

## AS 2124—1992

with  
AS 2125—1992  
AS 2127—1992  
(Incorporating Amendment No. 1)

Australian Standard™

### General conditions of contract

**Based upon (AS 2124 – 1992)  
(AS 2125 – 1992)  
(AS 2127 – 1992)**

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Construction



Standards Australia

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The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry  
Australian Electrical and Electronic Manufacturers Association  
Australian Federation of Construction Contractors  
Australian Institute of Project Management  
Australian Institute of Purchasing and Supply Management  
Australian Institute of Quantity Surveyors  
Australian Mining Industry Council  
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Construction Industry Engineering Services Group  
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## PREFACE

These editions of AS 2124, AS 2125 and AS 2127 (bound together) were prepared by the Standards Australia Committee on General Conditions of Contract. While these are the latest editions, the 1986 editions remain as current Standards, the 1981 editions remain as available superseded Standards and the 1978 editions are withdrawn.

*This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the ~~clause~~ Clause, note, table, figure, or part thereof affected.*

In the preparation of this edition of AS 2124, recommendations contained in the report by the National Public Works Conference/National Building and Construction Council Joint Working Party publication **NO DISPUTE** (May 1990) have been taken into account.

Clauses prefixed by an asterisk are optional, and may be omitted in the Contract as necessary, without making consequential amendments; but such omission should be clearly shown on the face of the Contract by striking out these clauses or indicating clearly elsewhere that they are *not to apply*.

The attention of users of this Standard is drawn to the separate document Doc 2124N, *Notes on changes in the General Conditions of Contract 4th edition (AS 2124—1992) as compared with the 3rd edition (AS 2124—1986)* which indicates the changes of major importance which have been made in the 1992 edition.

**WARNING: Users of this Australian Standard are warned that Clause 17 (damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.**

**This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the Works) and 19 (Public Liability Insurance).**

**Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.**

**WARNING**

**Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

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STANDARDS AUSTRALIA

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**Australian Standard**

**General conditions of contract**

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NOTE: Clauses prefixed by an asterisk can be omitted without making consequential amendments.

## 1 CONSTRUCTION OF CONTRACT

The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law of the State or Territory stated in the Annexure.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in the Annexure.

Communications between the Principal, the Superintendent and the Contractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*, as amended from time to time.

Where provisions in the General Conditions of Contract are expressed to be alternatives and the Contract fails to state which alternative applies, the first alternative shall apply.

## 2 INTERPRETATION

In the Contract, except where the context otherwise requires—

~~'Bill of Quantities' means a document named therein as a Bill of Quantities issued to tenderers by or on behalf of the Principal, stating estimated quantities of work to be carried out;~~

'Accepted Latent Condition' has the meaning in Clause 12.1;

'Accessed Site' means those parts of the Site (if any):

- (a) described in the Contract to be Accessed Site (if any);
- (b) directed by the Superintendent to be Accessed Site at any time before or after they are made available to the Contractor under the Contract; or
- (c) which have previously been handed over to the Principal following Practical Completion of the Works within them;

'Australian Standard' means a standard drawn up and published by the Council of Standards Australia (or any successor organisation).

'British Standard' means the specification of recommended procedure, quality of output, terminology, and other details, in a particular field, drawn up and published by the British Standards Institution (or any successor organisation).

'business day' means a day that is not a Saturday, Sunday, public holiday, special holiday or bank holiday in Queensland;



'Chief Executive Officer' means, in respect of each of the parties, the person from time to time nominated by that party as the senior manager or executive officer of that party, who has authority to negotiate and settle any dispute on behalf of that party;

'Claim' means any claim by the Contractor for or entitlement of the Contractor to:

- (a) extension of:
  - (i) the time within which the Contractor must complete work under the Contract, or perform any obligation under or in connection with the Contract; or
  - (ii) the Date for Practical Completion;
- (b) adjustment or addition to the Contract Sum or any other consideration payable by the Principal for work under the Contract;
- (c) recovery of any costs, expenses, damages, liabilities or other amounts of whatever nature from the Principal, the Superintendent or any of the Principal's employees, agents and contractors;
- (d) relief from any of the Contractor's obligations or liabilities under the Contract; or
- (e) any other right, remedy or claim,

whether under the Contract or otherwise at law or in equity (including under statute, in tort (including negligence) or for restitution);

'Confidential Information' includes:

- (a) all information, data, documents, plans, specifications or other material (including commercially sensitive information and technical know-how) directly or indirectly disclosed or made available by or on behalf of the Principal to the Contractor in connection with the Contract;
- (b) all notes and other records prepared by the Contractor based on or incorporating the information referred to in paragraph (a); and
- (c) all copies of the information and those parts of the notes and other records referred to in paragraphs (a) and (b) above;

'Codes of Practice' means the codes of practice approved by the Minister for the purposes of section 274 of the Work Health and Safety Act 2011 (Qld).

'Constructional Plant' means appliances and things used in the execution of the work under the Contract but not forming part of the Works;

'Contract' means the agreement between the Principal and the Contractor;

'Contract Bill of Quantities' means the bills of quantities (if any) described in the Formal Instrument of Agreement as the Contract Bill of Quantities;

'Contract Schedule of Rates' means any schedule which the Contract expressly provides is included as part of the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment or cost for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices, excluding the Contract Bill of Quantities;

'Contract Sum' means—

- (a) where the Principal accepted a lump sum, the lump sum;
- (b) where the Principal accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Contract Bill of Quantities or Contract Schedule of Rates;

(c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including provisional sums but excluding any additions or deductions which may be required to be made under the Contract;

'Contractor' means the person bound to execute the work under the Contract;

'Contractor's Management Plans' means the management plans relating to the matters listed in the Annexure or set out elsewhere in the Contract in respect of the work under the Contract which the Contractor is required to provide under Clause 14E;

'Controlled Site' means those parts of the Site not comprising Accessed Site;

'Date of Acceptance of Tender' means:

(a) the date which appears on the notice in writing of acceptance of the tender; or

(b) if there has been no written notice of acceptance of tender, then the date the Contract is entered into by the parties;

'Date for Practical Completion' means—

(a) where the Annexure provides a date for Practical Completion, 4.00pm on the date;

(b) where the Annexure provides a period of time for Practical Completion, 4.00pm on the last day of the period,

but if any extension or reduction of time for Practical Completion is granted by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;

'Date of Practical Completion' means—

(a) the date certified by the Superintendent in a Certificate of Practical Completion issued pursuant to Clause 42.5, to be the date upon which Practical Completion was reached; or

(b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date;

'day' means calendar day;

'Drawings' means the drawings referred to in the Contract listed in Schedule 3 as Contract Documents and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract;

'Energex Standard Procedures' means the documents described as such and listed in the Annexure as Relevant Documents (as they may be amended from time to time);

'Energex Supplied Material' has the meaning given to it by Clause 29.4;

'Environmental Requirement' means all permits, clearances, licences and other requirements related to the protection of the environment and applying in connection with the work under the Contract by any Legislative Requirement, any Government Approval, the Environmental Management Plan comprising one of the Contractor's Management Plans or any Energex Environmental Requirement as referred to in the Instrument of Agreement;

'Existing Improvements' means the existing improvements situated within, about or in the vicinity of the Site and includes without limitation;

- (a) any part of the Works comprising a Separable Portion from the time it reaches Practical Completion and is handed over to the Principal under the Contract; and
- (b) roads, pavement, kerbs and other similar things;

'Government Approvals' includes:

- (a) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of, or use of, the work under the Contract; and
- (b) certificates, licences, consents, permits and approvals relating to the completion, occupation or use of the Works;

including any certificate of classification or occupancy permit;

'IEC Standard' means an international standard for electrical, electronic and related technologies drawn up and published by the International Electrotechnical Commission (or any successor organisation).

'Legislative Requirement' means the requirements in Clause 14.1(a)-(c);

'Methodology and Resourcing Documents' means:

- (a) the documents listed in the Annexure or described in the Contract as methodology and resourcing documents; and
- (b) any methodology or resourcing list, plan, program, statement, outline, answered questionnaire or other document describing the methodology or resources to be applied or used by the Contractor in carrying out the work under the Contract (including any site management plan or plant and equipment list) provided by the Contractor in connection with its tender or the Contract and approved by the Principal or Superintendent.

excluding any document which forms part of the Contract;

'month' means calendar month;

'Non-Profit Items' means:

- (a) delay or disruption costs of the Contractor;
- (b) fees or charges payable by the Contractor in connection with work under the Contract;
- (c) items comprising Contractor's profit, attendance or on-Site and off-Site overhead; and
- (d) items valued by the application of rates, prices or other amounts which include any amount for the Contractor's profit, attendance or on-Site or off-Site overheads;

'Payments Act' means the *Building and Construction Industry Payments Act 2004* (Qld);

'Performance Guarantee' has the meaning in Clause 5.10;

'person' includes a firm or body corporate or unincorporate or an individual;

'Practical Completion' is that stage in the execution of the work under the Contract when—

- (a) the Works are complete except for minor omissions and minor defects—
  - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; ~~and~~
  - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and

- (iii) rectification of which will not prejudice the convenient use of the Works; and
- (b) ~~those tests testing which are~~ required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed to the satisfaction of the Superintendent; and
- (c) documents and other information required under the Contract which, in the opinion of the Superintendent, are essential for the use, operation, occupation and maintenance of the Works have been supplied;
- (d) all services, equipment and facilities have been certified by appropriate consultants as installed and having been performed in accordance with:
- (i) the Contract;
  - (ii) Legislative Requirements; and
  - (iii) Work Standards;
- (e) any certificate of approval in regard to fire protection systems installed in the Works has been issued;
- (f) the Contractor has provided to the Superintendent:
- (i) all Government Approvals relating to, and necessary in connection with the carrying out or completion of the Works (other than those expressly required to be obtained by the Principal under the Contract); and
  - (ii) evidence that all relevant inspections and approvals (including those required under any Legislative Requirement or Government Approval) have been satisfactorily completed and obtained;
- (g) the Contractor has provided to the Superintendent each of the documents which the Contract requires to be submitted prior to Practical Completion;
- (h) the Contractor has completed all training or instruction of employees or other nominees of the Principal required by the Contract (other than that expressed to be required after Practical Completion);
- (i) the Contractor has cleaned the Site and removed all rubbish and surplus material from the Site;
- (j) all keys and other security or locking devices relating to all parts of the Works (if any) have been delivered to the Principal; and
- (k) any other requirements which the Contract requires to be satisfied prior to Practical Completion, have been satisfied;

'Priced Contract Bill of Quantities' means the Contract Bill of Quantities priced and lodged by the Contractor with the Superintendent and corrected where necessary from time to time under Clause 4.3;

'Pricing Reference Document' means:

- (a) any document described as a Pricing Reference Document in the Annexure or elsewhere in the Contract; and
- (b) any other schedule of rates, schedule of prices, bill of quantities or other breakdown of the Contract Sum or any part of the Contract Sum (whether prepared, completed or provided by the Principal or Contractor) (including where provided by the Contractor as part of its tender for work under the Contract) which is approved by the Superintendent as a Pricing Reference Document for the purposes of the Contract,

but excluding any Contract Schedule of Rates or Contract Bill of Quantities;

↳ 'Principal' means the Principal stated in the Annexure;

'Principal-Supplied Information' means any information (whether written or otherwise) supplied or made available to the Contractor by or on behalf of the Principal before or after the Date of Acceptance of Tender (including without limitation Principal-supplied documents and the information identified in the Annexure) other than Relevant Documents or documents which comprise part of the Contract;

↳ 'provisional sum' includes monetary sum, contingency sum and prime cost item; or

'Relevant Documents' means the agreements, licences, leases, easements, approvals, policies or other documents listed in the Annexure or provided at any time to the Contractor by or on behalf of the Principal as a relevant document for the purposes of the Contract (as they may be amended, from time to time);

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

↳ 'Separable Portion' means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Superintendent has determined pursuant to Clause 35.4 shall be a Separable Portion;

↳ 'Site' means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract;

'Site Owner' means any entity owning or having an interest in the Site or part of the Site, including each of the entities set out in the Annexure;

↳ 'Specification' means the specification in the Instrument of Agreement and all specifications listed in that Specification as Contract Documents referred to in the Contract and any modification of such specification thereafter directed or the use of which has been permitted by the Superintendent pursuant to powers contained in the Contract;

'Standard Work Procedures (SWPs) means the Principal's Standard Work Procedures listed in the Instrument of Agreement;

'subcontractor' means any person engaged by the Contractor to carry out any part of the work under the Contract including a Selected Subcontractor or Nominated Subcontractor but excluding an employee of the Contractor;

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

↳ 'Superintendent's Representative' means a person appointed in writing by the Superintendent under Clause 24;

↳ 'Temporary Works' means works used in the execution of the work under the Contract but not forming part of the Works;

'Testing' includes examine, measure and commission;

'Work Health and Safety Law' means any Legislative Requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons acting in

the exercise of statutory powers relating to health and safety, including the *Work Health and Safety Act 2011 (Qld)* and the *Work Health and Safety Regulation 2011 (Qld)*;

'Work Health and Safety Requirements' means:

- (a) any Work Health and Safety Law; and
- (b) the requirements of:
  - (i) *Energex Standard Procedures*;
  - (ii) *Relevant Documents*;
  - (iii) *Standard Work Procedures*;
  - (iv) *Work Standards*;
  - (v) *the Contractor's Management Plans*;
  - (vi) any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of carrying out the work under the Contract or to be installed as part of the work under the Contract; or
  - (vii) any other provisions of the Contract,  
relating to health and safety;

'Work Standards' means:

- (a) industry standards, codes, practices and guidelines;
- (b) *Australian Standards*, and where *Australian Standards* do not apply, *British Standards* and where *British Standards* do not apply, *IECEC Standards*;
- (c) good engineering practice;
- (d) proper and tradesmenlike workmanship; and
- (e) any standards as to the performance of the work under the Contract required by the Contract;

'work under the Contract' means the work which the Contractor is or may be required to execute under the Contract and includes variations, remedial work, Constructional Plant and Temporary Works and all work reasonably necessary for or inferred from the work expressly referred to in the Contract;

'Works' means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal (including without limitation any plant and material to be supplied by the Contractor under the Contract, and to become the property of the Principal, whether or not intended by the Contract to be affixed to the Site and the *Energex Supplied Material*).

NOTE: In addition to these definitions, some terms, specific to a clause, are defined in that clause. Refer to the Index.

The clause headings and sub-clause headings in the General Conditions of Contract shall not form part of the General Conditions of Contract and shall not be used in the interpretation of the Contract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender.

Nothing in this Contract shall be interpreted against a party solely on the ground that the party put forward the Contract or a relevant part of it.

Mentioning anything after includes, including, for example or similar expressions does not limit what else may be included.

A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

A reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent expressly provided by this Contract or that other agreement or document.

A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity whether or not it comprises a separate legal entity.

A reference to writing includes any means of representing or producing words, figures, drawings or symbols in a visible tangible form.

Unless otherwise stated, a reference to a Clause, schedule or annexure is a reference to a Clause or schedule or annexure to this Contract.

### **3 NATURE OF CONTRACT**

#### **3.1 Performance and Payment**

The Contractor shall execute and complete the work under the Contract.

The Principal shall pay the Contractor—

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

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

#### **3.1A Acknowledgement by Contractor**

The Contract Sum and any rates or prices to be applied in calculating the Contract Sum (including under any Contract Schedule of Rates or Contract Bill of Quantities) together with any additions or deductions expressly provided for by the Contract:

- (a) include all costs, expenses, fees and charges incurred by the Contractor in performing all its obligations under the Contract;
- (b) include all items of work (including the supply of any labour, materials or other items not specified in the contract) which are reasonably inferred or are necessary for the proper completion of the Works;
- (c) include the Contractor's profit, attendance, preliminaries, supervision, on-Site and off-Site overheads in connection with the performance of all of its obligations under the Contract; and
- (d) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason,

except to the extent expressly provided by the Contract.

#### **3.1B Obligations to Benefit Site Owner**

The Contractor:

- (a) also indemnifies the Site Owner in the terms of all indemnities given by the Contractor to the Principal under the Contract (including without limitation the indemnity set out in Clause 17.1);
- (b) shall ensure that if policies of insurance are required to be effected by the Contractor under Clauses 18, 18B, 19 or 20 of the Contract, those insurances are also effected in the name of the Site Owner, as a separate insured party;
- (c) warrants to the Site Owner that the work under the Contract shall be carried out in accordance with and to the standard required by the Contract;
- (d) agrees for the purposes of section 55 of the Property Law Act 1974 (Old) each Site Owner:
  - (i) comprises a 'beneficiary'; and
  - (ii) may accept the benefit of this Clause at any time by notice in writing to the Contractor.

### 3.2 Quantities

Quantities in a Contract Bill of Quantities or Contract Schedule of Rates are estimated quantities only and the Principal makes no warranty as to the accuracy of the quantities.

A direction shall not be required to be given by the Superintendent by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in the Contract Bill of Quantities or Contract Schedule of Rates.

