 Procedure upon Loss or Damage

If loss of or damage to any part of the Works or a Stage occurs whilst the Contractor bears the risk of loss of or damage to the Works or the Stage under clause 5.1:

- (a) the Contractor must:
 - (i) make the Works or the Stage and the Site safe and secure;
 - (ii) notify the relevant insurers and comply with any reasonable instructions from the insurer(s); and
 - (iii) promptly consult with the Contract Administrator to discuss the steps to be taken to:
 - A. comply with its obligations under clause 5.3; and
 - B. ensure that, to the greatest extent possible, the Contractor continues to comply with its other obligations under the Contract; and

- (b) upon settlement of a claim under the Construction Risks Insurance relating to this loss or damage, the amount of money received from this insurance (excluding any amount provided for the fees of any of [## INSERT] consultants) will:
 - (i) be paid to the Contractor in accordance with the procedure in clauses 12.2 - 12.5 as and when the Contractor replaces, makes good or repairs the loss of or damage to the Works or the Stage; and
 - (ii) be the limit of the Contractor's entitlement to payment for the replacement, making good or repair of the loss or damage to the Works or the Stage.

5.9 Cross Liability

- (a) Clause 5.9 does not apply to Professional Indemnity Insurance, Errors and Omissions Insurance or Workers Compensation Insurance.
- (b) Where the Contract requires insurance to provide cover to more than one insured, the Contractor must ensure that, to the extent permitted by law, the insurance policy provides that:
 - (i) the insurer agrees to treat each insured as a separate insured as though a separate contract of insurance had been entered into with each insured, without increasing the overall limit of indemnity;
 - (ii) the insurer will not impute to any insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured;
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom the benefit of insurance cover extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
 - (iv) a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds; and
 - (v) the insurer agrees not to reduce or exclude the insurance cover of an insured because the:
 - A. liability of the insured is limited by the operation of the proportionate liability legislation of any [## INSERT] jurisdiction; or
 - B. proportionate liability legislation of any [## INSERT] jurisdiction is lawfully excluded by the contract.

5.10 Insurances Secondary

- (a) [## INSERT] is not obliged to make a claim or institute proceedings against any insurer under the insurances before enforcing any of its rights or remedies under the indemnities referred to in this Contract or generally.
- (b) The Contractor is not relieved from and remains fully responsible for its obligations and liabilities in accordance with this Contract and at law regardless of whether the insurances respond or fail to respond to any claim and regardless of the reason why any insurance responds or fails to respond.

5.11 Exclusion of Consequential Loss and Limitation on Liability

- (a) Subject to paragraphs (b) and (c):

- (i) neither [## INSERT] nor the Contractor will be liable to the other for any Consequential Loss howsoever arising; and
 - (ii) to the extent permitted by law, the maximum aggregate liability of the Contractor to [## INSERT] arising out of or in connection with the Contract (whether arising in contract, in equity, tort (including negligence), by way of indemnity, under statute or otherwise at law) is limited to the amount specified in the Contract Particulars.
- (b) Paragraph (a) does not apply to a liability of the Contractor:
- (i) for any deliberate breach or repudiation of the Contract;
 - (ii) under the indemnities in clauses 1.3(f)(i), 5.1, 5.2, 6.10(b), 18.5(a)(xiv) and 20.5(b);
 - (iii) for Fraud;
 - (iv) to the extent that:
 - A. payments are received by the Contractor; or
 - B. the Contractor is entitled to be indemnified (other than in circumstances where the relevant insurer is insolvent),
under any insurance policy or policies required to be effected and maintained under the Contract in relation to that liability or payments would have been received by the Contractor or the Contractor would have been entitled to be indemnified under such insurance policy or policies but for:
 - C. the failure of the Contractor to effect and maintain the required insurance policy or insurance policies;
 - D. any failure of an insurance policy to respond due to the misconduct of the Contractor (including a misrepresentation to the insurer or failure to make proper disclosure or to comply with the requirements of the policy);
 - E. the failure by the Contractor to diligently pursue any claim for indemnity under any insurance policy or insurance policies; or
 - F. the reliance by the insurer of the required insurance on this clause 5.11 to deny liability on the basis that the party has no liability to [## INSERT];
 - (v) for fines or penalties incurred by [## INSERT] arising from the Contractor's Activities; and
 - (vi) in respect of paragraph (a)(i) only, for liquidated damages under clause 13.7.
- (c) Paragraph (a)(i) does not apply to a liability of [## INSERT] for:
- (i) any deliberate breach or repudiation of the Contract;
 - (ii) Fraud; or
 - (iii) fines or penalties incurred by the Contractor arising from an act or omission of [## INSERT].
- (d) For the purposes of this clause 5.11:

- (i) **Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of goodwill, loss of use (other than loss of use of the Works or other [## INSERT] property) or loss of production or financing costs, whether present or future, fixed or unascertained, actual or contingent; and
- (ii) **Fraud** includes dishonesty (such as obtaining a benefit, or causing loss, by deception or other means).

6. DESIGN AND DOCUMENTATION

6.1 Contractor's Documentation Program

To the extent that the Contractor is required to design any part of the Works, the Contractor must, as part of the Delivery Phase Program it is to prepare under clause 2.5, submit to the Contract Administrator for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Design Documentation within the period of time within which the Contract Administrator may review the Design Documentation under clause 6.3.

6.2 Delivery Phase - Contractor's Design

In the Delivery Phase, the Contractor must:

- (a) design the parts of the Works (if any) which the Contract requires it to design in accordance with the Works Description and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Design Documentation; and
- (b) submit the Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 6.1.

6.3 Contract Administrator May Review Contractor's Design

- (a) The Contract Administrator may:
 - (i) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within the number of days specified in the Contract Particulars of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in the Contract Administrator's reasonable opinion the Design Documentation does not comply with the requirements of the Contract.
- (b) If any Design Documentation is rejected, the Contractor must submit amended Design Documentation to the Contract Administrator.
- (c) The Contractor must not commence construction of any part of the Works to which any Design Documentation it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days specified in the Contract Particulars to review the Design Documentation and has not rejected the Design Documentation.

6.4 No Obligation to Review

- (a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of [## INSERT] in relation to, the Design Documentation will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or

- (ii) prejudice [## INSERT] rights against the Contractor under the Contract or otherwise at law or in equity.

6.5 Copies of Contractor's Design

For the purposes of clauses 6.2(b) and 6.3, the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of Design Documentation in:

- (a) hard copy; and
- (b) electronic copy,

in accordance with the requirements specified in the Contract Particulars.

6.6 Fitness for Purpose

The Contractor warrants that:

- (a) the Design Documentation it prepares will be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description; and
- (b) upon Completion, the Works or the Stage will, to the extent that the Works have or the Stage has been designed by the Contractor, be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description.

6.7 Availability

The Contractor must:

- (a) keep available for the use of the Contract Administrator, [## INSERT] or anyone else acting on behalf of [## INSERT] one complete set of the Works Description, all Design Documentation (including all Design Documentation issued by the Contract Administrator under clause 8.8 if Option 1 of that clause applies) and all other Project Documents directed in writing by the Contract Administrator; and
- (b) if required by any Statutory Requirement, keep such documents available on Site.

6.8 Licence over Project Documents

The Contractor grants to [## INSERT] a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

- (a) arises, for each Project Document, immediately when the Project Document is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to [## INSERT] or the Contract Administrator,under, for the purposes of, arising out of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor;
- (b) includes an unlimited right to sub-licence;
- (c) without limitation, extends to:
 - (i) any subsequent occupation, use, operation and maintenance of or additions, alterations or repairs to the Works; and
 - (ii) use in any way for any other [## INSERT] project; and

- (d) survives the termination of the Contract on any basis.

6.9 Intellectual Property Warranties

The Contractor warrants that:

- (a) the Contractor owns all Intellectual Property Rights in the Project Documents or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by the Contract;
- (b) use by [## INSERT] or any sublicensee or subsublicensee of the Project Documents in accordance with the Contract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
- (c) neither [## INSERT] nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Project Documents, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
- (d) the use by [## INSERT] or by any sublicensee or subsublicensee of the Project Documents in accordance with the Contract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).

6.10 Intellectual Property Rights

The Contractor must:

- (a) ensure that the Contractor's Activities do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
- (b) indemnify [## INSERT] in respect of all claims against, and costs, losses, damages or liabilities suffered or incurred by [## INSERT] arising out of or in connection with any actual or alleged infringement of any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right.

6.11 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Design Documentation (which the Contractor is entitled to use for construction purposes under clause 6.3) or any other Project Document:

- (a) subject to paragraphs (b) and (c), the order of precedence specified in the Contract Particulars will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between the Works Description and any other requirement of the Contract (including any other requirement of the Works Description), the greater, higher or more stringent requirement, standard, level of service or scope (as applicable) will prevail;
- (c) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and
- (d) irrespective of whether paragraphs (a) to (c) apply, if it is discovered by:
 - (i) the Contractor or [## INSERT], then the party discovering it must promptly give the Contract Administrator and the other party notice in writing. After receipt of a notice from a party the Contract Administrator must within 14 days of receipt of the notice instruct the Contractor as to the course it must adopt; or

- (ii) the Contract Administrator, then the Contract Administrator must promptly give the parties notice in writing together with an instruction to the Contractor as to the course it must adopt,

including, where applicable, by applying the principles in paragraphs (a) to (c) above.

6.12 Access to Premises and Project Documents

The Contractor must:

- (a) at the request of [## INSERT] at any time during the Contractor's Activities and the period of 10 years following the latest of the:
 - (i) end of the last Defects Liability Period;
 - (ii) date upon which all Defects have been rectified in accordance with the Contract; and
 - (iii) completion of the Contractor's Activities,provide and make available:
 - (iv) access to its premises and make the Project Documents available for inspection by the Contract Administrator or anyone else acting on behalf of [## INSERT];
 - (v) such copies of the Project Documents as the Contract Administrator or anyone else acting on behalf of [## INSERT] may require, in such formats as may be required;
 - (vi) all such facilities and assistance, answer all questions of, co-operate with and do everything necessary to assist the Contract Administrator or anyone else acting on behalf of [## INSERT]; and
 - (vii) any officers, employees, agents or subcontractors for interviews with the Contract Administrator or anyone else acting on behalf of [## INSERT];
- (b) as a condition precedent to Completion, deliver to the Contract Administrator a copy of the installed version of each item of software comprising the IT Equipment incorporated in the Works or the Stage, in a storage medium reasonably satisfactory to [## INSERT], together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising under clause 6.12 as if the subcontractor were the Contractor.

6.13 Contractor's Design - Design Certification

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, if the Contract requires the Contractor to design any part of the Works, in the Delivery Phase the Contractor must, with each submission of Design Documentation under clause 6.2, payment claim under clause 12.2 and as a condition precedent to Completion, provide the Contract Administrator with:

- (a) a certificate in the form of the Contractor Design Certificate which certifies that (to the extent then applicable):
 - (i) the Design Documentation complies with:

- A. subject to clause 8.3(a), all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the Contract; and
 - (ii) the Works comply or the Stage complies with the Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.3(c); and
- (b) a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form of the Consultant Design Certificate or Subcontractor Design Certificate which certifies that (to the extent then applicable):
 - (i) all design carried out by that subcontractor complies with:
 - A. subject to the subcontract, all Statutory Requirements (including the WHS Legislation); and
 - B. the requirements of the subcontract; and
 - (ii) the Works comply or the Stage complies with the design carried out by that subcontractor,

except to the extent set out in such certificates.

6.14 Samples

- (a) The Contractor must:
 - (i) obtain each sample or range of samples required by the Contract; and
 - (ii) submit the sample or range of samples it obtains to the Contract Administrator in accordance with:
 - A. in the Planning Phase, the Planning Phase Program; or
 - B. in the Delivery Phase, the Delivery Phase Program.
- (b) The Contract Administrator may:
 - (i) review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Contractor; and
 - (ii) within the number of days specified in the Contract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples if, in the reasonable opinion of the Contract Administrator, the sample or range of samples does not comply with the requirements of the Contract.
- (c) If any sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Contract Administrator.
- (d) The Contractor must not commence construction of any part of the Works to which the sample or range of samples which it has submitted to the Contract Administrator applies unless the Contract Administrator has had the number of days specified in the Contract Particulars to review the sample or range of samples and has not rejected the sample or range of samples.
- (e) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract.

- (f) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of [## INSERT] in relation to, the sample or range of samples will:
- (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - (ii) prejudice [## INSERT] rights against the Contractor whether under the Contract or otherwise at law or in equity.

7. SITE

7.1 Contractor to Inform Itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the Contract Price contains sufficient allowances to protect it against any of these risks eventuating,

including, in respect of risks arising in the Delivery Phase, as informed by the ECI Activities.

7.2 Site and Other Information

Without limiting clause 7.7 the:

- (a) [## INSERT] has made available to the Contractor before the Award Date, or may make available to the Contractor on or after the Award Date, certain information, data and documents obtained by [## INSERT] for the purpose of the Works, including from investigations it carried out as to the conditions on, in, under or in the vicinity of the Site;
- (b) [## INSERT] does not warrant, guarantee or make any representation about the relevance, completeness, accuracy or adequacy of any such information, data and documents made available to the Contractor;
- (c) Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 7.7 applies to the information, data and documents; and
- (d) Contractor acknowledges and agrees that, to the extent permitted by law, it will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with such information, data and documents.

7.3 Notice of Latent Condition

Clauses 7.3 and 7.4 apply unless the Contract Particulars state that they do not apply.

- (a) If the Contractor considers it has encountered or found a Latent Condition, it must immediately give the Contract Administrator and [## INSERT] notice in writing.
- (b) The Contract Administrator must, within 14 days of receipt of the Contractor's notice under paragraph (a):
 - (i) notify the Contractor and [## INSERT] of its determination whether a Latent Condition has been encountered or found; and
 - (ii) instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Latent Condition.

7.4 Contractor's Entitlement

- (a) If, in the Delivery Phase, the Contract Administrator determines that a Latent Condition has been encountered or found, the Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under clause 7.3(a) which arise directly from the Latent Condition and the

Contract Administrator's instruction under clause 7.3(b)(ii), as determined by the Contract Administrator.

- (b) To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with a Latent Condition or the Contract Administrator's instruction under clause 7.3(b)(ii), other than under paragraphs (a)(i) and (a)(ii).

7.5 Site Access Generally

- (a) [## INSERT]:
 - (i) is not obliged to:
 - A. provide the Contractor with sole access to the Site; or
 - B. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
 - (ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
 - (iii) must use reasonable endeavours to ensure that any Other Contractors engaged by [## INSERT] comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, insurance and work health and safety.
- (b) In carrying out the Contractor's Activities, the Contractor must, and must ensure that its officers, employees, subcontractors and agents comply with any direction of the Contract Administrator in relation to Site access or conduct at the Site.
- (c) Failure by [## INSERT] to give access as required by clause 2.8 or 2.10(b)(ii) will not be a breach of the Contract but will, in respect of failure to provide access as required by clause 2.10(b)(ii) only, during the Delivery Phase, entitle the Contractor to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from [## INSERT] failure to give the Contractor access to the Site, as determined by the Contract Administrator.
- (d) To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with [## INSERT] failure to give the Contractor access to the Site, other than under paragraph (c).

7.6 Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to [## INSERT], Other Contractors and any person authorised by [## INSERT] or the Contract Administrator to occupy, use, operate, maintain or access the Site in their occupation, use, operation or maintenance of or access to any part of the Site, including any occupation, use, operation or maintenance of or access to part of the Works or a Stage under clause 13.5;

- (b) at all reasonable times give [## INSERT], the Contract Administrator, Other Contractors and any person authorised by [## INSERT] or the Contract Administrator access to the Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
- (c) provide [## INSERT] and the Contract Administrator with every reasonable facility necessary for the supervision, examination, inspection and testing of the Contractor's Activities or the Works.

7.7 Non-Reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by [## INSERT] or anyone on behalf of [## INSERT] (including any information, data and documents provided under clause 7.2(a)); or
 - (ii) the relevance, completeness, accuracy or adequacy of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract and will carry out the Contractor's Activities based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges and agrees that [## INSERT] has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. CARRYING OUT OF THE CONTRACTOR'S ACTIVITIES

8.1 Description of Works

Subject to clause 6.11, the Contractor must construct the Works in accordance with:

- (a) the Works Description and any Design Documentation issued by the Contract Administrator under clause 8.8 (if Option 1 of that clause applies);
- (b) if the Contract requires the Contractor to design any part of the Works, any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for construction purposes under clause 6.3;
- (c) any direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation directed by the Contract Administrator by a document titled "Variation Order"; and
- (d) the other requirements of the Contract.

8.2 All Work Included

- (a) The Contractor has allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Works Description or any Design Documentation.
- (b) Any such Plant, Equipment and Work, materials and other work:
 - (i) must be undertaken and provided by the Contractor; and
 - (ii) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.3 Statutory Requirements

In carrying out the Contractor's Activities, the Contractor must:

- (a) unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
- (b) apply for and obtain all Approvals other than those specified in the Contract Particulars;
- (c) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
- (d) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Contractor's Activities or the Works issues to the Contractor.

8.4 Change in Statutory Requirements or Variance with Contract

- (a) If:
 - (i) there is any change in a Statutory Requirement after the Award Date; or
 - (ii) a Statutory Requirement is at variance with the Contract,then the party discovering the change or variance must promptly give the Contract Administrator and the other party notice in writing.

- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the change or variance.
- (c) Subject to paragraph (d), the Contractor will be entitled, where the change or variance occurs in the Delivery Phase, to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
- (d) The Delivery Phase Price will be decreased by any saving made by the Contractor which arise directly from the change or variance and the Contract Administrator's instruction under paragraph (b), as determined by the Contract Administrator.
- (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the change or variance or the Contract Administrator's instruction under paragraph (b), other than under paragraph (c)(i) and (ii).

8.5 Subcontracting

The Contractor:

- (a) must not, without the prior written approval of the Contract Administrator, subcontract any work specified in the Contract Particulars except to a subcontractor specified in the Contract Particulars;
- (b) will:
 - (i) not be relieved of any of its liabilities or obligations under the Contract; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted, as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe any of the requirements of the relevant subcontract;
- (c) will be vicariously liable to [## INSERT] for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, the Contractor's Activities;
- (d) must ensure that all subcontract documentation is prepared and all procurement processes for subcontractors are conducted:
 - (i) consistently with the principles of [## INSERT] Procurement Rules, including the rules in relation to "value for money", "encouraging competition", "efficient, effective, economical and ethical procurement", "accountability and transparency" and the need to achieve value for money, as described in [## INSERT] Procurement Rules;
 - (ii) with the highest standards of probity, fairness and equal opportunity; and
 - (iii) in accordance with all other Statutory Requirements;

- (e) must ensure that each subcontract contains provisions:
 - (i) which bind the subcontractor to participate in any novation required by [## INSERT] under clause 14.5(a)(ii); and
 - (ii) as otherwise required by the Contract;
- (f) must, if requested by the Contract Administrator:
 - (i) execute;
 - (ii) procure the relevant subcontractor to execute; and
 - (iii) deliver to the Contract Administrator,
 - a Subcontractor Deed of Covenant or Consultant Deed of Covenant, duly completed with all relevant particulars:
 - (iv) as a condition precedent to seeking the prior written approval of the Contract Administrator under paragraph (a); or
 - (v) when such approval is not required, within the time required by the Contract Administrator and in any event before commencement of work by the relevant subcontractor; and
- (g) must obtain and hold satisfactory and valid STRs of any subcontractor referred to in paragraph (a) where the subcontract price is valued (or estimated) to be over [Insert Sum] (inclusive of [GST/VAT/Applicable Tax]). For the purposes of this paragraph (g), a reference to “satisfactory” and “valid” has the meaning given in clause 18.14(f).

No Subcontractor Deed of Covenant or Consultant Deed of Covenant will be construed in any way to modify or limit any of the rights, powers or remedies of [## INSERT] against the Contractor under the Contract or otherwise at law or in equity.

8.6 Collateral Warranties

- (a) The Contractor must, as a condition precedent to Completion of the Works or a Stage specified in the Contract Particulars, procure and provide [## INSERT] with the warranties specified in the Contract Particulars:
 - (i) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
 - (ii) in the form of the Collateral Warranty; and
 - (iii) for the minimum warranty periods stated in the Contract Particulars.
- (b) No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of [## INSERT] against the Contractor under the Contract or otherwise at law or in equity.
- (c) If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by the Contract:
 - (i) the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
 - (ii) [## INSERT] will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
 - (iii) for the purpose of subparagraph (ii), the Contractor irrevocably appoints [## INSERT] as its lawful attorney to execute any instrument necessary to give effect to the assignment.

- (d) No assignment under clause 8.6 will be construed in any way to modify or limit any of the rights, powers or remedies of [## INSERT] against the Contractor under the Contract or otherwise at law or in equity.

8.7 Provisional Sum Work

Clauses 8.7 to 8.12 do not apply unless the Contract Particulars state that they apply.

- (a) In the Delivery Phase, for each item of Provisional Sum Work the Contract Administrator will give the Contractor an instruction either deleting the item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the item of Provisional Sum Work.
- (b) If an item of Provisional Sum Work is deleted from the Contract:
 - (i) the Delivery Phase Price will be reduced by the amount allowed for the item of Provisional Sum Work specified in the Contract Particulars;
 - (ii) [## INSERT] may engage an Other Contractor to carry out the item of Provisional Sum Work; and
 - (iii) to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the deletion of the item of Provisional Sum Work.

8.8 Design for Provisional Sum Work to be Prepared by [## INSERT] - Option 1

- (a) If the Contractor is instructed to proceed with an item of Provisional Sum Work, [## INSERT] designers will progressively prepare the Design Documentation for the item of Provisional Sum Work.
- (b) The Contractor must attend such design and other meetings as required by the Contract Administrator to assist these designers in preparing the Design Documentation for the Provisional Sum Work and to advise upon:
 - (i) buildability issues and the choice of materials to be incorporated in the Works; and
 - (ii) the sufficiency and completeness of the Design Documentation.

8.8 Design for Provisional Sum Work to be Prepared by Contractor - Option 2

- (a) If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Contractor will progressively prepare the Design Documentation for the item of Provisional Sum Work.
- (b) The Contractor must inform the Contract Administrator when the Design Documentation is being discussed at design and other meetings and the Contract Administrator may attend all such meetings.

8.9 Tendering Provisional Sum Work

Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Contract Administrator, be carried out under subcontracts entered into by the Contractor as follows:

- (a) after the Design Documentation for the item of Provisional Sum Work has been prepared (and, if prepared by the Contractor, is in accordance with the requirements of the Contract and the Contractor is entitled to use it for construction purposes under clause 6.3), or the Contractor is otherwise instructed to proceed with the item of Provisional Sum Work, the Contractor must invite tenders:

- (i) from at least 3 persons as either specified in the Contract Particulars or proposed by the Contractor and approved by the Contract Administrator; and
- (ii) on the terms of a subcontract containing similar terms to the Contract and approved by the Contract Administrator (for that purpose, each form of subcontract specified in the Contract Particulars is approved);
- (b) the Contractor must give the Contract Administrator such details of each tender as the Contract Administrator may require;
- (c) the Contractor must recommend to the Contract Administrator which tender it believes should be accepted and, if the tender is not the lowest priced tender, it must give reasons why the lowest priced tender is not recommended; and
- (d) the Contractor must then enter into a subcontract with a tenderer as instructed by the Contract Administrator.

8.10 Delivery Phase Price Adjustment for Tendered Provisional Sum Work

After the Contractor is instructed to enter into a subcontract for an item of Provisional Sum Work under clause 8.9:

- (a) the Delivery Phase Price will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount specified in the Contract Particulars for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.12; and
- (b) any Variation to that work will be dealt with under clause 11.

8.11 Delivery Phase Price Adjustment for Other Provisional Sum Work

If the Contract Administrator directs that an item of Provisional Sum Work is not to be tendered under clause 8.9, the Delivery Phase Price will be adjusted for the item of Provisional Sum Work by the difference between:

- (a) the amount specified in the Contract Particulars for that item of Provisional Sum Work; and
- (b) either:
 - (i) an amount agreed by the parties; or
 - (ii) failing agreement, an amount determined by the Contract Administrator under clause 11.3(b) or 11.3(c)(ii) as if the item of Provisional Sum Work were a Variation.

8.12 Further Allowance for Provisional Sum Work

If, after each and every item of Provisional Sum Work has been deleted from the Contract under clause 8.7, tendered under clause 8.9 or priced under clause 8.11, the total net increase to the Delivery Phase Price after all adjustments under clauses 8.7, 8.10 and 8.11 exceeds the percentage specified in the Contract Particulars of the total amount specified for Provisional Sum Work, the Delivery Phase Price will be further increased by the percentage specified in the Contract Particulars of the amount by which the total net increase to the Delivery Phase Price exceeds the percentage specified in the Contract Particulars of the total amount specified in the Contract Particulars for Provisional Sum Work.

8.13 Co-operation with Other Contractors

Without limiting clause 8.16(a)(iii), the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid inconveniencing, interfering with, disrupting or delaying the work of Other Contractors.

8.14 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

8.15 Survey

The Contractor must, as a condition precedent to Completion of the Works or a Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:

- (a) the whole of the Works or the Stage are within any particular boundaries stipulated in the Contract except to the extent that the Works or Stage are specifically required by the Contract to be outside those boundaries; and
- (b) if required by the Works Description, structural elements of the Works or the Stage are within the tolerances specified.