### 3.3 Adjustment for Actual Quantities—Contract Schedule of Rates

Where otherwise than by reason of a direction of the Superintendent to vary the work under the Contract, the actual quantity of an item required to perform the Contract is greater or less than the quantity shown in the Contract Schedule of Rates—

- (a) where the Principal accepted a lump sum for the item, ~~the difference shall be valued under Clause 40.5 as if it were varied work directed by the Superintendent as a variation~~ the Contractor shall carry out the actual items or quantities required to comply with the Contract and the Contractor shall not be entitled to any Claim; and
- (b) where the Principal accepted a rate for the item:
  - (i) the rate shall apply to the greater or lesser quantities provided that where limits of accuracy are stated in the Annexure the rate shall apply to the greater or lesser quantities within the limits; ~~and~~
  - (ii) quantities outside the limits of accuracy stated in the Annexure (if any) shall be valued under Clause 40.5 as if they were varied work directed by the Superintendent as a variation (to the extent they are outside the limits of accuracy); and
  - (b) (iii) the Contractor shall otherwise have no other Claim in connection with the difference.

If a Contract Schedule of Rates omits an item which should have been included, the omitted item shall be taken to be included in items (as determined by the Superintendent) which are included in the Contract Schedule of Rates and the Contractor shall have no Claim ~~valued under Clause 40.5 as if it was extra work directed by the Superintendent as a variation.~~



### **3A Contractor's Warranties and Obligations**

- (a) Without limiting any other obligation of the Contractor, where any Contract Documents comprise or include performance specifications or requirements applying to the Works ('Performance Requirements'):
- (i) the Contractor shall ensure that in:
    - (A) carrying out the work under the Contract; and
    - (B) making any selection of any materials, goods, plant or equipment in relation to carrying out the work under the Contract,  
the Performance Requirements are satisfied or complied with;
  - (ii) the Contractor shall ensure that all materials used in the carrying out of the work under the Contract whether or not nominated in, or required by, the Contract are adequate for, and satisfy, the Performance Requirements.
- (b) Without limiting any other obligation of the Contractor, the Contractor:
- (i) is solely responsible for the management, construction and completion of the Works in accordance with the provisions of the Contract;
  - (ii) is responsible for the timely progression, evaluation and monitoring of the progress of the Works including:
    - (A) issues of constructability; and
    - (B) the proper sequencing and timely management of all activities, supplies, materials and resources to coincide with the requirements of the construction program;
  - (iii) must engage (and ensure its subcontractors engage) only suitably qualified, trained and competent personnel for the proper performance of the Works and supply those personnel with all appropriate apparel and safety equipment;
  - (iv) is responsible for managing all industrial relations issues arising in connection with the performance of the Works and must implement appropriate policies and procedures to minimise the risk of industrial issues and disputes;
  - (v) except where the Contract expressly requires or the Superintendent directs otherwise, the Contractor must not do or cause or allow to be done any act or thing that would:
    - (A) place the Principal in breach of any Legislative Requirement or Government Approval;
    - (B) cause any damage to any property including the Existing Improvements;
  - (vi) must co-ordinate and maintain all necessary control of traffic on or in the vicinity of the Site.
- (c) Without limiting any other provision of the Contract, the Contractor warrants to the Principal that:
- (i) it shall carry out and construct the Works in accordance with the Contract Documents:
    - (A) in a manner and to a quality required by the Contract and commensurate with the purpose of the Works; and

- (B) using the materials required by the Contract, or failing any specific description of a material in the Contract, then materials of the best quality available which are of merchantable quality and fit for their purpose;
- (ii) it will supply and execute items not expressly mentioned in the Contract but which are necessary or reasonably inferred for the satisfactory completion and performance of the Works;
- (iii) it will furnish efficient business administration, supervision and an adequate supply of workers and materials and perform its obligations in the best way and in the most expeditious and economical manner consistent with the best interests of the Principal.
- (d) Without limiting the generality of this clause the Contractor warrants to the Principal that the Contractor and all persons engaged by the Contractor to perform any part of the work under the Contract at all times shall be suitably qualified (including without limitation with all necessary licences, certificates and registration) and experienced, and shall exercise due skill, care and diligence in the execution and completion of work under the Contract.

### **3B Contractor's Design Obligations**

This clause only applies where the work under the Contract includes the performance of any design or specification of work under the Contract as detailed in the Specification.

#### **3B.1 Definitions**

In this clause:

- (a) *Contractor Designed Works* means any work under the Contract or Works in respect of which the Contractor is required by the Contract to provide the Contractor's Design Work;
- (b) *Contractor's Design Documents* means all designs, drawings (including shop drawings), specifications, surveys, reports, models, samples, patterns and other information required in connection with the Contractor's Design Work;
- (c) *Contractor's Design Work* means all work under the Contract relating to the design and specification of work under the Contract or the Works including preparation of drawings (including shop drawings), specifications or the Design Documents for the construction of the Works; and
- (d) *Principal's Requirements* means the requirements stated in the Specification summarising or outlining the Principal's requirements for the Contractor's Design Work or work under the Contract to which the Contractor's Design Work relates, as they may be developed or updated by the Contractor in accordance with the Contract, and approved by the Principal.

#### **3B.2 Acknowledgement by Contractor**

The Contractor confirms that the description of the work under the Contract set out in the Contract is adequate for the Contractor to complete the Contractor's Design Work in accordance with the Contract and has satisfied itself as to the Principal's Requirements.

#### **3B.3 Contractor's Design Work**

In respect of the Contractor Designed Works the Contractor must carry out all Contractor's Design Work (including undertaking any design or redesign required to give effect to any Variation or to ensure that the Works comply with the requirements of the Contract despite any Latent Conditions discovered or changes in Legislative Requirements taking effect after

the Date of Acceptance of Tender) and complete all Contractor's Design Documents required for the construction of the Works.

### **3B.4 Fit for Purpose**

Without limiting any other obligation of the Contractor under the Contract, the Contractor must complete the Contractor's Design Work in respect of Contractor Designed Works so that:

- (a) the construction of the Works may be commenced within the time required by the Contract and so as to enable Practical Completion to be reached by the Date for Practical Completion;
- (b) the Contractor's Design Work and all Contractor's Design Documents prepared by the Contractor comply fully with the Principal's Requirements and all other requirements for the Works including the Specification and Drawings and are fit for their purpose.

and shall execute and complete the work under the Contract in accordance with the Contractor's Design Work and the Contractor's Design Documents.

### **3B.5 Design Completed**

The Contractor will not commence any construction in connection with any part of the Contractor Designed Work until:

- (a) the Contractor's Design Work relating to that part has been completed in accordance with the Contract; and
- (b) Contractor's Design Documents relevant to the Contractor's Design Work have been submitted to the Superintendent and the Superintendent has consented to their use for the purpose of the work under the Contract.

### **3B.6 Consent**

The parties acknowledge that:

- (a) if the Superintendent refuses consent to Contractor's Design Documents submitted by the Contractor for consent, the Contractor will resubmit the Contractor's Design Documents amended to take account of the Superintendent's comments and the provisions of this clause will apply again; and
- (b) if for any reason the Contractor amends any Contractor's Design Document after the Superintendent has consented to its use, the Contractor must resubmit the amended Design Document (indicating how it has been amended) for the Superintendent's further consent and this clause will apply again.
- (c) the Contractor's Design Work must be consistent with and not deviate from:
  - (i) any Contractor's Design Document submitted to the Principal as part of or in connection with the Contractor's tender;
  - (ii) any Contractor's Design Documents previously prepared and approved or taken to have been approved by the Superintendent for the purposes of the Contract; and
  - (iii) the Contract and any Drawings and Specifications provided by or on behalf of the Principal;

except to the extent that:

- (iv) the Principal has notified the Contractor that any part of such Contractor's Design Documents are not accepted by the Principal or Superintendent; or
- (v) the Principal has agreed in writing to such inconsistency or deviation.

### **3B.8 Obligations Unaffected**

The Contractor agrees that the requirement for it to obtain the Superintendent's consent to the use of any Contractor's Design Document is not to be taken to impose on the Principal any obligation in respect of Contractor's Design Work and neither:

- (a) the Superintendent's consent to the use of any Contractor's Design Document; nor
- (b) the Superintendent's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any Contractor's Design Documents,

will relieve the Contractor from any of its obligations or liabilities under the Contract or entitle the Contractor to any Claim.

### **3B.9 Payment Claims**

If required by the Superintendent, the Contractor must submit in support of each payment claim, certificates (on terms acceptable to the Superintendent) from those subcontractors (and employees of the Contractor) directed by the Superintendent who have carried out Contractor's Design Work in respect of the Contractor Designed Works to which the payment claim relates, that:

- (i) the Contractors Design Work has been carried out in accordance with the requirements of the Contract including the Principal's Requirements; and
- (ii) any construction work in respect of such Contractor's Design Work has been carried out in accordance with the Contractor's Design Documents in respect of which that person has provided design or specification services,

and the Contractor submitting those certificates is a precondition to the Contractor becoming entitled to submit its payment claim.

## **4 BILL OF QUANTITIES**

### **4.1 Purpose of the Bill of Quantities**

#### *Alternative 1*

A Bill of Quantities forms part of the Contract only to the extent provided in the Contract.

#### *Alternative 2*

A Bill of Quantities shall not form part of the Contract.

#### *Alternative 3*

A Bill of Quantities forms part of the Specification.

No bill of quantities (priced or unpriced) other than a Contract Bill of Quantities shall form part of the Contract and the Contractor will not be entitled to any adjustment to the Contract Sum or other Claim whatever in connection with any bill of quantities (priced or unpriced) whether provided by the Contractor or the Principal (including any error, omission, discrepancy or ambiguity) and Clauses 4.2, 4.3 and 4.4 shall not apply to any bill of quantities (other than a Contract Bill of Quantities).

#### 4.2 Pricing and Lodgement

Where there is a Contract Bill of Quantities:

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

#### 4.3 Errors in Pricing

Any errors in extension or addition, or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by the Principal or the Contractor in the Priced Contract Bill of Quantities shall be notified to the Superintendent in writing by the party making the discovery and corrected in a manner agreed between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent so that the total of all items in the Priced Contract Bill of Quantities continues to equal the sum accepted by the Principal for the execution of the whole of the work to which the Contract Bill of Quantities relates.

#### 4.4 Errors in Bills of Quantities

If the Contract Bill of Quantities is in error in that it—

- (a) contains an incorrect quantity in relation to any item included therein; or
- (b) contains an item which should not have been included therein; or
- (c) omits an item which should have been included therein;

then—

- (i) in the case of Clause 4.4(a) where the item is deficient in quantity or in the case of Clause 4.4(c)— upon application in writing to the Superintendent by the Contractor; and
- (ii) in the case of Clause 4.4(a) where the item is excessive in quantity or in the case of Clause 4.4(b)— upon notification in writing to the Contractor by the Superintendent,

the lump sum accepted by the Principal for the execution of the whole of the work to which the Contract Bill of Quantities relates shall except when the value of the error is less than \$400, be adjusted by such amount as is required to correct the error, determined in the manner provided by Clause 40.5 for the valuation of variations as if the correction were a variation under Clause 40.

The Contract Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Works in accordance with the drawings and specification referred to in the Contract, measured in accordance with the method of measurement evidenced by the Contract.

#### **4.5 Pricing Reference Documents**

- (a) No Pricing Reference Document shall:
- (i) be taken to form part of the Contract;
  - (ii) be taken to define the extent of work under the Contract; or
  - (iii) give rise to any basis for a Claim by the Contractor.
- (b) Subject to paragraph (a), a Pricing Reference Document may be used by the Superintendent for the purposes of:
- (i) valuations under Clause 40.5;
  - (ii) certifying progress payments under Clause 42.1; or
  - (iii) otherwise making determinations pursuant to the Contract, to the extent the Superintendent, in its discretion, decides to do so.
- (c) The parties agree that:
- (i) any Pricing Reference Document prepared by or on behalf of the Principal and made available to the Contractor for any purpose in connection with the Contract shall be 'Principal-Supplied Information';
  - (ii) the Principal may (at any time) request the Contractor to, and the Contractor shall, provide more detailed breakdowns of any prices, rates, quantities or items contained in any Pricing Reference Document;
  - (iii) without limiting Clause 8.3A, it shall be taken to have satisfied itself in all respects as to the quantities or estimated quantities set out in any Pricing Reference Document; and
  - (iv) the Contractor shall have no Claim arising from or in connection with the quantities or estimated quantities in any Pricing Reference Document differing from the actual quantities of work under the Contract.
- (d) Except to the extent a Pricing Reference Document expressly provides otherwise, each individual rate or price for any item of work included in the Pricing Reference Document will:
- (i) be taken to include all costs associated with the relevant item and all the Contractor's preliminaries, supervision, overhead (off-Site and on-Site) and profit relating to that item;
  - (ii) not be subject to rise and fall, foreign exchange adjustment or any other adjustment whatever; and
  - (iii) be taken to apply to any quantity of the relevant item (whether or not that quantity differs from the quantity (if any) stated in the Pricing Reference Document).

## **5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS**

### **5.1 Purpose**

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract.

## 5.2 Provision of Security

If it is provided in the Annexure that a party shall provide security then the party shall provide security in the amount stated in the Annexure and in accordance with this Clause.

## 5.3 Form of Security

The security shall be in the form of ~~cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security (in its absolute discretion).~~

The party having the benefit of the security shall have a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution ~~or insurance company~~ giving it ~~or other form of security offered~~. The form of unconditional undertaking attached to these General Conditions is approved.

The financial institution must be a security provider which is an approved security provider under the Queensland Financial and Performance Management Standard 1997 2009 (Qld) ('Approved Security Provider').

Where the Annexure specifies the form of security (including class of security provider), the security must comply with the Annexure.

If the security is not transferable by delivery, it shall be accompanied by an executed transfer or such other documentation as is necessary to effect a transfer of the security. The costs (including all stamp duty or other taxes) of and incidental to the transfer and retransfer, shall be borne by the party providing the security.

### 5.3A Change of Approved Security Provider Rating

If security provided by the Contractor under this Clause 5 is given by any entity who ceases at any time to be an Approved Security Provider the Contractor shall, within 14 days of the security provider ceasing to be so approved, provide to the Principal a replacement security from an entity which is approved and otherwise complying with the requirements of this Clause. Such replacement security shall be taken to be security required to be provided under Clause 5.2.

### 5.3B Adjustment of Security

Within 14 days after any date (prior to the reduction of security in accordance with Clause 5.7) on which the value of security held by the Principal under Clause 5.3 falls for any reason below the amount equal to 0.5 percent less than the value of security required under Clause 5.2, the Contractor shall provide to the Principal such additional security (in the form required by Clause 5.3) as is necessary to ensure the Principal holds security of a value being not less than the amount required under Clause 5.2.

## 5.4 Time for Lodgement of Security

Security shall be lodged within ~~28~~7 days of the Date of Acceptance of Tender.

### 5.4A No Payment Claim Until Security Lodged

The Contractor's full compliance with its obligation to lodge security under Clause 5.4 or Clause 5.3A and its obligation under Clause 5.10 to provide a Performance Guarantee (if

applicable) shall be a condition precedent to the Contractor being entitled to possession of the Site or to submit any claim for payment under the Contract at any time.

### **5.5 Recourse to Retention Moneys and Conversion of Security**

A party may have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money where—

- (a) the party has become entitled to exercise a right under the Contract in respect of the retention moneys and/or security; and
- (b) the party has given the other party notice in writing for the period stated in the Annexure, or if no period is stated, ~~five~~ 5 days of the party's intention to have recourse to the retention moneys and/or cash security and/or to convert the security; and
- (c) the period stated in the Annexure or if no period is stated, ~~five~~ 5 days has or have elapsed since the notice was given.

### **5.6 No Substitution of Security for Retention Moneys**

Unless otherwise agreed by the Principal (at its absolute discretion), ~~The~~ ~~the~~ Contractor shall be at liberty at any time to ~~may not~~ provide alternate security in lieu of retention moneys and is not entitled to a ~~security in any of the forms permitted in Clause 5.3.~~ To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release of retention moneys if alternate security is provided to the Principal.

### \* **5.7 Reduction of Security and Retention Moneys**

Upon issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, to 50 per cent thereof.

Subject to the first paragraph of this Clause 5.7, if in the opinion of the Superintendent it is reasonable to further reduce the Principal's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal shall, within 14 days of the Superintendent making such a determination, release security and retention moneys in excess of the entitlement.

### **5.8 Release of Security**

If the Contractor has provided additional security pursuant to Clause 42.4, the Principal shall release that additional security within 14 days of the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished.

If the Principal has provided security, then when the Contractor has been paid all moneys finally due to the Contractor under the Contract or a Separable Portion, the Contractor shall release the security lodged by the Principal in respect of the Contract or the Separable Portion, as the case may be.

If the Contractor has provided security, then the Principal shall release it when required by Clause 42.8.



### **5.8A Retention of Security**

Despite any other provision of the Contract:

- (a) a party holding security or retention moneys may continue to hold security or retention moneys where the Contract may otherwise require it to be released or after termination of the Contract for any reason, to the extent of any bona fide claim by the party under or in connection with the Contract (whether liquidated or otherwise and whether or not the party is at that time entitled to use the security to recover the amount claimed);
- (b) where the Contract is terminated by reason of the Contractor repudiating the Contract, being in substantial breach of the Contract (including a breach referred to in Clause 44.2A) or having an event referred to in Clause 44.11 occur in respect of it, the Principal may immediately recourse and apply security or retention moneys after termination in respect of any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise; and
- (c) where the Contract is terminated in circumstances other than those referred to in paragraph (b), the Principal may recourse and apply security or retention moneys after termination in respect of any amount which the Contractor fails to pay which becomes due to the Principal within the agreed period for payment or if no period is agreed, within 14 days.

### **5.9 Interest on Security and Retention Moneys**

#### *Alternative 1*

A party holding retention moneys and/or cash security shall forthwith deposit the moneys in an interest bearing account in a bank. That party shall nominate the bank and the type of account. The account shall be in the joint names of the Principal and the Contractor and shall be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Principal and the Contractor. The moneys shall be held until the Principal or the Contractor is entitled to receive them.

Interest earned on security lodged by the Contractor and on retention moneys belongs to the Contractor. Interest earned on security lodged by the Principal belongs to the Principal.

Upon the Principal or the Contractor becoming entitled to receive any moneys, including interest in the account, the other party shall forthwith have that party's appointee sign all documentation necessary to withdraw the moneys and shall give the signed documentation to the other party.

#### *Alternative 2*

A party holding retention moneys or cash security shall own any interest earned on the retention moneys or security. ~~Except where retention moneys or cash security are held by a government department or agency or a municipal, public or statutory authority, retention moneys or cash security shall be held in trust by the party holding them for the other party until the Principal or the Contractor is entitled to receive them.~~

Despite any other provision of the Contract, security which is cash or retention moneys held by the Principal shall not be held in trust.

### **5.10 Deed of Guarantee, Undertaking and Substitution**

If the Annexure provides that a Performance Guarantee is required, or the Principal during the tender process notifies that a Performance Guarantee is required, the parties agree:

(a) the Contractor shall lodge with the Principal within 14 days after the Date of Acceptance of Tender, the Performance Guarantee annexed as Annexure Part D executed by the Contractor's ultimate holding company (as that term is defined in the *Corporations Act 2001 (Cth)*); and

(b) the Contractor's full compliance with its obligations under paragraph (a) shall be a condition precedent to the Contractor being entitled to submit any claim for payment under the Contract at any time.

~~Where—~~

~~(a) a party is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Law as amended from time to time; and~~

~~(b) the Principal has included in the tender documents a form of Deed of Guarantee, Undertaking and Substitution;~~

~~that party shall, if requested by the other party in writing within 7 days after the Date of Acceptance of Tender lodge with the other party within 14 days after that request having been made a Deed of Guarantee, Undertaking and Substitution in the form included in the tender documents duly executed by the first party and that other corporation for the performance of the obligations and the discharge of the liabilities of the first party under the Contract.~~

~~For the purpose of Clause 5.10, the terms 'corporation' and 'subsidiary' have the meanings defined in the Corporations Law.~~

## 6 EVIDENCE OF CONTRACT

### 6.1 Contract in Absence of Formal Instrument of Agreement

Unless a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Contract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Contract.

### 6.2 Formal Instrument of Agreement

~~If the conditions of tender require a Formal Instrument of Agreement, Unless a Formal Instrument of Agreement has already been executed by the parties, the Principal shall prepare in duplicate a Formal Instrument of Agreement and shall, within 28 days after the Date of Acceptance of Tender, forward it to the Contractor with a request that it be executed.~~

Within 14 days after being requested in writing by the Principal so to do, the Contractor shall execute both copies of the Formal Instrument of Agreement in the manner directed in writing by the Principal and return them to the Principal.

Within 14 days after receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor, the Principal shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Contractor.

The Superintendent may extend the periods under Clause 6.2 by notice in writing to the parties.

The Principal shall bear the cost of any stamp duty payable on the Contract.

## 7 SERVICE OF NOTICES

A notice to be given under the Contract shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Contract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

The Principal, the Contractor and the Superintendent shall each notify the others of a change of address. The Contractor must maintain an address for service of documents in Australia for the duration of the Contract.

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

Any notice given to the Contractor's representative (identified in a notice to the Superintendent under Clause 25) shall be deemed to have been given to the Contractor.

Notices may be given under this Clause 7 by facsimile and shall be taken to have been received upon completion of a successful transmission to the recipient, but if a facsimile is transmitted after 5.00pm (at the place of receipt) it shall be deemed to have been received on the next day.

Notices may not be given by email.

## 8 CONTRACT DOCUMENTS

### 8.1 Discrepancies

The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any inconsistency, ambiguity, ~~or~~ discrepancy or inadequacy in or between any documents forming part of the Contract or relevant to the carrying out of the Works, that party shall notify the Superintendent in writing of the inconsistency, ambiguity, ~~or~~ discrepancy or inadequacy. ~~In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.~~ The Contractor shall request and comply with the Superintendent's direction as to the interpretation and construction to be followed in respect of the inconsistency, ambiguity, discrepancy or inadequacy and the parties agree that unless otherwise directed by the Superintendent:

- (a) where the inconsistency, ambiguity or discrepancy relates to the required quality or standard of work under the Contract or the Works or the extent of the Contractor's obligations under the Contract, the Contractor shall comply with the highest quality or standard specified or perform the more onerous obligation;
- (b) where paragraph (a) does not apply and the inconsistency, ambiguity or discrepancy is between any documents forming part of the Contract, the documents shall be given precedence in accordance with the Instrument of Agreement;
- (c) where neither paragraphs (a) nor (b) applies and the inconsistency, ambiguity or discrepancy is between figured and scaled dimensions, figured shall prevail over scaled dimensions.

Subject to Clause 8.1A, if compliance with any direction under this Clause 8.1 (other than a direction to comply with any of paragraphs (a) to (c) above or with any other provision of the Contract relating to the resolution of discrepancies) causes the Contractor to incur more or less cost than otherwise would have been incurred had the direction not been given, the difference shall be valued under Clause 40.5 and the Contractor shall be entitled to claim an

extension of the Date for Practical Completion subject to the terms of the Contract, but the Contractor shall not be entitled to any other Claim.

If the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

### **8.1A Claims for Discrepancies**

The Contractor agrees:

(a) it has reviewed all documents forming part of the Contract and all documents relevant to the carrying out of the work under the Contract or completion of the Works provided or made available to the Contractor prior to the Date of Acceptance of Tender ('Construction Documents'); and

(b) it will immediately upon receipt by it of any further documents relevant to the carrying out of the work under the Contract or completion of the Works ('Further Construction Documents') carry out a review of the Further Construction Documents,

for the purposes of satisfying itself that there are no inconsistencies, ambiguities, discrepancies or inadequacies in the Construction Documents and Further Construction Documents and despite any other provision of the Contract the Contractor shall have no Claim arising from any inconsistency, ambiguity, discrepancy or inadequacy in:

(c) Construction Documents or any direction given by the Superintendent under this Clause 8 in relation to the Construction Documents; or

(d) Further Construction Documents or a direction given by the Superintendent under this Clause 8 in relation to Further Construction Documents unless the Contractor has notified the Superintendent of the inconsistency, ambiguity, discrepancy or inadequacy within 14 days after receipt by the Contractor of the Further Construction Documents and before the Contractor relies on the Further Construction Documents in connection with the carrying out of the work under the Contract.

### **8.2 Dimensions Not Used**

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

### **8.3 Supply of Documents by Principal**

The Principal shall supply to the Contractor the number of copies stated in the Annexure, or if no number is stated, then 5 copies of the Drawings, Specification, Bill of Quantities (if any) and other documents required by the Contract to be supplied to the Contractor by the Principal.

Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

### **8.3A Principal-Supplied Information**

The Contractor agrees:

(a) unless the Principal expressly agrees otherwise in writing, any Principal-Supplied Information:

- (i) has been or will be provided only for the Contractor's convenience; and
  - (ii) has not been and will not be relied upon by the Contractor for any purpose (including entering into the Contract or performing its obligations under the Contract);
- (b) the Principal does not:
- (i) assume any responsibility or duty of care in respect of; or
  - (ii) warrant, guarantee or make any representation as to,  
the Principal-Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract);
- (c) the Contractor shall have no Claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Principal-Supplied Information or the non-provision of any other information by the Principal;
- (d) the Contractor must:
- (i) not rely upon (or allow any other person to rely upon) the Principal-Supplied Information for or in connection with the carrying out of work under the Contract until it has satisfied itself as to the accuracy, completeness and adequacy of the Principal-Supplied Information; and
  - (ii) indemnify the Principal against any claims or liability arising from or in connection with the Contractor failing to satisfy itself in accordance with paragraph (i); and
- (e) without prejudice to paragraph (a), it has by its own independent enquiries satisfied itself as to and taken into account any matter or thing relevant to the carrying out of the work under the Contract disclosed by any Principal-Supplied Information; and
- (f) it has reviewed and taken into account any Principal-Supplied Information relating to any hazards or risks relating to the Site in respect of its performance of its workplace health and safety and principal contractor obligations.

#### **8.4 Supply of Documents by Contractor**

If the Contract requires the Contractor to supply documents, the Contractor shall supply the number of copies stated in the Annexure or, if no number is stated, 5 copies.

If the Contractor submits documents to the Superintendent, then—

- (a) the Superintendent shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Contract—
- (b) notwithstanding the provisions of Clause 23, the Superintendent's approval shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract;
- (c) if the Contract including the Annexure, provides that the Contractor must obtain the Superintendent's direction whether documents are suitable or are not suitable then the Contractor must do so before giving effect to the document in carrying out the work under the Contract and within the time stated in the Annexure (or if no time is stated then within 14 days) after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable;
- (d) if the Superintendent notifies the Contractor that the documents are not suitable, the Superintendent shall give reasons why the documents are not suitable and the

Contractor shall submit new or amended documents for the Superintendent's direction under this Clause;

- (e) the Superintendent shall not reject documents which are in accordance with the requirements of the Contract.

Copies of documents supplied by the Contractor shall be the property of the Principal but shall not be used or copied otherwise than for the purposes for which the Principal is entitled to use intellectual property in those documents under the Contract including for the completion, use, maintenance, upgrade or alteration of the Works or otherwise in connection with any matter relating to or dealing with the Works.

The Contractor must ensure that any documents supplied by the Contractor to the Superintendent or the Principal clearly state the revision number of each document and highlight all changes made from the previous revision of that document.

### 8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of Drawings, Specification and other written information supplied by the Principal, the Superintendent and the Contractor shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Superintendent and any person nominated in writing by either of them.

### 8.6 Confidential Information

~~Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall ensure that Confidential Information is be regarded as confidential and shall not be disclosed to any third party except with the prior agreement of the other partyPrincipal to the Contract.~~

If required in writing by ~~a party~~the Principal, the ~~other party~~Contractor shall enter into a separate agreement not to disclose to anyone else any ~~confidential~~Confidential matter information even after the issue of the Final Certificate pursuant to Clause 42.8 or the earlier termination of the Contract.

Without limiting its other obligations under this Clause, the Contractor must not:

- (a) disclose to any person; or  
 (b) use for any purpose other than the carrying out of the work under the Contract, any of the contents of the Contract or any other information obtained by the Contractor in the course of or in connection with it carrying out the work under the Contract unless:  
 (c) the Principal has given its prior consent in writing; or  
 (d) required by law.

The Contractor's obligations under this Clause continue to apply after the issue of a Final Certificate or termination of the Contract for any reason (whether or not the Contractor signs a separate agreement under this Clause).

### 8.7 Media Releases

\* The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior express written approval of the Principal, ~~(which approval shall not be unreasonably withheld)~~. The Contractor shall refer to the Principal any enquiries concerning the project from any media.

The Contractor shall ensure the Contractor, its employees, its subcontractors and their employees:

- (a) direct all enquiries which it may receive in respect of the work under the Contract, the Works, the Site or the Principal from the media, government officers or representatives of any outside organisations to the Principal; and
- (b) do not make any statements to the media, government officers or to outside organisations in respect of matters concerning the work under the Contract, the Works, the Site or the Principal without the prior express written consent of the Principal.

### 8.8 Delivery of Documents and other Deliverables Before Practical Completion

The Contractor must deliver to the Superintendent before Practical Completion each of the documents and other deliverables listed in the Annexure.

### 8.9 Delivery of Documents and other Deliverables After Practical Completion

The Contractor must deliver to the Superintendent within the number of days after the Date of Practical Completion specified in the Annexure each of the documents and other deliverables listed in the Annexure. Despite any other provision of the Contract:

- (a) the Contractor's full compliance with its obligations to deliver such documents and deliverables shall be a condition precedent to the Contractor being entitled to submit any claim for payment at any time after Practical Completion; and
- (b) the Principal shall not be obliged to release any security otherwise due for release at any time after Practical Completion until such documents and other deliverables are delivered.

### 8.10 Contractor's Tender

(a) The Superintendent may (to the extent the Superintendent decides to do so) refer to the information contained in:

- (i) the Principal's invitation to tender, request for tender, conditions of tender, notice to tenderers or other document provided to the Contractor by or on behalf of the Principal in connection with the Contractor's tender; or
- (ii) the Contractor's tender or other document or information provided by or on behalf of the Contractor in connection with the Contractor's tender ('Contractor's Tender Information').

for the purpose of the assessment of any request for approval of any Claim by the Contractor or any other purpose under or in connection with the Contract.

(b) The Contractor warrants that the Contractor's Tender Information:

- (i) was and is true, complete and accurate; and
- (ii) except where expressly stated otherwise, was and is in accordance with the Principal's conditions of tender.

- (c) The Contractor must promptly notify the Principal if any of the matters warranted in this Clause cease to be correct and otherwise shall be taken to continue to warrant the matters contained in this Clause.
- (d) The Contractor acknowledges and agrees that the Principal has relied on the warranties in Clause 8.10(b) in entering into the Contract.

## 9 ASSIGNMENT AND SUBCONTRACTING

### 9.1 Assignment

- (a) Neither party shall, without the prior written approval of the other and except on such reasonable terms and conditions as are determined in writing by the other, assign the Contract or any payment or any other right or benefit or interest thereunder. The Principal may assign or novate the Contract or assign any right under the Contract:
- (i) without the consent of the Contractor if the Principal is not in breach of the Contract and:
- (A) the assignee or novatee is a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)); or
- (B) the assignee or novatee is an entity to whom a substantial part of the Principal's business is assigned; or
- (ii) to any other entity with the consent of the Contractor ~~or~~ (which must not be unreasonably withheld).
- (b) The Contractor may not assign or otherwise deal with the Contract or any right under the Contract without the prior written consent of the Principal which may be withheld or given unconditionally or subject to conditions in the Principal's discretion.

### 9.2 Subcontracting

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a subcontractor to assign or subcontract work described in the Annexure.

With a request for approval, the Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.

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

Within 14 days after a request by the Contractor for approval, and compliance by the Contractor with its obligations under this Clause, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including—

- (a) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (c) provisions which impose obligations on the subcontractor to consent to any novation or assignment of the Contractor's rights and obligations under the subcontract to the



Principal or a nominee of the Principal, if required by the Principal, and sign any documents required by the Principal to give effect to such novation or assignment.

The Contractor agrees to assign or novate its rights and obligations in any subcontract to the Principal or a nominee of the Principal and sign any documents required by the Principal to give effect to such assignment or novation if both:

- (a) the work is taken out of the hands of the Contractor or the Principal terminates the Contract for any reason; and
- (b) the Principal directs the Contractor to do so.

Where a subcontractor is a Selected or Nominated Subcontractor, the Superintendent shall be taken to have approved the identity of the subcontractor but not the other matters the Superintendent is to take into account under this Clause and Clause 9.2A approving the subcontract.

### **9.2A Further Conditions for Approval to Subcontracting**

Without limiting Clause 9.2, the Superintendent's approval of a subcontract or the assignment or further subcontracting by a subcontractor may also be conditional upon:

- (a) the subcontractor, assignee or sub-subcontractor completing any usual pre-qualification requirements of the Principal applying to the Site or contracts entered into by the Principal; and
- (b) the Contractor satisfying the Superintendent that the Contractor has used its best endeavours to ensure that the subcontractor, assignee or sub-subcontractor executes, in favour of and delivers to, the Principal, a deed in the form set out in Annexure Part F or if no form is set out, in the form reasonably required by the Principal, prior to the Contractor entering into the subcontract or further subcontract or effecting the assignment.

### **9.3 Contractor's Responsibility**

Approval to subcontract, the exercise by the Principal of its rights and discretions under Clause 9.2, compliance with any prequalification requirements or the Contractor entering into any subcontract with any subcontractor, shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor and any matter within the reasonable control of any subcontractor shall be taken to be within the reasonable control of the Contractor.

### **9.3A Pre-Approved Subcontractors**

Despite any other provision of the Contract:

- (a) where the Contract identifies subcontractors which the Contractor has proposed that it use in connection with work under the Contract and the Superintendent has not raised any objection to such subcontractors ('Pre-approved Subcontractors'), the Contractor shall engage a subcontractor so identified in connection with the corresponding category of work under the Contract, unless it obtains the Principal's approval to do otherwise;
- (b) the Contractor shall not repudiate, terminate or rescind a Pre-approved Subcontractor contract without the prior written consent of the Principal;
- (c) if a Pre-approved Subcontractor contract is terminated for any reason;

- (i) the Contractor remains fully responsible in all respects for completion of the work under the Contract; and
- (ii) the Contractor shall, subject to Clause 9.2, be responsible for engaging an alternative subcontractor to complete the relevant part of the work under the Contract; and
- (d) neither the obligations of the Contractor under this Clause nor any approval given by the Principal in connection with any Pre-approved Subcontractor shall:
  - (i) derogate from or otherwise affect the Contractor's responsibility for subcontractors under Clause 9.3;
  - (ii) relieve the Contractor from full responsibility for all work under the Contract and the performance of the Contract; and
  - (iii) give rise to any Claim by the Contractor.