8.16 Work Health and Safety

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) it complies with all Statutory Requirements and other requirements of the Contract in respect of work health and safety, including the applicable WHS Legislation;
 - (ii) where the applicable WHS Legislation does not prescribe a duty referred to in this Contract as one the Contractor must comply with, it complies with the duty contained in [## INSERT] WHS Legislation;
 - (iii) it complies with the duty under the WHS Legislation to consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iv) it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
 - (v) it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless:
 - A. it is to assist an injured person or remove a deceased person;
 - B. it is to make the area safe or to minimise the risk of a further notifiable incident; or

- C. the relevant regulator/inspector has given permission to disturb the site;
- (b) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator in respect of:
 - (i) notifiable incidents within the meaning of the WHS Legislation, immediately;
 - (ii) work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable, within 24 hours of the incident or accident occurring; and
 - (iii) all other work health and safety matters arising out of or in connection with the Contractor's Activities and the Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in the reports under clause 3.10;
- (c) for the purposes of paragraphs (a)(iv) and (b) above, in respect of any notifiable incident:
 - (i) immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant [## INSERT], [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] regulator;
 - (ii) promptly provide the Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
 - (iii) promptly provide the Contract Administrator with copies of any notice(s) or other documentation issued by the relevant [## INSERT], [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] regulator; and
 - (iv) within 10 days of the date of notification to the relevant [## INSERT], [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] regulator, provide the Contract Administrator with a summary of the related investigations, actions to be taken and any impact on the Contract that may result from the notifiable incident;
- (d) if applicable, maintain accreditation under the WHS Accreditation Scheme at all times whilst carrying out the Contractor's Activities and comply with all conditions of the WHS Accreditation Scheme;
- (e) if applicable, where the Contractor is a joint venture for the purposes of the WHS Accreditation Scheme, ensure:
 - (i) all parties holding accreditation in accordance with the WHS Accreditation Scheme at the Award Date:
 - A. maintain accreditation at all times whilst carrying out the Contractor's Activities; and
 - B. comply with all conditions of the WHS Accreditation Scheme; and
 - (ii) any parties carrying out the Contractor's Activities (where those activities include building work as defined in the *[Relevant Act]* that do not hold accreditation in accordance with the WHS Accreditation

Scheme, comply with the written undertakings provided to the Federal Safety Commissioner and lodged as part of their tender;

- (f) carry out the Contractor's Activities safely and in a manner that does not put the health and safety of persons at risk;
- (g) carry out the Contractor's Activities in a manner that protects property;
- (h) institute systems to:
 - (i) obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation; and
 - (ii) provide, in a format specified by the Contract Administrator, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:
 - A. on a monthly basis in the reports under clause 3.10;
 - B. on a quarterly basis (when requested by the Contract Administrator); and
 - C. as otherwise directed by the Contract Administrator;
- (i) provide the written assurances obtained under paragraph (h) to the Contract Administrator in accordance with paragraph (h);
- (j) without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, within 10 days of receipt provide to the Contract Administrator copies of all:
 - (i) formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or subcontractor relating to work health and safety matters;
 - (ii) formal notices issued by a health and safety representative of the Contractor or subcontractor under or in compliance with the applicable WHS Legislation; and
 - (iii) formal notices, written communications and written undertakings given by the Contractor or subcontractor to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation, arising out of or in connection with the Contractor's Activities or the Works;
- (k) exercise a duty of the utmost good faith to [## INSERT] in carrying out the Contractor's Activities to enable [## INSERT] to discharge [## INSERT] duties under the WHS Legislation;
- (l) ensure all subcontracts include provisions equivalent to the obligations of the Contractor in clause 8.16;
- (m) ensure that, if any Statutory Requirement requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - B. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or

experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

- (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (n) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless, the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (m) are met;
- (o) immediately notify the Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
- (p) without limiting the Contractor's obligations under the Contract (including paragraph (c) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of [## INSERT], provide all information or copies of documentation held by the Contractor or a subcontractor to the Contract Administrator or anyone else acting on behalf of [## INSERT] to enable [## INSERT] to comply with its obligations under the WHS Legislation;
- (q) if requested by the Contract Administrator or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contract Administrator before the Contractor or any subcontractor commences such work;
- (r) where the Contractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contract Administrator as a condition precedent to Completion and before the expiry of the Defects Liability Period information concerning:
 - (i) the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
 - (ii) the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
 - (iii) any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured;
- (s) if the Contractor is responsible for design, ensure the Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
- (t) ensure that it:
 - (i) reviews the Asbestos Management Plan and the Asbestos Register prior to commencing any physical construction works at the Site; and
 - (ii) complies with the Asbestos Management Plan at all times whilst carrying out the Contractor's Activities and the Works, including by:
 - A. ensuring its subcontractors and personnel have access to and review the Asbestos Management Plan and the Asbestos

- Register, prior to commencing any physical construction works at the Site;
- B. ensuring it engages appropriately licensed Asbestos removalist subcontractors to carry out any Asbestos Related Activities;
- C. maintaining records of all Asbestos training provided to all subcontractors and personnel and providing these to the Contract Administrator upon request; and
- D. promptly providing the Contract Administrator with:
 - 1) all documentation associated with Asbestos Related Activities (including clearance certificates, air monitoring results and tip fee receipts); and
 - 2) all relevant information confirming all instances of Asbestos Related Activities;
- (u) not use Asbestos in carrying out the Contractor's Activities;
- (v) not use, install or incorporate Asbestos into the Works;
- (w) provide a certificate to the Contract Administrator in a form satisfactory to the Contract Administrator as a condition precedent to Completion which states that:
 - (i) all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) used, installed or incorporated into the Works are entirely (meaning 100%) free of Asbestos; and
 - (ii) the Contractor has otherwise complied with all Statutory Requirements in relation to Asbestos in carrying out the Contractor's Activities and the Works;
- (x) without limiting paragraph (w), if any imported materials, goods, products, equipment and plant have or has been used, installed or incorporated into the Works, the Contractor must provide to the Contract Administrator as a condition precedent to Completion:
 - (i) sample test reports; and
 - (ii) test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method, in relation to the imported materials, goods, products, equipment or plant which have or has been used, installed or incorporated into the Works; and
- (y) if the Contractor is a designer of a structure or part of a structure for the purposes of the WHS Legislation, the Contractor must provide to the Contract Administrator, with each submission of Design Documentation under clause 6.2, a written report that specifies the hazard relating to the design of the structure (or part) which, as far as the Contractor is reasonably aware:
 - (i) create a risk to health or safety to those carrying out construction work on the structure (or part); and
 - (ii) are associated only with that particular design.

8.17 Plant, Equipment and Work

The Contractor must not remove from the Site any Plant, Equipment and Work without the Contract Administrator's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.18(b).

8.18 Cleaning Up

The Contractor must:

- (a) in carrying out the Contractor's Activities, keep the Site and the Works clean and tidy and free of refuse; and
- (b) as a condition precedent to Completion, remove all rubbish, materials and Plant, Equipment and Work from the part of Site relevant to the Works or the Stage.

8.19 The Environment

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (ii) it does not cause or contribute to any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies the Contract Administrator of:
 - A. any non-compliance with the requirements of clause 8.19;
 - B. any breach of a Statutory Requirement for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its subcontractors comply with the requirements in clause 8.19; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of or in connection with the Contractor's Activities or the Works, whether or not it has complied with all Statutory Requirements and other requirements of the Contract for the protection of the Environment.

8.20 Urgent Protection

- (a) [## INSERT] may take any action necessary to protect the Works, other property, the Environment, or to prevent or minimise risks to the health and safety of persons, which the Contractor must take but does not take.
- (b) The costs, expenses, losses, damages and liabilities suffered or incurred by [## INSERT] in taking such action will be a debt due from the Contractor to [## INSERT].

8.21 Valuable, Archaeological or Special Interest Items

- (a) Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of [## INSERT].

- (b) Where such an item is found on or in the Site, the Contractor must:
 - (i) immediately give the Contract Administrator and [## INSERT] notice in writing;
 - (ii) not disturb the item under any circumstances other than where such disturbance is necessary to comply with subparagraph (iii); and
 - (iii) ensure that the item is protected until the nature of the item has been competently determined.
- (c) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (b)(i), instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the finding of the item.
- (d) The Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - (ii) have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (b)(i) which arise directly from the finding of the item and the Contract Administrator's instruction under paragraph (c), as determined by the Contract Administrator.
- (e) To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the finding of the item or the Contract Administrator's instruction under paragraph (c), other than under paragraph (d).

8.22 [## INSERT] May Act

- (a) [## INSERT] may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.
- (b) The costs, expenses, losses, damages and liabilities suffered or incurred by [## INSERT] in so carrying out such a Contract obligation will be a debt due from the Contractor to [## INSERT].

8.23 Access Hours

Unless otherwise agreed in writing by the Contractor and the Contract Administrator, the access hours applicable to the Contractor's Activities to be carried out on Site are those specified in the Contract Particulars.

8.24 Imported Items

- (a) Clause 8.24 does not apply unless the Contract Particulars state that it applies.
- (b) The Delivery Phase Price will be adjusted in respect of any imported item required for the Works as specified in the Contract Particulars for which there has been an exchange rate fluctuation between the rate:
 - (i) set out in the Contract Particulars; and
 - (ii) prevailing at the date upon which the Contractor pays the applicable subcontractor for the imported item.
- (c) In these circumstances, the Delivery Phase Price will be adjusted by the difference in the cost of the imported item (in [## INSERT] [currency]) calculated using the information lodged by the Contractor in its tender as set out in the Contract Particulars on the basis of the exchange rate:

- (i) set out in the Contract Particulars; and
 - (ii) prevailing at the date upon which the Contractor makes a payment to the applicable subcontractor for the imported item.
- (d) The exchange rate in paragraph (c)(ii) will be that quoted by the same bank from which the exchange rate in paragraph (c)(i) was obtained.
- (e) Any imported items (whether subject to adjustment under clause 8.24 or not) will not be subject to adjustment for rise and fall in costs.

8.25 Salvaged Materials

Subject to clause 8.21, unless expressly stated to the contrary in the Contract or directed by the Contract Administrator, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Works are the property of the Contractor.

8.26 Contract Administrator's Office

- (a) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, provide and erect on the Site, where directed by the Contract Administrator, the temporary office and associated facilities and services specified in the Contract Particulars for the sole use of the Contract Administrator and the Contract Administrator's representatives.
- (b) The Contract Administrator's Office will remain the property of the Contractor.
- (c) Without limiting paragraph (a), the Contractor must:
- (i) carry out all installations and connections necessary to provide lighting, heating, air conditioning and a separate telephone line to the Contract Administrator's Office;
 - (ii) install all lighting, heating, air conditioning and telephones in the Contract Administrator's Office as directed by the Contract Administrator;
 - (iii) maintain the Contract Administrator's Office until the last Date of Completion, including all necessary cleaning and maintenance;
 - (iv) pay all costs of installation, consumption, rental and removal of all lighting, heating, air conditioning and telephone services in the Contract Administrator's Office (excluding the cost of telephone calls which are to be paid by the Contract Administrator); and
 - (v) remove the Contract Administrator's Office from the Site within 7 days of the last Date of Completion.

8.27 Project Signboards

- (a) The Contractor must provide the number of project signboards specified in the Contract Particulars, each of which must:
- (i) be in the dimensions specified in the Contract Particulars; and
 - (ii) set out:
 - A. the name of the project;
 - B. the names of the parties to the Contract;
 - C. the name of the Contract Administrator;
 - D. a general description of the Works;

- E. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
 - F. the Date for Completion;
 - G. the location of the Site office (if any);
 - H. an 'Acknowledgement of Country' in accordance with the requirements set out in the website specified in the Contract Particulars; and
 - I. any additional information:
 - 1) specified in the Contract Particulars; or
 - 2) required by the Contract Administrator.
- (b) The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site during the Delivery Phase, submit the proposed location, layout and content of the project signboards to the Contract Administrator for approval.
- (c) Once approved by the Contract Administrator, the Contractor must:
- (i) fix the project signboards in the locations approved by the Contract Administrator;
 - (ii) maintain the project signboards until the last Date of Completion; and
 - (iii) dismantle and remove the project signboards within 7 days of the last Date of Completion.

8.28 Measurements and Dimensions

Without limiting clause 8.14:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Works Description (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
- (c) to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by clause 8.28.

8.29 Pandemic Adjustment Event

- (a) If either party considers that there has been a Pandemic Adjustment Event, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing, together with detailed particulars of the relevant event and such other information as the Contract Administrator may require.
- (b) The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), notify the Contractor and [## INSERT] of its determination whether a Pandemic Adjustment Event has occurred.
- (c) Where the Contract Administrator has determined a Pandemic Adjustment Event has occurred, the Contract Administrator may, without being under any obligation to do so, instruct the Contractor as to the course it must adopt insofar

as the Contractor's Activities are affected by the Pandemic Adjustment Event, including to prepare (and thereafter comply with) a plan satisfactory to the Contract Administrator specifying the steps that the Contractor will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Contractor's Activities and the Works.

- (d) If a Pandemic Adjustment Event occurs:
- (i) in the Delivery Phase, subject to paragraph (f), the Contractor will be entitled to:
 - A. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - B. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator;
 - (ii) in the Delivery Phase, subject to paragraph (f), the Delivery Phase Price will be decreased by any savings made (or which would have been made if the Contractor had taken all reasonable steps to maximise savings) by the Contractor which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator; and
 - (iii) the Contractor must comply with any direction of the Contract Administrator in relation to the Pandemic Adjustment Event.
- (e) To the extent permitted by law:
- (i) the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 8.29; and
 - (ii) without limiting subparagraph (i), the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), other than under paragraph (d)(i).
- (f) The Contract Administrator:
- (i) will reduce any entitlement the Contractor would have otherwise had under paragraph (d)(i)B to the extent that the Contractor has failed to take all reasonable steps to:
 - A. avoid or overcome any adverse effects of the Pandemic Adjustment Event (including by implementing and complying with its obligations under the Contract); or
 - B. minimise any additional cost to [## INSERT] in respect of the Pandemic Adjustment Event; and
 - (ii) will take into account, for the purposes of paragraph (d)(ii), the extent that the Contractor has failed to take all reasonable steps to maximise any savings to the [## INSERT] in respect of the Pandemic Adjustment Event.

9. QUALITY

9.1 Workmanship, Materials and Other Requirements

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard prescribed in the Contract; or
 - B. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Works and which is at least to the same standard as that found in the development specified in the Contract Particulars; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which:
 - A. comply with the requirements of the Contract; or
 - B. if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Works and which are at least to the same standard as those found in the development specified in the Contract Particulars; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works; and
- (c) comply with the requirements of the Contract and, to the extent they are not inconsistent, the requirements of the Building Works Manual, the National Construction Code and all relevant standards of Standards [## INSERT].

9.2 Project Plans

- (a) The Contractor:
 - (i) must carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Plans; and
 - (ii) for the purposes of subparagraph (i), must:
 - A. prepare Project Plans based, where applicable, on the draft Project Plans lodged by the Contractor in its tender for the Contractor's Activities, and otherwise in accordance with the requirements of the Contract and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event no later than the number of days specified in the Contract Particulars after the Award Date for each Project Plan;
 - B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of days specified in the Contract Particulars for each Project Plan to review the Project Plan and has not rejected the Project Plan;
 - C. if any Project Plan is rejected, submit an amended Project Plan to the Contract Administrator;

D. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator;

E. after each Project Plan has been finalised:

1) regularly review, update and amend each Project Plan in accordance with the process set out in each Project Plan and otherwise at least:

a) on each anniversary of the Award Date;
and

b) prior to the Date for Delivery Phase Approval;

2) update or amend a Project Plan on request of the Contract Administrator; and

3) continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor),

and submit an updated or amended Project Plan to the Contract Administrator, after which:

4) the Contractor must continue to comply with the requirements of the then current Project Plan until the process in subparagraph (ii) has been completed in respect of the updated or amended Project Plan; and

5) subsubparagraphs B - E will apply (to the extent applicable); and

F. document and maintain detailed records of all:

1) reviews, updates, amendments and submissions of each Project Plan;

2) audits or other monitoring of each Project Plan;
and

3) training and awareness programs and communications provided to Contractor and subcontractor personnel in respect of each Project Plan (including each updated or amended Project Plan).

(b) The Contractor will not be relieved from compliance with any of its obligations under the Contract or otherwise at law or in equity as a result of:

(i) the implementation of, and compliance with, the requirements of any Project Plan;

(ii) any direction by the Contract Administrator concerning a Project Plan or the Contractor's compliance or non-compliance with a Project Plan;

(iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of [## INSERT] of the Contractor's compliance with a Project Plan; or

- (iv) any failure by the Contract Administrator, or anyone else acting on behalf of [## INSERT], to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

9.3 Contract Administrator's Right to Inspect

The Contract Administrator may at any time inspect the Contractor's Activities or the Works.

The Contractor acknowledges and agrees that:

- (a) the Contract Administrator owes no duty to the Contractor to:
 - (i) inspect the Contractor's Activities or the Works; or
 - (ii) review construction for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
- (b) no inspection of the Contractor's Activities or the Works or review of construction by the Contract Administrator will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - (ii) [## INSERT] rights against the Contractor under the Contract or otherwise at law or in equity.

9.4 Inspections and Tests

- (a) The Contractor must carry out all inspections and tests required by the Contract or directed by the Contract Administrator.
- (b) All inspections and tests are to be carried out in accordance with the procedure:
 - (i) specified in the Contract; or
 - (ii) if no procedure exists, as reasonably directed by the Contract Administrator.

9.5 Costs of Inspections and Tests

If:

- (a) the Contract Administrator directs the Contractor to carry out an inspection or test which:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Defect in respect of which the Contract Administrator gave an instruction under clause 9.6; and
- (b) the results of the inspection or test show the work is in accordance with the Contract,

the Contractor will be entitled to have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the inspection or test, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the inspection or test, other than under this clause 9.5.

9.6 Defects

Subject to paragraphs (b) and (c), the Contractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Works or a Stage, the Contract Administrator discovers or believes there is a Defect, the Contract Administrator may give the Contractor an instruction specifying the Defect and doing one or more of the following:

- (a) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising the Contractor that [## INSERT] will accept the work, or any part of it, despite the Defect.

9.7 Correction of Defect or Variation

- (a) If an instruction is given under clause 9.6(a) or (b), the Contractor must correct the Defect or carry out the Variation:
 - (i) within the time specified in the Contract Administrator's instruction; and
 - (ii) if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Works or the Stage as is reasonably possible.
- (b) If the Contractor fails to comply with paragraph (a), [## INSERT] may (in its absolute discretion and without prejudice to any other rights it may have) itself engage an Other Contractor to correct the Defect and the cost of such correction will be a debt due from the Contractor to [## INSERT].

9.8 Claim for Correction of Defect

Where an instruction is given under clause 9.6(a) and clause 9.7(b) does not apply:

- (a) the Contractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.

9.9 Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

- (a) the Contractor is not responsible for the Defect (or the relevant part) the:
 - (i) Delivery Phase Price will be adjusted in accordance with clause 11.3; and
 - (ii) Contractor will be entitled to an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; or
- (b) the Contractor is responsible for the Defect (or the relevant part):
 - (i) the Contract Administrator will determine the:
 - A. value of the Variation in accordance with clause 11.3; and
 - B. cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied;

- (ii) the Delivery Phase Price will be adjusted by the difference between the valuations under subparagraph (i) as follows:
 - A. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Delivery Phase Price will be increased by the excess; or
 - B. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the Delivery Phase Price will be decreased by the difference and will be a debt due from the Contractor to [## INSERT]; and
- (iii) the Contractor will not be entitled to claim an extension of time to any Date for Completion.

9.10 Acceptance of Work

If:

- (a) an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and

- (b) the Contractor is responsible for the Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Contractor to [## INSERT].

9.11 Extension of Defects Liability Period

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and

- (b) the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

9.12 Common Law Rights not Affected

Neither [## INSERT], nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon [## INSERT] or Contract Administrator by clause 9 or any other provision of the Contract;
- (b) the failure by [## INSERT] or the Contract Administrator to exercise any such rights; or
- (c) any instruction of the Contract Administrator under clause 9.6.

9.13 HOTO Process

Without limiting clause 8.16(a)(iii), the Contractor must:

- (a) fully co-operate with the Contract Administrator, [## INSERT] and Other Contractors and take all steps necessary to ensure the timely, efficient, comprehensive and smooth completion of the HOTO Process; and

- (b) without limiting paragraph (a):

- (i) carry out all Contractor HOTO Obligations;

- (ii) ensure that all Contractor HOTO Obligations are carried out within any applicable timeframe prescribed by, or determined in accordance with, the HOTO Requirements;
- (iii) comply with:
 - A. all applicable HOTO Requirements; and
 - B. all commissioning, handover and takeover requirements described in the Contract, including the requirements in Annexure 1;
- (iv) as and when required by the Contract Administrator, provide [## INSERT] with such other specific assistance as may be required by [## INSERT] to facilitate the timely, efficient, comprehensive and smooth completion of the HOTO Process; and
- (v) as and when required by the Contract Administrator, meet with the Contract Administrator, [## INSERT] and Other Contractors for the purpose of ensuring that the Contract Administrator, [## INSERT] and Other Contractors have sufficient Project Documents to enable the Contract Administrator, [## INSERT] and Other Contractors to:
 - A. occupy, use, operate and maintain the Works or the Stage; and
 - B. perform such other activities as may be required by [## INSERT] in respect of the Works or the Stage.

9.14 Defects Records and Reports

- (a) Without limiting clause 9.6, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects.
 - (b) The Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator:
 - (i) before the Date of Completion:
 - A. with its reports under clause 3.10; and
 - B. as a condition precedent to Completion; and
 - (ii) after the Date of Completion:
 - A. with its reports under clause 3.10; and
 - B. within 14 days after the end of the Defects Liability Period,
- which sets out:
- (iii) details of all calls, attendances, recommendations and actions taken in respect of each Defect;
 - (iv) recommendations for the future maintenance of the Works;
 - (v) any work health and safety matters; and
 - (vi) any other matters specified in the Contract Particulars or required by the Contract Administrator.

9.15 Quality Assurance

The Contractor:

- (a) must implement the quality assurance process, system or framework in its Quality Plan;
- (b) without limiting clause 6.12, must allow the Contract Administrator or anyone else acting on behalf of [## INSERT] access to the quality assurance process, system or framework of the Contractor and its subcontractors so as to enable auditing or other monitoring; and
- (c) will not be relieved from compliance with its obligations under the Contract or otherwise at law or in equity as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any direction by the Contract Administrator concerning the Contractor's quality assurance process, system or framework or its compliance or non-compliance with the process, system or framework;
 - (iii) any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of [## INSERT] of the Contractor's compliance with the quality assurance process, system or framework; or
 - (iv) any failure by the Contract Administrator, or anyone else acting on behalf of [## INSERT], to detect any Contractor's Activities or aspects of the Works which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

10. TIME

10.1 Progress and Time for Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) achieve Completion of the Works or each Stage by the relevant Date for Completion.

10.2 Programming

The Contractor must:

- (a) update:
 - (i) in the Planning Phase, the Planning Phase Program; and
 - (ii) in the Delivery Phase, the Delivery Phase Program,
 periodically, at least at intervals of no less than that specified in the Contract Particulars, to record and take account of:
 - (iii) actual progress of the Contractor's Activities to the date which is two working days prior to the date on which the update is provided;
 - (iv) changes to the program; and
 - (v) delays which may have occurred, or which are likely to occur including, in the Delivery Phase, any for which the Contractor is granted an extension of time under clause 10.8;
- (b) ensure all programs contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (c) give the Contract Administrator copies of all programs; and

- (d) provide all programs in a format compatible with the software specified in the Contract Particulars.

The Contract Administrator may review and comment on any program given under this clause 10.2.

10.3 Contractor Not Relieved

Any review of, comment upon, or any failure to review or comment upon, a Planning Phase Program or Delivery Phase Program by the Contract Administrator will not:

- (a) relieve the Contractor from or alter its obligations under the Contract, especially (without limitation) the obligation to achieve Completion of the Works or each Stage by the relevant Date for Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any or all of the Contractor's Activities; or
- (c) affect the time for the carrying out of [## INSERT] or Contract Administrator's Contract obligations.

10.4 Acceleration by Contractor

If the Contractor chooses to accelerate progress then despite clause 3.3:

- (a) neither [## INSERT] nor the Contract Administrator will be obliged to take any action to assist or enable the Contractor to achieve Completion of the Works or each Stage before any Date for Completion; and
- (b) the time for the carrying out of [## INSERT] or the Contract Administrator's obligations will not be affected.

10.5 Delays, Including Delays Entitling Claim for Extension of Time

- (a) If the Contractor becomes aware of any occurrence that is likely to delay it in carrying out the Contractor's Activities it must, as soon as practicable, and in any event within 14 days of becoming aware, inform the Contract Administrator in writing of the occurrence and the likely delay.
- (b) If the Contractor has been delayed in carrying out the Contractor's Activities:
 - (i) after the Date of Delivery Phase Approval and prior to the Date for Completion of the Works or a Stage, by an Act of Prevention or a cause specified in the Contract Particulars in a manner which has delayed, or is likely to delay, the Contractor in achieving Completion of the Works or the Stage; or
 - (ii) after the Date for Completion of the Works or a Stage, by an Act of Prevention in a manner which has delayed, or is likely to delay, the Contractor in achieving Completion of the Works or the Stage,

the Contractor may claim an extension of time.

10.6 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) not later than 28 days after the commencement of the delay to the carrying out of the Contractor's Activities, submit a written claim to the Contract Administrator for an extension to the relevant Date for Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and

- (ii) states the number (not exceeding 28) of days extension of time claimed together with the basis of calculating that period, including evidence that it has been, or is likely to be, delayed in achieving Completion in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
- (b) if the delay to the carrying out of the Contractor's Activities continues beyond 28 days from the commencement of that delay, and the Contractor wishes to claim an extension of time in respect of any further period, submit a further written claim to the Contract Administrator:
 - (i) every 28 days after the last date for submitting the first written claim, provided however that the final written claim must be submitted not later than 7 days after the end of the delay to the carrying out of the Contractor's Activities; and
 - (ii) containing the information required by paragraph (a).

10.7 Conditions Precedent to Extension

Subject to clause 10.13, it is a condition precedent to the Contractor's entitlement to an extension of time that the:

- (a) Contractor gives the written claim required by clause 10.6 as required by that clause;
- (b) cause of the delay to the Contractor's Activities was beyond the reasonable control of the Contractor;
- (c) Contractor must have actually been, or be likely to be, delayed in the manner set out in clause 10.5(b)(i) or 10.5(b)(ii); and
- (d) Contractor must not have been given an instruction under clause 10.12.