## 10 SELECTED AND NOMINATED SUBCONTRACTORS

### 10.1 Definitions

If the Contract provides that certain work or the supply of certain items shall be subcontracted to a Selected or Nominated Subcontractor, the work or the supply of the items is 'Selected Subcontract Work' or 'Nominated Subcontract Work' as the case may be, and:

'Selected Subcontractor' means a subcontractor identified in the Contractor's tender from a list of subcontractors provided by the Principal in the tender documents for Selected Subcontract Work. The list may include one or more subcontractors.

'Nominated Subcontractor' means—

- (a) a subcontractor identified as a Nominated Subcontractor in the Annexure;
- (b) a subcontractor to whom the Contractor is directed by the Superintendent to subcontract Nominated Subcontract Work; or
- (c) a subcontractor named in the Contract with whom the Principal has entered into a prior contract for Nominated Subcontract Work, and in which prior contract the subcontractor has consented to the assignment by the Principal of the benefit of the prior contract, a copy of which is included in the ~~tender documents~~Contract; or
- (d) a subcontractor named in the Contract with whom the Principal has entered into a prior contract for Nominated Subcontract Work, and in which prior contract the subcontractor has consented to the novation of the prior contract by the Principal pursuant to a deed of novation, a copy of which is included in the ~~tender documents~~Contract.

~~'Nominated Subcontract Work' shall relate only to work or the supply of items for which a Provisional Sum has been included in the Contract.~~

### 10.2 Selected Subcontract

If the Contract includes Selected Subcontract Work, the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. If the tender documents or the Contract specify the terms and conditions upon which the subcontract is to be entered into, the subcontract shall include those terms and conditions.

### 10.3 Nominated Subcontract

If the Contract includes Nominated Subcontract Work, ~~at such time as is necessary to avoid delay to the Contractor, the Superintendent shall direct the Contractor to~~ shall subcontract the Nominated Subcontract Work to a Nominated Subcontractor.

If the Contract or tender documents specify the terms and conditions upon which the subcontract is to be entered into, the subcontract shall include those terms and conditions.

If the Contract provides that the Principal may assign to the Contractor the benefit of a prior contract made between the Principal and a Nominated Subcontractor, the Contractor shall when directed by the Superintendent, accept the assignment of that prior contract.

If the Contract provides that the Principal may novate to the Contractor a prior contract made between the Principal and a Nominated Subcontractor in respect of Nominated Subcontract Work, the Contractor shall when directed by the Superintendent, execute a deed of novation of that prior contract in the form included in the tender documents and unless the Contract otherwise provides, the Contractor shall give the Principal credit for payments made by the Principal to the Nominated Subcontractor in respect of the Nominated Subcontract Work.

~~The Contractor shall ensure that the provisions of the subcontract are severally set out in the subcontract documents, so that the subcontract is fully expressed and complete in itself and includes provisions —~~

- ~~(a) that in respect of the Nominated Subcontract Work, the Nominated Subcontractor will undertake towards the Contractor obligations and liabilities which will enable the Contractor to discharge the Contractor's obligations and liabilities to the Principal under the terms of the Contract;~~
- ~~(b) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any failure by the Nominated Subcontractor to perform such obligations or fulfil such liabilities;~~
- ~~(c) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any negligence by the Nominated Subcontractor and the Nominated Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract;~~
- ~~(d) that the Nominated Subcontractor will lodge security in a form provided by Clause 5.3 and that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract;~~
- ~~(e) equivalent to those in Clause 44.~~

~~The Contractor shall not be obliged to enter into a subcontract with a Nominated Subcontractor against whom the Contractor raises reasonable objection.~~

~~If the Contractor declines to enter into a subcontract with a Nominated Subcontractor on the ground that the Nominated Subcontractor refuses to enter into a subcontract containing provisions in paragraphs (a) to (e) of Clause 10.3, the Superintendent shall nominate another Nominated Subcontractor or direct the Contractor to enter into a subcontract with the Nominated Subcontractor on such other terms as the Superintendent specifies. In the latter event —~~

- ~~(i) the Contractor shall not be bound to discharge obligations and liabilities under the Contract to the extent that the subcontract terms so specified by the Superintendent are inconsistent with the discharge; and~~

- ~~(ii) if the Contractor suffers loss arising out of the refusal of the Nominated Subcontractor to accept such provisions, the Principal shall pay to the Contractor the amount of loss which the Contractor could not reasonably avoid.~~

#### **10.4 Provisions Applying Generally to Selected and Nominated Subcontract Work**

If the Contractor is required by Clause 10 to enter into a subcontract, or to accept an assignment or to execute a deed of novation, the Contractor shall proceed promptly to do so and shall notify the Superintendent in writing as soon as the subcontract, assignment or novation has been effected.

~~With the consent of the Contractor, t~~The Superintendent may direct the Contractor to perform Selected or Nominated Subcontract Work.

~~Notwithstanding Clause 16.2 if the Contractor is to be responsible to the Principal for the design or suitability of Selected or Nominated Subcontract Work, as distinct from the quality or workmanship, the responsibility shall be expressly stated in the Contract and the Contractor's liability for the design or suitability of the Selected or Nominated Subcontract Work shall only be that which is expressly stated in the Contract.~~

Despite any other provision of the Contract:

- (a) the Contractor is to be responsible to the Principal for Selected and Nominated Subcontract Work to the same extent that the Contractor is responsible for any other work under the Contract;
- (b) the Contractor shall not be relieved of any liability or obligation under the Contract because the Contractor subcontracts to any Selected or Nominated Subcontractor;
- (c) the Contractor shall be liable to the Principal for acts and omissions of Selected and Nominated Subcontractors and their employees and agents as if they were acts or omissions of the Contractor;
- (d) any matter within the control of a Selected or Nominated Subcontractor shall be taken to be within the reasonable control of the Contractor;
- (e) the Principal shall have no liability to a Selected or Nominated Subcontractor arising from their subcontract with the Contractor;
- (f) the Principal shall have no obligation or liability to the Contractor for any act, omission, default, breach of contract or insolvency of a Selected or Nominated Subcontractor; and
- (g) the Contractor shall not, without the prior written consent of the Superintendent, do any act or thing which:
  - (i) varies, assigns or novates any of the Contractor's rights or obligations under any subcontract with a Nominated Subcontractor or Selected Subcontractor; or
  - (ii) change the scope of, or requirements for, work to be provided by a Nominated Subcontractor or Selected Subcontractor.

~~Except as herein contained, and subject to any reasonable objection made by the Contractor pursuant to this Clause —~~

- ~~(i) the Principal shall have no liability to a Selected or Nominated Subcontractor arising from the subcontract between the Contractor and the Selected or Nominated Subcontractor; and~~

(ii) ~~the Principal shall not be liable to the Contractor for any act, default or omission or breach of contract by a Selected or Nominated Subcontractor, arising from the subcontract between the Contractor and the Selected or Nominated Subcontractor.~~

\* **10.5 Direct Payment of Nominated Subcontractor**

~~In respect of Nominated Subcontract Work performed by a Nominated Subcontractor, the Principal shall make payment directly to the Nominated Subcontractor. Except where the Contractor has accepted an assignment of the benefit of a prior contract made between the Principal and a Nominated Subcontractor—~~

~~(a) such payment shall be made on behalf of the Contractor; and~~

~~(b) if the Contractor reasonably requests the Principal in writing not to make a payment to the Nominated Subcontractor, the Principal shall withhold payment but under no circumstances, including bankruptcy or winding up of the Contractor, shall payment be made to the Contractor.~~

~~The Principal as stakeholder shall hold retention moneys and security provided by a Nominated Subcontractor and shall disburse or apply the retention moneys or security as jointly requested by the Contractor and the subcontractor or in accordance with the decision of an arbitrator or Court.~~

**10.6.10.5 Termination of Selected Subcontract/Nominated Subcontract**

~~The Contractor shall not unreasonably terminate a subcontract for Selected Subcontract Work or Nominated Subcontract Work without the written approval of the Superintendent (which is not to be unreasonably withheld) and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. ~~If a Nominated Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent in writing and the Superintendent shall proceed under Clause 10.3 to nominate a Nominated Subcontractor to complete the subcontract work and Clause 11(b) shall apply.~~~~

**10.6 Alternative Selected or Nominated Subcontractors**

Despite any other provision of the Contract, if at any time for any reason:

(a) the Contractor is unable to enter a subcontract with a Selected or Nominated Subcontractor; or

(b) the Selected or Nominated Subcontractor repudiates or abandons the subcontract; or

(c) the subcontract with a Selected or Nominated Subcontractor is terminated,

then:

(d) the Contractor shall request the Superintendent to nominate an alternative Selected or Nominated Subcontractor;

(e) if the Superintendent does not nominate an alternative Selected or Nominated Subcontractor within 7 days after the Contractor's request, the Contractor shall proceed with the work under the Contract as if it were not Selected or Nominated Subcontract Work; and

(f) the Contractor shall have no Claim whatever by reason of the Superintendent taking up to 7 days after the Contractor's request to nominate an alternative Selected or Nominated Subcontractor or failing to nominate an alternative Selected or Nominated Subcontractor.

## 11 PROVISIONAL SUMS

A provisional sum included in the Contract shall not itself be payable by the Principal but where at the direction of the Superintendent the work or item to which the provisional sum relates is performed or supplied by—

- (a) the Contractor, subject to Clause 11B the work or item shall be valued under Clause 40.5;
- (b) a subcontractor to the Contractor, subject to Clause 11B the Principal shall pay the Contractor the amount payable by the Contractor to the subcontractor for the work or item, disregarding any damages payable by the Contractor to the subcontractor or vice versa, plus the amount or percentage thereon for profit, on—Site and off-Site overheads and attendance stated in the Annexure or, where not so stated, as stated elsewhere in the Contract; and
- (c) a Nominated Subcontractor pursuant to a prior contract made between the Principal and a Nominated Subcontractor, the benefit of which has been assigned to the Contractor, subject to Clause 11B the Principal shall pay the Contractor the amount stated in the Annexure or the percentage for profit, on-Site and off-Site overheads and attendance stated in the Annexure of the amount payable by the Principal to the Nominated Subcontractor for the work or item or, where no amount or percentage is stated, as stated elsewhere in the Contract, disregarding any damages payable ~~by the Principal~~ to the Nominated Subcontractor or vice versa.

The amount payable to a subcontractor for materials or goods is to be taken to be the nett cost to the Contractor (disregarding any deduction of cash discount for prompt payment).

### 11A ADDITIONAL PROVISIONAL SUM OBLIGATIONS

The Contractor shall:

- (a) provide the Superintendent (at the Contractor's own cost and expense) with the Contractor's estimate of the likely cost to the Principal of the carrying out or supply by the Contractor of the work or item to which a provisional sum relates when requested by the Superintendent; and
- (b) comply with the reasonable directions of the Superintendent in respect of the subcontracting or procurement of the work or item to which a provisional sum relates.

### 11B RATED PROVISIONAL SUMS

- (a) Despite Clause 11, work or items to which a provisional sum included in the Contract relates and referred to in the Annexure ('Rated Provisional Sum Work') shall be priced by the Superintendent by applying the rates or prices (if any) stated as applying to the work or item in a Contract Bill of Quantities, Contract Schedule of Rates or Pricing Reference Document or as provided elsewhere in the Contract and no amount for profit, on-Site and off-Site overheads or attendance shall be added.
- (b) The Contractor must each day record particulars of all resources used by the Contractor in the execution of Rated Provisional Sum Work, including time sheets, wage sheets, invoices, receipts and other documents evidencing the cost of Rated Provisional Sum Work and the time spent by persons engaged in respect of the Rated Provisional Sum Work. The Superintendent may direct the manner in which matters are to be recorded.
- (c) The Contractor shall:

- (i) provide all records in respect of Rated Provisional Sum Work to the Superintendent upon its request; and
- (ii) provide to the Superintendent with each payment claim under Clause 42.1, all records in respect of Rated Provisional Sum Work the carrying out of which by the Contractor forms part of the payment claim.

## 12 LATENT CONDITIONS

### 12.1 Definition

Latent Conditions are—

- (a) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions or the effect of weather conditions, which differ materially and substantially from the physical conditions which should reasonably have been anticipated by ~~the Contractor~~ an experienced and competent Contractor at the time of the Contractor's tender if the Contractor had—
  - (i) examined, investigated and satisfied itself in all respects as to all information relevant to the work under the Contract or other obligations of the Contractor under the Contract (including the Contract) and any information provided by or on behalf of the Principal, written or otherwise (including without limitation, any Principal-Supplied Information); ~~all information made available in writing by the Principal to the Contractor for the purpose of tendering; and~~
  - (ii) examined, investigated and satisfied itself in all respects as to all information relevant to the risks, contingencies and other circumstances having an effect on the tender work under the Contract and known to the Contractor or obtainable by the making of reasonable enquiries; ~~and and~~
  - (iii) inspected ~~examined, investigated and satisfied itself in all respects as to the Site, and its surroundings and all improvements and fixtures on the Site and its surrounds (including the Existing Improvements and all physical conditions and characteristics, facilities, services and access); and~~
- (b) any other conditions which the Contract specifies to be Latent Conditions,  
but excluding Accepted Latent Conditions.  
'Accepted Latent Conditions' are:
  - (a) those conditions identified in the Annexure; and
  - (b) other conditions or risks for which a provisional sum has been allowed in the Contract.

### 12.2 Notification

If during the execution of the work under the Contract, the Contractor becomes aware of a Latent Condition or Accepted Latent Condition, the Contractor shall forthwith and where possible before the Latent Condition or Accepted Latent Condition is disturbed, give written notice thereof to the Superintendent.

If required by the Superintendent, the Contractor shall provide to the Superintendent a statement in writing specifying—

- (a) the Latent Condition or Accepted Latent Condition encountered and in what respects it differs materially and substantially;

- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition or Accepted Latent Condition ;
- (c) the time the Contractor anticipates will be required to deal with the Latent Condition or Accepted Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition or Accepted Latent Condition ; and
- (e) other details reasonably required by the Superintendent.

The Contractor shall promptly provide to the Superintendent in writing any other details regarding a Latent Condition or Accepted Latent Condition requested by the Superintendent.

### **12.3 Extension of Time and Cost**

Subject to the Contractor's compliance with the notice requirements of Clause 12.2, delay caused by a Latent Condition may justify an extension of time under Clause 35.5.

If a Latent Condition causes the Contractor to—

- (a) carry out additional work;
- (b) use additional Constructional Plant; or
- (c) incur extra cost (including but not limited to the cost of delay or disruption),

which the Contractor—that an experienced and competent contractor could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

### **12.4 Time Bar**

In making a valuation pursuant to Clause 12.3, regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 28 days before the date on which the Contractor gives the written notice required by the first paragraph of Clause 12.2.

### **12.5 Accepted Latent Condition Risk**

Despite any other provision of the Contract but subject to Clause 11:

- (a) the Contractor accepts the risk of all Accepted Latent Conditions (whether or not they could have reasonably been anticipated at the time of the Contractor's tender);
- (b) without limiting paragraph (a) the Contractor shall not be entitled to any Claim (including without limitation for any extension of time, for adjustment to the Contract Sum or for any costs, expenses, damages or other liabilities) arising from or in connection with any Accepted Latent Conditions.

### **12.6 Contractor's Obligations Regarding Latent Conditions**

The Contractor shall carry out:

- (a) all reworking required in respect of work under the Contract or the Works to ensure that the Contractor complies with its obligations under the Contract and work under the Contract and the Works are in accordance with the Contract despite any Latent Conditions or Accepted Latent Conditions; and



(b) all reinstatement and rectification of any damage to or destruction of work under the Contract, the Works or any other property arising from the existence of any Latent Conditions or Accepted Latent Conditions or the failure by the Contractor to comply with paragraph (a).

and the Contractor shall not be entitled to any Claim in connection with the performance of its obligations under this Clause except to the extent expressly provided by the Contract.

### **13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

The Principal warrants that unless otherwise provided in the Contract—

- (a) design;
- (b) materials;
- (c) documents; and
- (d) methods of working,

specified in the Contract or provided or directed by the Principal or the Superintendent will not infringe any patent, registered design, trademark or name, copyright or other protected right.

The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe any patent, registered design, trademark or name, copyright or other protected right.

#### **13A RIGHTS TO INTELLECTUAL PROPERTY**

The Contractor (for all time and despite any termination of the Contract for any reason):

- (a) irrevocably grants (or must ensure that the person legally entitled to do so irrevocably grants) to the Principal; and
- (b) shall do all things necessary to give effect to the grant to the Principal of, both:
  - (i) in respect of all intellectual property rights in or relating to the materials, processes, documents and methods of working relevant to work under the Contract or the Works provided by the Contractor and first prepared or created specifically for or in connection with the Works, absolute title to the same (from the date it is prepared or created); and
  - (ii) in respect of all intellectual property rights in or relating to the materials, processes, documents and methods of working relevant to work under the Contract or the Works provided by the Contractor not first prepared or created specifically for or in connection with the Works, a royalty free and fully assignable licence to use the same for the purposes of completing the construction of, using, maintaining, upgrading, altering or otherwise dealing with the Works or any purpose associated with further development of improvements on the Site or any improvements on or proposed for other Sites, premises or facilities which the Principal or any Site Owner owns, occupies or is otherwise interested in (from the date it is used in connection with the Works).