10.8 Extension of Time

- (a) If the conditions precedent in clause 10.7 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to [## INSERT] and the Contractor within 21 days of the Contractor's written claim under clause 10.6(a) or (b) (as applicable).
- (b) In determining a reasonable period under paragraph (a), the Contract Administrator must not include any period of delay in respect of which the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the extent of the delay.

10.9 Unilateral Extension of Time

- (a) Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under clause 10, [## INSERT] may (in its absolute discretion) at any time and from time to time by written notice to the Contractor and the Contract Administrator, unilaterally extend any Date for Completion.
- (b) The Contractor acknowledges that clause 10.9 does not give the Contractor any rights.

10.10 Delay Damages

- (a) Clause 10.10 applies unless the Contract Particulars state that it does not apply.

- (b) In the Delivery Phase, the Contractor will be entitled to be paid the extra costs reasonably incurred by the Contractor up to the maximum daily amount specified in the Contract Particulars for each day by which the Date for Completion of the Works or a Stage is extended due to a breach of the Contract by [## INSERT].
- (c) The amount determined under this clause 10.10 will be a limitation upon [## INSERT] liability to the Contractor for any delay or disruption which:
 - (i) the Contractor encounters in carrying out the Contractor's Activities; and
 - (ii) arises out of or in connection with, the breach of the Contract by [## INSERT].

and to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with any such delay or disruption, other than under clause 10.8 or clause 10.10.

10.11 Suspension

- (a) The Contract Administrator:
 - (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
 - (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
- (b) If a suspension under clause 10.11 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with the Contract, to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract, an instruction to suspend under clause 10.11 will, where the suspension occurs during the Delivery Phase, entitle the Contractor to:
 - A. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8; and
 - B. have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the suspension, other than under paragraph (b)(ii).

- (c) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the Contractor's Activities when instructed to do so under clause 10.11.

10.12 Instruction to Accelerate

If the Contractor gives the Contract Administrator a written claim under clause 10.6, the Contract Administrator may:

- (a) instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of

some or all of the delay including, if required, in order to achieve Completion of the Works or the Stage by the relevant Date for Completion; and

- (b) give such an instruction whether or not the cause of delay for which the Contractor has given its written claim under clause 10.6 otherwise entitles the Contractor to an extension of time to any relevant Date for Completion.

10.13 Partial Acceleration

If the Contract Administrator gives the Contractor an instruction to accelerate under clause 10.12 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

10.14 Acceleration

If the Contract Administrator gives an instruction to the Contractor under clause 10.12:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Works or the Stage by the relevant Date for Completion; and
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Contractor will be entitled to be paid:
 - (i) the extra costs reasonably incurred by the Contractor as a direct result of accelerating the Contractor's Activities; and
 - (ii) that percentage of the amount under subparagraph (i) specified in the Contract Particulars; and

subject to clause 10.13, to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the cause of the delay or the instruction under clause 10.12, other than under paragraph (b).

10.15 [## INSERT]'s Rights to Liquidated Damages Not Affected

[## INSERT] rights to liquidated damages under clause 13.7 for a failure by the Contractor to achieve Completion of the Works or a Stage by any relevant Date for Completion are not affected by the Contract Administrator giving the Contractor an instruction to accelerate under clause 10.12.

11. VARIATIONS

11.1 Variation Price Request

(a) At any time during:

- (i) the Planning Phase; or
- (ii) the Delivery Phase prior to the Date of Completion (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may issue a document titled "**Variation Price Request**" to the Contractor which will set out details of a proposed Variation which [## INSERT] is considering.

(b) The Contractor must immediately take all action required under any relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.

(c) Within 14 days of the receipt of a Variation Price Request (or such longer period as may be agreed by the Contract Administrator) the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out the:

- (i) adjustment (if any) to:
 - A. in the case of a Planning Phase Material Variation, the Planning Phase Price to carry out the proposed Variation; and
 - B. in any other case, the Delivery Phase Price to carry out the proposed Variation; and
- (ii) effect (if any) which the proposed Variation will have on the then current Planning Phase Program or Delivery Phase Program (as applicable), including each Date for Completion.

11.2 Variation Order

Whether or not the Contract Administrator has issued a Variation Price Request under clause 11.1, at any time during:

- (a) the Planning Phase; or
- (b) the Delivery Phase prior to the Date of Completion (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may instruct the Contractor to carry out a Variation by a written document titled "**Variation Order**" in which the Contract Administrator will state one of the following:

- (c) the proposed adjustment to the Contract Price set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly;
- (d) any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c); or
- (e) the Variation is to be carried out as daywork and any adjustment to the Contract Price will be determined under clause 11.3(d).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Variation.

11.3 Valuation of Variation

Subject to clauses 9.9(b) and 11.9, the Contract Price will be increased or decreased for all Variations which have been the subject of a direction by the Contract Administrator:

- (a) as agreed under clause 11.2(c);
- (b) if paragraph (a) does not apply, in accordance with the rates and prices included in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates and prices are applicable to or it is reasonable to use them for valuing, the Variation, to which, if the Variation is to the Works in the Delivery Phase, the following will be added:
 - (i) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Delivery Phase Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
 - B. where the adjustment to the Delivery Phase Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
 - (ii) any reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor;
- (c) to the extent paragraph (b) does not apply, by a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Contract Administrator, to which, if the Variation is to the Works in the Delivery Phase, the following will be added:
 - (iii) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Delivery Phase Price is to be an increase, the percentages specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; or
 - B. where the adjustment to the Delivery Phase Price is to be a decrease, the percentage specified in the Contract Particulars for off-site overheads and profit; and
 - (iv) any reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor; or
- (d) if the Variation is to the Works in the Delivery Phase, by the amount determined by the Contract Administrator under clause 11.6.

11.4 Omissions

If a Variation the subject of a direction by the Contract Administrator omits any part of the ECI Activities or the Works, [## INSERT] may thereafter carry out this omitted work either itself or by engaging Other Contractors.

11.5 Daywork

If the Contractor is given an instruction under clause 11.2(e) to carry out work as daywork, the Contractor must:

- (a) carry out the daywork in an efficient manner; and

- (b) after the instruction, provide the Contract Administrator with a written report each day signed by the Contractor which:
 - (i) records particulars of all resources used by the Contractor for the execution of the daywork; and
 - (ii) includes the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the daywork.

The Contract Administrator may direct the manner in which such matters are to be recorded.

11.6 Valuation of Daywork

In determining the value of work which the Contract Administrator instructed was to be carried out as daywork, the Contract Administrator will have regard to:

- (a) the amount of wages and allowances paid or payable by the Contractor at:
 - (i) the rates pertaining at the Site at the time as established by the Contractor to the reasonable satisfaction of the Contract Administrator; or
 - (ii) other reasonable rates approved by the Contract Administrator;
- (b) the percentage specified in the Contract Particulars of the wages paid or payable under paragraph (a);
- (c) the amount of hire charges in respect of plant approved by the Contract Administrator for use on the work in accordance with the hiring rates and conditions:
 - (i) agreed between the Contract Administrator and the Contractor; or
 - (ii) failing agreement, reasonably determined by the Contract Administrator;
- (d) the reasonable amounts paid for services, subcontracts and professional fees; and
- (e) the actual cost to the Contractor at the Site of all materials supplied and required for the work,

to which will be added:

- (f) the percentages of the amounts determined under paragraphs (a) - (e) specified in the Contract Particulars for non-time related on-site overheads and preliminaries and off-site overheads and profit; and
- (g) the reasonable costs incurred by the Contractor as a direct result of the Variation delaying the Contractor.

11.7 Contractor Variation Request

The Contractor may, for its convenience, request the Contract Administrator to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with [## INSERT] including the amount;
- (c) any benefits which will flow to [## INSERT] from the Variation; and

- (d) the effect which the Variation will have upon the ECI Activities or the future cost of operating and maintaining the Works (as applicable).

11.8 Contract Administrator's Determination

- (a) After a request is made by the Contractor in accordance with clause 11.7, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (b) The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.

11.9 Contractor Variation Request Approved by Contract Administrator

If the Contract Administrator issues a written notice under clause 11.8 approving the Contractor's request under clause 11.7:

- (a) unless otherwise agreed, to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the Variation;
- (b) if the Contractor's request offered to share savings in cost with [## INSERT], the Contract Price will be reduced by or adjusted in accordance with the Contractor's offer; and
- (c) the Contractor will be responsible for all parts of the ECI Activities and the Works which are in any way affected by the Variation.

12. PAYMENT

12.1 Payment Obligation

Subject to clause 12.15 and to any other right to set-off which [## INSERT] may have, [## INSERT] will pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by [## INSERT] to the Contractor under the Contract.

12.2 Payment Claims

The Contractor must give the Contract Administrator claims for payment on account of the Contract Price and all other amounts then payable by [## INSERT] to the Contractor under the Contract:

- (a) at the times specified in the Contract Particulars until Completion or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after Completion or the Defects Liability Period within the time required by clause 12.9 or 12.11;
- (c) in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
- (d) which are based on the Table of Variation Rates and Prices to the extent this is relevant;
- (e) which show separately the amounts (if any) claimed on account of:
 - (i) the Contract Price; and
 - (ii) all other amounts then payable by [## INSERT] to the Contractor under the Contract; and
- (f) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by [## INSERT] to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.

12.3 Certification to Accompany Submission of Payment Claim

The Contractor must, with each payment claim under clause 12.2, certify to the Contract Administrator that it has:

- (a) complied with clause 4.1;
- (b) if clause 4.4 applies, complied with clause 4.4;
- (c) complied with clause 5.4;
- (d) if clause 6.13 applies, complied with clause 6.13;
- (e) if a request has been made under clause 8.5(f), complied with clause 8.5(f);
- (f) complied with clause 8.16;

- (g) complied with clause 10.2;
- (h) complied with clause 12.16; and
- (i) complied with clause 23.

12.4 Payment Statement

The Contract Administrator:

- (a) must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2; or
- (b) may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time,

give the Contractor (with a copy to [## INSERT]), on behalf of [## INSERT], a payment statement which is in the form set out in the Schedule of Collateral Documents and which states:

- (c) the payment claim to which it relates (if any);
- (d) the amount previously paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract;
- (e) the amount (if any) which the Contract Administrator believes to be then payable by [## INSERT] to the Contractor on account of the Contract Price and otherwise in accordance with the Contract and which [## INSERT] proposes to pay to the Contractor; and
- (f) if the amount in paragraph (e) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that [## INSERT] has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contract Administrator will not constitute:

- (g) approval of the Contractor's Activities or the Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract;
- (h) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which [## INSERT] expressly waives such requirements in respect of the payment claim the subject of the payment statement;
- (i) an admission or evidence of the value of the Contractor's Activities or the Works or that the Contractor's Activities or the Works comply with the Contract;
- (j) an admission or evidence of liability; or
- (k) otherwise, any approval, admission or evidence by [## INSERT] or the Contract Administrator of the Contractor's performance or compliance with the Contract.

12.5 Payment

- (a) Within 3 business days of the Contractor receiving a payment statement under clause 12.4, the Contractor must give the Contract Administrator, with a copy to

the email address set out in the Contract Particulars, a tax invoice for the amount stated as then payable by [## INSERT] to the Contractor in the payment statement.

- (b) Subject to clause 12.17(c), within the number of business days specified in the Contract Particulars of t[## INSERT] receiving a payment statement under clause 12.4, [## INSERT] will pay the Contractor the amount stated as then payable by [## INSERT] h to the Contractor in the payment statement.

12.6 Payment on Account

Any payment of moneys under clause 12.5 will not constitute:

- (a) approval of the Contractor's Activities or the Works, nor will it be taken as an admission or evidence that the part of the Contractor's Activities or the Works covered by the payment has been satisfactorily carried out in accordance with the Contract;
- (b) a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which [## INSERT] expressly waives such requirements in respect of the payment claim the subject of the payment;
- (c) an admission or evidence of the value of the Contractor's Activities or the Works or that the Contractor's Activities or the Works comply with the Contract;
- (d) an admission or evidence of liability; or
- (e) otherwise, any approval, admission or evidence by [## INSERT] or the Contract Administrator of the Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

12.7 Unfixed Goods and Materials

- (a) Unfixed goods or materials will not be included in the value of work in a payment statement under clause 12.4 unless:
 - (i) the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
 - (ii) the Contractor gives the Contract Administrator with a payment claim under clause 12.2:
 - A. additional Approved Security equal to the amount claimed for the unfixed goods and materials; and
 - B. such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in [## INSERT] upon payment;
 - (iii) the unfixed goods and materials are clearly marked as the property [## INSERT] and are on the Site or available for immediate delivery to the Site; and
 - (iv) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.
- (b) Upon payment by [## INSERT] of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in [## INSERT].

12.8 Release of Additional Approved Security

If the Contractor has given [## INSERT] additional Approved Security for payment for unfixed goods and materials, [## INSERT] must release such security to the Contractor when those goods and materials are incorporated into the Works.

12.9 Completion Payment Claim and Notice

- (a) Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Notice of Completion for the Works or a Stage, the Contractor must give the Contract Administrator:
- (i) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from [## INSERT] on account of the Contract Price and all other amounts payable under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from [## INSERT], 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:
 - (iii) in the case of the Works, occurred prior to the Date of Completion of the Works; or
 - (iv) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.
- (b) The payment claim and notice required under clause 12.9 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.10 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.9 has passed, the Contractor releases [## INSERT] 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:

- (a) in the case of the Works, occurred prior to the Date of Completion of the Works; or
- (b) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.9 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.9.

12.11 Final Payment Claim and Notice

- (a) Within 28 days (or such longer period agreed in writing by the Contract Administrator) of the end of the Defects Liability Period, the Contractor must give the Contract Administrator:
- (i) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from [## INSERT] on account of the Contract Price and all other amounts payable under the Contract; and

- (ii) notice of any other amounts which the Contractor claims from [## INSERT],

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:

- (iii) in the case of the Works, occurred during the Defects Liability Period for the Works; or
 - (iv) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.
- (b) The payment claim and notice required under clause 12.11 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.
 - (c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.12 Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Contractor releases [## INSERT] 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:

- (a) in the case of the Works, occurred during the Defects Liability Period for the Works; or
- (b) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

12.13 Interest

- (a) [## INSERT] will pay simple interest at the rate specified in the Contract Particulars on any:
 - (i) amount stated as then payable by [## INSERT] in a payment statement under clause 12.4, but which is not paid by [## INSERT] within the time required by the Contract; and
 - (ii) damages (excluding any delay damages payable under clause 10.10).
- (b) This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

12.14 Correction of Payment Statements

The Contract Administrator may, in any payment statement:

- (a) correct any error in any previous payment statement; and
- (b) modify any previous payment statement,

given by the Contract Administrator.

12.15 Right of Set-Off

[## INSERT] may:

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

- (i) any debt or other moneys due from the Contractor to [## INSERT] (including liquidated damages payable under clause 13.7); and
 - (ii) any claim to money which [## INSERT] asserts in good faith against the Contractor whether for damages or otherwise under the Contract or otherwise at law or in equity arising out of or in connection with the Contractor's Activities or the Works; and
- (b) without limiting paragraph (a), deduct any debt, other moneys due or any claim to money referred to in paragraph (a)(i) or (a)(ii) from any:
- (i) amount which may be or thereafter become payable to the Contractor by [## INSERT] in respect of any Variation the subject of a Variation Order under clause 11.2; or
 - (ii) without limiting the unconditional nature of the security held under clause 4.1, the security held under clause 4.1.

12.16 Payment of Workers and Subcontractors

The Contractor must with each payment claim submitted under clause 12.2 provide the Contract Administrator with a duly completed declaration in the form set out in the payment claim (in the format set out in the Schedule of Collateral Documents) for each applicable jurisdiction in which the Contractor's Activities were carried out during the relevant period.

12.17 [GST/VAT/Applicable Tax]

- (a) Subject to paragraph (b), where any supply arises out of or in connection with the Contract, the Contractor's Activities or the Works for which [GST/VAT/Applicable Tax] 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/VAT/Applicable Tax] .
- (b) 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/VAT/Applicable Tax] under paragraph (a).
- (c) As a condition precedent to any amount on account of [GST/VAT/Applicable Tax] 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.
- (d) If the amount paid to the Supplier in respect of the [GST/VAT/Applicable Tax] (whether because of an adjustment or otherwise):
 - (i) is more than the [GST/VAT/Applicable Tax] on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the [GST/VAT/Applicable Tax] on the supply, then the recipient shall pay the deficiency to the Supplier.
- (e) In clause 12.17, subject to clause 1.1, terms defined in [GST/VAT/Applicable Tax] Legislation have the meaning given to them in [GST/VAT/Applicable Tax] Legislation.

12.18 Security of Payment Legislation

- (a) The Contractor agrees with [## INSERT] that:

- (i) a payment claim submitted to the Contract Administrator under clause 12.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Contract Administrator as agent for [## INSERT];
 - (ii) the Contract Administrator will give payment statements and carry out all other functions of [## INSERT] under the relevant Security of Payment Legislation as the agent of [## INSERT] (without affecting [## INSERT] s right to carry out those functions itself);
 - (iii) to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clauses 12.2(a) and 12.2(b) on which the Contractor has satisfied the requirements of clause 12.3; and
 - (iv) a reference to a "payment statement" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.
- (b) Failure by the Contract Administrator to state in a payment statement issued under the relevant Security of Payment Legislation or otherwise an amount which [## INSERT] is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by [## INSERT] to the Contractor will not prejudice:
- (i) the Contract Administrator's ability or power to state in a subsequent payment statement an amount which [## INSERT] is entitled to retain, deduct, withhold or set-off from the amount which would otherwise then be payable by [## INSERT] to the Contractor; or
 - (ii) [## INSERT] right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract or otherwise at law or in equity.
- (c) The Contractor agrees that the amount stated in the payment statement as then payable by [## INSERT] to the Contractor under clause 12.4(e) is, subject to clause 12.16, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of the Contract and which the Contractor is entitled to be paid in respect of the Contract.
- (d) The Contractor must not at any time, without the written consent of [## INSERT], divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by [## INSERT] or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation (in this paragraph, the **Information**).

For the avoidance of doubt:

- (i) to the extent permitted by law, the Contractor's obligations in respect of the Information apply to any subsequent proceedings before a court, arbitrator, expert or tribunal;
- (ii) notwithstanding the Contractor's obligations in respect of the Information, [## INSERT] has absolute discretion to divulge or permit its servants, subcontractors or agents to divulge to any person the Information;
- (iii) [## INSERT] may divulge or permit its servants, subcontractors or agents to divulge to any person any communication, submission or

statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under the relevant Security of Payment Legislation; and

- (iv) any Information which [## INSERT] provides or relies upon in respect of an adjudication application made under the relevant Security of Payment Legislation is made without prejudice to [## INSERT] right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.

12.19 Accounting Records

The Contractor must keep accurate and up to date accounting records including books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or papers which show all details in relation to:

- (a) all Variations; and
- (b) without limiting paragraph (a) all amounts paid to the Contractor on account of the Contract Price and otherwise in accordance with the Contract.

12.20 Cost Allocation Advice

Without limiting clause 12.2, for the purposes of assisting [## INSERT] to report on an accrual basis, the Contractor must, with each payment claim under clause 12.2, provide the Contract Administrator with accurate information which apports monthly costs against buildings, infrastructure and expenses for all work completed since [## INSERT] previous payment to the Contractor.

12.21 Facilities and Infrastructure Accounting

Without limiting clause 12.2, for the purposes of assisting [## INSERT] to bring all completed facilities and infrastructure to account, as a condition precedent to Completion, the Contractor must provide a cost report to the Contract Administrator which sets out:

- (a) details of the Contract Price and all other amounts payable under the Contract paid by [## INSERT] to the Contractor in respect of the Works or the Stage;
- (b) the matters specified in the Contract Particulars; and
- (c) any other matters required by the Contract Administrator.

12.22 Fee Payment Schedule

If the Contract Price is adjusted under the Contract, the Fee Payment Schedule will (where applicable) be adjusted:

- (a) as agreed between the parties; or
- (b) failing agreement, as determined by the Contract Administrator.

13. COMPLETION

13.1 Contractor to Notify

- (a) Nothing in clause 13 limits the Contractor's obligations, or [## INSERT] or the Contract Administrator's rights, under clause 9.13.
- (b) The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Completion.

13.2 Contract Administrator to Inspect

The Contract Administrator must:

- (a) promptly, and in any event no later than 14 days after receiving the Contractor's second written notice under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Works or the Stage; and
- (b) if:
 - (i) satisfied that Completion has been achieved, issue a notice to [## INSERT] and the Contractor:
 - A. stating the date upon which the Contract Administrator determines Completion was achieved; and
 - B. containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Completion" in clause 1.1; or
 - (ii) not satisfied that Completion has been achieved, issue a notice so advising the Contractor and [## INSERT].

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

- (c) proceed to bring the Works or the Stage to Completion; and
- (d) when it considers it has achieved Completion, give the Contract Administrator written notice to that effect (after which clause 13.2 will reapply).

13.3 Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1(b) or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Completion has been achieved, the Contract Administrator may issue a Notice of Completion under clause 13.2(b)(i).

13.4 Take Over Upon Completion

Upon the issue of a Notice of Completion, the Contractor must:

- (a) handover the Works or the Stage to [## INSERT]; and
- (b) correct all Defects listed in the Notice of Completion as soon as possible.

13.5 Part of the Works or a Stage

- (a) [## INSERT] may, after written notice is given to the Contractor by the Contract Administrator, occupy, use, operate or maintain (or arrange for Other Contractors to occupy, use, operate or maintain) any part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.
- (b) If any such notice is given by the Contract Administrator:
 - (i) [## INSERT] must allow the Contractor reasonable access to the part of the Works or the Stage referred to in the notice and being occupied, used, operated or maintained, to enable the Contractor to bring the

Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part to Completion; and

- (ii) this will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Stage of which the area being occupied, used, operated or maintained forms part by the relevant Date for Completion.

13.6 Effect of Notice of Completion

A Notice of Completion will not:

- (a) constitute approval of the Contractor's Activities, the Works or the Stage, nor will it be taken as an admission or evidence that the Contractor's Activities, the Works or the Stage have or has been satisfactorily carried out in accordance with the Contract;
- (b) constitute an admission or evidence that the Contractor's Activities, the Works or the Stage comply or complies with the Contract;
- (c) otherwise, constitute any approval, admission or evidence by [## INSERT] or the Contract Administrator of the Contractor's performance or compliance with the Contract; or
- (d) prejudice any rights or remedies of [## INSERT] or Contract Administrator under the Contract or otherwise at law or in equity.

13.7 Liquidated Damages

- (a) If the Date of Completion of the Works or a Stage has not occurred by the Date for Completion for the Works or the Stage, the Contractor must pay liquidated damages at the rate specified in the Contract Particulars for every day after the Date for Completion until the Date of Completion or the Contract is terminated, whichever is first.
- (b) This amount is an agreed genuine pre-estimate of [## INSERT] damages if the Date of Completion does not occur by the Date for Completion.
- (c) The amount payable under clause 13.7 will be a debt due from the Contractor to [## INSERT].

14. TERMINATION

14.1 Preservation of Rights

Subject to clause 14.6, nothing in clause 14 or that [## INSERT] does or fails to do pursuant to clause 14 will prejudice any right or remedy of [## INSERT] (including the recovery of damages) where the Contractor breaches (including repudiates) the Contract.

14.2 Contractor Default

[## INSERT] may give a written notice under clause 14.3 to the Contractor if the Contractor is in breach of the Contract.

14.3 Contents of Notice of Default

A notice under clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the failure or breach relied upon; and
- (c) that [## INSERT] requires the Contractor to remedy the failure or breach within the number of days specified in the Contract Particulars of receiving the notice.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises two or more persons, to any one of those persons;
- (b) the Contractor does not remedy a failure or breach the subject of a notice under clause 14.3 within the number of days specified in the Contract Particulars of receiving the notice under clause 14.3;
- (c) an instruction has been given under clause 9.6(a) or (b), the Contractor fails to comply with clause 9.7(a); or
- (d) the Contractor fails to comply with:
 - (i) clause 20; or
 - (ii) clause 21,

then [## INSERT] may by written notice to the Contractor immediately (and without having to first give a notice under clause 14.3, except in the case of paragraph (b)) terminate the Contract.

14.5 [## INSERT]'s Entitlements after Termination by [## INSERT]

Subject to clause 14.1, if [## INSERT] terminates the Contract under clause 14.4, or if the Contractor repudiates the Contract and [## INSERT] otherwise terminates the Contract:

- (a) [## INSERT] will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works;
 - (ii) be entitled to require the Contractor to novate to [## INSERT] or [## INSERT] nominee, any or all subcontracts between the Contractor and its subcontractors as required by [## INSERT];
 - (iii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any amount the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and

- (iv) be entitled to recover from the Contractor all costs, expenses, losses, damages or liabilities suffered or incurred by [## INSERT] arising out of or in connection with such termination; and
- (b) the Contractor must comply with clause 20.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

Clause 14.5 will survive the termination of the Contract.

14.6 Contractor's Entitlements after Termination by Contractor

- (a) If [## INSERT] repudiates the Contract and the Contractor terminates the Contract, the Contractor will:
 - (i) be entitled to payment of an amount determined in accordance with clause 14.8 as if t[## INSERT] had terminated the Contract under clause 14.7; and
 - (ii) not be entitled to a quantum meruit.
- (b) Clause 14.6 will survive the termination of the Contract.

14.7 Termination for Convenience

Without prejudice to any right or remedy of [## INSERT] under the Contract or otherwise at law or in equity, [## INSERT] may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in [## INSERT] notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter (at its absolute discretion) complete the uncompleted part of the Contractor's Activities and the Works either itself or by engaging Other Contractors.

14.8 Contractor's Entitlements after Termination for Convenience by [## INSERT]

If [## INSERT] terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts, as determined by the Contract Administrator:
 - (i) for work carried out prior to 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; and
 - (ii) if the termination occurs in the Delivery Phase:
 - A. 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:
 - 1) the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - 2) title in the goods and materials will vest in [## INSERT] upon payment; and
 - B. the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and

- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraphs (a)(ii)A and (a)(ii)B; and
 - (ii) comply with clause 20.4 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

The amounts to which the Contractor is entitled under clause 14.8 will be a limitation upon [## INSERT] liability to the Contractor arising out of or in connection with the termination of the Contract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)(i)) and to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] 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 14.8.

Clause 14.8 will survive the termination of the Contract by [## INSERT] under clause 14.7 or by the Contractor following repudiation by [## INSERT].

14.9 Anti-corruption and Anti Bribery Clause

If this contract was procured, facilitated, awarded and/or otherwise generated through corrupt or other improper practices, in whole or in part, it will be deemed to be void ab initio.

15. DISPUTES

15.1 Notice of Dispute

- (a) If a dispute or difference arises between the Contractor and [## INSERT] or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in clause 15.
- (b) Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:
 - (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.

15.2 Expert Determination

Unless otherwise agreed between the parties, to the extent the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses specified in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to expert determination.

15.3 The Expert

- (a) The expert determination under clause 15.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under clause 15.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the Expert Determination Agreement or other agreement in accordance with clause 15.9(b) within 14 days of his or her appointment under clause 15.3; or
 - (v) does not make a determination within the time required by clause 15.8,

the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

15.4 Not Arbitration

An expert determination conducted under clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.5 Procedure for Determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.6 Disclosure of Interest

The expert must:

- (a) disclose to the parties any:
 - (i) interest he or she has in the outcome of the determination;
 - (ii) conflict of interest;
 - (iii) conflict of duty;
 - (iv) personal relationship which the expert has with either party, or either party's representatives, witnesses or experts; and
 - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.7 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.8 Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under clause 15 within 28 days from the acceptance by the expert of his or her appointment.

15.9 Expert Determination Agreement

- (a) The expert will not be liable to the parties arising out of or in connection with the expert determination process, except in the case of fraud.
- (b) The parties must enter into the Expert Determination Agreement with the appointed expert or an agreement with the appointed expert on such other terms as the parties and the expert may agree.

15.10 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.11 and 15.12, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

15.11 Executive Negotiation

- (a) If:
 - (i) clause 15.2 applies, and a notice of appeal is given under clause 15.10; or
 - (ii) clause 15.2 does not apply,the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
 - (i) 21 days of:
 - A. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - B. otherwise, the notice of appeal given under clause 15.10; or
 - (ii) such longer period of time as the Executive Negotiators may agree in writing,meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

15.12 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - (ii) otherwise, the notice of appeal given under clause 15.10; or
- (b) such longer period of time as the Executive Negotiators may agree in writing, the Executive Negotiators:
- (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
- (d) cannot resolve the dispute or difference; or
- (e) have not reached agreement upon a procedure to resolve the dispute or difference,

the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

15.13 Arbitration

- (a) Arbitration pursuant to clause 15.13 will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration and as otherwise set out in clause 15.13.
- (b) The seat of the arbitration will be [## INSERT] and hence the proper law of the arbitration shall be [## INSERT] law.
- (c) The second sentence of Article 35(6) of the ICC Rules (in force from 1 March 2017) or its equivalent in any subsequent version of the ICC Rules shall not apply.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;
 - (ii) any arbitration conducted pursuant to clause 15.13 will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Court of [## INSERT] at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in [## INSERT] and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing will be conducted on a stop clock basis with the effect that the time available to the parties will be split equally between the parties so that each party will have the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and

- (vi) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

15.14 Proportionate Liability

To the extent permitted by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of the proportionate liability legislation of any [## INSERT]jurisdiction which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to clause 15.

15.15 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties the Contractor must:

- (a) continue to carry out the Contractor's Activities and the Works; and
- (b) otherwise comply with its obligations under the Contract.

16. NOTICES

16.1 Notice of Variation

If a direction by the Contract Administrator, other than a Variation Order under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against [## INSERT] arising out of or in connection with the direction:

- (a) within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities and the Works in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under clause 16.1.

16.2 Notices of Other Claims

Except for claims for:

- (a) an extension of time under clause 10.6;
- (b) payment under clause 12.2 of the original Contract Price specified in the Contract Particulars; or
- (c) a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Contractor must give the Contract Administrator the notices required by clause 16.3 if it wishes to make a Claim against [## INSERT] in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by [## INSERT]) under, arising out of or in connection with the Contractor's Activities, the Works or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) amounts are to be added to the Contract Price; or
 - (ii) otherwise, the Contract Price will be increased or adjusted,

as determined by the Contract Administrator.

16.3 Prescribed Notices

The notices referred to in clause 16.2 are:

- (a) a written notice within 21 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;

- (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification.

16.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time Bar

If the Contractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

- (a) [## INSERT] will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against [## INSERT],

arising out of or in connection with the relevant direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

16.6 Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against [## INSERT].

16.7 Address for Service

Any notice to be given or served under or arising out of a provision of the Contract must:

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 14 and 15 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
 - (i) specified in the Contract Particulars; or
 - (ii) last notified in writing to the party giving or serving the notice, for the party to whom or upon which the notice is to be given or served;
- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
- (d) in the case of notices sent by email:
 - (i) be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
 - (ii) include the words "This is a notice under clause 16.7 of the Contract" in the subject field of the email.

16.8 Receipt of Notices

- (a) Subject to paragraph (b), a notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
- (i) delivery by hand, on delivery;
 - (ii) prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
 - (iii) prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
 - (iv) email, the earlier of:
 - A. delivery to the email address to which it was sent; or
 - B. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
- (b) In the case of notices under clauses 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.7(b), 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:
- (i) the date the notice sent by email is taken to be received; or
 - (ii) the date the notice delivered by hand or sent by prepaid express post is taken to be received,
- as determined in accordance with paragraph (a).

17. ESD AND WOL

17.1 Design and Construction

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must:

- (a) carry out the ECI Activities;
- (b) design the parts of the Works which the Contract requires it to design; and
- (c) construct the Works,

in a manner which:

- (d) complies with the requirements of the ESD and WOL Plan; and
- (e) maximises the achievement of the ESD Principles and the WOL Objectives.

17.2 Consultation

The Contractor must meet with the Contract Administrator, [## INSERT] and Other Contractors at such times as the Contract Administrator may require from time to time to:

- (a) review the progress of the ECI Activities and the design and construction of the Works against the ESD and WOL Plan, the ESD Principles and the WOL Objectives; and
- (b) consult with the Contract Administrator, [## INSERT], the Design Consultant and Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the ESD Principles and the WOL Objectives.

17.3 ESD and WOL Proposals

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must at all times in carrying out the Contractor's Activities:

- (a) use its best endeavours to identify and recommend to the Contract Administrator, reasonably available proposals for maximising the achievement of the ESD Principles and the WOL Objectives; and
- (b) consult with the Contract Administrator, [## INSERT] and Other Contractors, as to:
 - (i) proposals which it is considering making under paragraph (a); and
 - (ii) possible proposals under paragraph (a) identified by [## INSERT].

17.4 Post Occupancy Evaluation

The Contract Administrator may:

- (a) at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and
- (b) without limiting paragraph (a):
 - (i) inspect the Works to review the extent to which the Contractor has complied with the ESD and WOL Plan and otherwise maximised the achievement of the ESD Principles and the WOL Objectives in the design and construction of the Works; and
 - (ii) issue a report to [## INSERT] and the Contractor:
 - A. stating the extent to which the Contractor has complied with the ESD and WOL Plan and otherwise maximised the

achievement of the ESD Principles and the WOL Objectives in the design and construction of the Works; and

- B. containing a list of any aspects of the Works which do not conform with the requirements of the Contract.

The Contractor:

- (c) must consult with the Contract Administrator, [## INSERT] and Other Contractors, and must provide such other assistance as is reasonably necessary, for the purposes of the Contract Administrator carrying out the requirements in paragraphs (a) and (b); and
- (d) acknowledges and agrees that [## INSERT] may take the results of the post occupancy evaluation into account in any registration of interest process, tender process or similar procurement process in connection with any other [## INSERT] project.

17.5 Rights and Obligations Not Affected

Neither [## INSERT] rights or remedies, nor the Contractor's obligations under the Contract or otherwise at law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon [## INSERT] or Contract Administrator by clause 17 or the failure by [## INSERT] or the Contract Administrator to exercise any such rights;
- (b) the obligations imposed upon the Contractor by clause 17 or the Contractor's compliance with those obligations; or
- (c) any direction of the Contract Administrator under or purported to be given under the Contract, including any comment or direction upon or review, acceptance or rejection of:
 - (i) any advice, recommendation or other assistance provided by the Contractor under clause 17; or
 - (ii) any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.4.

18. GENERAL

18.1 Workplace Gender Equality

The Contractor must:

- (a) comply with its obligations under [Relevant Act]; and
- (b) not enter into a subcontract made in connection with the Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the [Relevant Act].

18.2 Local Industry Capability

Without limiting clause 9.2, the Contractor must:

- (a) comply with the Local Industry Capability Plan;
- (b) report at least six monthly on the implementation of the Local Industry Capability Plan, including on:
 - (i) the matters set out in Local Industry Capability Plan; and
 - (ii) any other matters as may be required by the Contract Administrator, in accordance with the form set out in the Local Industry Capability Plan, or if not specified, in a form required by the Contract Administrator; and
- (c) notify the Contract Administrator in writing within 7 days of any change to the person specified as the Contractor's point of contact in the Local Industry Capability Plan.

18.3 Security Alert System

- (a) Nothing that the Contractor is or may be required to do under clause 18.3 will derogate from, or otherwise limit, the Contractor's obligations under the Contract.
- (b) The Contractor must be, and must ensure that its subcontractors are, fully familiar with the requirements of Security Alert System.
- (c) The Contractor must, and must ensure that its subcontractors:
 - (i) attend any security briefing requested by the Contract Administrator from time to time; and
 - (ii) participate in any rehearsal of Security Alert System directed by the Contract Administrator from time to time.
- (d) In carrying out the Contractor's Activities, the Contractor must, and must ensure that its subcontractors, comply with the requirements of Security Alert System:
 - (i) at the level specified in the Contract Particulars; and
 - (ii) at any alternative level (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time.
- (e) If there is any change to Security Alert System level specified in the Contract Particulars (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time after the Award Date:
 - (i) the Contract Administrator will notify the Contractor of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Contractor as to the course it is to adopt insofar as the Contractor's Activities are affected by the change

to the level (or individual measure from a higher level to meet a specific threat or threats); and

- (ii) subject to subparagraph (iii), where the change occurs in the Delivery Phase, the Contractor will be entitled to have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator; or
 - (iii) where the change occurs in the Delivery Phase, the Delivery Phase Price will be decreased by any saving made by the Contractor after the giving of the notice under subparagraph (i) which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator.
- (f) The amount (if any) under paragraph (e)(ii) will be a limitation on [## INSERT] liability to the Contractor arising out of or in connection with the:
- (i) change to Security Alert System level (or individual measure from a higher level to meet a specific threat or threats); and
 - (ii) Contract Administrator's instruction,

and to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with any change to Security Alert System level (or individual measure from a higher level to meet a specific threat or threats) or the Contract Administrator's instruction under paragraph (e)(i), other than under paragraph (e)(ii).

18.4 IT Equipment

- (a) Without limiting the Contractor's obligations under the Contract, the Contractor warrants that:
- (i) each item of IT Equipment:
 - A. is free of defects in materials and workmanship;
 - B. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Equipment in the Contract or in any documentation accompanying that IT Equipment; and
 - C. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Equipment and other parts of the Works, will not be adversely affected by the date; and
 - (ii) no virus will be introduced into [## INSERT] systems as a result of the supply by the Contractor of any IT Equipment or as a result of any other act or omission of the Contractor in connection with carrying out the Contractor's Activities and the Works.

- (b) Without limiting clause 8.6, the Contractor must assign to [## INSERT], the benefits of warranties given by any supplier from whom the Contractor sources any IT Equipment and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Contractor becoming entitled to the benefit of such warranties. The assignment of a warranty pursuant to clause 18.4 does not in any way relieve the Contractor of the obligation to comply with warranties given by the Contractor under the Contract.

18.5 Privacy

- (a) The Contractor must:

- (i) comply with its obligations under the [Relevant Privacy Act]
- (ii) comply with the [## INSERT] Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;
- (iii) use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract only for the purposes of fulfilling its obligations under the Contract;
- (iv) not disclose Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Contract Administrator;
- (v) not collect, transfer, store or otherwise use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract outside [## INSERT], or allow parties outside [## INSERT] to have access to it, without the prior written approval of the Contract Administrator;
- (vi) co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;
- (vii) ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract is made aware of, and undertakes in writing to observe, the [## INSERT] Privacy Principles, as if the person was an agency as defined in the Privacy Act;
- (viii) comply with policy guidelines laid down by [## INSERT] or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
- (ix) ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Contract Administrator's election, to be either returned to [## INSERT] or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;
- (x) agree to the naming or other identification of the Contractor in reports by the Federal Privacy Commissioner;

- (xi) ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of clause 18.5, as if the subcontractor were the Contractor;
 - (xii) enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contract Administrator may give;
 - (xiii) not use Personal Information collected by the Contractor for the purposes of, under, arising out of or in connection with the Contract for, or in any way relating to, any direct marketing purpose; and
 - (xiv) indemnify [## INSERT] in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by [## INSERT] arising out of or in connection with:
 - A. a breach of the obligations of the Contractor under clause 18.5;
 - B. a breach of a subcontractor's obligations under a subcontract as contemplated by subparagraph (xi);
 - C. the misuse of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor; or
 - D. the disclosure of Personal Information held for the purposes of, under, arising out of or in connection with the Contract by the Contractor or a subcontractor in breach of an obligation of confidence.
- (b) For the purposes of paragraph (a)(xiv), **costs, expenses, losses, damages or liabilities** includes any compensation paid to a person by or on behalf of [## INSERT] to settle a complaint arising out of or in connection with a breach of clause 18.5.
- (c) The Contractor must immediately notify [## INSERT] in writing if the Contractor:
- (i) becomes aware of a breach of the obligations under clause 18.5 by itself or by a subcontractor;
 - (ii) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by paragraph (a)(xi);
 - (iii) becomes aware that a disclosure of Personal Information may be required by law; or
 - (iv) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- (d) The Contractor acknowledges that, in addition to the requirements of clause 18.5, the Contractor may also be obliged to comply with other obligations in relation to the handling of Personal Information, including [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] legislation.
- (e) Nothing in clause 18.5 limits any of the Contractor's obligations under the Contract or otherwise at law or in equity.
- (f) In clause 18.5, **received** includes collected.

18.6 Moral Rights

- (a) The Contractor must:
- (i) to the extent permitted by law and for the benefit of [## INSERT], ensure that each of the Contractor and subcontractor personnel engaged by the Contractor in the production or creation of Project Documents or the Works gives genuine consent in writing to the use of the Project Document or the Works (as applicable) for the Specified Acts, notwithstanding that such use would otherwise be an infringement of their Moral Rights; and
 - (ii) provide copies of such consents to the Contract Administrator on request at such times as the Contract Administrator may require.
- (b) In this clause 18.6, **Specified Acts** means:
- (i) falsely attributing the authorship of any Project Document or the Works, or any content in a Project Document or the Works (including literary, dramatic, artistic works and cinematograph films within the meaning of the *[Relevant Act]*).
 - (ii) materially altering the style, format, colours, content or layout of a Project Document or the Works and dealing in any way with the altered Project Document or Works;
 - (iii) reproducing, communicating, adapting, publishing or exhibiting any Project Document or the Works; and
 - (iv) adding any additional content or information to a Project Document or the Works.

18.7 Freedom of Information

- (a) [Relevant Freedom of Information Act - If Applicable - Remove References if such Legislation not in Place] (**FOI Act**) gives members of the public rights of access to official documents of [## INSERT] Government and its agencies. The FOI extends, as far as possible, rights to access information (generally documents) in the possession of [## INSERT] Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (b) The Contractor acknowledges that [## INSERT] requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

18.8 Long Service Leave

Clause 18.8 only applies if the Long Service Leave Legislation applies to the Contractor's Activities.

- (a) Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, the Contractor must comply with its obligations under the Long Service Leave Legislation.
- (b) If required by the Long Service Leave Legislation [Remove Reference if not Applicable], the Contractor must pay any levy, charge, contribution or associated amount in respect of the Contractor's Activities.
- (c) Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Contract Price and the Contractor will have no Claim against [##

INSERT] arising out of or in connection with its obligations under clause 18.8 or the Long Service Leave Legislation.

18.9 Assignment

- (a) The Contractor must not, without the prior written approval of [## INSERT] and except on such terms and conditions notified by [## INSERT], assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
- (b) For the purpose of but without limiting paragraph (a), an assignment of the Contract will be deemed to have occurred where there has been a Change of Control.

18.10 Publicity

Without limiting clause 20, the Contractor must:

- (a) not furnish any information or issue any document or other written or printed material concerning the Contractor's Activities or the Works for publication in the media without the prior written approval of the Contract Administrator; and
- (b) refer any enquiries from the media concerning the Contractor's Activities or the Works to the Contract Administrator.

18.11 Building Works Manual and National Construction Code Certification

Without limiting clauses 6.13, 8.3, 8.4 and 9.1(c), the Contractor must provide to the Contract Administrator written certification from an Accredited Building Surveyor:

- (a) at the time it submits any Design Documentation to the Contract Administrator under clause 6.2 - that the Design Documentation submitted at that time complies with the Building Works Manual and the National Construction Code; and
- (b) as a condition precedent to Completion - that the Works comply or the Stage complies (as the case may be) with the Building Works Manual and the National Construction Code,

except to the extent of any dispensation granted by the Assistant Secretary Estate Engineering and identified in the certification. To the extent that there is any inconsistency between the Building Works Manual and the National Construction Code, the Building Works Manual prevails.

18.12 Applicable Standards

- (a) The Contractor acknowledges that the Contract identifies:
 - (i) the [## INSERT] standards which are applicable to the Contractor's Activities and the Works; or
 - (ii) in the absence of an applicable [## INSERT] standard, the relevant international standards which are applicable to the Contractor's Activities and the Works,

and that it must comply with all relevant standards of Standards [## INSERT] to the extent required by clause 9.1(c) (collectively, the **Applicable Standards**).

- (b) Without limiting the Contractor's obligations under this Contract, the Contractor must comply with the Applicable Standards in performing the Contractor's Activities and executing the Works.
- (c) The Contract Administrator may, at any time, request that the Contractor provides:

- (i) a certificate which certifies that the Design Documentation, the Works or any Stage (as the case may be) complies with the Applicable Standards; and
 - (ii) a corresponding certificate from each relevant subcontractor which certifies that (to the extent then applicable) all design carried out by that subcontractor or the Works or any Stage executed by that subcontractor (as the case may be) complies with the Applicable Standards.
- (d) The Contractor acknowledges that [## INSERT] may exercise any of its rights under this Contract (including under clause 6.12) to carry out periodic auditing of the Contractor's compliance with clause 18.12.

18.13 Fraud Control

- (a) Without limiting the Contractor's other obligations, the Contractor must proactively:
- (i) take all necessary measures to prevent, detect and investigate any fraud in connection with the Contract or the Contractor's Activities (including all measures directed by the Contract Administrator); and
 - (ii) take all necessary corrective action to mitigate any loss or damage [## INSERT] resulting from fraud to the extent that the fraud was caused or contributed to by the Contractor or any of its officers, employees, subcontractors or agents and put [## INSERT] in the position it would have been in if the fraud had not occurred (including all corrective action directed by the Contract Administrator).
- (b) If the Contractor knows or suspects that any fraud is occurring or has occurred in connection with the Contract or the Contractor's Activities it must immediately provide a detailed written notice to the Contract Administrator including details of:
- (i) the known or suspected fraud;
 - (ii) how the known or suspected fraud occurred;
 - (iii) the proactive corrective action the Contractor will take under paragraph (a)(ii); and
 - (iv) the proactive measures which the Contractor will take under paragraph (a)(i) to ensure that the fraud does not occur again,
- and such further information and assistance as [## INSERT], or any person authorised by [## INSERT], requires in relation to the fraud or suspected fraud.

18.14 Shadow Economy Procurement Policy

- (a) Clause 18.14 does apply unless the Contract Particulars state that it does not apply.
- (b) Without limiting the operation of clause 8.5, the Contractor must not enter into a subcontract with a subcontractor (or agree to a novation of a subcontract to a subcontractor) if the total value of all work under the subcontract is expected to exceed [Insert Sum] (inclusive of [GST/VAT/Applicable Tax]) unless the Contractor has obtained and holds any of the STRs referred to in the table below, as applicable to the relevant subcontractor.

If the subcontractor to enter into the subcontract is:	STRs required:
a. a body corporate or natural person	a satisfactory and valid STR in respect of that body corporate or person.
b. a partner acting for and on behalf of a partnership	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the subcontract.
c. a trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust.
d. a joint venture participant	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
e. a member of a Consolidated Group	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group.
f. a member of a [GST/VAT/Applicable Tax] Group	a satisfactory and valid STR in respect of the: (i) the [GST/VAT/Applicable Tax] Group member; and (ii) the [GST/VAT/Applicable Tax] Group representative.

- (c) The Contractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Contractor becoming aware of the circumstances arising:

If the Contractor or subcontractor is:	Additional STRs required:
a. a partner acting for and on behalf of a partnership	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the

	Contract or subcontract (as applicable).
b. a trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of any new trustee appointed to the trust.
c. a joint venture participant	a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture.
d. a member of a Consolidated Group	a satisfactory and valid STR in respect of any new head company of the Consolidated Group.
e. a member of a [GST/VAT/Applicable Tax] Group	a satisfactory and valid STR in respect of any new representative for the [GST/VAT/Applicable Tax] Group.

- (d) The Contractor must provide [## INSERT] with copies of the STRs referred to in paragraph (b) or paragraph (c) within 5 business days after a written request by [## INSERT].
- (e) The Contractor:
- (i) warrants that at the Award Date it holds a valid and satisfactory STR;
 - (ii) must hold a valid and satisfactory STR at all times during the Contractor's Activities and the Works and, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR;
 - (iii) must ensure that any subcontractor, if the total value of all work under the subcontract is expected to exceed [Insert Sum] (inclusive of [GST/VAT/Applicable Tax]), holds a valid and satisfactory STR at all times during the term of the relevant subcontract; and
 - (iv) must retain a copy of any STR held by any subcontractor in accordance with subparagraph (iii) and must, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR.
- (f) For the purposes of the Contract, an STR is taken to be:
- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the [## INSERT] tax system; and
 - (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

18.15 [## INSERT] Publication and Reporting Requirements

The Contractor acknowledges that [## INSERT] is and will be subject to a number of [## INSERT] requirements and policies which support internal and external scrutiny of its

tendering and contracting processes and the objectives of transparency, accountability and value for money including requirements to:

- (a) publish details of agency agreements, [## INSERT] contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of 10,000 or more on Tender ([## INSERT] Tender business opportunity website located at [## INSERT LINK]).ECI
- (b) report and post on the internet a list of contracts valued at 100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
- (c) report and post on the internet information about its contracts in other ways pursuant to its other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the [## INSERT].

18.16 Modern Slavery

- (a) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the carrying out of the Contractor's Activities.
- (b) The Contractor must ensure the Contractor's key people under clause 3.6 and other personnel responsible for managing the operations and supply chains used in the performance of the Contractor's Activities have undertaken suitable training to be able to identify and report Modern Slavery.
- (c) If at any time the Contractor becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the carrying out of the Contractor's Activities, the Contractor must:
 - (i) promptly notify the Contract Administrator of the Modern Slavery practices and provide any relevant information requested by the Contract Administrator;
 - (ii) as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
 - (iii) regularly update the Contract Administrator of the steps taken by it in accordance with subparagraph (ii).
- (d) For the purposes of this clause 18.16, **Modern Slavery** has the same meaning as it has in the [*Relevant Act*].

19. COMMERCIAL-IN-CONFIDENCE INFORMATION

Clause 19 does not apply unless the Contract Particulars state that it applies.

- (a) Subject to paragraph (b), [## INSERT] must keep confidential any information provided to [## INSERT] by the Contractor before or after the Award Date when:
- (i) a written request to keep specific information confidential and the justification for keeping such information confidential has been expressly made by the Contractor to [## INSERT] in its tender;
 - (ii) [## INSERT] agrees (in its absolute discretion) that such information is commercial-in-confidence information;
 - (iii) the Contract Administrator notifies the Contractor in writing that [## INSERT] (in its absolute discretion) agrees, including the terms of any agreement under subparagraph (ii); and
 - (iv) such information and the terms of any agreement are expressly specified in the Contract Particulars,

(Commercial-in-Confidence Information).

- (b) [## INSERT] obligation in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
- (i) disclosed by [## INSERT] to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with the Contract;
 - (ii) disclosed by [## INSERT] to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with [## INSERT] management, reporting or auditing requirements;
 - (iii) disclosed by [## INSERT] to any responsible Minister or any Ministerial adviser or assistant;
 - (iv) disclosed by [## INSERT] to any House or Committee of the Parliament of the [## INSERT];
 - (v) disclosed to any [## INSERT] department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;
 - (vi) authorised or required by law to be disclosed; or
 - (vii) in the public domain otherwise than due to a breach of paragraph (a).

20. INFORMATION SECURITY

20.1 [Relevant Requirements]

The Contractor must:

- (a) at its cost have obtained as at the Award Date and thereafter maintain for the term of the Contract the level of [Relevant Requirements] specified in the Contract Particulars in accordance with [## INSERT RELEVANT REGULATIONS]
- (b) comply with any other direction or requirement of the Contract Administrator in relation to the Information Security.