The Principal grants to the Contractor a royalty free licence to use for the purposes of executing the work under the Contract, intellectual property owned by the Principal in or relating to materials, processes, documents and methods of working provided by the Principal in connection with the Works.

## 14 STATUTORY REQUIREMENTS

### 14.1 Complying with Statutory Requirements

The Contractor shall comply with the requirements of the following:—

- (a) Acts of the Commonwealth;
- (b) Acts and Ordinances of the State or Territory in which the work under the Contract or any part thereof is carried out;
- (c) Ordinances, regulations, by-laws, orders and proclamations under the Acts and Ordinances;
- (d) persons acting in the exercise of statutory powers enabling them to give directions affecting the work under the Contract.

If a ~~Legislative requirement~~ Requirement or Government Approval is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor shall notify the Superintendent in writing specifying the difference.

If a ~~Legislative requirement~~ Requirement necessitates a change to the Works or so much of the Temporary Works or method of working as may be specified in the Contract, the Superintendent shall direct a variation under Clause 40.1.

Except to the extent that the Contract provides for reimbursement in respect of a requirement referred to in this Clause 14.1 the Contractor shall bear the cost of complying with the requirement, whether the requirement existed at the time of tendering or not.

The Contractor shall:

- (a) provide to the Superintendent promptly upon request, evidence of its compliance with the requirements of any relevant Legislative Requirements and Government Approvals; and
- (b) provide to the Superintendent all correspondence or other documents issued to, or received from any statutory or other authority that relate to the use, operation or maintenance of the Works, promptly after such correspondence or other documents are issued or received by the Contractor.

For the avoidance of doubt, the Contractor shall not be entitled to any Claim (whether under this Clause or otherwise) arising from or in connection with any reduction to or limitation of the hours which labour engaged in connection with the work under the Contract is to work at any time (whether under any Legislative Requirement, workplace agreement, enterprise bargaining agreement or otherwise).

#### 14.1A Licence and Competency Requirements

Without limiting any other provision of the Contract, the Contractor must:

- (a) ensure that the Contractor, its subcontractors and their respective employees and agents, hold and maintain at all times during the Contract all certificates, licences, permits and approvals including Government Approvals and have and maintain the necessary competencies required to be held for the purposes of carrying out the work under the Contract including but not limited to those licences and competencies listed in the Standard Work Procedures, other Relevant Documents, Clause 14B.2 or elsewhere in the Contract or notified in any Contractor's Tender Information (Licence and Competency Requirements);
- (b) provide evidence to the Superintendent that the Contractor, its subcontractors and their respective employees and agents, comply with the Licence and Competency

Requirements prior to commencing work on Site and at other times on request by the Superintendent; and

- (c) immediately notify the Superintendent if any Licence and Competency Requirements expires, is suspended or cancelled or otherwise ceases to be complied with at any time.

\* **14.2 Payment Where There is No Variation**

If a Legislative requirement Requirement does not necessitate a variation under Clause 40 but is—

(a) a change after the 28th day prior to the date of closing of tenders in a requirement referred to in Clause 14.1(a), (b) or (c); or and could not have been anticipated by an experienced and competent contractor

(b) a requirement referred to in Clause 14.1(d),

which and necessitates a change in the Temporary Works or the Contractor's method of working and thereby causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5, but the Contractor shall not be entitled to any other Claim.

**14.3 Notices and Fees**

The Contractor shall give the notices necessary to comply with the requirements referred to in Clause 14.1.

The Contractor shall pay any fees or charges necessary to comply with the requirements referred to in Clause 14.1.

If a requirement necessitates the provision or expansion of services of a municipal, public or statutory authority in relation to the Works or the Temporary Works, the Contractor shall pay any fee or charge payable to the authority for the services and to the extent to which the services are not included in the work under the Contract, the fee or charge shall be reimbursed by the Principal to the Contractor.

If after the 14th day prior to the closing of tenders, there is required to be paid by the Contractor to a municipal, public or statutory authority in relation to the Works or the Temporary Works an increase or decrease in a fee or charge or a new fee charge incurred directly by the Contractor, the difference or new fee or charge incurred directly by the Contractor shall be valued under Clause 40.5,—

- (a) — an increase or decrease in a fee or charge, the difference shall be valued under Clause 40.5; and

there is a new fee or charge, that fee or charge shall be reimbursed by the Principal to the Contractor.

**14.4 Documents Evidencing Approvals of Authorities**

The Contractor shall give the Principal copies of documents issued to the Contractor by municipal, public or other statutory authorities in respect of the work under the Contract and, in particular, any approvals of work.

**14.5 Contractor to Obtain and Comply with Government Approvals**

- (a) The Contractor agrees the Contractor shall apply for, procure and pay all fees, costs and charges for all Government Approvals necessary for the lawful carrying out of

the work under the Contract or relating to the completion, occupation or use of the Works other than Government Approvals expressly referred to in the Annexure.

- (b) The Contractor must comply with all Government Approvals (whether obtained by the Contractor or by or on behalf of the Principal).
- (c) Despite the preceding paragraph, where due to any variation or any other reason, any modification or amendment is required to any Government Approval (including any Government Approval obtained by or on behalf of the Principal) the Contractor shall, at its cost, prepare any application for and obtain such modification or amendment.

#### **14.6 Taxes, Duties and Charges**

Subject to the other provisions of the Contract, the Contractor shall:

- (a) pay and indemnify the Principal against all customs duties and other duties, charges, taxes or imposts payable in connection with the carrying out of the work under the Contract (including the provision of all work under the Contract); and
- (b) provide all security required under any Legislative Requirement as security for the payment of any duties, charges, taxes or imposts.

#### **14.7 Portable Long Service Leave Levy/Workplace Health and Safety Levy**

The Principal shall pay any levy or fee payable in connection with the work under the Contract by the Principal under any Legislative Requirement relating to the payment of portable long service leave in the construction industry or under the *Work Health and Safety Regulation 2011 (Old)* and such amounts shall not be included in the Contract Sum.

#### **14.8 Workplace Health and Safety**

- (a) The Contractor must ensure that all work under the Contract is carried out in accordance with Work Health and Safety Law.
- (b) Without limiting paragraph (a), the Contractor must at all times:
  - (i) discharge its duties under Work Health and Safety Law; and
  - (ii) ensure its officers, employees and agents, subcontractors and its subcontractors' officers, employees and agents ('Contractor's Personnel') discharge their respective duties under Work Health and Safety Law,  
in connection with work under the Contract.
- (c) The parties agree:
  - (i) subject to paragraph (iii), the Principal appoints the Contractor as the "principal contractor" (as defined by Work Health and Safety Law) in respect of the project comprising the work under the Contract;
  - (ii) the Contractor accepts appointment under paragraph (i);
  - (iii) the project in respect of which the Contractor is appointed "principal contractor" under paragraph (i) includes:
    - (A) all work under the Contract (other than work under the Contract carried out upon Accessed Site); and
    - (B) all works (whether or not work under the Contract) carried out or to be carried out upon Controlled Site (including works carried out by Separate Contractors); and

- (iv) the Principal authorises the Contractor to:
  - (A) assume management and control of the Controlled Site; and
  - (B) carry out and discharge the duties given to the "principal contractor" by Work Health and Safety Law.
- (d) The Contractor must ensure that the Contractor and Contractor's Personnel:
  - (i) subject to paragraph (c), comply with the directions of the Principal Superintendent (or any other person nominated by the Principal as having the authority to give directions ('Principal's Nominee')) in connection with health and safety;
  - (ii) consult fully with the Principal, Superintendent and Principal's Nominee in respect of:
    - (A) any matter relevant to health and safety; and
    - (B) without limiting subparagraph (A), how the work under the Contract can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the work under the Contract;
  - (iii) comply strictly with the Work Health and Safety Requirements;
  - (iv) throughout the period of the Contract maintain all qualifications, competencies and licences:
    - (A) held at the commencement of the work under the Contract; or
    - (B) required by Work Health and Safety Requirements;
  - (v) consult fully with the Principal, Superintendent and Principal's Nominee in respect of, and demonstrate to the Principal or Principal's Nominee, compliance by the Contractor and Contractor's Personnel with the requirements of this Clause 14.8 and Work Health and Safety Requirements;
  - (vi) maintain adequate records of all health and safety matters (including in accordance with Work Health and Safety Requirements);
  - (vii) audit the Contractor's health and safety records and compliance with Work Health and Safety Requirements regularly and whenever requested by the Principal or Superintendent and provide to the Principal and Superintendent a copy of the findings of that audit; and
  - (viii) satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of the Principal.
- (e) The Principal or Superintendent may at any time conduct its own audit of the Contractor's health and safety records and compliance with Work Health and Safety Requirements (including any safety management systems of the Contractor) and the Contractor must:
  - (i) co-operate fully with the Principal or Superintendent in connection with that audit (including by providing all necessary access, relevant documents or other information); and
  - (ii) immediately address and ensure the Contractor's Personnel address any issues identified by the Principal or Superintendent from its audit and notified to the Contractor.

- (f) The Contractor must immediately notify the Principal and Superintendent of:
- (i) any breach or potential breach by the Contractor or any Contractor's Personnel of Work Health and Safety Requirements; or
  - (ii) any notice or direction received by the Contractor or any Contractor's Personnel under or in connection with Work Health and Safety Law (including by providing a copy of the notice or direction to the Principal and Superintendent).
- (g) Despite any other provision of the Contract, the Principal's or Superintendent's rights under the Contract relating to health and safety (including without limitation the rights under this Clause 14.8, to give directions to the Contractor, carry out an audit of the Contractor's records or practices, provide, approve or review any plan or other document to be implemented or relied upon by the Contractor (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under the Contract) ('Safety Enforcement Rights'):
- (i) are for the benefit of the Principal and Superintendent;
  - (ii) may be exercised by the Principal or Superintendent in its absolute discretion (without the Principal or Superintendent being under any obligation to do so); and
  - (iii) do not prejudice or otherwise affect the Contractor's full responsibility for ensuring strict compliance with all of the Contractor's obligations under the Contract and under Work Health and Safety Requirements.
- (h) The Contractor must provide to the Principal and also to any person who the Contractor is aware has been or will be engaged by the Principal to undertake any activities relating to the work under the Contract ('Relevant Contractors'), all information relevant to work under the Contract:
- (i) required to be disclosed by the Contractor in the discharge of its duties under Work Health and Safety Law; or
  - (ii) received (or which should have been received) by the Contractor or any subcontractor of the Contractor from any other person required to disclose the information to the Contractor or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.
- (i) The Contractor must indemnify and keep indemnified the Principal and Superintendent and their officers, employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including without limitation under the general law (including under contract, in tort (including negligence) or in equity), under statute or otherwise), arising from or in connection with any breach by the Contractor of its obligations under this Clause 14.8 or any Work Health and Safety Requirements.

#### **14.9 Environmental Protection**

The Contractor shall:

- (a) take all action necessary to protect and preserve the environment from harm or damage arising from or in connection with the carrying out of the work under the Contract;
- (b) comply with all Environmental Requirements and all Legislative Requirements and Government Approvals relating to the protection or preservation of the environment, nature conservation, vegetation management or handling of dangerous materials;

- (c) obtain all approvals or licences required and pay and indemnify the Principal against all fees, fines or other amounts payable under all environmental protection or preservation Legislative Requirements (including in connection with any applicable approvals or licences) except to the extent listed in the Annexure as approvals or licences to be obtained by the Principal;
- (d) except as expressly required by the Contract, not remove or damage any existing vegetation on or in the vicinity of the Site;
- (e) if the Contractor receives any direction or notice from any authority having jurisdiction over the carrying out of the work under the Contract in relation to a Legislative Requirement or Government Approval referred to in paragraph (b), provide a copy of the direction or notice to the Superintendent within 2 business days of receiving the direction or notice; and
- (f) indemnify and keep indemnified the Principal and its officers, employees and agents against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss, penalty, fine or other liability (including without limitation in tort or under any law), arising from or in connection with actual or threatened environmental damage, destruction or harm (including in respect of making good environmental damage or in defending claims) arising from or contributed to by:
  - (i) acts or omissions of the Contractor, its subcontractors or their respective employees, contractors or agents (whether wilful, negligent or otherwise);
  - (ii) the carrying out of the work under the Contract;
  - (iii) breach by the Contractor of its obligations under this Clause; or
  - (iv) the Contractor's failure to comply with any Principal's Environmental Management System or Plan provided to the Contractor or any Contractor's Management Plan in respect of environmental protection or management.

#### **14.10 Industrial Relations**

The Contractor shall:

- (a) ensure all employees (including employees of subcontractors) carrying out the work under the Contract are:
  - (i) employed in accordance with any applicable industrial Legislative Requirement, award or agreement;
  - (ii) qualified, skilled and competent in their respective trade or job;
  - (iii) of such character and experience that they will not prejudice the health and safety of other persons carrying out the work under the Contract or otherwise carrying out activities on the Site;
- (b) actively manage and do all things necessary to avoid any disputes or disturbance in industrial relations, bans, limitations of work, disruptive tactics or denial of facilities or services involving its employees or the employees of its subcontractors on the Site or off the Site ('Industrial Dispute') including attending all meetings called by the Superintendent to resolve any Industrial Dispute with employees;
- (c) upon request by the Principal, consult fully with the Principal and the Superintendent in connection with any actual or potential Industrial Dispute;
- (d) in the event of an Industrial Dispute:

- (i) immediately notify the Superintendent in writing giving full details of the Industrial Dispute;
- (ii) comply with and take all necessary steps pursuant to any Industrial Disputes procedure applicable to the work under the Contract;
- (iii) at all times ensure that its employees comply with the provisions of any applicable Industrial Disputes procedure; and
- (iv) ensure as far as practicable that the work under the Contract continues whilst the appropriate steps are taken to resolve the Industrial Dispute.

#### **14.11 Award Particulars**

The Contractor:

- (a) acknowledges that:
  - (i) the Queensland Government has directed that all contracts awarded by the Principal must comply with the Queensland Code of Practice for the Building and Construction Industry ('the Construction Code');
  - (ii) the Construction Code requires that all contractors employed by the Principal integrate suitable industrial relations practices into its organisational procedures, practices and performance standards of the enterprise; and
- (b) agrees that:
  - (i) if the Contract allows for a Rise and Fall adjustment, that this Clause 14.11 will provide a basis for negotiations between the Contractor and the Principal as to the amount of that adjustment;
  - (ii) if the Contract does not allow for a Rise and Fall adjustment, the Contractor cannot claim any future adjustments as the result of any new Enterprise Bargaining Agreement (or other applicable award or agreement) wage rates which the Contractor may agree with its employees;
- (c) acknowledges that, as required by Clause 5.31 of the Construction Code, the terms and conditions of employment of employees by the Contractor must be in accordance with the provisions of the relevant Federal or State Award/Agreement;
- (d) acknowledges that:
  - (i) the relevant award/agreement information for the Contractor's employees is;
  - (ii) the employment classifications for its employees are; and
  - (iii) the Contractor will pay the rates of pay for its employees, as set out in the Instrument of Agreement;
- (e) acknowledges that the relevant award applicable to the Contract is as set out in the Instrument of Agreement;
- (f) acknowledges that the payment of salary/wages to its employees by the Contractor must not be less than the provisions of the relevant Federal or State Award/Agreement; and
- (g) acknowledges that the Contractor must make payments to superannuation funds and severance funds in accordance with the relevant Federal or State Award/Agreement.



#### **14.12 Other Employee Obligations**

The Contractor acknowledges and agrees that:

- (a) notwithstanding any other provisions in the Contract, the Principal may require the Contractor to provide evidence confirming that all employees engaged on the work under the Contract in Australia by the Contractor, have been paid, in full, all amounts due to be paid on their behalf or due to them as wages and allowances of every kind required to be paid under Statute, Industrial Award or Industrial Agreement, Award of a Court or certified by a Court or an agreement approved by the Contractor;
- (b) the Contractor must promptly provide to the Principal in a form and substance satisfactory to the Principal, all reports, evidence and information requested by the Principal pursuant to subparagraph (a) above;
- (c) the Principal or a person authorised by the Principal will have unrestricted access at such times as the Principal requires to inspect and audit the Contractor's books, records, files and copies of any other records for the purpose of confirming the Contractor's compliance with subparagraph (a) above;
- (d) that under the provisions of any applicable industrial Legislative Requirement, officials of a relevant union may periodically examine the wages records of the Contractor (subject to approval by the individual employee); and
- (e) that the Contractor must comply with all Legislative Requirements in respect of its tax and superannuation obligations.

#### **14.13 Withholding Tax**

- (a) Whenever the Contractor does not have a valid ABN or the Principal otherwise reasonably considers itself bound to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, tax calculated and to be held in accordance with the *Taxation Administration Act 1953* (Cth).
- (b) The Contractor warrants that it is not an entity covered by Schedule 1, 12-315(2) of the *Taxation Administration Act 1953* (Cth) ('Foreign Resident'). If requested by the Principal, the Contractor must provide the Principal with evidence to the Principal's satisfaction that the Contractor is not a Foreign Resident, failing which the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, tax calculated and to be held in accordance with the *Taxation Administration Act 1953* in respect of Foreign Residents.