20.2 Confidential Information and Information Security

- (a) The Contractor acknowledges and agrees that:
 - (i) the Confidential Information is confidential to [## INSERT] and that any unauthorised use or disclosure of the Confidential Information may cause loss or damage to [## INSERT]; and
 - (ii) part of the Confidential Information may be Sensitive and Classified Information.
- (b) Except as expressly provided in this clause 20.2, the Contractor must:
 - (i) hold the Confidential Information in strict confidence and must not disclose, use or deal with it or otherwise make it available to any person; and
 - (ii) ensure all Confidential Information is strictly kept secure and protected from all unauthorised access and use.
- (c) The Contractor may disclose Confidential Information where such disclosure is required by law provided that the Contractor:
 - (i) only discloses such of the Confidential Information as is strictly required by law to be disclosed, including by taking all reasonable steps in consultation with the recipient (whether by agreed redaction or otherwise) to limit the Confidential Information which is disclosed;
 - (ii) where legally permitted to do so, immediately notifies the Contract Administrator and [## INSERT] in writing of such requirement and provides such details as would enable [## INSERT] to independently seek to protect the confidentiality of the Confidential Information; and
 - (iii) ensures that any recipient is made aware of the confidential status of the Confidential Information and takes all reasonable steps to obtain confidentiality undertakings from the recipient.
- (d) Subject to paragraph (e)(ii)B, the Contractor may disclose Confidential Information to:
 - (i) an employee, officer, agent, legal adviser, insurer, subcontractor or proposed subcontractor of the Contractor who needs to know the Confidential Information to enable the Contractor to perform its obligations under the Contract; and
 - (ii) such other persons, provided the Contractor has obtained the prior written approval of the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion),

provided that the Contractor must ensure that:

- (iii) all such persons strictly comply with equivalent obligations as are imposed on the Contractor by this clause 20 in respect of all Confidential Information disclosed to them; and
- (iv) in the case of disclosure to a subcontractor or proposed subcontractor and prior to making any disclosure, the Contractor has entered into a written agreement with the relevant person, which:
 - A. imposes equivalent obligations as are imposed on the Contractor by this Contract in respect of all Confidential Information disclosed to them; and
 - B. is expressed to be made for the benefit of both the Contractor [## INSERT].
- (e) The Contractor must:
 - (i) strictly comply with all:
 - A. Information Security Requirements; and
 - B. additional information security or confidentiality requirements notified by the Contract Administrator or [## INSERT], including in respect of any Security or Confidentiality Incident; and
 - (ii) without limiting paragraph (d) or subparagraph (i), ensure:
 - A. that persons performing the roles specified in the Contract Particulars hold and maintain a security clearance at or above the level specified in the Contract Particulars;
 - B. that no Sensitive and Classified Information is released to any third party, without the prior written approval of the originator through the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion); and
 - C. all subcontracts include provisions equivalent to the obligations of the Contractor in this clause 20.
- (f) Without limiting the Contractor's strict obligations under paragraph (e)(i), the security classification of the information and assets accessible to the Contractor in connection with the Contract is anticipated to be at or below the level specified in the Contract Particulars, provided that if the Contractor is required to access information and assets above the specified level, this will be deemed to be a change in Statutory Requirements for the purposes of clause 8.4.
- (g) Within such period as the Contract Administrator or [## INSERT] may direct, the Contractor must, in accordance with the other terms of the direction, provide:
 - (i) evidence of the Contractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 20; and
 - (ii) a statutory declaration in a form and from an authorised officer satisfactory [## INSERT] (acting reasonably) in respect of the Contractor's (including all persons who have been provided with or had access to Confidential Information) compliance with this clause 20.

20.3 Security or Confidentiality Incidents

The Contractor must:

- (a) detect all actual or potential Security or Confidentiality Incidents;
- (b) immediately notify the Contract Administrator and [## INSERT] if it becomes aware of any actual or potential Security or Confidentiality Incident;
- (c) take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Security or Confidentiality Incident; and
- (d) take all other steps as may be notified by the Contract Administrator or [## INSERT] under clause 20.2(e)(i)B in respect of the Security or Confidentiality Incident or as necessary to comply with an Information Security Requirement.

20.4 Return and Retention of Confidential Information

- (a) Subject to paragraph (b), the Contractor must return to [## INSERT] or destroy all documents in its possession, power or control which contain any Confidential Information:
 - (i) in accordance with the Information Security Requirements; and
 - (ii) without limiting subparagraph (i), where the Confidential Information is no longer required for the purposes of the Contract.
- (b) Subject to ongoing compliance with the other requirements of this clause 20 in respect of confidentiality and information security, the Contractor may retain Confidential Information in its records if retention is required to comply with the Information Security Requirements or any other Statutory Requirement, insurance obligation or otherwise with the prior written approval of the Contract Administrator (including on such conditions as the Contract Administrator may impose in its absolute discretion).
- (c) If the Contractor is aware that documents containing the Confidential Information are beyond its possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and procure compliance by such persons with paragraphs (a) and (b) as applicable.

20.5 Release and Indemnity

The Contractor:

- (a) must bear, and releases [## INSERT] in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with a Security or Confidentiality Incident or the exercise of any of the Contract Administrator's or [## INSERT] absolute discretions under clause 20; and
- (b) indemnifies [## INSERT] in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by [## INSERT] arising out of or in connection with a Security or Confidentiality Incident.

21. STRATEGIC NOTICE EVENT

21.1 Contractor's Warranty on Award Date

The Contractor warrants that, on the Award Date and the Date of Delivery Phase Approval, it is not aware of any Strategic Notice Event.

21.2 Contractor to Give Notice

If, at any time, the Contractor becomes aware of any Strategic Notice Event, the Contractor must, as soon as reasonably practicable, notify the Contract Administrator, providing details, to the extent such details are known by or reasonably available to the Contractor, of:

- (a) the Strategic Notice Event, including:
 - (i) whether the Contractor considers that it is a Material Change, or a Significant Event;
 - (ii) the date or dates on or during which the Strategic Notice Event occurred and the date on which the Contractor became aware of the Strategic Notice Event; and
 - (iii) whether any of the Contractor's key people, other personnel engaged in connection with the Contractor's Activities or any officers or employees of any subcontractors were involved; and
- (b) the steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Strategic Notice Event on the interests of [## INSERT]
- (c) [## INSERT] Rights Upon Occurrence of Strategic Notice Event

Without limiting any other right or remedy of [## INSERT] (under the Contract or otherwise at law or in equity), if:

- (d) the Contractor:
 - (i) notifies the Contract Administrator under clause 21.2; or
 - (ii) has given a false warranty in any respect under clause 21.1 or has failed to strictly comply with clause 21; or
- (e) [## INSERT] otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Strategic Notice Event,

[## INSERT] may (in its absolute discretion) and either itself, or through the Contract Administrator, do any one or more of the following:

- (f) notify the Contractor that it is required to provide further information, documents or evidence in relation to, and otherwise clarify, the:
 - (i) nature and extent of the Strategic Notice Event to the extent such information, documents or evidence are known or reasonably available to the Contractor; and
 - (ii) steps which the Contractor has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Strategic Notice Event on the interests of [## INSERT],within 3 business days of the request (or longer period agreed in writing by [## INSERT]);

- (g) regardless of whether or not the Contractor has received a notice under paragraph (f), notify the Contractor that the Contractor may continue to perform the Contractor's Activities, whether with or without such conditions as [## INSERT] thinks fit (in its absolute discretion) including the Contractor preparing and implementing a Strategic Notice Event Remediation Plan in accordance with clause 21.3; and
- (h) regardless of whether or not [## INSERT] has notified the Contractor under paragraphs (f) or (g), take into account the occurrence of a Strategic Notice Event at any time, including when:
 - (i) deciding whether to consent to the subcontracting of any of the Contractor's Activities or the Works (including where required under clause 8.5(a));
 - (ii) conducting performance reviews, providing a direction to remove a person from the Site or the Contractor's Activities (including in accordance with clause 3.7), or exercising any rights of [## INSERT] in relation to access, audit or the treatment of documentation under or in connection with the Contract (including in accordance with clause 6.12);
 - (iii) deciding whether to exercise any rights in relation to termination or to omit parts of the Works by Variation Order; and
 - (iv) determining whether to proceed with the Contractor to the Delivery Phase.

21.3 Strategic Notice Event Remediation Plan

- (a) If notified by [## INSERT] under clause 21.2(g), the Contractor must prepare and submit a draft Strategic Notice Event Remediation Plan to the Contract Administrator for approval within 10 business days of [## INSERT] notice (or longer period agreed in writing by [## INSERT]).
- (b) A draft Strategic Notice Event Remediation Plan prepared by the Contractor under paragraph (a) must include the following information:
 - (i) how the Contractor will address the Strategic Notice Event to minimise the impact of the Strategic Notice Event on the Contractor's Activities and the Works;
 - (ii) confirmation that the implementation of the Strategic Notice Event Remediation Plan will not in any way impact on the compliance by the Contractor with its other obligations under the Contract;
 - (iii) how the Contractor will seek to ensure that any events of a similar nature to the Strategic Notice Event do not occur again;
 - (iv) if the Strategic Notice Event involves a Material Change, how the Material Change will impact the Contractor's original agreement with [## INSERT]; and
 - (v) any other matter reasonably requested by [## INSERT].
- (c) The Contract Administrator will review the draft Strategic Notice Event Remediation Plan and either approve it or provide the Contractor with the details of any changes that are required. The Contractor must make any changes reasonably requested by the Contract Administrator and resubmit the draft Strategic Notice Event Remediation Plan to the Contract Administrator within 5 business days of the request (or longer period agreed in writing by the Contract

Administrator). This paragraph (c) will apply to any resubmitted draft Strategic Notice Event Remediation Plan.

- (d) Without limiting its other obligations under the Contract, the Contractor must:
- (i) comply with each Strategic Notice Event Remediation Plan as approved by the Contract Administrator; and
 - (ii) provide such reports and other information about the Contractor's progress in implementing the Strategic Notice Event Remediation Plan as may be reasonably requested by the Contract Administrator.

21.4 Release

The Contractor must bear, and releases [## INSERT] in respect of, all costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor or any other person or entity arising out of or in connection with the Strategic Notice Event or the exercise of any of the Contract Administrator's or [## INSERT] absolute discretions under clause 21.

21.5 Contractor's Compliance

- (a) Nothing in this clause 21 requires the Contractor to act in any manner or disclose any information which would:
- (i) breach an obligation of confidentiality that existed prior to the date the Strategic Notice Event occurred, that is owed to an unrelated third party;
 - (ii) cause the Contractor to breach any law or regulation or contractual obligation regarding privacy or security (in [## INSERT] or outside of [## INSERT]);
 - (iii) have the effect of waiving legal professional privilege (or any equivalent privilege in [## INSERT] or outside of [## INSERT]) in relation to the information; or
 - (iv) breach the rules of a stock exchange or any similar body on which the Contractor, or any Related Body Corporate of the Contractor, is listed, which require the information to be first disclosed to the stock exchange or body. In this case, the Contractor must disclose the information to the Contract Administrator promptly after disclosure is made to the stock exchange or body.
- (b) Notwithstanding any restriction that may apply in respect of specific information, such as that described in paragraph (a), the Contractor must use reasonable endeavours to make any disclosures and take reasonable steps to ensure that the overarching intent of this clause 21 is achieved.

22. FINANCIAL VIABILITY

- (a) The Contractor:
- (i) warrants that, on the Award Date, the Date of Delivery Phase Approval and on the date of submitting each payment claim under clause 12.2:
 - A. it has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors (in accordance with paragraph (b))); and
 - B. each subcontractor engaged in the Contractor's Activities, the Works or each Stage has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
 - (ii) acknowledges and agrees that [## INSERT] has entered into the Contract and, if applicable, has made payments to the Contractor under clause 12.5 and proceeded to the Delivery Phase, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 22.
- (b) The Contractor must pay all subcontractors in accordance with the payment terms in all subcontracts.
- (c) The Contractor must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
- (i) the Contractor's ability to perform the Contractor's Activities, achieve Completion of the Works or each Stage or otherwise meet its obligations under the Contract; and
 - (ii) a subcontractor's ability to perform its activities in accordance with the relevant subcontract,
- including any potential or actual change in:
- (iii) the Contractor's financial viability; or
 - (iv) a subcontractor's financial viability.
- (d) The Contract Administrator may (in its absolute discretion) at any time request the Contractor to:
- (i) provide the Contract Administrator with a solvency statement in the form required by [## INSERT] with respect to:
 - A. the Contractor, properly completed and duly executed by the Contractor; or
 - B. a subcontractor, properly completed and duly executed by the subcontractor;
 - (ii) ensure:
 - A. its Financial Representative is available; and
 - B. each subcontractor makes its Financial Representative available,
- to provide the Contract Administrator and any independent financial adviser engaged by [## INSERT] with financial information and documents (including internal monthly management accounts), answer

questions, co-operate with and do everything necessary to assist [## INSERT], the Contract Administrator and the independent financial adviser engaged by [## INSERT] for the purpose of demonstrating that:

- C. the Contractor has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Works or each Stage and otherwise meet its obligations under the Contract (including the payment of all subcontractors in accordance with paragraph (b)); or
- D. a subcontractor has the financial viability necessary to perform its activities in accordance with the relevant subcontract.

(e) If [## INSERT] considers (in its absolute discretion) that there could be or has been a change in:

- (i) the Contractor's financial viability; or
- (ii) a subcontractor's financial viability,

which could adversely affect:

- (iii) the Contractor's ability to perform the Contractor's Activities, achieve Completion of the Works or each Stage or otherwise meet its obligations under the Contract; or
- (iv) a subcontractor's ability to perform its activities in accordance with the relevant subcontract,

the Contract Administrator may (in its absolute discretion) direct the Contractor to take such steps as [## INSERT] considers necessary to secure the performance of the Contractor's Activities, the Completion of the Works or each Stage and the meeting of its obligations under the Contract, including requiring the Contractor to:

- (v) provide additional Approved Security in the form and for an amount required by [## INSERT] under clause 4.1(a);
- (vi) provide a deed of guarantee and undertaking in the form required by [## INSERT];
- (vii) establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by [## INSERT];
- (viii) provide Subcontractor Deeds of Covenant or Consultant Deeds of Covenant; or
- (ix) provide Collateral Warranties.

(f) If the Contract Administrator gives a direction under paragraph (e), then the Contractor must take such steps as [## INSERT] considers necessary to better secure a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by [## INSERT]. If such direction is given in the Planning Phase, the Contractor's compliance with this paragraph (f) is a condition precedent to Delivery Phase Approval.

(g) The Contractor acknowledges and agrees that:

- (i) nothing in clause 22 will limit, reduce, or otherwise affect any of the rights of [## INSERT] under other provisions of the Contract or otherwise at law or in equity; and

- (ii) clause 22 does not give the Contractor (or any subcontractor) any rights.
- (h) Unless otherwise approved by the Contract Administrator, the Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in clause 22.

23. ESTATE INFORMATION

23.1 Contractor Estate Information Obligations

(a) The Contractor must:

- (i) carry out and fulfil all Contractor Estate Information Obligations; and
- (ii) ensure that all Contractor Estate Information Obligations are carried out:
 - A. within any applicable timeframe prescribed by the Contract or the Estate Information Management Requirements; and
 - B. in relation to the obligations contained in Annexure 1, in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the relevant Estate Information within the period of time within which the Contract Administrator may review the relevant Estate Information in accordance with Annexure 1.

(b) The Contractor warrants that all Estate Information assessed, created, managed, updated and recorded in accordance with this clause 23 will be:

- (i) prepared and completed in accordance with the requirements of the Contract; and
- (ii) complete, fit for purpose and free from errors and omissions.

23.2 No Obligation to Review

(a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, any Estate Information submitted by the Contractor for errors, omissions or compliance with the Contract.

(b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Estate Information prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of [## INSERT] in relation to, any Estate Information will:

- (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
- (ii) prejudice [## INSERT] rights against the Contractor under the Contract or otherwise at law or in equity.

24. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

Clause 24 does not apply unless the Contract Particulars state that it applies.

24.1 PT PCP Subcontracts

- (a) The Contractor must comply with the Payment Times Procurement Connected Policy.
- (b) If the Contractor enters into a PT PCP Subcontract, the Contractor must include in the PT PCP Subcontract:
 - (i) a requirement for the Contractor to pay the PT PCP Subcontractor:
 - A. subject to paragraph (d), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
 - B. subject to paragraph (e), for payments made by the Contractor after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (e) and (f);
 - (ii) a statement that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract; and
 - (iii) a statement that the PT PCP Subcontractor may make a complaint to the PT PCP Policy Team or to [## INSERT] in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of this paragraph (b).
- (c) If the Contractor enters into a Reporting Entity Subcontract in anticipation of, or after, entering into the Contract, the Contractor must use reasonable endeavours to include in that Reporting Entity Subcontract:
 - (i) obligations equivalent to those in paragraph (b); and
 - (ii) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract will include:
 - A. obligations equivalent to those in paragraph (b); and
 - B. obligations equivalent to this subparagraph (ii) (such that the obligations in this subparagraph (ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- (d) Paragraph (b)(i)A does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in paragraph (b)(i)A.
- (e) The Contractor is not required to pay any interest in accordance with paragraph (b)(i)B if either:
 - (i) [## INSERT] has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - (ii) the amount of interest payable is less than 100 ([GST/VAT/Applicable Tax] inclusive).
- (f) Interest payable under paragraph (b)(i)B:

- (i) will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Contractor effects payment; and
- (ii) will be paid at the [## INSERT] Taxation Office-sourced General Interest Charge Rate current at the due date for payment.

24.2 PT PCP Evaluation Questionnaire

If requested in writing by [## INSERT], the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 days of the request.

24.3 Non-Compliance and Remediation

- (a) If [## INSERT] considers or becomes aware that the Contractor has not or may not have complied with:
 - (i) the requirements of clause 24.1; or
 - (ii) the payment requirements of a PT PCP Subcontract,
[## INSERT] may direct the Contractor to provide to [## INSERT] either or both of the following within the timeframes specified by [## INSERT]:
 - (iii) information to enable [## INSERT] to review the Contractor's compliance; or
 - (iv) a properly completed PT PCP Remediation Plan.
- (b) The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under paragraph (a)(iv).
- (c) If [## INSERT] considers that the Contractor has failed to comply with any of its obligations under this clause 24, without limiting [## INSERT] rights and remedies at law or otherwise under the Contract, [## INSERT] may do either or both of the following:
 - (i) take the failure or non-compliance into account as part of [## INSERT] monitoring of the Contractor's performance under the Contract; or
 - (ii) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- (d) The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clause 24.1 or the associated payment requirements of a PT PCP Subcontract:
 - (i) it will not take any prejudicial action against the PT PCP Subcontractor due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (ii) it will co-operate in good faith with [## INSERT] in connection with any investigation or inquiry and any attempt to resolve the complaint.

24.4 Consent

- (a) For any PT PCP Purpose, the Contractor consents to [## INSERT]:
 - (i) using and sharing with any other [## INSERT] Entity (as defined in the *[Relevant Act]*) the information provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by [## INSERT] in connection with this Contract or a PT PCP Subcontract; and

- (ii) receiving information obtained under, or in accordance with, the [Relevant Act] (**Protected Information**) from Entrusted Person and using such Protected Information.

For the purposes of subparagraph (ii), **Entrusted Person** has the meaning given in the [Relevant Act].

- (b) By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the Payment Times Procurement Connected Policy that includes any personal information within the meaning of Privacy Act, the Contractor warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 24.4. The Contractor will provide evidence of such consents to [## INSERT] on request.

24.5 Interpretation

A reference to [## INSERT] in clauses 24.2, 24.3(a), 24.3(d)(ii) and 24.4 includes the PT PCP Policy Team.

CONTRACT PARTICULARS

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Completion - additional conditions precedent to Completion:
(Clause 1.1)

Contract - other documents forming part of the Contract:
(Clause 1.1)

Contract Administrator:
(Clause 1.1)

Contractor: [To be inserted following selection of the successful Tenderer]
(Clause 1.1)

Contractor's Representative: [To be inserted following selection of the successful Tenderer]
(Clause 1.1)

Date for Completion: Where there are no Stages, for the Works is:
(Clause 1.1) [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved]

Where there are Stages, for each Stage is:

Stage	Date for Completion
[Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved]	[Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved]

Date for Delivery Phase Approval:
(Clause 1.1)

Defects Liability Period:
(Clause 1.1)

Asbestos Register:
(Clause 1.1)

Delivery Phase Approval - additional requirements:
(Clause 1.1)

Delivery Phase Price: [Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved]
(Clause 1.1)

Design Consultant:
(Clause 1.1)

ECI Brief: (Clause 1.1)	As set out in Attachment 1 to the Contract Particulars				
ECI Objectives (additional): (Clause 1.1)					
EMOS Contractor: (Clause 1.1)					
Environmental Management Plan (additional): (Clause 1.1)					
Environmental Objectives (additional): (Clause 1.1)					
Environmental Requirements (additional): (Clause 1.1)					
ESD and WOL Manager: (Clause 1.1)	[To be inserted following selection of the successful Tenderer]				
ESD and WOL Plan (additional): (Clause 1.1)					
ESD Principles (additional): (Clause 1.1)					
Executive Negotiators: (Clause 1.1)	[## INSERT]: Director General Capital Facilities and Infrastructure Contractor: [To be inserted following selection of the successful Tenderer]				
Fee Payment Schedule: (Clause 1.1)	In respect of the Planning Phase, as set out in Attachment 2 to the Contract Particulars. In respect of the Delivery Phase, without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to the Delivery Phase Approval being achieved.				
Indicative Date for Completion: (Clause 1.1)	Where there are no Stages, for the Works is: Where there are Stages, for each Stage is: <table border="0" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Stage</th> <th style="text-align: left;">Indicative Date for Completion</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Stage	Indicative Date for Completion		
Stage	Indicative Date for Completion				
Indicative Delivery Phase Price: (Clause 1.1)	[To be inserted following selection of the successful Tenderer]				
Outline Delivery Phase Program: (Clause 1.1)	[To be inserted following selection of the successful Tenderer]				

**Pandemic Adjustment Event
(additional):
(Clause 1.1)**

**Planning Phase Design
Documentation (as at the Award
Date):
(Clause 1.1)**

**Planning Phase Milestones and
Planning Phase Milestone Dates:
(Clause 1.1)**

Planning Phase Milestone	Description	Planning Phase Milestone Date
[50% Schematic Design Report]	<p><i>[Each of the following has been achieved:</i></p> <p><i>(a) Planning Phase Design Documentation comprising the 50% Schematic Design Report has been submitted to, and not rejected by, the Contract Administrator under the Design Services Contract;</i></p> <p><i>(b) the Contractor has completed all ECI Activities required by the Contract in respect of the 50% Schematic Design Report prepared by the Design Consultant; and</i></p> <p><i>(c) each of the other activities to be undertaken as described in section [INSERT] of the ECI Brief has been completed by the Contractor in accordance with the requirements set out in the ECI Brief]</i></p>	
[INSERT]	[INSERT]	

**[INSERT [INSERT]
]**

Planning Phase Price:
(Clause 1.1)

[To be inserted following selection of the successful Tenderer]

Project Plans (additional):
(Clause 1.1)

If clause [9] of the Special Conditions applies, Method of Work Plan for Airfield Activities.

[[## INSERT] TO INSERT ANY ADDITIONAL PLANS REQUIRED]

Provisional Sum Work:
(Clauses 1.1, 8.7, 8.9, 8.10, 8.11 and 8.12)

Work or Goods Amount

[Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), if any, subject to Delivery Phase Approval being achieved]

Total:

Quality Manager:
(Clause 1.1)

[To be inserted following selection of the successful Tenderer]

Quality Objectives (additional):
(Clause 1.1)

Quality Plan (additional):
(Clause 1.1)

Schedule of Collateral Documents:
(Clause 1.1)

1. Approved Security (Unconditional Undertaking)
2. Collateral Warranty
3. Subcontractor Deed of Covenant
4. Consultant Deed of Covenant
5. Deed of Guarantee and Undertaking
6. Contractor Design Certificate
7. Consultant Design Certificate
8. Subcontractor Design Certificate
9. Payment Claim
10. Payment Statement
11. Expert Determination Agreement
12. Delivery Phase Terms
13. If clause [16] of the Special Conditions applies, the “Consultant Deed of Novation” as defined in that clause.

Site:
(Clause 1.1)

Site Management Plan (additional):
(Clause 1.1)

Stages of the Works:
(Clause 1.1)

Table of Variation Rates and Prices: [To be inserted following selection of the successful
(Clause 1.1) Tenderer]

WOL Objectives (additional):
(Clause 1.1)

**Work Health and Safety Plan
(additional):**
(Clause 1.1)

Works:
(Clause 1.1)

Governing law:
(Clause 1.3(a))

CLAUSE 2 - ENGAGEMENT, PLANNING PHASE AND ECI ACTIVITIES

Program format and methodology: [*PRIMAVERA SURETRAK/MICROSOFT PROJECT*] or
(Clauses 2.5(b)(iv) and 10.2(d)) equivalent requested by the Contractor and approved
by the Contract Administrator

**Other conditions precedent to Site
access during the Planning Phase:**
(Clause 2.8(b)(vii))

**Date for Site access for
commencement of Works on Site:** [*INSERT WEEKS/DAYS*] after the date on which [##
(Clause 2.10(b)(ii)A) INSERT] issues a notice under clause 2.10(a)(i)A

**Other conditions precedent to Site
access during the Delivery Phase:** [Without limiting clause 2.9(a), to be finalised and
(Clause 2.10(b)(ii)D) set out in the Contract Particulars (Delivery Phase),
subject to Delivery Phase Approval being achieved]

CLAUSE 3 - PERSONNEL

**Contract Administrator's
representatives and their
functions:**
(Clause 3.4)

Representative	Function(s)
-----------------------	--------------------

Contractor's key people:
(Clause 3.6(a))

Person	Position
---------------	-----------------

[To be inserted
following selection
of the successful
Tenderer]

CLAUSE 4 - SECURITY

**Security to be provided by the
Contractor:**
(Clause 4.1)

Where there are no Stages, for the Works is:

[Total payable] or % of the Contract Price (in the
form of two Approved Securities, each for 50% of this
amount).

Where there are Stages, for each Stage is:

[WHERE SECURITY IS TO BE PROVIDED FOR EACH STAGE, [## INSERT] AND CONTRACT ADMINISTRATOR TO CONSIDER CUMULATIVE TOTAL AMOUNT OF THE SECURITY BEING REQUESTED. IF A PERCENTAGE AMOUNT IS REQUIRED, CONSIDER INSERTING THE WORDS "REFERABLE TO THE STAGE" AFTER THE WORDS "CONTRACT PRICE"]

Stage	Amount
	[Total payable] or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).
	[Total payable] or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).
	[Total payable] or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).
	[Total payable] or % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount).

Deed of Guarantee and Undertaking:
(Clause 4.4)

Clause 4.4 **[DOES/DOES NOT]** apply.
(Clause 4.4 does not apply unless otherwise stated)
If clause 4.4 applies, the Related Body Corporate of the Contractor is: [To be inserted following selection of the successful Tenderer]

CLAUSE 5 - RISKS AND INSURANCE

Insurance policies required to be obtained by the Contractor:
(Clause 5.4)

[INSURANCE LEVELS TO BE FINALISED IN LIGHT OF SUCCESSFUL TENDERER'S NOMINATED LEVELS, [## INSERT] RISK ASSESSMENT AND ANY NEGOTIATIONS WITH THE PREFERRED TENDERER ARISING FROM THAT RISK ASSESSMENT.

WHERE [## INSERT]/CONTRACT ADMINISTRATOR INTENDS TO INCLUDE INDICATIVE LEVELS OF INSURANCE, THE WORDS "[To be inserted following selection of the successful Tenderer, indicatively [INSERT AMOUNT]]" AND THE RELEVANT AMOUNT SHOULD BE INCLUDED.

WHERE AN INSURANCE IS NOT REQUIRED, OR THE RELEVANT PARTICULAR DOES NOT APPLY, INSERT "Not Applicable". APPROPRIATE ADVICE SHOULD BE SOUGHT WHERE THERE ARE QUESTIONS AS TO WHICH OF THE INSURANCES SPECIFIED BELOW ARE REQUIRED FOR A SPECIFIC PROJECT.]

Public Liability Insurance

If written on an occurrence basis:

Amount of Cover: [Total] for each and every occurrence for public liability claims

If written on a claims made basis:

Amount of Cover: [Total] per claim and [Total] in the aggregate

Workers Compensation Insurance

Amount of Cover: Amount of Cover prescribed by Statutory Requirement in the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] in which the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside.

Employers' Liability Insurance

Amount of Cover: The amount that a prudent, competent and experienced contractor undertaking the Contractor's Activities would purchase which must not be less than [value] .

Professional Indemnity Insurance

Amount of Cover: [value] per claim and [value] in the aggregate

Errors and Omissions Insurance

Amount of Cover: [value] per claim and [value] in the aggregate.

Construction Risks Insurance

Amount of Cover:

- (a) [value] (the Contract Price if no amount is specified);
- (b) [value] or % of the Contract Price to cover the costs of demolition and removal of debris;
- (c) [value] or % of the Contract Price to cover [## INSERT] consultant fees;
- (d) [value] for the value of materials or things to be supplied by [## INSERT]; and
- (e) % of the total of the amounts in (a) to (d) to cover escalation costs.

(The Contractor should note that the amount of Construction Risks Insurance which will be required for the Delivery Phase will be based on the finalised Contract Price following Delivery Phase Approval (subject to Delivery Phase Approval being achieved))

	Other Insurances required on and from the Award Date: (Clause 5.4(a)(i)E)
	Other Insurances required as a condition precedent to Delivery Phase Approval: (Clause 5.4(a)(ii)B)
	[[## INSERT] AND CONTRACT ADMINISTRATOR TO CONSIDER AND SEEK ADVICE ON OTHER SPECIFIC AND ADDITIONAL INSURANCES THAT MAY BE REQUIRED EG TRANSIT INSURANCE FOR KEY ITEMS TRANSPORTED TO THE SITE, PRODUCT LIABILITY INSURANCE, MOTOR VEHICLE INSURANCE, INDUSTRIAL SPECIAL RISKS INSURANCE ETC]
Minimum amount of subcontractors' Professional Indemnity Insurance or Errors and Omissions Insurance: (Clause 5.4(i))	Professional Indemnity Insurance Amount of Cover: [value] per claim and [value] in the aggregate Errors and Omissions Insurance Amount of Cover: [value] per claim and [value] in the aggregate
Run-off period for Public Liability Insurance (if written on a claims made basis): (Clause 5.6(b))	Where any part of the Site is located in the [## INSERT]: 11 years. Otherwise: 7 years.
Run-off period for Professional Indemnity Insurance or Errors and Omissions Insurance: (Clause 5.6(d))	Where any part of the Site is located in the [## INSERT]: 11 years. Otherwise: 7 years.
Maximum aggregate liability of the Contractor to [## INSERT]: (Clause 5.11)	In the Planning Phase, the Planning Phase Price. In the Delivery Phase, the Contract Price.

CLAUSE 6 - DESIGN AND DOCUMENTATION

Number of days for review: (Clause 6.3(a)(ii) and 6.3(c))	days
Number of copies of Design Documentation to be submitted by the Contractor to the Contract Administrator: (Clause 6.5)	
Design Documentation hard copy requirements: (Clause 6.5(a))	Compatible with Autocad 14 To scale Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator)
Design Documentation electronic copy requirements: (Clause 6.5(b))	Compatible with Autocad 14 CD-ROM or as determined by the Contract Administrator
Order of precedence of documents in the case of any ambiguity,	1. Formal Agreement

discrepancy or inconsistency:
(Clause 6.11(a))

2. Conditions of Contract
3. Special Conditions
4. Contract Particulars
5. In the Delivery Phase, the Works Description
6. Any other documents forming part of the Contract (as specified in the relevant item under clause 1.1 in these Contract Particulars)
7. Design Documentation
8. ECI Brief
9. Project Plans

Number of days for sample review:
(Clause 6.14(b)(ii) and 6.14(d)) days

CLAUSE 7 - SITE

Applicability of Latent Condition clauses:
(Clauses 7.3 and 7.4)

Clauses 7.3 - 7.4 **[DO/DO NOT]** apply.
(Clauses 7.3 and 7.4 apply unless otherwise stated)

CLAUSE 8 - CARRYING OUT OF THE CONTRACTOR'S ACTIVITIES

Statutory Requirements with which the Contractor does not need to comply:
(Clause 8.3(a))

Approvals which the Contractor is not to obtain:
(Clause 8.3(b))

[TO THE EXTENT [## INSERT] WILL BE RESPONSIBLE FOR OBTAINING AN APPROVAL AFTER THE AWARD DATE, [## INSERT] AND CONTRACT ADMINISTRATOR SHOULD CONSULT WITH THE PROJECT'S LEGAL ADVISER IN RESPECT OF ANY REQUIRED SPECIAL CONDITION]

Work which requires approval to subcontract or which must be let to one of the named subcontractors:
(Clause 8.5(a))

Work or Goods Subcontractors

Stages for which Collateral Warranties required:
(Clause 8.6)

Collateral Warranties required to be procured by the Contractor from subcontractors and provided to [## INSERT]:
(Clause 8.6)

As set out in Annexure 1

Option for responsibility for preparation of design for Provisional Sum Work:
(Clause 8.7)

[Without limiting clause 2.9(a), to be finalised and set out in the Contract Particulars (Delivery Phase), subject to Delivery Phase Approval being achieved: Clauses 8.7 to 8.12 [do/do not] apply.]

("None stated" is the default option, unless otherwise stated)

Requirements for Contract Administrator's Office:
(Clause 8.26)

Number of project signboards:
(Clause 8.27(a))

Project signboard dimensions:
(Clause 8.27(a)(i))

Project signboard (Acknowledgement of Country):
(Clause 8.27(a)(ii)H)

Project signboard information (additional):
(Clause 8.27(a)(ii)I)

CLAUSE 9 - QUALITY

Reference development for purpose of determining minimum standards for workmanship and materials:
(Clause 9.1)

Number of days for submission of Project Plans:
(Clause 9.2(a)(ii)A)

Environmental Management Plan:	days
ESD and WOL Plan:	days
Estate Information Provision Plan:	days
Local Industry Capability Plan:	14 days
Project Lifecycle and HOTO Plan:	days
Quality Plan:	days
Site Management Plan:	days
Work Health and Safety Plan:	days
Other: [SPECIFY]	days

Number of days for review of Project Plans:
(Clause 9.2(a)(ii)B)

Environmental Management Plan:	days
ESD and WOL Plan:	days

Estate Information Provision Plan:	days
Local Industry Capability Plan:	14 days
Project Lifecycle and HOTO Plan:	days
Quality Plan:	days
Site Management Plan:	days
Work Health and Safety Plan:	days
Other: <i>[SPECIFY]</i>	days

Period by which Defects Liability Period will be extended following rectification of a Defect or Completion of a Variation to overcome a Defect:
(Clause 9.11)

Defects Records and Reports (additional):
(Clause 9.14(b)(vi))

CLAUSE 10 - TIME

Maximum intervals between program updates by Contractor:
(Clause 10.2(a))

Additional causes of delay entitling Contractor to claim an extension of time in the Delivery Phase:
(Clause 10.5(b)(i))

1. Statewide industrial disputation or other industrial disputation caused by [## INSERT], which in neither case is caused or contributed to by the Contractor or any subcontractor of the Contractor.
2. A change or variance in respect of a Statutory Requirement after the Award Date.
3. A [## INSERT] Risk.
4. If clauses 7.3 - 7.4 apply, a Latent Condition.
5. Valuable, archaeological or special interest items found on or in the Site.
6. If clause 1 of the Special Conditions applies, Latent Hazardous Substances, Asbestos, or GHS Material.
7. A Pandemic Adjustment Event.

8. A bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Contractor's Activities.

Delay damages:
(Clause 10.10)

Clause 10.10 **[DOES/DOES NOT]** apply.
(Clause 10.10 applies unless otherwise stated)

If clause 10.10 applies:

Where there are no Stages, the daily cap is:

[To be inserted following selection of the successful Tenderer] per working day

If there are Stages, the daily cap is:

Stage	Maximum delay damages
	[To be inserted following selection of the successful Tenderer] per working day
	[To be inserted following selection of the successful Tenderer] per working day
	[To be inserted following selection of the successful Tenderer] per working day
	[To be inserted following selection of the successful Tenderer] per working day

Percentage of extra costs reasonably incurred due to acceleration:
(Clause 10.14(b)(ii))

[To be inserted following selection of the successful Tenderer] %
(5% unless otherwise stated)

CLAUSE 11 - VARIATIONS

Percentage adjustments for valuing a Variation to the Works in the Delivery Phase:
(Clauses 11.3(b)(i), 11.3(c)(iii) and 11.6(f))

[To be inserted following selection of the successful Tenderer]% of amount determined for off-site overheads and profit

[To be inserted following selection of the successful Tenderer]% of amount determined for non-time related on-site overheads and preliminaries

Percentage of wages:
(Clause 11.6(b))

[To be inserted following selection of the successful Tenderer]%

CLAUSE 12 - PAYMENT

Times for submission of payment claims by the Contractor to the Contract Administrator:
(Clause 12.2(a))

Monthly on the [To be inserted following selection of the successful Tenderer] day of each month in accordance with the Fee Payment Schedule

Email address for copy of tax invoice:
(Clause 12.5(a))

[Email address]

Number of business days for payment:
(Clause 12.5(b))

To the extent that the relevant part of the Contractor's Activities is carried out in [## INSERT]

1.

Interest rate:
(Clause 12.13)

1. In the case of damages - the [## INSERT]Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator; or

2. In the case of late payments - the greater of:

(a) the rate in paragraph (1); and

(b) the rate of interest prescribed under any applicable Security of Payment Legislation.

Facilities and infrastructure accounting (additional):
(Clause 12.21(b))

CLAUSE 13 - COMPLETION

Liquidated damages payable by Contractor when Date of Completion occurs after Date for Completion:
(Clause 13.7)

If there are no Stages, for the Works is:

[value] per day.

If there are Stages, for each Stage is:

Stage	Liquidated Damages
-------	--------------------

[value]	per day
---------	---------

[value]	per day
---------	---------

CLAUSE 14 - TERMINATION

Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b))

days

CLAUSE 15 - DISPUTES

Directions to be subject of an expert determination if disputed:
(Clause 15.2)

Directions under clauses: 4.2, 7.3(b)(i), 7.4(a)(ii), 7.5(c)(ii), 8.4(c)(ii), 8.4(d), 8.21(d)(ii), 8.29, 9.5, 9.9(b)(i), 9.10, 10.8, 10.11(b)(ii)B, 11.3(b), 11.3(c)(ii), 11.3(d), 11.6, 12.4, 13.2(b)(ii), 14.8(a), 18.3(e)(ii) and 18.3(e)(iii) and if clause 1 of the Special Conditions applies, clause 1.1(b)(i) of the Special Conditions and clause 1.2(b) of the Special Conditions.

Industry expert who will conduct expert determinations:
(Clause 15.3(a)(i))

Nominating authority for industry expert:
(Clause 15.3(a)(ii))

(The President for the time being of the Resolution Institute unless otherwise specified)

CLAUSE 16 - NOTICES

Address and email address, for the giving or serving of notices, upon:
(Clause 16.7(b)(i))

[## INSERT]:

Address (not PO Box):

Email address:

Attention:

Contract Administrator:

Address (not PO Box):

Email address:

Attention:

Contractor:

Address (not PO Box): [To be inserted following selection of the successful Tenderer]

Email address: [To be inserted following selection of the successful Tenderer]

Attention: [To be inserted following selection of the successful Tenderer]

CLAUSE 18 - GENERAL

Security Alert System level:
(Clause 18.3(d)(i))

("Aware" if not otherwise specified)

Shadow Economy Procurement Connected Policy:
(Clause 18.14)

Clause 18.14 **[DOES/DOES NOT]** apply.
(Clause 18.14 does apply unless otherwise stated)

CLAUSE 19 - COMMERCIAL-IN-CONFIDENCE INFORMATION

Commercial-in-Confidence Information:
(Clause 19)

Clause 19 [does/does not] apply. [To be inserted following selection of the successful Tenderer]
(Clause 19 does not apply unless otherwise stated)

Information which is Commercial-in-Confidence Information:
(Clause 19)

Specific Information	Justification	Period of confidentiality
[To be inserted following selection of the successful Tenderer]	[To be inserted following selection of the successful Tenderer]	[To be inserted following selection of the successful Tenderer]

CLAUSE 20 - INFORMATION SECURITY

[Information Security Requirements]

**Anticipated highest security
classification of information and
assets:**

ATTACHMENT 1 TO THE CONTRACT PARTICULARS - ECI BRIEF

[## INSERT, if any]

ATTACHMENT 2 TO THE CONTRACT PARTICULARS - FEE PAYMENT SCHEDULE

[## To be inserted following selection of the successful Tenderer]

ANNEXURE 1 - ESTATE INFORMATION

1. REVIEW BY CONTRACT ADMINISTRATOR

- (a) The Contract Administrator may:
- (i) review any Estate Information and any other documents prepared and submitted by the Contractor under and in accordance with this Annexure 1 (**Annexure 1 Estate Information**), or any resubmitted Annexure 1 Estate Information; and
 - (ii) within 14 days, or such longer period as the Contract Administrator may reasonably require, as notified in writing to the Contractor:
 - A. approve the Annexure 1 Estate Information; or
 - B. reject the Annexure 1 Estate Information if in the Contract Administrator's reasonable opinion the Annexure 1 Estate Information does not comply with the requirements of the Contract.
- (b) If any Annexure 1 Estate Information is rejected, the Contractor must promptly (and in any event within 14 days) resubmit amended Annexure 1 Estate Information to the Contract Administrator and paragraph (a) will reapply until the Contract Administrator approves the relevant Annexure 1 Estate Information.
- (c) Clause 23.2 of the Conditions of Contract will apply to any review by the Contract Administrator in accordance with this clause 1.
- (d) Without limiting any other provision of the Contract, and notwithstanding any approval by the Contract Administrator under paragraph (a), where an error, defect or omission in the Annexure 1 Estate Information is identified, the Contractor must revise and resubmit the relevant Annexure 1 Estate Information as directed by the Contract Administrator, and paragraph (a) will reapply.

2. "AS-CONSTRUCTED" DRAWINGS AND DOCUMENTS

The Contractor must:

- (a) by no later than the date on which the Contractor provides its 28 day notice of anticipated Completion to the Contract Administrator under clause 13.1(b) of the Conditions of Contract, prepare and submit the complete sets of the draft drawings and documents in respect of the Works or the Stage (**Draft As-Constructed Documents**) to the Contract Administrator for its review under clause 1(a) as follows:

[STANDARD DISCIPLINES AND AS-CONSTRUCTED DRAWINGS/DOCUMENTS ARE INCLUDED IN THE TABLE BELOW. [## INSERT] AND CONTRACT ADMINISTRATOR TO CONSIDER AND REMOVE THOSE NOT APPLICABLE TO THE PROJECT AND INCLUDE ANY ADDITIONAL DISCIPLINES AND AS-CONSTRUCTED DRAWINGS/DOCUMENTS REQUIRED]

Discipline	As-Constructed Drawings and Documents - General	As Constructed Drawings and Documents - Works or Stage specific requirements
<i>Multi-discipline</i>	<ul style="list-style-type: none"> • updated Master Site Plan (to reflect the Works or a Stage) in accordance with the Spatial Data Management Plan and so as 	<i>[INSERT STAGE/S (IF APPLICABLE) AND ANY ADDITIONAL REQUIREMENTS]</i>

Discipline	As-Constructed Drawings and Documents - General	As Constructed Drawings and Documents - Works or Stage specific requirements
	<p>to show any change or modification to all infrastructure and asset features; and</p> <ul style="list-style-type: none"> • surveys of the Works or a Stage prepared in accordance with, and to the standard required by, the Spatial Data Management Plan; 	
<i>Architectural</i>	<ul style="list-style-type: none"> • building plans and floor plans, including floor types; and • provision of (or amendment to) Spaces Plan in accordance with the Spatial Data Management Plan; 	[INSERT]
<i>Landscape</i>	<ul style="list-style-type: none"> • plans; • cabling/systems layout; • underground cabling/systems layout; • as-constructed metering strategy; • separate landscape management/planting drawings specifying Grassed Areas, Garden Beds, Monuments or other important built assets as specified by Estate Class 2 'I.LA' in the Estate Register Information Model (ERIM) available on the [## INSERT LINK] Website as amended or replaced from time to time; and • separate document for landscape sustainment support; 	[INSERT]
<i>Engineering Services Civil</i>	<ul style="list-style-type: none"> • underground infrastructure systems layout; • bulk earthworks plan; • roads & paths plan; and • [INSERT OTHER RELEVANT PLANS]; 	[INSERT]
<i>Engineering Services Structural</i>	<ul style="list-style-type: none"> • structural and sectional plans, elevations and details; 	[INSERT]
<i>Engineering Services Hydraulic</i>	<ul style="list-style-type: none"> • building plans and floor plans; • cabling/systems layout; • underground cabling/systems layout; 	[INSERT]

Discipline	As-Constructed Drawings and Documents - General	As Constructed Drawings and Documents - Works or Stage specific requirements
	<ul style="list-style-type: none"> • circuit/single line/P&ID (Piping & Instrumentation Diagram) schematic layout diagrams; and • as-constructed metering strategy; 	
<i>Engineering Services Mechanical</i>	<ul style="list-style-type: none"> • building plans and floor plans; • cabling/systems layout; • underground cabling/systems layout; • circuit/single line/P&ID (Piping & Instrumentation Diagram) schematic layout diagrams; and • as-constructed metering strategy; 	[INSERT]
<i>Engineering Services Electrical</i>	<ul style="list-style-type: none"> • building plans and floor plans; • wiring diagrams; • cabling/systems layout; • underground cabling/systems layout; • lighting and power layout, including emergency lighting and emergency power layout; • main switchboard layout; • main switchboard schematic drawings; • main switchboard circuit index; • lightning protection; • distribution board layout; • distribution board circuit index; • sub mains cabling layout; • earthing systems; • metering strategy; • update to Whole of Base HV Electrical Single Line Diagrams; and • LV Single Line Diagrams; 	[INSERT]
<i>Engineering Services Communications</i>	<ul style="list-style-type: none"> • building plans and floor plans; • wiring diagrams; • cabling/systems layout; • underground cabling/systems layout; 	[INSERT]

Discipline	As-Constructed Drawings and Documents - General	As Constructed Drawings and Documents - Works or Stage specific requirements
	<ul style="list-style-type: none"> • network schematic diagrams and building service layout diagram; • cabinet layout diagram and cable patching register; • IP address register, Site/cabinet/key register; • User and Group register, audit and change logs, security settings; • room operating parameter requirements notice; and • critical recovery/restoration software files, standard operating environment configuration settings; 	
<i>Engineering Services Security</i>	<ul style="list-style-type: none"> • building plans and floor plans; • wiring diagrams; • cabling/systems layout; • underground cabling/systems layout; • network schematic diagrams and building service layout diagram; • cabinet layout diagram and cable patching register; • IP address register, Site/cabinet/key register; • User and Group register, audit and change logs, security settings; and • critical recovery/restoration software files, standard operating environment configuration settings; 	[INSERT]
<i>Engineering Services Fire</i>	<ul style="list-style-type: none"> • building plans and floor plans; • wiring diagrams; • fire detector layout; • wiring diagram for the fire alarm control panel; • cabling/systems layout; • underground cabling/systems layout; 	[INSERT]

Discipline	As-Constructed Drawings and Documents - General	As Constructed Drawings and Documents - Works or Stage specific requirements
	<ul style="list-style-type: none"> • P&ID (Piping & Instrumentation Diagram) documentation for wet fire suppression services; and • building system layout plan for wet suppression services; 	
[OTHER DISCIPLINES - SPECIFY]	[INSERT]	[INSERT]

- (b) without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, as a condition precedent to Completion of the Works or a Stage:
- (i) update as necessary to reflect the completed Works or Stage and resubmit the Draft As-Constructed Documents to the Contract Administrator for review under clause 1(a), with any amendments to be clearly indicated;
 - (ii) once approved by the Contract Administrator, submit the final, approved versions of the Draft As-Constructed Documents to the Contract Administrator (**Final As-Constructed Documents**); and
 - (iii) at the same time the Contractor submits the Final As-Constructed Documents, provide a complete and accurate:
 - A. new or updated (as applicable) metadata record for each drawing and document; and
 - B. metadata record for each updated Master Site Plan dataset, in accordance with the requirements of the Spatial Data Management Plan;
- (c) without limiting paragraphs (a) and (b), ensure that the Draft As-Constructed Documents and Final As-Constructed Documents:
- (i) are provided electronically in accordance with the Spatial Data Management Plan, or such other format directed by the Contract Administrator;
 - (ii) are prepared in accordance with:
 - A. the Spatial Data Management Plan and the requirements contained in EGIS; and
 - B. the requirements of the Contract; and
 - (iii) have the words "As-Constructed" printed in the following locations:
 - A. if a document, immediately above the title and reference; and
 - B. if a drawing, immediately above the title and drawing number block at the bottom right hand corner of the drawing and immediately to the left of the drawing number block at

the top left hand corner of the drawing, parallel to and outside the left hand border of the drawing; and

- (d) for each of the Draft As-Constructed Documents and the Final As-Constructed Documents provide to the Contract Administrator a comprehensive document and drawing index setting out all documents and drawings prepared by the Contractor and by its subcontractors.

For the purposes of this clause 2:

- (a) the terms **Master Site Plan** and **Spaces Plan** have the same meaning as in the Spatial Data Management Plan; and
- (b) **EGIS** means the "Estate Governance & Integrity System" available on the [Relevant] Website, as amended or replaced from time to time.

3. COLLATERAL WARRANTIES

- (a) Without limiting the definition of "Completion" in clause 1.1 and clause 8.6 of the Conditions of Contract the Contractor must, as a condition precedent to Completion of the Works or a Stage, provide the Contract Administrator with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

Description	Minimum Warranty Period (from the Date of Completion of the Works or the Stage)
Access Floor	[INSERT] years
Aircraft Aprons, Flexible and Rigid Pavements and Seals	[INSERT] years
Benches and Cupboards and Associated Joinery	[INSERT] years
Carpentry	[INSERT] years
Carpet	[INSERT] years
Communications Systems	[INSERT] years
Concrete Toppings and Repairs	[INSERT] years
Drainage	[INSERT] years
Doors	[INSERT] years
Electrical Services	[INSERT] years
Electrical Building and Distribution Services	[INSERT] years
External Coating Systems	[INSERT] years
External Lighting	[INSERT] years
External Non-Structural Concrete	[INSERT] years
External Signage (sign writing and lettering)	[INSERT] years
External Signage (excluding sign writing and lettering)	[INSERT] years

Description	Minimum Warranty Period (from the Date of Completion of the Works or the Stage)
Façade	<i>[INSERT]</i> years
Fire Services	<i>[INSERT]</i> years
Floor and Pavement Markings (internal)	<i>[INSERT]</i> years
Floor and Pavement Markings (external)	<i>[INSERT]</i> years
Furniture Fittings and Equipment	<i>[INSERT]</i> years
Gates and Fences	<i>[INSERT]</i> years
Gantries	<i>[INSERT]</i> years
Hardened Structures	<i>[INSERT]</i> years
Hardware	<i>[INSERT]</i> years
High Ropes Structure and Equipment	<i>[INSERT]</i> years
Internal Signage	<i>[INSERT]</i> years
Kitchen Equipment	<i>[INSERT]</i> years
Mechanical Services	<i>[INSERT]</i> years
Membrane Roofing and Tanking	<i>[INSERT]</i> years
Metal Roof and Walling	<i>[INSERT]</i> years
Noise Attenuation Structures	<i>[INSERT]</i> years
Painting	<i>[INSERT]</i> years
Partitions	<i>[INSERT]</i> years
Piling and foundations	<i>[INSERT]</i> years
Plumbing	<i>[INSERT]</i> years
Resilient finishes, e.g. Vinyl	<i>[INSERT]</i> years
Security	<i>[INSERT]</i> years
Sewers	<i>[INSERT]</i> years
Stormwater Drainage	<i>[INSERT]</i> years
Structural Concrete	<i>[INSERT]</i> years
Structural Steel	<i>[INSERT]</i> years
Sun Control Louvres	<i>[INSERT]</i> years
Supervisory / Data Services	<i>[INSERT]</i> years
Suspended Ceilings	<i>[INSERT]</i> years
Tiling	<i>[INSERT]</i> years
Toilet Partitions	<i>[INSERT]</i> years

Description	Minimum Warranty Period (from the Date of Completion of the Works or the Stage)
Water Supply Services	[INSERT] years
Windows and Glazing	[INSERT] years
Vehicle Pavement and Seals	[INSERT] years
[[## INSERT] AND CONTRACT ADMINISTRATOR MUST CONSIDER AND SPECIFY COLLATERAL WARRANTY DESCRIPTIONS AND PERIODS APPROPRIATE FOR THE WORKS. THE ABOVE ARE PROVIDED BY WAY OF EXAMPLE ONLY]	[INSERT] years

4. OPERATION AND MAINTENANCE MANUALS

The Contractor must:

- (a) ensure that operation and maintenance manuals are prepared or updated (as applicable) in accordance with the O&MM Instructions and any other requirements of the Contract and so as to ensure that such manuals detail specific operation and maintenance information for each aspect of the Works or the Stage;
- (b) obtain and co-ordinate the provision of information by its subcontractors as is necessary for the preparation or updating (as applicable) of the operation and maintenance manuals that it is required to prepare or update in accordance with paragraph (a);
- (c) by no later than the date on which the Contractor provides its 28 day notice of anticipated Completion to the Contract Administrator under clause 13.1(b) of the Conditions of Contract, provide draft operation and maintenance manuals in accordance with paragraph (a) (**Draft Operation and Maintenance Manuals**) to the Contract Administrator for review under clause 1(a); and
- (d) without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, as a condition precedent to Completion of the Works or a Stage:
 - (i) update as necessary to reflect the completed Works or the Stage and resubmit the Draft Operation and Maintenance Manuals to the Contract Administrator for review under clause 1(a), with any amendments to be clearly indicated; and
 - (ii) once approved by the Contract Administrator, submit the final versions of the Draft Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) to the Contract Administrator.