#### **14A GST**

##### **14A.1 Goods and Services Tax**

Any Consideration to be paid or provided for any supply made under or in connection with this Contract, unless expressly described in this Contract as including GST, does not include an amount on account of GST.

Despite any other provision in this Contract, if a party ('Supplier') makes a Taxable Supply under or in connection with this Contract on which GST is imposed:

- (a) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under this Contract but for the application of this clause is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and

(b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

#### **14A.2 Reimbursements**

If a payment to a party under or in connection with this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

#### **14A.3 Adjustment Events**

If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Contract, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 14A.1. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

#### **14A.4 GST Group**

If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

#### **14A.5 Non Monetary Consideration**

If a supply made under this Contract is a Taxable Supply made for non-monetary consideration then:

- (a) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Contract is GST inclusive.

#### **14A.6 Notification of GST Registration Status**

- (a) The Contractor warrants to the Principal that:
  - (i) the Contractor is registered for GST as at the Date of Acceptance of Tender and shall maintain that registration until the issue of a Final Certificate under the Contract; and
  - (ii) the Contractor's ABN notified by the Contractor to the Principal is correct.
- (b) The Contractor shall immediately notify the Principal if at any time the Contractor ceases to be registered for GST.

#### **14A.7 Tax Invoices**

Until the Principal notifies the Contractor otherwise, the Principal appoints the Superintendent its agent for the purposes of issuing, or providing to or receiving from the Contractor Tax Invoices or Adjustment Notes (as the case may be) on the Principal's behalf.

**14A.8 Definitions**

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related imposition and amending Acts have the same meaning in this clause.

**14A.9 Survival**

This clause will continue to apply after expiration or termination of this Contract.

**14A.10 No Other Claim to GST**

No other provision of the Contract (including Clause 14) shall operate to give the Contractor any Claim in connection with GST.

**14B QBSACC LICENSING REQUIREMENTS****14B.1 Provisions Subject to QBSACC Act**

To the extent the Queensland Building ~~Services Authority~~ and Construction Commission Act 1991 (Qld) ('QBSACC Act') applies to the Contract:

- (a) the rights and obligations of the parties under the Contract are subject to the provisions of the QBSACC Act to the extent they apply;
- (b) where there is any inconsistency between the Contract and the QBSACC Act, the QBSACC Act shall prevail to the extent necessary to avoid the inconsistency; and
- (c) terms used in this Clause and defined in the QBSACC Act, shall have the meaning given to them by the QBSACC Act.

**14B.2 Contractor's Registration**

- (a) The Contractor warrants that without limiting Clause 14.1A, ~~it and~~ any persons engaged on the work under the Contract (including the Contractor, its employees and any sub-contractors) will hold at all times during the Contract all necessary licences (including in respect of the QBSACC Act the licence referred to in the Annexure) to carry out the work under the Contract.
- (b) The Contractor must immediately notify the Superintendent if any licence required to carry out the work under the Contract expires or is suspended or cancelled.

**14B.3 Additional Security**

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

- (a) the QBSACC Act applies; and
- (b) the Contract provides for the total of:
  - (i) all retention amounts withheld by the Principal; and
  - (ii) all securities held by the Principal.

to exceed 2.5% of the contract price for the Contract (which under the QBSACC Act includes adjustments for variations) after Practical Completion has been reached.

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 the Principal of any other costs, damages, liabilities or other amounts which may become payable to the Principal by the Contractor under or in connection with the Contract, the Contractor's performance of the Contract or any breach of contract by the Contractor.

**14C REQUIREMENTS OF RELEVANT DOCUMENTS**

- (a) The Contractor agrees that it:
- (i) has had the opportunity to familiarise itself with the Relevant Documents listed in the Annexure or provided to the Contractor prior to the Date of Acceptance of Tender; and
  - (ii) shall promptly familiarise itself with any Relevant Documents (including any amendments to Relevant Documents listed in the Annexure) provided to the Contractor after the Date of Acceptance of Tender.
- (b) The Contractor:
- (i) shall satisfy the requirements of; and
  - (ii) without limiting paragraph (b)(i), shall comply with (including complying with all obligations of the Principal under),
- Relevant Documents (so far as they are relevant to the carrying out of the work under the Contract or the Works or the performance of the Contractor's obligations under the Contract).
- (c) The Contractor acknowledges the Relevant Documents set out minimum obligations and requirements of the Contractor only, and shall not limit the generality of or affect in any way the Contractor's obligations to comply with the Contract or any Legislative Requirements or Government Approvals and the Contractor shall not be relieved of any obligation, warranty or liability arising under or in connection with the Contract or to be taken to have complied with the Contract, notwithstanding the obligation of the Contractor to comply or the Contractor actually complying with the requirements of the Relevant Documents in accordance with the Contract.
- (d) The Relevant Documents do not form part of the Contract.
- (e) The Contractor shall not be entitled to any Claim arising from:
- (i) the matters or requirements disclosed in or which could reasonably have been anticipated from information in the Relevant Documents; or
  - (ii) compliance with its obligations under this Clause,
- except to the extent that:
- (iii) the Relevant Document was not provided to the Contractor until after the Date of Acceptance of Tender; and
  - (iv) the matters or requirements could not reasonably have been anticipated by a competent and experienced contractor.

**14D CONTRACTOR'S METHODOLOGY AND RESOURCING DOCUMENTS**

The parties agree that Methodology and Resourcing Documents:

- (a) do not form part of the Contract;
  - (b) without limiting paragraph (a), will not be:
    - (i) taken to define or describe the extent; or
    - (ii) relied upon by the Contractor as limiting or evidencing the satisfactory performance,
- of the work under the Contract or the Contractor's obligations under the Contract;

- (c) must be complied with by the Contractor in performing the work under the Contract unless the Principal or Superintendent allows or requires otherwise;
- (d) may be used by the Principal or the Superintendent for the purposes of:
  - (i) defining the minimum requirements to be fulfilled by the Contractor in complying with the Contract;
  - (ii) assessing any Claim, including Claims for extra costs (including delay costs) or for an extension to the Date for Practical Completion; and
  - (iii) undertaking a valuation under Clause 40.5,  
to the extent the Principal or Superintendent considers it reasonable to do so; and
- (e) must not be changed without the agreement of both parties.

#### **14E CONTRACTOR'S MANAGEMENT PLANS**

- (a) Subject to paragraph (b), the Contractor must prepare and submit comprehensive and detailed Contractor's Management Plans to the Superintendent before any work under the Contract is commenced on Site.
- (b) The Contractor acknowledges that:
  - (i) the Principal has prepared and provided to the Contractor as Principal-Supplied Information those plans listed in the Annexure which the Contractor may, but is not obliged to, utilise as Contractor's Management Plans for the purposes of this Clause; and
  - (ii) the Contractor shall not be entitled to any Claim, including without limitation for any extension of time or cost arising out of or in connection with either the use of the Principal's Plans or the preparation by the Contractor of its own Contractor's Management Plans as contemplated by this Clause.
- (c) The Contractor must as and when required by the Superintendent:
  - (i) consult openly with the Superintendent and Principal in respect of the preparation of the Contractor's Management Plans;
  - (ii) obtain the Superintendent's approval to the Contractor's Management Plans and any update to the Contractor's Management Plans;
  - (iii) update the Contractor's Management Plans to address changed or additional matters identified by the Principal, Superintendent or Contractor from time to time.
- (d) The Contractor must:
  - (i) ensure the Contractor's Management Plans are implemented and complied with in connection with work under the Contract; and
  - (ii) not change a Contractor's Management Plan unless it has obtained the Superintendent's prior approval to the change.
- (e) The Contractor agrees:
  - (i) the Contractor's Management Plans must, as a minimum, satisfy all requirements of the Contract including but without limitation, Environmental Requirements, Energex Standard Procedures, Relevant Documents, Methodology and Resourcing Documents, **Work Health and Safety Requirements** and Legislative Requirements;

- (ii) the Contract, Relevant Documents, Legislative Requirements and Government Approvals shall prevail over the Contractor's Management Plans to the extent of any inconsistency or discrepancy between them; and
- (f) The Contractor agrees:
- (i) the Contractor's Management Plans shall comprise the minimum obligations of the Contractor;
- (ii) the Contractor shall remain fully responsible for complying with the Contract, all Legislative Requirements and Government Approvals and shall not be relieved of any obligation, duty of care, warranty or liability arising out of or in connection with the Contract or the performance of the work under the Contract; and
- (iii) neither the Principal nor the Superintendent assumes any responsibility to the Contractor arising out of or in connection with any approval or audit of any Contractor's Management Plan or any audit of the Contractor's performance in accordance with any Contractor's Management Plan,
- notwithstanding:
- (A) the obligation of the Contractor to prepare, implement or comply with the requirements of the Contractor's Management Plans in accordance with the Contract; or
- (B) any comment or direction upon, review or acceptance or approval of, direction to proceed with or request, or absence of request to vary or update a Contractor's Management Plan by or on behalf of the Principal or the Superintendent.
- (g) The Contractor's full compliance with its obligations under paragraphs (a) and (b) of this Clause shall be a condition precedent to the Contractor being entitled to submit any claim for payment under the Contract at any time.

## **14F DILAPIDATION SURVEY**

### **14F.1 Application of Clause**

This Clause 14F applies where the Contractor is required to provide a dilapidation survey in accordance with the Annexure.

### **14F.2 Contractor to Obtain**

As part of the work under the Contract, prior to the commencement of construction of the Works, the Contractor shall obtain the Superintendent's prior approval of the scope of, undertake to the satisfaction of the Superintendent and provide to the Principal a comprehensive dilapidation investigation survey and report in respect of the Site and any improvements on or in the vicinity of the Site (including without limitation the Existing Improvements).

### **14F.3 Compliance with Report**

The Contractor shall:

- (a) in carrying out work under the Contract take into account and comply with the recommendations arising from dilapidation investigations, surveys and reports referred to in Clause 14F.2; and

- (b) whenever reasonably required by the Superintendent undertake to the satisfaction of the Superintendent and provide to the Principal any further dilapidation investigation, survey and report at the Contractor's own cost and expense for the purposes of monitoring the impact of work under the Contract on the Site or any improvements on or in the vicinity of the Site.

#### **14F.4 Assessment Before Practical Completion**

Before Practical Completion shall be taken to have been achieved the Contractor must:

- (a) undertake a further dilapidation investigation survey and report in respect of the Site or improvements on or in the vicinity of the Site (including without limitation the Existing Improvements) as the Contract may require or the Superintendent may reasonably require in the circumstances; and
- (b) ensure that, to the extent required by the Superintendent, the Superintendent is present at all necessary inspections, tests or investigations and is provided with copies of all information collected or compiled in connection with such dilapidation investigation survey or report.

Alternative 1 – use for Hub works or where continued use of Existing operations without interruption from the Contractor is required.

### **14G CONTRACTOR'S RESPONSIBILITIES REGARDING EXISTING IMPROVEMENTS**

#### **14G.1 Existing Improvements**

- (a) This Clause 14G applies to the extent that there are at any time any Existing Improvements.
- (b) The Contractor acknowledges that, except to the extent expressly required by the Contract, the Principal or Site Owner is to continue the operation and use of the Existing Improvements during the course of the carrying out of the work under the Contract and the Contractor must take all measures to allow those Existing Improvements to continue to be operated and used to the maximum extent reasonably practicable during the carrying out of the work under the Contract.

#### **14G.2 Use of Existing Facilities**

Without limiting any other obligations of the Contractor, the Contractor shall:

- (a) not disrupt or interfere with the operations being undertaken on, from or within the Existing Improvements;
- (b) without limiting paragraph (a), not interfere with the free movement of traffic (vehicular or pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Improvements or block or impair access to any premises, carparks, loading bays, roadways, pedestrian ways or other facilities associated with the Existing Improvements ('Existing Facilities');
- (c) not use nor allow any subcontractor (or their respective agents or employees) to use, whether for parking or any other purpose, any part of the Existing Facilities other than as expressly allowed by the Contract or as directed by the Superintendent from time to time;
- (d) comply with the Superintendent's directions as to:

- (i) the times of day and days of the week that any particular Existing Facilities may not be used by the Contractor, subcontractors or their agents or employees or when use of them is restricted; or
- (ii) any part of the Existing Facilities the use of which is prohibited by the Contractor, subcontractors or their agents or employees; and
- (e) at the Contractor's own cost immediately repair and make good any damage to the Existing Facilities arising from or in connection with the work under the Contract to the Superintendent's satisfaction.

#### **14G.3 Interference with Services to Existing Improvements**

The Contractor shall:

- (a) give the Superintendent 48 hours (or such longer period as may be specified in the Contract) prior written notice of any disconnection or other interference with services to the Existing Improvements;
- (b) ensure that any disconnection or other interference with services to the Existing Improvements takes place outside the trading or operating hours of the Existing Improvements;
- (c) provide at the Contractor's cost such alternative temporary services as are required to ensure that there is no disruption to the trading or operations of the Existing Improvements;
- (d) at the Contractor's own cost immediately repair and make good any damage to the services to the Existing Improvements arising from or in connection with the work under the Contract (to the Superintendent's satisfaction).

#### **14G.4 Interference with Users**

Except to the extent expressly permitted by the Contract or agreed with the Superintendent, the Contractor shall:

- (a) not disrupt or interfere in any way with the daily operations, use and trading of the Existing Improvements;
- (b) not cause any nuisance, inconvenience or disruption to users of the Existing Improvements; and
- (c) program and co-ordinate all work under the Contract so as to minimise the effect that the carrying out of the work under the Contract has on the Existing Improvements.

#### **14G.5 Indemnity by Contractor**

The Contractor shall indemnify the Principal in respect of all demands, claims, costs, expenses, damages and other liabilities arising from the breach by the Contractor of the provisions of this clause (including without limitation any claim by a user of the Existing Improvements for compensation or damages arising from disruption to their business).

Alternative 2 – use for substation works where continued use of Existing operations without interruption from the Contractor is not practicable



## **14G CONTRACTOR'S RESPONSIBILITIES REGARDING EXISTING IMPROVEMENTS**

### **14G.1 Existing Improvements**

- (a) This Clause 14G applies to the extent that there are at any time any Existing Improvements.
- (b) The Contractor acknowledges that, except to the extent expressly required by the Contract, the Principal or Site Owner is to continue the operation and use of the Existing Improvements, during the course of the carrying out of the work under the Contract.

### **14G.2 Use of Existing Facilities**

Without limiting any other obligations of the Contractor:

- (a) the Contractor shall subject to paragraph (b):
  - (i) not disrupt or interfere with the operations being undertaken on, from or within the Existing Improvements;
  - (ii) without limiting subparagraph (i), not interfere with the free movement of traffic (vehicular or pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Improvements or block or impair access to any premises, carparks, loading bays, roadways, pedestrian ways or other facilities associated with the Existing Improvements ('Existing Facilities');
  - (iii) not use nor allow any subcontractor (or their respective agents or employees) to use, whether for parking or any other purpose, any part of the Existing Facilities other than as expressly allowed by the Contract or as directed by the Superintendent from time to time;
- (b) the parties acknowledge that for the purposes of carrying out the work under the Contract, it may be necessary for the Contractor to block driveways or otherwise use Existing Facilities in a manner which restricts or prevents access to the Existing Improvements, but the Contractor must, in such circumstances, if the Principal or Superintendent at any time directs that access be provided, immediately repair and make good any damage to the Existing Facilities arising from or in connection with the work under the Contract to the Superintendent's satisfaction and otherwise take all steps necessary to allow the Principal to access the Existing Improvements and, unless the Principal's requirement for that access has arisen out of or in connection with an act or omission of the Contractor, the Contractor shall be entitled to claim its direct costs necessarily incurred in complying with the Principal or Superintendent's direction which shall be valued by the Superintendent in accordance with Clause 40.5;
- (c) the Contractor must comply with the Superintendent's directions as to:
  - (i) the times of day and days of the week that any particular Existing Facilities may not be used by the Contractor, subcontractors or their agents or employees or when use of them is restricted; or
  - (ii) any part of the Existing Facilities the use of which is prohibited by the Contractor, subcontractors or their agents or employees; and
- (d) subject to paragraph (b), the Contractor must at the Contractor's own cost immediately repair and make good any damage to the Existing Facilities arising from or in connection with the work under the Contract to the Superintendent's satisfaction.

**14G.3 Interference with Services to Existing Improvements**

The Contractor shall:

- (a) give the Superintendent 48 hours (or such longer period as may be specified in the Contract) prior written notice of any disconnection or other interference with services to the Existing Improvements;
- (b) ensure that any disconnection or other interference with services to the Existing Improvements is minimised;
- (c) provide at the Contractor's cost such alternative temporary services as are required to ensure that there is no disruption to the operations of the Existing Improvements; and
- (d) at the Contractor's own cost immediately repair and make good any damage to the services to the Existing Improvements arising from or in connection with the work under the Contract (to the Superintendent's satisfaction).