For the purposes of this clause 4:

- (e) catalogues, sales brochures and other documents giving general information in respect of aspects of the Works or the Stage will not be acceptable;
- (f) all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to

undertake maintenance work but who are not necessarily familiar with any particular aspect of the Works or the Stage; and

- (g) all manuals must be prepared in accordance with the “Instructions for Operations and Maintenance Manuals (O&MM) for Facilities” available on the [Relevant] Website, as amended or replaced from time to time (**O&MM Instructions**), including that one operation and maintenance manual is to be provided or updated for each building and base infrastructure system within the project.

5. TRAINING

The Contractor must:

- (a) in accordance with its approved Estate Information program (as contained in the Estate Information Provision Plan), prepare and submit a detailed draft outline of a comprehensive training program in respect of the occupation, use, operation and maintenance of each element of the Works or the Stage to the Contract Administrator;
- (b) without limiting the definition of "Completion" in clause 1.1 of the Conditions of Contract, as a condition precedent to Completion of the Works or a Stage:
 - (i) obtain and co-ordinate all documents and information to be included in the training program, including documents and information provided by subcontractors;
 - (ii) during commissioning of the Works or the Stage, plan, manage and deliver the comprehensive training program in respect of all operational and maintenance aspects of the Works or the Stage for the number of and each category of persons as required by the Contract Administrator, including (where applicable) training on how to instruct other staff by way of a “train the trainer” approach;
 - (iii) carry out such training:
 - A. using trained instructors, fully experienced in respect of all operational and maintenance aspects of the Works or the Stage;
 - B. using the Final Operation and Maintenance Manuals produced by the Contractor, with copies of such manuals to be made available during the training to all trainees; and
 - (iv) provide the Contract Administrator with copies of all documents, information and training materials necessary to enable ongoing training in respect of all operational and maintenance aspects of the Works or the Stage; and
- (c) ensure that such training and training program is prepared and conducted in accordance with, and in the manner and at times required by, the Project Lifecycle and HOTO Plan.

ANNEXURE 2 - SPECIAL CONDITIONS

[THE TENDER/CONTRACT ADMINISTRATOR ARE TO REVIEW THIS LIST OF POTENTIAL SPECIAL CONDITIONS AND ADVISE WHICH ONES ARE REQUIRED FOR THE CONTRACT. THE TENDER/CONTRACT ADMINISTRATOR ARE ALSO REQUIRED TO IDENTIFY ANY AMENDMENTS TO THESE SPECIAL CONDITIONS OR ANY ADDITIONAL SPECIAL CONDITIONS WHICH MAY BE REQUIRED AND ADVISE THESE TO THE DPA AND THE PROJECT'S LEGAL SERVICES PROVIDER (IF ANY)]

1. LATENT HAZARDOUS SUBSTANCE, ASBESTOS, OR GHS MATERIAL

1.1 Notice of Latent Hazardous Substances, Asbestos, or GHS Material

- (a) If in carrying out the Contractor's Activities the Contractor considers that it has encountered or found Latent Hazardous Substances, Asbestos, or GHS Material, it must:
- (i) immediately give the Contract Administrator and [## INSERT] notice in writing;
 - (ii) not disturb the substance or the material under any circumstances other than where such disturbance is necessary to comply with subparagraph (iv);
 - (iii) cordon off the relevant area preventing access by all unauthorised persons and install a warning sign informing of the suspected Latent Hazardous Substances, Asbestos, or GHS Material; and
 - (iv) ensure that all persons are protected from exposure to the substance or material (including in accordance with the WHS Legislation) until the nature of the substance or material has been competently determined.
- (b) The Contract Administrator must within 14 days of receipt of the Contractor's notice under paragraph (a)(i):
- (i) notify the Contractor and [## INSERT] of its determination of whether Latent Hazardous Substances, Asbestos, or GHS Material has been encountered or found; and
 - (ii) instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Latent Hazardous Substances, Asbestos, or GHS Material.

1.2 Contractor's Entitlement

If, in the Delivery Phase, the Contract Administrator determines that Latent Hazardous Substances, Asbestos, or GHS Material have been encountered or found, the Contractor will be entitled to:

- (a) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Contract; and
- (b) have the Delivery Phase Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under clause 1.1(a) which arise directly from the Latent Hazardous Substances, Asbestos, or GHS Material and the Contract Administrator's instruction under clause 1.1(b)(ii), as determined by the Contract Administrator.

To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with any Latent Hazardous Substances, Asbestos, or GHS Material or the Contract Administrator's instruction under clause 1.1(b)(ii), other than under paragraphs (a) and (b).

1.3 Contractor's Obligations

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, if:

- (a) the Contractor's Activities include identifying, surveying, treating, removing, monitoring or doing any other matter or thing in respect of Hazardous Substances, Asbestos, or GHS Material; or
- (b) the Contract Administrator has otherwise instructed the Contractor under clause 1.1(b)(ii) to identify, survey, treat, remove, monitor or do any other matter or thing in respect of Hazardous Substances, Asbestos, or GHS Material,

the Contractor must comply with the requirements of the WHS Legislation, any applicable Code of Practice and any other Statutory Requirements applicable in the [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] in which the Works are situated relating to such substances and materials.

1.4 Definitions and interpretation

- (a) If clause 7.3 and 7.4 of the Conditions of Contract apply, this clause 1 takes precedence over clauses 7.3 and 7.4 of the Conditions of Contract.
- (b) For the purposes of clause 1:
 - (i) **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
 - (ii) **Dangerous Goods** has the meaning given in the [## INSERT] Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
 - (iii) **GHS** means the Globally Harmonised System of Classification and Labelling of Chemicals published by the United Nations, as amended from time to time and as modified by the relevant WHS Legislation.
 - (iv) **GHS Material** means material suspected of containing or likely to contain a substance defined or listed in the GHS.
 - (v) **Hazardous Chemical** has the meaning given [## INSERT RELEVANT REGULATIONS]: and
lead as defined in [## INSERT RELEVANT REGULATIONS].
 - (vi) **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
 - (vii) **Latent Hazardous Substances, Asbestos, or GHS Material** means Hazardous Substances, Asbestos, or GHS Material in, on or in the vicinity of the Site which differ materially from the Hazardous Substances, Asbestos, or GHS Material which should have been anticipated by a prudent, competent and experienced contractor if it had done the things that the Contractor is:
 - A. deemed to have done under clause 7.1 of the Conditions of Contract; or
 - B. required to do by the Contract.
 - (viii) **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the [Relevant Act] or any regulations made under that Act.

- (ix) **Hazardous Chemical** has the meaning given in [Relevant Regulations and/or Act].
- (x) **Chemical** has the meaning given in [Relevant Regulations and/or Act].
- (xi) **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in the [*Relevant Act*] or in any regulations made under that Act.

2. USE OF HAZARDOUS SUBSTANCES (INCLUDING HAZARDOUS CHEMICALS)

2.1 [## INSERT]

- (a) [## INSERT] seeks to ensure that:
 - (i) workers and other persons are not exposed to Hazardous Substances as a consequence of activities conducted on [## INSERT] Premises and from work carried out as part of its business or undertaking, unless the Hazardous Substances are managed in accordance with subparagraph (ii); and
 - (ii) risks to health and safety concerning Hazardous Substances are managed in accordance with the WHS Legislation.
- (b) To the extent that [## INSERT] is legally required to do so, [## INSERT] will notify the Contractor of Hazardous Substances known to it to be within:
 - (i) [## INSERT] Premises relevant to the Contractor's Activities and the Works; or
 - (ii) any other [## INSERT] property (including plant and equipment) provided to the Contractor for the purposes of the Contractor's Activities and the Works.

2.2 The Contractor

- (a) The Contractor acknowledges Hazardous Substances may be present within:
 - (i) [## INSERT] Premises relevant to the Contractor's Activities and the Works; or
 - (ii) any other [## INSERT] property (including plant and equipment) provided to the Contractor for the purposes of the Contractor's Activities and the Works.
- (b) Without limiting paragraph (d), the Contractor must provide full details of each Hazardous Substance (including the proposed location and protective covering) proposed to be used in the Contractor's Activities or incorporated into the Works to the Contract Administrator as soon as possible after the Award Date (and in any event no later than 30 days prior to the proposed Hazardous Substance being used in the Contractor's Activities or incorporated into the Works).
- (c) Without limiting paragraph (b), the Contractor must:
 - (i) prepare a register of each Hazardous Substance to be:
 - A. used in the Contractor's Activities;
 - B. incorporated into the Works;
 - C. held or stored by the Contractor on Site; or
 - D. transported by the Contractor to or from the Site or in or through [## INSERT] Premises,

(Hazardous Substance Register);

- (ii) provide the Hazardous Substance Register to the Contract Administrator prior to the Contractor:
 - A. handling or storing the Hazardous Substance on Site; or
 - B. transporting the Hazardous Substance to or from the Site or in or through [## INSERT] Premises;
- (iii) provide the Contract Administrator with an updated Hazardous Substance Register:
 - A. on each occasion that it is updated by the Contractor; and
 - B. otherwise as requested by the Contract Administrator;
- (iv) without limiting subparagraph (i), provide a Safety Data Sheet (SDS) in the form required by [## INSERT] for entry into the [Relevant] database for each Hazardous Substance:
 - A. to be used in the Contractor's Activities; or
 - B. to be incorporated into the Works;
- (v) provide the SDS under subparagraph (iv) and any other information concerning the risks and hazards associated with the Hazardous Substance to the Contract Administrator prior to the Hazardous Substance being used in the Contractor's Activities or incorporated into the Works;
- (vi) provide the Contract Administrator any updated SDS from the manufacturer, importer or supplier of each relevant Hazardous Substance:
 - A. on each occasion an updated SDS is provided by the manufacturer, importer or supplier of the relevant Hazardous Substance; and
 - B. otherwise as requested by the Contract Administrator;
- (vii) without limiting subparagraphs (i) - (iv), prepare information in the form required by [## INSERT] in accordance with the WHS Legislation (including, but not limiting, any applicable information regarding use, handling, storage, locations, maximum storage quantities and volumes) for entry into the [Relevant] database for each Hazardous Substance to be:
 - A. used in the Contractor's Activities;
 - B. incorporated into the Works; or
 - C. used, handled or stored on [## INSERT] Premises, **(ChemAlert Information)**;
- (viii) provide the ChemAlert Information prepared under subparagraph (vii) to the Contract Administrator:
 - A. in its reports under clause 3.10 of the Conditions of Contract; and
 - B. otherwise as requested by the Contract Administrator;
- (ix) update the ChemAlert Information and provide the updated ChemAlert Information to the Contract Administrator:

- A. in its reports under clause 3.10 of the Conditions of Contract; and
 - B. otherwise as requested by the Contract Administrator; and
- (x) do all things necessary to assist the Contract Administrator and [## INSERT] to enter Information into the [Relevant] database.
- (d) The Contractor must not use, handle or store a Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 2.3(d) in connection with the Contractor's Activities or the Works, without the prior written consent of the Contract Administrator.
- (e) Without limiting paragraph (b), in its request for consent under paragraph (d), the Contractor must provide:
 - (i) details of the Hazardous Substance and the relevant category under clause 2.3(d);
 - (ii) details of the purpose, use, handling or storage of each Hazardous Substance which falls within one or more of the categories of Hazardous Chemical described in clause 2.3(d); and
 - (iii) for each Hazardous Substance which falls within one or more of the following categories:
 - A. clause **Error! Reference source not found.** or **Error! Reference source not found.**, a copy of all Approvals for use, handling or storage;
 - B. clause 2.3(d)(i) or 2.3(d)(ii), details of how the health of workers using, handling or storing such Hazardous Chemical will be monitored in accordance with WHS Legislation; and
 - C. clause 2.3(d)(i), a copy of:
 - 1) all notices given to a relevant regulator; and
 - 2) all licences required to be held by the Contractor or subcontractor,

in relation to use, storage or handling.
- (f) Without limiting clause 8.16 of the Conditions of Contract or any other provision of the Contract, the Contractor must:
 - (i) comply with any applicable Code of Practice;
 - (ii) ensure that all documentation (including all Design Documentation and other Project Documents) concerning Hazardous Substances (including in relation to assembly, maintenance and operation) identifies the nature of the hazard and risk (including those risks which may remain after Completion and after the end of the last Defects Liability Period);
 - (iii) ensure that all goods incorporated into the Works comply with WHS Legislation and any Statutory Requirements relating to Hazardous Substances;
 - (iv) ensure that all Hazardous Substances used in connection with the Contractor's Activities or incorporated into the Works are correctly labelled and packaged in accordance with WHS Legislation and Statutory Requirements;

- (v) notify the Contract Administrator within 14 days of becoming aware of any non-hazardous substance which could be substituted for the Hazardous Substance without significant detriment to the performance of the Contractor's Activities or the Works; and
 - (vi) be able to demonstrate compliance with this paragraph (f) at the request of the Contract Administrator.
- (g) Without limiting clause 8.16 of the Conditions of Contract, the Contractor is responsible for all Hazardous Substances used or incorporated into the Works by subcontractors.

2.3 Definitions

For the purposes of clause 2:

- (a) **Code of Practice** means a code of practice approved in accordance with the WHS Legislation.
- (b) **[## INSERT] Premises** means any of the following that is owned or occupied by [## INSERT]:
 - (i) an area of land or any other place (whether or not it is enclosed or built on);
 - (ii) a building or other structure; or
 - (iii) a vehicle, vessel or aircraft.
- (c) **Dangerous Goods** has the meaning given in the [## INSERT]Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
- (d) **Hazardous Chemical** has the meaning given in [Relevant Regulations]
 - (i) hazardous chemicals listed [Relevant Regulation]; and
 - (ii) lead as defined in [Relevant Regulation]
- (e) **Hazardous Substances** means Ozone Depleting Substances, Synthetic Greenhouse Gases, Hazardous Chemicals or Dangerous Goods.
- (f) **Ozone Depleting Substance** means any substance identified as having ozone depleting potential in the [Relevant Act] or any regulations made under that Act.
- (g) **Hazardous Chemical** has the meaning given in [Relevant Regulation or Act].
- (h) **Chemical** has the meaning given in [Relevant Regulation or Act]; and
- (i) **Synthetic Greenhouse Gas** means any gas identified as a Synthetic Greenhouse Gas in [Relevant Act]) or in any regulations made under that Act.

3. DRAWINGS

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, all drawings which the Contractor is required to provide under the Contract must be prepared by competent draftspersons in accordance with:

- (a) the standard prescribed in the Contract (or, to the extent it is not so prescribed, a standard consistent with the best industry standard for drawings of a nature similar to those required for the Works);
- (b) all Statutory Requirements;
- (c) the directions of the Contract Administrator; and

- (d) to the extent that they are not inconsistent with the requirements of the Contract, the requirements of all relevant standards of Standards [## INSERT].

4. DILAPIDATION SURVEY

- (a) Prior to commencing the Contractor's Activities on the Site, the Contractor must carry out a comprehensive survey of the location and condition of existing structures, roads, carparks, access paths, footpaths, trees, services, **[and]** other civil works **[and INSERT ANY OTHER AREAS/FEATURES TO BE INCLUDED IN THE SURVEY]** on and around the Site. The survey must include the recording by all adequate means as is necessary to accurately show the existing conditions. If requested by the Contractor, the Contract Administrator may attend for the carrying out of the survey.
- (b) The survey must include a comprehensive photographic record of existing conditions prior to the Contractor having access to the Site.
- (c) A copy of the survey and the photographic record is to be provided to the Contract Administrator by no later than **[INSERT]** days after [## INSERT] gives the Contractor access to the Site.

5. PRIOR WORK

- (a) Where the proper execution of the Contractor's Activities is dependent upon or appreciably affected by the quality, completeness, accuracy or adequacy of any work to be carried out or that has been carried out by any other person (**Prior Work**), the Contractor must:
 - (i) inspect the Prior Work as soon as is practicable after [## INSERT] gives the Contractor access to the Site under clause 2.8(a) or 2.10(b)(ii) of the Conditions of Contract (as the case may be);
 - (ii) if it discovers any defect or matter in or connected with the Prior Work which in its opinion renders or is likely to render the Prior Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Contractor's Activities, immediately notify the Contract Administrator in writing providing:
 - A. full particulars of the defect or matter identified; and
 - B. the reasons for the opinion formed by it in respect to the defect or matter identified; and
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Prior Work the subject of the notice referred to in subparagraph (ii).
- (b) On receipt of the Contractor's notice, the Contract Administrator will investigate the Prior Work the subject of the notice and:
 - (i) if the Contract Administrator agrees with the Contractor - issue a direction to the Contractor and value any work carried out by the Contractor by reason of that direction as a Variation under clause 11.3 of the Conditions of Contract; or
 - (ii) if the Contract Administrator disagrees with the Contractor - issue an instruction to the Contractor to commence or continue with the Contractor's Activities.
- (c) If the Contractor fails to:
 - (i) inspect the Prior Work as required by clause 5(a)(i); or

- (ii) notify the Contract Administrator of any defects or matters which should have been detected at the time of such inspection by a prudent, competent and experienced contractor and which may render the Prior Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Contractor's Activities,

and the Prior Work subsequently proves to be unsatisfactory for the proper execution of the Contractor's Activities, then any work which is required to be executed in order to render the Prior Work suitable, satisfactory and non-detrimental for the proper execution of the Contractor's Activities will be performed by the Contractor at its own expense.

6. JOINING UP

Where the method of joining up of old and new work is not specified in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract, the cutting away and joining up must be carried out by the Contractor in a manner approved by the Contract Administrator and made good in all trades to match existing adjacent work.

7. EXISTING SERVICES AND STRUCTURES

- (a) The Contractor may only modify or remove existing structures or services within the Site in accordance with the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract.
- (b) The Contractor must obtain the prior written approval from the Contract Administrator in relation to the timing of any connection, disconnection or interference with existing structures and services.
- (c) Existing infrastructure records and information that are currently available must not be taken to be complete nor accurate. The Contractor must carry out investigations to verify services locations prior to any excavations. Where an existing service, whether within the Site or outside of the Site, is shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract or should have been shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract, is evident on the Site or has been notified in writing by the Contract Administrator to the Contractor, the Contractor is responsible for the cost of any necessary repair or relocation in the event of damage.
- (d) The Contractor must notify the Contract Administrator immediately upon the discovery of services or obstructions not shown in the Works Description and any Design Documentation the Contractor is entitled to use under clause 6.3(c) of the Conditions of Contract or identified by inspection.
- (e) The Contractor must immediately notify the Contract Administrator in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area. The Contractor must also repair, divert, relocate, cut, seal, disconnect or make safe as required by the relevant authority and so as to ensure continued operation.
- (f) The Contractor must, with every care and skill, support and protect all structures, walls, fences and all services, property and existing landscaping which may, unless so protected, be damaged as a result of the execution of the Works and must comply with the requirements of [## INSERT] of relevant authorities and others controlling those structures, fences, services, landscaping

and property for their protection from damage during construction or maintenance of the Works.

8. ITEMS TO BE SUPPLIED BY [## INSERT]

The items specified in the Schedule to clause 8 will be supplied by [## INSERT] without charge to the Contractor for use in the execution of the Contractor's Activities subject to the following conditions:

- (a) the Contractor must submit a written request for any such items and, on receiving the Contract Administrator's written authority, must take delivery of the items at **[INSERT TIME AND PLACE]**;
- (b) before taking delivery of any such items, the Contractor must ensure that they are in a satisfactory condition and in the quantities specified and the Contractor has all relevant information in respect of the installation, construction or commissioning of such items;
- (c) to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with the replacement of any items that the Contractor claims to be defective or deficient in quantity;
- (d) the Contractor is responsible for the safety of all such items until they are incorporated in the Works; and
- (e) [## INSERT] does not represent or warrant that the quantities specified in clause 8 are adequate for the Contractor's Activities and the supply of any additional quantities must be arranged by the Contractor at its cost.

Schedule of Items

Item	Quantity
[INSERT]	[INSERT]

9. METHOD OF WORK PLAN FOR AIRFIELD ACTIVITIES

- (a) Without limiting clause 9.2 of the Conditions of Contract, the Contractor must prepare and implement by no later than **[INSERT EG 14 days]** after the Award Date and as a condition precedent to the Contractor being given access to the Site, a Method of Work Plan for Airfield Activities for all aspects of the Contractor's Activities and the Works (**Method of Work Plan for Airfield Activities**).
- (b) The Method of Work Plan for Airfield Activities must incorporate Site specific management and control procedures and must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities on and near the Site, including:
 - (i) submission of the Method of Work Plan for Airfield Activities to the Contract Administrator;
 - (ii) the establishment of the Site;
 - (iii) access to the Site;
 - (iv) security passes for the Site;
 - (v) personnel and vehicle identification and control on the Site;
 - (vi) control of personnel including a point of contact from the Contractor;
 - (vii) liaison with [## INSERT] and Other Contractors;

- (viii) Approvals prior to carrying out Works;
- (ix) rubbish, dust and debris control;
- (x) Foreign Object Damage (FOD) control;
- (xi) noise management;
- (xii) fencing;
- (xiii) security of the Works;
- (xiv) hours of work;
- (xv) traffic management;
- (xvi) safety procedures;
- (xvii) fuel and hazardous material storage;
- (xviii) issues associated with military exercises and military expeditions; and
- (xix) issues associated with aircraft movements.

10. OPERATING AIRFIELD

- (a) The Contractor must ensure that the Contractor's Activities and the Works do not compromise aircraft operations or the safety of aircraft.
- (b) Without limiting clause 8.16(a)(iii) of the Conditions of Contract and as part of the Contractor's Activities, the Contractor must liaise with [## INSERT] and the Contract Administrator as required to co-ordinate the Contractor's Activities and the Works with, and prevent interruption of, [## INSERT] activities including aircraft operations and the safety of aircraft.

11. [## INSERT] HERITAGE PLACE

- (a) The Contractor must ensure that, in carrying out the Contractor's Activities:
 - (i) it does not take any action that has, will have or is likely to have a significant impact on [## INSERT] Heritage Values of a [## INSERT] Heritage Place; and
 - (ii) it does not act inconsistently with or contravene:
 - A. a management plan for a [## INSERT] Heritage Place made under the [Relevant Act].
 - B. [## INSERT] Heritage Management Principles under the [Relevant Act].
- (b) For the purposes of clause 11:
 - (i) **Heritage Management Principles** means Heritage management principles within the meaning of the [Relevant Act]/
 - (ii) **Heritage Place** means a Heritage place within the meaning of the [Relevant Act]
 - (iii) **Heritage Values** means [## INSERT] Heritage values within the meaning of the [Relevant Act]; and

12. INSURANCE AMENDMENTS WHERE THE CONTRACTOR IS A SELF-INSURED LICENSEE

12.1 Amendments to Clause 1.1

"Workers Compensation Insurance" in clause 1.1 of the Conditions of Contract is deleted and replaced as follows:

Workers Compensation Insurance

A policy of insurance or a self-insurer's authorisation or licence in the form prescribed by [Relevant Act] to insure against or make provision for the liability of the Contractor to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment.