**14G.4 Interference with Users**

Except to the extent expressly permitted by the Contract or agreed with the Superintendent, the Contractor shall:

- (a) not disrupt or interfere in any way with the daily operations and use of the Existing Improvements;
- (b) not cause any nuisance, inconvenience or disruption to users of the Existing Improvements; and
- (c) program and co-ordinate all work under the Contract so as to minimise the effect that the carrying out of the work under the Contract has on the Existing Improvements.

**14G.5 Indemnity by Contractor**

The Contractor shall indemnify the Principal in respect of all demands, Claims, costs, expenses, damages and other liabilities arising from the breach by the Contractor of the provisions of this Clause 14G.

**14H PPSA****14H.1 Meanings of Terms**

In this Clause, 'PPSA' means the *Personal Property Securities Act 2009 (Cth)* and 'security interest' and 'perfected' have the meanings given to them in the PPSA.

**14H.2 Principal's Security Interests**

The Contractor must, whenever the Principal requests, do anything to ensure any security interest granted to the Principal under the Contract is fully effective, enforceable and perfected with priority over any other claims or interests of any person.

**14H.3 Security Interests of Third Parties**

- (a) The Contractor must not without the Principal's consent (which will not be unreasonably withheld) give or allow to exist any security interest in the Contract or plant, equipment, materials, documents or other things provided or used by the Contractor in the discharge of its obligations under the Contract;

- (b) The Contractor must, whenever requested by the Principal, provide the Principal with any form, notice, consent, agreement or other information relating to a security interest referred to in Clause 14H.3(a);
- (c) Despite any other provision of the Contract and without prejudice to the requirements of Clause 42.4, the Principal will not be obliged to pay for and the Contractor will not be entitled to make a claim for the value of any plant, equipment, materials, documents or other things which are provided by the Contractor under the Contract until either:
- (i) those things have been affixed to land of the Principal; or
  - (ii) the Contractor has demonstrated to the Principal that those things are not the subject of security interests in favour of any person (other than the Principal).

#### **14H.4 PPSA Requirements**

The Contractor must take reasonable steps to identify security interests in its favour and to perfect and protect them, with the highest priority reasonably available, to the extent they are relevant to the subject matter of the Contract or the Contractor's performance of its obligations under the Contract.

#### **14H.5 PPSA Exclusions**

- (a) To the extent the Contract or the transactions contemplated by it give rise to a security interest under the PPSA, the parties agree that all provisions of the PPSA listed in section 115(1) and 115(7) of the PPSA (other than, in respect of any security interest held by the Principal, sections 117, 118, 128, 129, 134 and 135) are excluded in full and will not apply to that security interest.
- (b) The Contractor waives its right to receive:
- (i) each notice which section 157(3) permits it to waive and, to the extent capable of being waived, notice under any other provision of the PPSA; and
  - (ii) anything from the other party under section 275 and agrees not to make any request of the other party under that section.

#### **14H.6 Confidentiality**

For the purposes of section 275(6) of the PPSA, the Principal and the Contractor agree, their obligations of confidentiality under Clauses 8.6 and 50.5 of the Contract applies to any information of the kind referred to in section 275(1) of the PPSA relating to any security interest given or arising under the Contract.

#### **14H.7 Retention Moneys or Payments Withheld**

Despite any other provision of the Contract:

- (a) the Contractor has no right, title or interest in or in respect of retention moneys or other amounts withheld by the Principal under the Contract; and
- (b) the retention moneys or other amounts withheld comprise amounts of consideration under the Contract in respect of which the Principal has no payment or other obligations,
- until those retention moneys or other amounts withheld are required by the Contract to be paid to the Contractor.

**14H.8 Principal Supplied Material**

Despite any other provision of the Contract:

- (a) the Principal at all times retains full ownership of any Energex Supplied Material despite possession or control of the Energex Supplied Material being given to the Contractor;
- (b) if for any reason Energex Supplied Material made available to the Contractor is not:
- (i) used up in the provision of work under the Contract;
  - (ii) affixed to the Works handed over to the Principal; or
  - (iii) returned to the Principal by Practical Completion or upon the earlier termination of the Contract (free of any security interest or other third party claim).
- the value of that Energex Supplied Material as reasonably determined by the Superintendent will be a debt due from the Contractor to the Principal whether or not the Energex Supplied Material was provided to the Contractor free of charge.

**15 PROTECTION OF PEOPLE AND PROPERTY**

~~Insofar as compliance with the requirements of the Contract permits, the~~The Contractor shall—

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

Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property ~~on, or~~ adjacent to or in the vicinity of the Site, or improvements which a dilapidation survey referred to in Clause 14F reveals have been damaged the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay and shall have no Claim.

If the Contractor fails to comply with an obligation under this Clause 15 the Principal may, in its absolute discretion and in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

Without limiting any other provision of the Contract, the Contractor shall indemnify the Principal against any costs, expenses, damages, loss, Claim or liability arising from the Contractor's breach of this Clause.

**16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE****16.1 Care of the Work Under the Contract**

From and including the earlier of the date of commencement of work under the Contract and the date on which the Contractor is given possession of the Site to 4 p.m. on the Date of Practical Completion of the Works, the Contractor shall be responsible for the care of the work under the Contract.

Without limiting the generality of the Contractor's obligations, the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted or provided to the Contractor by the Principal or the Superintendent for the purpose of carrying out the work under the Contract, things brought on the Site by subcontractors for that purpose, the Works, the Temporary Works and Constructional Plant, and the Contractor shall provide the storage and protection necessary to preserve these items and things, and the Works, the Temporary Works and Constructional Plant.

After 4 p.m. on the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and shall be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clauses 30.6, 31.1 and 37.

### 16.2 Reinstatement

If loss or damage (except loss or damage which is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.3) occurs to anything while the Contractor is responsible for its care, the Contractor shall at the Contractor's own cost promptly make good the loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

### 16.3 Excepted Risks

The Excepted Risks are—

- (a) any negligent act or omission of the Principal, the Superintendent or the employees, consultants or agents of the Principal;
- (b) any risk specifically excepted in the Contract;
- (c) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents;
- (e) use or occupation by the Principal or the employees or agents of the Principal or other contractors ~~of~~ the Principal (not being employed by the Contractor) (other than Separate Contractors carrying out work or other activities in areas of the Site prior to those areas being handed over to the Principal upon Practical Completion) of any part of the work under the Contract a Nominated Subcontractor engaged by the Principal pursuant to a prior contract the benefit of which has been assigned to the Contractor pursuant to the Contract) of any part of the Works or the Temporary Works;
- (f) acts or omissions of Separate Contractors except acts or omissions caused or contributed to by a breach of the Contract by the Contractor;
- (g) defects in the design of the work under the Contract other than a design provided by the Contractor,

but excluding any risk causing 'eligible terrorism loss' to which the *Terrorism Insurance Act 2003 (Cth)* applies.

(f) The Contractor shall promptly, and in any event within 7 days, notify the Superintendent in writing of any loss or damage to the work under the Contract caused by an Excepted Risk identifying the nature, location and extent of the loss or damage.

## 17 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

### 17.1 Indemnity by Contractor

The Contractor shall indemnify the Principal against—

- (a) loss of or damage to property of the Principal, including without limitation existing property in or upon which the work under the Contract is being carried out or any Existing Improvements; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the negligent act or omission of the Principal or employees or agents of the Principal may have contributed to the loss, damage, death or injury.

This Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (ii) exclude any other right of the Principal to be indemnified by the Contractor;
- (iii) things for the care of which the Contractor is responsible under Clause 16.1;
- (iv) ~~damage which is the unavoidable result of the construction of the Works in accordance with the Contract~~ expressly required or authorised by the Contract; and
- (v) subject to the Contractor's strict compliance with the terms of the Contract, eClaims in respect of the right of the Principal to ~~construct~~ carry out the work under the Contract on the Site.

### ~~17.2 Indemnity by the Principal~~ **Not Used**

~~The Principal shall indemnify the Contractor in respect of damage referred to in Clause 17.1(iv) and claims referred to in Clause 17.1(v).~~

## 18 INSURANCE OF THE WORKS

### *Alternative 1*

Before the Contractor commences work, the Contractor shall take out an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 16.2 and things in storage off Site and in transit to the Site.

The insurance cover may exclude—

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works;

- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the Excepted Risks (b) and (c) in Clause 16.3.

The insurance cover shall be for an amount not less than the sum of—

- (i) the Contract Sum;
- (ii) the amount stated in the Annexure to provide for costs of demolition and removal of debris;
- (iii) the amount stated in the Annexure to cover fees of consultants;
- (iv) the value stated in the Annexure of any materials or things to be supplied by the Principal for the purposes of the work under the Contract (including without limitation Energex Supplied Material); and
- (v) the additional amount or percentage stated in the Annexure of the total of the items referred to in sub-paragraphs (i) to (iv) of this paragraph.

The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer ~~and in terms both~~ approved in writing by the Principal which approval~~s~~ shall not be unreasonably withheld. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

#### *Alternative 2*

On or before the Date of Acceptance of Tender, the Principal shall effect a policy of insurance in relation to the work under the Contract in the terms of the policy or proposed policy details of which were included in the documents on which the Contractor tendered. ~~The policy or proposed policy shall include the name of the insurer.~~ The Principal shall maintain the policy while ever the Contractor has an interest therein and the Principal shall pay all premiums.

#### **18A INSURANCE OF MOTOR VEHICLES**

- (a) Before the Contractor commences any of the work under the Contract, the Contractor shall effect motor vehicle third party bodily injury and property damage liability insurance for a combined limit of not less than the sum stated in the Annexure, or if no amount is stated, \$5,000,000, in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the work under the Contract.
- (b) The insurance shall be maintained at all times that the vehicles are to be used by the Contractor in connection with the work under the Contract or are on the Site.
- (c) The Contractor shall ensure that every subcontractor is similarly insured.
- (d) The provisions of Clause 21 shall also apply to the insurance to be effected under this Clause.

#### **18B TRANSIT INSURANCE**

- (a) Without limiting Clause 18, if required by the Superintendent the Contractor shall, before transporting or otherwise moving in any way any plant or material intended for

incorporation in the Works, effect a policy of insurance against loss of or damage to the same during their transit to the Site (including without limitation by air, sea or otherwise) and during their unloading at the Site, which shall:

- (i) be for an amount being no less than the full value of the plant or equipment; and
- (ii) be effected with an insurer on terms and conditions both satisfactory to and approved in writing by the Superintendent in its discretion.

(b) The provisions of Clause 21 shall also apply to the insurance to be effected under this Clause.

## **19 PUBLIC AND PRODUCTS LIABILITY INSURANCE**

### *Alternative 1*

Before the Contractor commences work under the Contract, the Contractor shall ~~take out a Public and Products Liability Policy~~ effect a public and products liability policy of insurance in the joint names of the Principal and Contractor which covers the Principal, the Contractor, the Superintendent and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a Workers Compensation Policy of insurance).

The ~~Public and Products Liability Policy~~ policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer ~~and in terms both~~ approved in writing by the Principal which ~~approval~~ shall not be unreasonably withheld. The policy shall be maintained until the Final Certificate is issued under Clause 42.8.

### *Alternative 2.*

On or before the Date of Acceptance of Tender, the Principal shall effect in relation to the work under the Contract a policy of insurance in the terms of the policy or proposed policy details of which were included in the documents on which the Contractor tendered. ~~The policy or proposed policy shall include the name of the insurer.~~ The Principal shall maintain the policy while ever the Contractor has an interest therein and the Principal shall pay all premiums.

## **20 INSURANCE OF EMPLOYEES**

Before commencing work the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed and shall extend cover to each and every Claim for an amount not less than the minimum statutory requirement.

The insurance shall be extended to indemnify the Principal for the Principal's statutory and common law liability to persons employed by the Contractor (where permitted by law).

The Contractor shall ensure that every subcontractor is similarly insured.



## 21 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

### 21.1 Proof of Insurance

Before the Contractor commences work and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the ~~satisfaction and approval of the other party~~ of the insurance effected and maintained and where the Contractor is obliged to insure, that evidence will include providing full copies of the insurance, including details of:

- (a) the amount and terms of cover;
- (b) the company issuing the policy; and
- (c) the currency or expiry date of the insurance,

which must be to the satisfaction and approval of the Principal.

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.

The Principal may in respect of any policy of insurance which the Principal is obliged to effect under the Contract:

- (a) vary the terms of the policy, including the cover or amount of the policy; or
- (b) substitute a different policy of insurance with the same or a different insurer on the same or substantially the same terms,

provided that the Principal shall not vary or substitute the policy if the variation or substitution would in the Principal's reasonable opinion adversely affect the Contractor's protection under the policy without the Contractor's written consent (which shall not be unreasonably withheld).

### 21.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the other party so to do, a party fails to produce evidence of compliance with insurance obligations under Clauses 18, ~~18A, 18B,~~ 19 or 20 ~~in accordance with Clause 21.1 to the satisfaction and approval of the other party,~~ the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. ~~Where the defaulting party is the Contractor, the Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 and 20 is produced by the Contractor to the satisfaction and approval of the Principal.~~ The Contractor's strict compliance with its obligations under Clause 21.1 shall be a condition precedent to the Contractor being entitled to submit any claim for payment under the Contract at any time. The rights given by this Clause 21.2 are in addition to any other right.

### 21.3 Notices from or to the Insurer

The party effecting insurance under Clauses ~~18, 18B~~ or 19 shall ~~ensure that each policy of insurance contains provisions acceptable to immediately notify the other party that will—~~

- (a) ~~require the insurer, whenever the insurer gives the Principal, the Contractor or a subcontractor a notice of cancellation or other notice concerning the policy at the same time to inform the other party in writing that the notice has been given; and~~
- (b) ~~provide that a notice of claim given to the insurer by the Principal, the Superintendent, the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Contractor and the subcontractor; and~~

~~(e)(b) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal and the Contractor and prior to the insurer giving any notice of cancellation.~~

The party effecting insurance under Clauses 18, 18B or 19 shall ensure that each policy of insurance contains a provision acceptable to the other party that a notice of claim given to the insurer by the Principal, the Superintendent, the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Contractor and the subcontractor.

#### **21.4 Notices of Potential Claims**

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clauses 18, 18A, 18B or 19 and shall keep the Principal informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the Principal.

Where a policy of insurance required by the Contract has been effected by the Principal the Principal shall similarly inform the Contractor.

#### **21.5 Settlement of Claims**

Upon settlement of a claim under the insurance specified by Clauses 18 ~~or 18B~~—

- (a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank ~~agreed upon by the parties~~ in an account in the ~~joint names of the Contractor and name of~~ the Principal. As the Contractor proceeds to reinstate the loss or damage, the Superintendent shall certify against the ~~joint~~ account for the cost of reinstatement; and
- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on site whether or not incorporated into the Works).

#### **21.6 Cross Liability**

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

#### **21.7 Miscellaneous Insurance Provisions**

The Contractor shall:

- (a) pay all excesses and deductibles under a policy of insurance effected by the Principal or the Contractor under the Contract unless the Claim:

- (i) includes only loss, damage or Claims for which the Contractor is not responsible under the Contract; or
- (ii) is caused by an Excepted Risk as defined in Clause 16.3 not caused or contributed to by the Contractor;
- (b) at its own cost and expense, effect and maintain any other insurances:
  - (i) required by any Legislative Requirement in force applicable to the work under the Contract;
  - (ii) in respect of Constructional Plant for an amount of not less than market value (unless otherwise insured to the satisfaction of the Principal); and
  - (iii) which the Contractor considers necessary in connection with the work under the Contract or the Works;
- (c) pay all premiums and other costs incurred by the Contractor in connection with insurance which it is obliged to effect under the Contract;
- (d) ensure that it:
  - (i) satisfies itself as to; and
  - (ii) complies strictly with,the terms of any policy of insurance effected under the Contract;
- (e) to the extent directed by the Superintendent, allow the Principal to make, negotiate and settle any insurance claim in which the Principal has an insurance interest;
- (f) ensure that any proceeds received from any insurance claim in which the Principal is interested are paid (in priority to any other payments) to compensate the Principal as fully as possible for any loss, damage, Claim or other liability of the Principal covered by the policy; and
- (g) despite any other provision of the Contract, accept as full payment for any reinstatement or replacement of the work under the Contract which is the subject of an insurance claim and does not arise from an Excepted Risk as defined in Clause 16.3, not caused or contributed to by the Contractor, the amount of insurance proceeds recovered by the Principal or Contractor in respect of that reinstatement or replacement.

## 22 CLERK OF WORKS AND INSPECTORS

The Superintendent shall forthwith notify the Contractor in writing of the name of any Clerk of Works or inspector appointed by the Principal or the Superintendent.

## 23 SUPERINTENDENT

The Principal shall:

- (a) ensure that at all times there is a Superintendent; and
- (b) endeavour to ensure that in the exercise of the functions of the Superintendent under the Contract Clause 35.5 (assessment of extension of time), Clause 36 (assessment of delay or disruption costs), Clause 42.5 (issue of the Certificate of Practical Completion), Clause 40.5 (valuation of variations), Clause 42.1 (issue of payment certificates), Clause 42.8 (issue of the Final Certificate), in making a decision in relation to a dispute under clause 47.2 and in making cost assessments the Superintendent—

~~(a)~~(i) acts honestly, ~~and~~ fairly and independently;

~~(b)~~(ii) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time; and

~~(c)~~(iii) arrives at a reasonable measure or value of work, quantities or time.