12.2 Amendments to clause 5.4

Clause 5.4 of the Conditions of Contract is deleted and replaced as follows:

5.4 Contractor Insurance Obligations

The Contractor must:

- (a) ensure that it obtains and maintains the authorisations and or licences required in all relevant jurisdictions to conduct itself as a self insurer for the purposes of Workers Compensation liabilities including comply with the requirements of the [Relevant Act];
- (b) comply with its legal obligations to make payments in respect of injury, loss or damage suffered by, or the death of, its employees arising out of or in connection with their employment;
- (c) indemnify, to the extent permitted by law, [## INSERT] in respect of any statutory liability to the Contractor's employees;
- (d) ensure that each of its subcontractors has Workers Compensation Insurance to the extent required by law, and Employers' Liability Insurance (if the relevant Contractor's Activities are performed or the subcontractor's employees perform work, are employed or normally reside in any jurisdiction outside [## INSERT]), covering the subcontractor in respect of its statutory and common law liability to employees;
- (e) cause to be effected and maintained or otherwise have the benefit of:
 - (i) from the Award Date:
 - A. Public Liability Insurance;
 - B. if the Contractor's Activities are performed or the Contractor's employees perform work, are employed or normally reside in any jurisdiction outside [## INSERT], Employers Liability Insurance;
 - C. if the Contract requires the Contractor to design any part of the Works, whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars; and
 - D. such other insurances on such terms as are specified in the Contract Particulars; and
 - (ii) as a condition precedent to Delivery Phase Approval:
 - A. Construction Risks Insurance; and

B. such other insurances on such terms as are specified in the Contract Particulars,

each of which must be:

- (iii) for the amounts specified in the Contract Particulars;
 - (iv) with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better; and
 - (v) on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
- (f) in relation to Construction Risks Insurance and Public Liability Insurance, ensure that each of these policies name [## INSERT] as a party (within the definition of 'Insured') to whom the benefit of the insurance cover extends;
- (g) in relation to the Public Liability Insurance, ensure the insurance is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out;
- (h) in relation to whichever of Professional Indemnity Insurance or Errors and Omissions Insurance has an amount specified in the Contract Particulars, ensure the insurance:
- (i) has a retroactive date of no later than the commencement of the Contractor's Activities;
 - (ii) is not subject to any worldwide or jurisdictional limits which might limit or exclude the jurisdictions in which the Contractor's Activities are being carried out; and
 - (iii) includes a run-off period as referred to in the Contract Particulars;
- (i) promptly provide the Contract Administrator with evidence satisfactory to the Contract Administrator that:
- (i) it has complied with clause [5.4]; and
 - (ii) each insurance required under clause [5.4] is current and complies with clause [5.4],

as required by the Contract Administrator from time to time;

(j) ensure that:

- (i) if the:
 - A. insurer gives the Contractor notice of expiry, cancellation or rescission of any required insurance policy; or
 - B. Safety Rehabilitation and Compensation Commission or other relevant authority, body or other organisation under any Statutory Requirement gives the Contractor notice of expiry, cancellation or rescission of the self-insurer's authorisation or licence,

the Contractor as soon as possible informs [## INSERT] in writing that the notice has been given and effects replacement insurance as required by the Contract and informs [## INSERT] in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract; and

- (ii) if the Contractor cancels, rescinds or fails to renew any:
 - A. required insurance policy; or
 - B. self-insurer's authorisation or licence,
 the Contractor as soon as possible obtains replacement insurance as required by the Contract and informs [## INSERT] in writing as soon as possible of the identity of the replacement insurer or details of the relevant self-insurer's authorisation or licence and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of the Contract;
- (k) ensure that it:
 - (i) does not do, permit to do, or omit to do anything whereby any insurance may be prejudiced;
 - (ii) complies at all times with the terms of each insurance;
 - (iii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
 - (iv) punctually pays all premiums and other amounts payable in connection with all of the required insurance policies, and gives the Contract Administrator copies of receipts for payment of premiums if and when requested by the Contract Administrator. Any increase in premium is the responsibility of, and must be borne by, the Contractor;
 - (v) renews any required insurance policy or self-insurer's authorisation or licence if it expires during the relevant period, unless appropriate replacement insurance is obtained;
 - (vi) immediately notifies the Contract Administrator (in writing) if the Contractor fails to renew any required insurance policy or pay a premium;
 - (vii) does not cancel or allow an insurance policy or self-insurer's authorisation or licence to lapse during the period for which it is required by the Contract without the prior written consent of the Contract Administrator;
 - (viii) immediately notifies the Contract Administrator (in writing) of any event which may result in a required insurance policy or self-insurer's authorisation or licence lapsing, being cancelled or rescinded;
 - (ix) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies and self-insurer's authorisation or licence;
 - (x) does everything reasonably required by [## INSERT] and the Contract Administrator to enable [## INSERT] to claim and to collect or recover, money due under any of the insurances; and
 - (xi) maintains full and appropriate records of incidents relevant to any insurance claim for a period of 10 years from the date of the claim;
- (l) ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain Professional Indemnity Insurance or Errors and Omissions Insurance in the same manner and on the same terms as those required to be obtained by the Contractor under clause [5.4] for the amounts specified in the Contract Particulars; and

- (m) bear the excess applicable to any insurance claim made under any of the insurance policies required to be maintained by the Contractor under clause [5.4]. Any excess borne by [## INSERT] will be a debt due from the Contractor to [## INSERT].

For the purpose of paragraph (f), such evidence may include certificates of currency (no more than 20 days old), current policy wordings (except where such insurances are prescribed by Statutory Requirements), a self-insurer's authorisation or licence and written confirmation from a relevant insurer or reputable broker stating that the relevant insurance is current and complies with clause [5.4].

The obtaining of insurance as required under clause [5.4] will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

12.3 Amendments to clause 5.5

Clause 5.5 of the Conditions of Contract is deleted and replaced as follows:

5.5 Failure to Insure or Satisfy Requirements

- (a) If the Contractor fails to comply with clause [5.4] (including any failure to cause to be effected and maintained or otherwise have the benefit of the insurance required by clause [5.4], provide evidence satisfactory to the Contract Administrator in accordance with clause [5.4(f)] or satisfy all requirements of being a self-insurer or exempt employer), [## INSERT] may, in its absolute discretion and without prejudice to any other rights it may have, take out the relevant insurance and the cost will be a debt due from the Contractor to [## INSERT].
- (b) The Contractor must take all necessary steps to assist [## INSERT] in exercising its discretion under paragraph (a). For the purpose of this paragraph (b), "**all necessary steps**" includes providing all relevant information and documents (including for insurance proposals), answering questions, co-operating with and doing everything necessary to assist the Contract Administrator or anyone else acting on behalf of [## INSERT].

12.4 Amendments to clause 5.7

Clause 5.7 of the Conditions of Contract is deleted and replaced as follows:

5.7 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform [## INSERT] in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor or [## INSERT] which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract;
- (b) keep [## INSERT] informed of all significant developments concerning the claim, except in circumstances where [## INSERT] is making a claim against the Contractor; and
- (c) ensure that its subcontractors similarly inform the Contractor and [## INSERT] in writing of any fact, matter or occurrence that may give rise to a claim under an insurance policy or self-insurer's authorisation or licence required by the Contract or any claim actually made against the Contractor, the subcontractor or [## INSERT] which may be covered by an insurance policy or self-insurer's authorisation or licence required by the Contract,

provided that, in respect of Professional Indemnity Insurance, the Contractor:

- (d) subject to paragraph (e), is not required to provide details of individual claims; and
- (e) must notify [## INSERT] if the estimated total combined value of claims made against the Contractor and claims which may arise from circumstances reported by the Contractor to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.

13. MAINTENANCE DURING DEFECTS LIABILITY PERIOD

The Contractor must ensure that during the Defects Liability Period for the Works or each Stage such planned and unplanned maintenance is carried out:

- (a) as required by the Project Lifecycle and HOTO Plan; and
- (b) as is otherwise necessary to ensure that the Works are, or each Stage is, throughout and at the end of the Defects Liability Period in a condition fit for their intended purpose.

14. CHILD SAFETY

[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE CONTRACTOR AND ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE CONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONTRACTOR IS CARRYING OUT ACTIVITIES THAT MAY BE PROVIDED ON A SCHOOL'S PREMISES EVEN WHERE INTERACTING WITH CHILDREN IS NOT A PART OF THE CONTRACTED ACTIVITIES]

- (a) If any part of the Contractor's Activities involves the Contractor employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] law to have a working with children check to undertake the Contractor's Activities or any part of the Contractor's Activities, the Contractor agrees:
 - (i) without limiting its other obligations under the Contract, to comply with all [## INSERT RELEVANT SUB-NATIONAL AUTHORITY] law relating to the employment or engagement of people who work or volunteer with children in relation to the Contractor's Activities, including mandatory reporting and working with children checks however described; and
 - (ii) if requested, provide [## INSERT] at the Contractor's cost, a statement of compliance with this clause, in such form as may be specified by [## INSERT].
- (b) When child safety obligations may be relevant to a subcontract made in connection with the Contract, the Contractor must ensure that any such subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the Contract imposes on the subcontractor the same obligations regarding child safety that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

15. INDEXATION OF PORTION OF DELIVERY PHASE PRICE

- (a) The parties acknowledge and agree that:

- (i) the Labour Component and the Materials Component will be adjusted in the Delivery Phase for indexation on the basis as set out in this clause; and
- (ii) other than as set out in this clause, and to the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim for any indexation of the Contract Price or the other amounts payable under the Contract, including in respect of the period prior to the Initial Adjustment Date.
- (b) The Labour Component and the Materials Component will be adjusted on and from the Initial Adjustment Date for each Adjustment Period in accordance with the following formula:

$$IA = \frac{(CIL - BIL)}{BIL} \times LC + \frac{(CIM - BIM)}{BIM} \times MC$$

Where:

IA =	Indexation Amount.
CIL =	The index number for labour applicable to the last month of the relevant Adjustment Period, as set out in the “Wage Price Index” ([## INSERT] Bureau of Statistics (ABS) Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction).
BIL =	Base index number for labour, being the “Wage Price Index” (ABS Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction) applicable as at the Date of Delivery Phase Approval.
LC =	In respect of an Adjustment Period, the aggregate of the amount the Contractor was paid, or entitled to be paid, by [## INSERT] in respect of that Adjustment Period for the applicable portion of the Labour Component.
CIM =	The index number for materials applicable to the last month of the relevant Adjustment Period, as set out in the “Producer Price Indexes, [## INSERT]” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction [## INSERT]).
BIM =	Base index number for materials, being the “Producer Price Indexes, [## INSERT]” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction [## INSERT]) as at the Date of Delivery Phase Approval.
MC =	In respect of an Adjustment Period, the aggregate of the amount the Contractor was paid, or entitled to be paid, by [## INSERT] in respect of that Adjustment Period for the applicable portion of the Materials Component.

- (c) The Contractor may claim the Indexation Amount for an Adjustment Period in the payment claim submitted by the Contractor in accordance with clause 12.2 of the Conditions of Contract in the later of the month immediately after:

- (i) the month in which the CIL and CIM applicable to that Adjustment Period have been published; and
 - (ii) the expiry of the applicable Adjustment Period,
- and the Delivery Phase Price will be increased by each Indexation Amount.
- (d) If, in respect of an Adjustment Period, there is a negative amount determined from the above formula, then there will be no adjustment in respect of that Adjustment Period.
 - (e) If an index is discontinued or the basis on which an index is calculated is altered, then an index referred to in paragraph (b) will be replaced by an index that most closely corresponds with that original index as agreed between the parties or, failing agreement, as determined by the Contract Administrator.
 - (f) For the purposes of this clause 15:
 - (i) a term defined in the table in paragraph (b) has the meaning given to it in that table;
 - (ii) **Adjustment Period** means:
 - A. the period from the Initial Adjustment Date until the end of the Quarter in which the Initial Adjustment Date occurred, provided that the first Adjustment Period may have a duration of less than a full Quarter; and
 - B. thereafter, each subsequent Quarter until all of the Works have reached Completion or earlier termination of the Contract, provided that the last Adjustment Period may have a duration of less than a full Quarter;
 - (iii) **Indexation Amount** means, in respect of an Adjustment Period, the amount calculated in accordance with paragraph (b), rounded to two decimal places;
 - (iv) **Initial Adjustment Date** means the date that is 12 months after the Date of Delivery Phase Approval; ***[NOTE: THIS DEFINITION SHOULD NOT BE CHANGED UNLESS PRIOR APPROVAL IS OBTAINED]***
 - (v) **Labour Component** means an amount equal to the sum of the following:
 - A. [To be inserted following negotiations under clause 2.9 of the Conditions of Contract, indicatively ***INSERT*** % of the original Delivery Phase Price specified in the Contract Particulars (Delivery Phase); and ***[NOTE: THIS INDICATIVE PERCENTAGE SHOULD BE INSERTED BEFORE GOING TO TENDER, NOTING THAT IT IS OPEN TO [## INSERT] TO AGREE TO A REVISION AS PART OF THE NEGOTIATIONS UNDER CLAUSE 2.9. THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE DELIVERY PHASE PRICE ATTRIBUTABLE TO LABOUR SET OUT IN THE FORECAST PROVIDED BY THE COST PLANNER / QUANTITY SURVEYOR. THE TOTAL COMBINED PERCENTAGE OF THE LABOUR COMPONENT AND MATERIAL COMPONENT DOES NOT NEED TO EQUAL 100%, NOTING THAT THE DELIVERY PHASE PRICE WILL LIKELY CONTAIN OTHER COMPONENTS (E.G. ON ACCOUNT OF THE CONTRACTOR'S PROFIT, SECURITY AND INSURANCE COSTS)]***

- B. [To be inserted following negotiations under clause 2.9 of the Conditions of Contract, indicatively *INSERT*] % of the Variation Adjustments; **[NOTE: THIS INDICATIVE PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]**
- (vi) **Materials Component** means an amount equal to the sum of the following:
 - A. [To be inserted following negotiations under clause 2.9 of the Conditions of Contract, indicatively *INSERT*] % of the original Delivery Phase Price specified in the Contract Particulars (Delivery Phase); and **[NOTE: THIS INDICATIVE PERCENTAGE SHOULD BE INSERTED BEFORE GOING TO TENDER, NOTING THAT IT IS OPEN TO [## INSERT] TO AGREE TO A REVISION AS PART OF THE NEGOTIATIONS UNDER CLAUSE 2.9. THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE DELIVERY PHASE PRICE ATTRIBUTABLE TO MATERIALS SET OUT IN THE FORECAST PROVIDED BY THE COST PLANNER / QUANTITY SURVEYOR]**
 - B. [To be inserted following negotiations under clause 2.9 of the Conditions of Contract, indicatively *INSERT*] % of the Variation Adjustments; **[NOTE: THIS INDICATIVE PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]**
- (vii) **Quarter** means a calendar quarter commencing on 1 January, 1 April, 1 July and 1 October in each year; and
- (viii) **Variation Adjustment** means the aggregate of all adjustments to the Delivery Phase Price in respect of all Variations agreed or determined under clause 11.3 of the Conditions of Contract, excluding:
 - A. any adjustment to the Delivery Phase Price referable to any Contractor's Activities carried out before the Initial Adjustment Date; and
 - B. if applicable, the additional amounts under clause 11.3(b)(i) and (ii) or 11.3(c)(iii) and (iv).

16. DOCUMENT AND CONSTRUCT - NOVATION OF DESIGN CONSULTANT

[THIS CLAUSE IS ONLY TO BE USED WITH PRIOR APPROVAL FROM DPA IN CIRCUMSTANCES WHERE THE DESIGN CONSULTANT WILL BE NOVATED TO THE CONTRACTOR IN THE DELIVERY PHASE]

16.1 Novation of Design Consultant

The Contractor agrees that, on **[INSERT DATE / PERIOD OF TIME FOLLOWING THE DATE OF DELIVERY PHASE APPROVAL]** in the Delivery Phase, it will accept a novation of the Design Services Contract between **[## INSERT]** and the Design Consultant by:

- (a) executing a consultant deed of novation in the form set out in the Schedule of Collateral Documents (**Consultant Deed of Novation**) completed with all relevant particulars;
- (b) delivering that deed to **[## INSERT]**; and
- (c) thereafter, subject to clause 6.2(a) of the Conditions of Contract and to the extent not completed in the Planning Phase, having the Design Consultant complete the design of the Works.

16.2 Fitness for Purpose

Clause 6.6(b) of the Conditions of Contract is deleted and replaced as follows:

- (b) upon Completion, the Works or the Stage will, to the extent that:
 - (i) the Works have or the Stage has been designed by the Contractor; or
 - (ii) the Contractor is otherwise responsible for the design of the Works or the Stage under clause 16.3 of the Special Conditions,

be fit for the purposes as set out in, or reasonably to be inferred from, the Works Description.

16.3 Warranties Unaffected

The Contractor:

- (a) acknowledges that prior to the Award Date certain activities may have been, and during the Planning Phase certain work will be performed in respect of the design of the Works by the Design Consultant;
 - (b) warrants that it has checked and carefully considered the design work referred to in paragraph (a) and that the design work is proper, adequate and suitable for the purposes for which the Works are intended; and
 - (c) agrees that:
 - (i) the warranties given in the Contract will remain unaffected;
 - (ii) it will comply with its obligations to complete the Works as required by the Contract;
 - (iii) it will bear and continue to bear full liability and responsibility for the design and construction of the Works in accordance with the Contract (including the risk of any Defects which may arise (whether directly or indirectly) as a result of or in any way in connection with any design prepared, or other work performed, whether before, on or after the Date of Delivery Phase Approval by the Design Consultant), and that this will not affect its obligations to complete the Works in accordance with the Contract or thereafter its obligations during the Defects Liability Period; and
 - (iv) it will not be entitled to make (nor will [## INSERT] be liable upon) any Claim against t[## INSERT], arising out of, or in any way in connection with, the use by the Contractor of the Planning Phase Design Documentation,
- notwithstanding paragraph (a) and that it is required to:
- (v) adopt the design which was prepared by the Design Consultant; and
 - (vi) accept a novation of the Design Services Contract under clause 16.1.

17. JOINT AND SEVERAL LIABILITY

[THIS CLAUSE IS ONLY TO BE USED WHERE THE CONTRACTOR IS COMPRISED OF A JOINT VENTURE]

The Contractor acknowledges and agrees:

- (a) that the joint and several liability of each entity comprising the Contractor, and the Contractor's obligations under this Contract, will not be qualified or otherwise limited by any matter whatsoever including as a result of, and

notwithstanding, the operation of any provision in any joint venture or other agreement between the entities comprising the Contractor entered into for the purposes of tendering for or performing the Contractor's Activities or the Works or otherwise in connection with this Contract; and

- (b) that [## INSERT] has entered into this Contract in reliance upon the Contractor's acknowledgement and agreement in paragraph (a).

18. UXO CONTAINING AREA - ENGAGEMENT OF UXO SUBCONTRACTOR

[THIS CLAUSE IS ONLY TO BE USED IF THERE IS A RISK OF THE SITE CONTAINING UXO. IN SUCH CIRCUMSTANCES [STATE/CONTRACT ADMINISTRATOR SHOULD CONSULT WITH THE NATIONAL UNEXPLODED ORDNANCE PROGRAM FOR FURTHER GUIDANCE]

18.1 General

Without limiting the Contractor's obligations under the Contract or otherwise at law or in equity, as a condition precedent to the Contractor commencing the Works or a Stage, the Contractor must:

- (a) engage a UXO Subcontractor for the purposes of undertaking activities in accordance with this clause18; and
- (b) following completion of the UXO Subcontractor's engagement as contemplated by this clause18, provide to the Contract Administrator a report issued by the UXO Subcontractor:
 - (i) detailing:
 - A. the location of any UXO identified by the UXO Subcontractor as present on or at the Site (if any); and
 - B. if relevant, all investigative activities carried out and Safety Protocols implemented by the UXO Subcontractor in accordance with this clause18;
 - (ii) certifying (to the extent applicable) that the activities carried out in accordance with this clause 18 comply with:
 - A. the [Relevant] Unexploded Ordnance Management [Guidance and/or Regulations]; and
 - B. all applicable Statutory Requirements (including those concerning work, health and safety); and
 - (iii) containing any other information requested by the Contract Administrator.

18.2 Provision of UXO Information for the Site and Determination of Course of Action

- (a) Prior to the UXO Subcontractor commencing any activities in accordance with this clause 18, the Contractor must ensure it provides to the UXO Subcontractor all available historical information in its possession or that can be reasonably obtained regarding the Site (and the possible presence of UXO on or at the Site) in order for the UXO Subcontractor to carry out the following activities in accordance with the [Relevant Guidance and/or Regulations]:
 - (i) complete a UXO Risk Assessment;
 - (ii) complete a UXO Assessment Survey; and
 - (iii) determine the risk of UXO being present on the Site.

- (b) If, having reviewed the information provided by the Contractor in accordance with paragraph (a) (whether it has completed a UXO Risk Assessment or not), the UXO Subcontractor considers a UXO Assessment Survey is required to determine the risk of UXO being present on or at the Site, the Contractor must contact [## INSERT] to facilitate the UXO Subcontractor accessing the Site to conduct a UXO Assessment Survey.

18.3 Management of UXO Risks on the Site

If, following completion of a UXO Risk Assessment or UXO Assessment Survey the UXO Subcontractor determines the Contractor can safely carry out the Works on the Site by implementing Safety Protocols, the Contractor must:

- (a) comply with:
 - (i) all Safety Protocols, so far as is reasonably practicable; and
 - (ii) the UXO Risk Management Plan implemented for the Site (if any) in accordance with the [Relevant Guidance and/or Regulations] and any other relevant documentation;
- (b) ensure it consults with all persons on the Site regarding the:
 - (i) UXO risks identified and communicated to the Contractor by the UXO Subcontractor;
 - (ii) Safety Protocols; and
 - (iii) UXO Risk Management Plan (if any) and any other relevant documentation;
- (c) ensure all persons on the Site comply with the Safety Protocols and UXO Risk Management Plan (if any), so far as is reasonably practicable; and
- (d) consult with the UXO Subcontractor to ensure that all Safety Protocols are regularly reviewed and updated.

18.4 Innocuous Material Found During UXO Assessment Survey

- (a) If, upon completing a UXO Assessment Survey, the UXO Subcontractor identifies potential UXO present on or at the Site as innocuous material (including Explosive Ordnance Materiel), the Contractor must ensure the UXO Subcontractor safely removes and disposes of the innocuous material from the Site, in accordance with all Statutory Requirements.
- (b) If the UXO Subcontractor removes innocuous material from the Site in accordance with paragraph (a), the Contractor must ensure that it obtains a UXO Clearance Certificate from the UXO Subcontractor.

18.5 Site Containing UXO

- (a) In the event the UXO Subcontractor identifies UXO present on or at the Site whilst carrying out investigative actions in accordance with this clause 18 that it considers is a risk to the health and safety of persons present on or at the Site (or persons who will carry out works on the Site), such that removal of the UXO is required, the Contractor must ensure the UXO Subcontractor:
 - (i) immediately verbally notifies the Contractor, the Contract Administrator and a representative of the Estate at which the Site is located;
 - (ii) within 24 hours of the verbal notification under subparagraph (i), provides written notice to the Contractor, Contract Administrator and

- (ii) instruct the Contractor as to the course of action it must adopt insofar as the Contractor's Activities are affected by the presence of UXO at or on the Site.

18.7 Contractor's Entitlement

- (a) If the Contract Administrator determines in accordance with clause 18.6(b)(i) that UXO has been identified at or on the Site and the Contractor has otherwise complied with its obligations under clauses 18.1 to 18.6, the Contractor will be entitled to:
 - (i) an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10.8 of the Conditions of Contract; and
 - (ii) have the Contract Price increased by the extra costs reasonably incurred by the Contractor after the giving of the notice under clause 18.6(a)(iv) which arise directly from the UXO and the Contract Administrator's instruction under clause 18.6(b)(ii), as determined by the Contract Administrator.
- (b) To the extent permitted by law, the Contractor will not be entitled to make (nor will [## INSERT] be liable upon) any Claim arising out of or in connection with any UXO or the Contract Administrator's instruction under clause 18.6(b)(ii), other than under paragraphs (a)(i) and (a)(ii).

18.8 Definitions and interpretation

For the purposes of clause 18:

- (a) **Abandoned Explosive Ordnance** means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned Explosive Ordnance may or may not have been primed, fuzed, armed or otherwise prepared for use;
- (b) **Discarded Military Munitions** means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal;
- (c) **Explosive Ordnance Materiel** means the general term to describe any materiel that forms, or has formed, part of an item of explosive ordnance. Explosive Ordnance Materiel refers to all by-products resulting from the functioning of munitions. This includes, but is not limited to, fragments of exploded/destroyed military munitions, shell casings, projectiles (including expended ejection munitions), fuze remnants, mortar tails, practice munitions, inert training munitions;
- (d) **Explosive Remnants of War** means UXO and Abandoned Explosive Ordnance;
- (e) **Safety Protocols** means any risk elimination strategies, risk mitigation strategies and control measures (as applicable) identified by the UXO Subcontractor and implemented at the Site to ensure that the Works can be carried out safely;
- (f) **UXO** means explosive ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design or for any other cause. For the purpose of this clause 18, the term 'UXO' is used to describe UXO, Discarded Military Munitions, Abandoned

- Explosive Ordnance and Explosive Remnants of War where contextually appropriate;
- (g) **UXO Assessment Survey** means a survey designed to determine, assess and report on the following (but is not limited to):
 - (i) whether an area is affected by UXO;
 - (ii) the boundaries of the affected area;
 - (iii) the densities of UXO, including the locations and characteristics of impact areas, within the affected area; and
 - (iv) the residual depths, types and natures of UXO and inert ordnance-related items within the affected area;
 - (h) **UXO Clearance Certificate** means a certificate obtained in accordance with clause 18.4(b) or 18.5(c):
 - (i) verifying that a UXO search has been conducted;
 - (ii) detailing if any innocuous material has been removed from a Site;
 - (iii) detailing any necessary remediation activities completed if UXO has been identified at the Site; and
 - (iv) confirming that the risk of UXO contamination on the Site has been eliminated or minimised, so far as reasonably practicable;
 - (i) **UXO Risk Assessment** means a preliminary or detailed risk conducted by the UXO Subcontractor to determine the likelihood of the presence of UXO on the Site and the risks to the Contractor in carrying out the Works;
 - (j) **UXO Risk Management Plan** means the plan developed by the UXO Subcontractor detailing the proposed approach for treating UXO risks on the Site; and
 - (k) **UXO Subcontractor** means a panel member under the:
 - (i) Unexploded Ordnance Management and Advice (only to be used by the Contractor as directed by [## INSERT] or the Contract Administrator where the likelihood of any remediation at the Site is low and no physical works are to be carried out by the UXO Subcontractor, and solely a UXO Risk Assessment is required);
 - (ii) Unexploded Ordnance Survey and Safety Services; or
 - (iii) Unexploded Ordnance Remediation.

ANNEXURE 3 - OUTLINE COST PLAN

[To be inserted following selection of the successful Tenderer]

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