For the avoidance of doubt, references in paragraph (b) above to the Superintendent's functions under Clause 35.5 (assessments of extension of time) and Clause 42.1 (issue of payment certificates) include the functions of assessing all Claims of the Contractor relevant to the quantification of the Contractor's entitlement to extensions of time or payments.

Despite any other provision of the Contract, the Principal is under no obligation to provide advice to the Superintendent in connection with, or review any determination made or to be made by, the Superintendent in the discharge of its functions under paragraph (b) above, but may, in its discretion, make submissions to the Superintendent for its consideration in connection with those determinations.

The Superintendent may carry out its functions under the Contract (other than those referred to in paragraph (b) above):

(c) as agent and representative of the Principal; and

(d) in accordance with instructions given to it by the Principal (acting in its absolute discretion unless the Contract expressly requires otherwise) and in a manner consistent with the interests of the Principal.

If, pursuant to a provision of the Contract enabling the Superintendent to give directions, the Superintendent gives a direction (whether oral or in writing):

(e) the Contractor shall comply with the direction; or

(f) if the Contractor considers it is not for any reason bound to comply with the direction, the Contractor shall notify the Superintendent that it considers it is not so bound and the reason immediately the direction is first given.

In Clause 23 'direction' includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Where the Contract provides for the Superintendent to approve any fact, matter or thing the Superintendent shall not be taken to have given its approval unless the approval is given in writing to the Contractor.

Except where the Contract otherwise provides, a direction may be given orally but the Superintendent shall as soon as practicable confirm it in writing.

If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent confirms it in writing.

The Superintendent shall have:

(i) access to the Site and the work under the Contract; and

(ii) after reasonable notice to the Contractor, access to any place other than the Site where work under the Contract is being carried out or materials are being prepared or stored,

for the purposes of discharging the functions of the Superintendent under the Contract.

### **23A PRINCIPAL'S AND SUPERINTENDENT'S DISCRETIONS**

The Contractor agrees that except to the extent expressly provided in the Contract:

- (a) the Principal and Superintendent may exercise discretions and rights given to them under the Contract in whatever way the Principal or Superintendent decide in their absolute discretion; and
- (b) the Principal or Superintendent may grant, refuse or grant subject to reasonable conditions any consent required from the Principal or Superintendent in their absolute discretion.

### **24 SUPERINTENDENT'S REPRESENTATIVE**

The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent's Representative shall be delegated the same function at the same time. The appointment of a Superintendent's Representative shall not prevent the Superintendent from exercising any function.

The Superintendent shall forthwith notify the Contractor in writing of—

- (a) the appointment and the name of any Superintendent's Representative and the functions delegated to the Superintendent's Representative;
- (b) the termination of the appointment of a Superintendent's Representative.

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

### **25 CONTRACTOR'S REPRESENTATIVE**

The Contractor shall personally superintend the execution of the work under the Contract or, at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Superintendent, at other places at which activities relating to the execution of the work under the Contract are taking place.

The Contractor shall forthwith notify the Superintendent in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall—

- (a) if it relates to the execution of work on the Site and is given to the representative on the Site; or
- (b) if it relates to the execution of work at any other place and is given to the representative at the other place,

be deemed to have been given to the Contractor.

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

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

### **26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS**

#### **26.1 Superintendent's Control**

The Superintendent may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Superintendent

directs, any person employed in connection with the work under the Contract who, in the opinion of the Superintendent, is guilty of misconduct or is incompetent or negligent or fails to comply with any Licence and Competency Requirement, Environmental Requirement or safety obligation under the Contract. The person shall not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Superintendent. The Contractor is not entitled to any Claim in respect of a direction by the Superintendent given under this Clause.

## **26.2 Key Personnel**

The Contractor:

- (a) must ensure the key personnel listed in the Annexure are engaged in the provision of the work under the Contract in the respective capacities also set out in the Annexure; and
- (b) must only replace the key personnel:
  - (i) in circumstances of death, serious illness, change of employment or request by the Superintendent; and
  - (ii) with others (having equivalent skill and experience) approved by the Superintendent.

## **27 SITE**

### **27.1 Possession of Site**

- (a) Subject to paragraph (b), ~~The~~ the Principal shall on or before the expiration of the time stated in the Annexure give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence work. If the Principal has not given the Contractor possession of the whole Site, the Principal shall from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract. The Principal shall advise the Contractor in writing of the date upon which the Site or any part thereof will be available.
- (b) The Contractor acknowledges and agrees that:
  - (i) the nature of the work under the Contract is such that the Principal may not own or control all of the Site;
  - (ii) the Contractor shall, at its own cost, obtain all necessary approvals, permissions and consents for access to those parts of the Site not owned or controlled by the Principal to enable it to execute the work under the Contract on those parts of the Site, except to the extent that:
    - (A) the Contract expressly provides that the Principal shall obtain such approval, permission or consent;
    - (B) the Contractor is unable, despite reasonable endeavours, to negotiate a right of access in respect of any part of the Site and notifies the Principal in writing of this, and the Principal has the right, under any legislation, to enforce a statutory right of access to that part of the Site for the purpose of the Works; or
    - (C) the Principal otherwise notifies the Contractor in writing;

- (iv) the Contractor shall comply with all conditions attaching to approvals, permissions and consents whether obtained by the Contractor or the Principal to access any part of the Site not owned or controlled by the Principal and indemnifies the Principal against any Claim arising from breach of any such condition.
- (c) Notwithstanding the provisions of this Clause 27.1, if the Contractor is in breach of Clause 21.1, the Principal may refuse to give the Contractor possession of the Site or any part of the Site until the Contractor has complied with the requirements of Clause 21.1.
- (d) Possession of the Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to execute the work under the Contract.
- (e) A delay by the Principal in giving the Contractor access to any part of the Site pursuant to this Clause shall not be a breach of Contract by the Principal but may, except in respect of any part of the Site for which the Contractor is obliged to arrange access, justify a Claim for an extension of time pursuant to Clause 35.5.
- (f) Except as expressly stated in the Contract, the Contractor is responsible for the performance of any work or the provision of any services or facilities which may be necessary to enable the Contractor to obtain and maintain possession of or access to the Site.

#### **27.1A Pre-conditions for Possession**

The Principal is not obliged to give the Contractor possession of the Site until:

- (a) the Contractor has:
- (i) provided proof of insurance policies in accordance with Clause 21.1;
  - (ii) given to the Superintendent:
    - (A) all Contractor's Management Plans in accordance with Clause 14E;
    - (B) a construction program in accordance with Clause 33.2;
  - (iii) provided evidence of compliance with the Licence and Competency Requirements in accordance with Clause 14.1A;
  - (iv) provided security as required in accordance with Clause 5.2;
- (b) the Instrument of Agreement has been executed by the parties and a copy of the Instrument of Agreement returned to the Principal;
- (c) any other conditions which the Contract requires be satisfied before the work under the Contract is commenced on Site, have been satisfied to the Superintendent's satisfaction.

#### **27.2 Access for the Principal and Others**

The Principal and the Principal's employees and agents may at any time ~~after reasonable notice to the Contractor~~ have access to any part of the Site for any purpose including without limitation to:

- (a) inspect the work under the Contract;
- (b) inspect, audit and obtain copies of the records and all records, reports and other documents prepared and maintained by the Contractor in performing the work under

the Contract and the Contractor shall be taken to have allowed in its Contract Sum for all costs, expenses, losses and damages the Contractor may incur in performing its obligations under this Clause 27.2.

~~The Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall cooperate with them and coordinate the Contractor's work with their work.~~

~~If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.~~

The Contractor shall at all reasonable times give the Principal, the Superintendent, the Clerk of Works and inspectors appointed under Clause 22, and other persons authorized in writing by the Principal or by the Superintendent access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

The Principal shall endeavour to ensure that the Contractor is not impeded in the execution of the Contractor's work by any persons referred to in this Clause 27.2, whilst exercising the right of access given by this Clause 27.2.

#### 27.2A Separate Contractors

The Contractor shall permit and the Principal shall be entitled to arrange for or allow persons (including without limitation personnel of the Principal) to carry out works, provide services or supply other items not included in the work under the Contract ('Separate Contractors') on the Site or the Works concurrently with the execution by the Contractor of the Works.

In respect of Separate Contractors:

- (a) to the extent they are not identified in the Contract, the Superintendent shall notify in writing the Contractor of the identity of Separate Contractors, if requested by the Contractor;
- (b) the Contractor shall co-operate with Separate Contractors and co-ordinate their work with the work under the Contract and the work of other Separate Contractors and the Contractor shall use its best endeavours to facilitate the execution of the work by Separate Contractors and to ensure it is not unreasonably interfered with, disrupted or delayed;

*#Alternative 1 – use for Hub work and other work where the Contractor can reasonably price for coordination#*

- (c) the Contractor acknowledges that it has allowed in the Contract Sum and the Date for Practical Completion for all delays and costs in respect of such co-ordination and shall not be entitled to any Claim (including without limitation for delay or disruption costs) as a result of the Contractor's compliance or failure to comply with its obligations under this Clause;

*#Alternative 2 – use for substation work and other work where the Contractor cannot reasonably price for coordination#*

- (c) the Contractor:
  - (i) acknowledges that it has allowed in the Contract Sum and the Date for Practical Completion for all delays and costs in respect of such co-ordination in relation to those Separate Contractors identified or contemplated in the Contract (or which should reasonably have been contemplated by an experienced and competent contractor at the time of the Contractor's tender) and shall not be



entitled to any Claim (including without limitation for delay or disruption costs) as a result of the Contractor's compliance or failure to comply with its obligations under this Clause; and

- (ii) shall be entitled to claim an extension of time (and delay and disruption costs) subject to the terms of the Contract as a result of the co-ordination of the work under the Contract with the work performed by other Separate Contractors not covered by subparagraph (i);
- (d) the Contractor shall ensure that all Separate Contractors satisfactorily complete the site induction program applying to the Site before commencing any work on Site or in connection with the Works, promptly having regard to each Separate Contractor's requirements for access to carry out works;
- (e) the Contractor shall:
  - (i) be responsible for any damage to the Works caused by the Contractor failing to adequately protect the work under the Contract or the Works or failing to co-ordinate the work under the Contract with the work of Separate Contractors;
  - (ii) be responsible for any damage (however caused) to the work of Separate Contractors caused by the Contractor or any subcontractor; and
- (f) the Contractor shall make available for use by Separate Contractors at the cost of the Contractor and at no charge to Separate Contractors or the Principal, all facilities which are otherwise provided by the Contractor in connection with the Contract and the Contractor shall co-operate with the Superintendent and Separate Contractors in the use of such facilities.

The carrying out of work by Separate Contractors is deemed not to be an act of prevention by the Principal.

### **27.3 Delivery of Materials to and Work on Site Before Possession**

Until possession of the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Superintendent.

### **27.4 Use of Site by Contractor**

Unless the Contract otherwise provides or the Superintendent gives prior written approval, the Contractor shall not use the Site or allow it to be used for—

- (a) camping;
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Contract.

### **27.5 Finding of Minerals, Fossils and Relics**

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall take precautions to prevent their loss or removal or damage and shall promptly notify the Superintendent of the discovery.

If compliance with obligations under this Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

## 27A ADDITIONAL SITE PROVISIONS

### 27A.1 Access to Site

The Contractor shall ensure that the Contractor, its employees, its subcontractors and their employees:

- (a) do not enter upon any place notified by the Principal to the Contractor in writing as a place to which the Contractor is not to have access, without the prior written consent of the Principal;
- (b) access the Site in the manner which:
  - (i) ensures minimum disturbance and inconvenience to use of the Existing Improvements; and
  - (ii) the Superintendent approves from time to time;
- (c) without limiting any other provision of the Contract, at all times:
  - (i) keep themselves informed as to the requirements of, comply with and not do anything which may place the Principal in breach of laws or Legislative Requirements applying to the Site;
  - (ii) comply with all procedures, policies or rules adopted from time to time by the Principal in connection with the Site; and
  - (iii) comply with the directions (if any) given to the Contractor by the Principal or the Superintendent or others authorised by the Principal or any Legislative Requirement at any time in connection with the Site (including access to and use of the Site);
- (d) only access the Site during the hours and on the days provided for in the Contract;
- (e) ensure the Site is kept safe and secure during and outside of working hours; and
- (f) keep the Site clean at all times.

### 27A.2 Access Only

Despite any other provision of the Contract, where the Annexure specifies the Contractor is to have only access to the Site:

- (a) references in the Contract to 'possession of' the Site shall be read as 'access to' the Site; and
- (b) the Contractor shall have no right of exclusive occupation or possession of any part of the Site and shall access the Site only in accordance with the Contract.

### 27A.3 Access to Adjoining Properties

The Contractor shall:

- (a) at its own cost, obtain all necessary approvals, permissions and consents for any access to or over, underpinning or use of, or work relating to any adjoining site or property which may be required for execution of the work under the Contract (not in the ownership or control of the Principal) except to the extent the Contract expressly provides that the Principal shall obtain such approvals, permissions and consents;
- (b) comply with all conditions attaching to such approvals, permissions and consents;

- (c) perform any work that is necessary to obtain access to or over any adjoining site or property or work relating to any adjoining site or property which may be required for execution of the work under the Contract;
- (d) not, in carrying out the work under the Contract, encroach on or over any adjoining site or property except in accordance with any approval, permission or consent under paragraph (a); and
- (e) indemnify the Principal against any Claim arising from breach of any condition attaching to any approval, permission or consent referred to in paragraph (a).

#### **27A.4 Site Plan**

Where the Contract includes a Site plan or description of the area comprising the Site for the purposes of the Contract ('Site Area');

- (a) subject to paragraph (b) and Clause 27A.3, the Contractor shall not access (and shall have no Claim arising from the Principal not providing access to) any area not within the Site Area;
- (b) the Principal may in its absolute discretion at any time consent to the Contractor having access to areas in the possession or control of the Principal not within the Site Area;
- (c) the Contractor shall be bound by and comply with any conditions imposed by the Principal in giving its consent under paragraph (b); and
- (d) any additional area made available to the Contractor under paragraph (b) shall comprise part of the Site for the purposes of the Contract.

#### **27A.5 Accessed Site and Controlled Site**

- (a) Where the Contractor is given access to or possession of the Controlled Site under the Contract, the Contractor must:
  - (i) assume full responsibility for and full management and control of the Controlled Site while it remains Controlled Site; and
  - (ii) without limiting paragraph (a)(i):
    - (A) ensure the Controlled Site is kept secure at all times (including against entry by any unauthorised person);
    - (B) ensure that any person entering the Controlled Site completes adequate safety or other training or induction before entering the Controlled Site; and
    - (C) ensure that any person entering the Controlled Site complies with all requirements that may arise in connection with the Contractor ensuring its full compliance with the Contract.
- (b) Where the Contractor is given access to Accessed Site, the Contractor must:
  - (i) allow the Principal or other person in possession or management and control of the Accessed Site ('Accessed Site Occupant') to maintain its possession or management and control of the Accessed Site while the Contractor is carrying out the work under the Contract within the Accessed Site; and
  - (ii) without limiting paragraph (b)(i):

- (A) comply with the directions of the Accessed Site Occupant regarding the timing and conditions of the Contractor's access to the Accessed Site; and
- (B) complete any safety or other training or induction required by the Accessed Site Occupant before entering upon the Accessed Site.

## 27B MEETINGS

### 27B.1 Attendance at Meetings

The Contractor shall ensure that it and any consultants, subcontractors or employees requested by the Superintendent or the Principal to attend are represented at any project control group or site meetings required by the Superintendent or Principal ('Project Meetings') to openly discuss all matters relevant to the Works and progress of the work under the Contract which may be convened by the Principal or Superintendent by reasonable notice to the Contractor.

### 27B.2 Project Control Group

- (a) Without limiting Clause 27B.1, a Project Control Group ('PCG') is established for the term of the Contract. The objective of the PCG is to provide a forum for regular and formal interaction between:
  - (i) the management of the Principal and the Contractor charged with the administration of the Contract;
  - (ii) the Superintendent;
  - (iii) subcontractors; and
  - (iv) such other parties who are invited to attend from time to time including appropriate consultants,

for the purpose of maintaining a consistent overview of the Works.
- (b) The Contractor shall be represented at PCG Project Meetings by the Contractor's Representative and another appropriate representative of the Contractor.
- (c) The Principal may be represented at PCG Project Meetings by the Superintendent and, at its option, any other representative of the Principal (including without limitation an Energex safety representative).
- (d) The Contractor's Representative shall prepare and circulate agenda papers two working days prior to PCG Project Meetings.
- (e) The Principal or the Superintendent may add items to the agenda by written notice to the Contractor.
- (f) The agenda shall always include:
  - (i) discussion of the current progress of the Works;
  - (ii) access issues; and
  - (iii) safety issues.
- (g) The chairman of the first PCG Project Meeting shall be the Superintendent, and thereafter the chairmanship shall alternate between the Superintendent and the Contractor's Representative.

- (h) At the first PCG Project Meeting, the parties must submit names and telephone number of the responsible persons who may be contacted after hours during the course of the contract.

### **27B.3 Minutes of Meeting**

Minutes of each Project Meeting may be kept by the Superintendent and issued to the Contractor as soon as possible thereafter. If the Contractor does not agree with the accuracy of the minutes, it shall notify the Superintendent of the inaccuracy within 48 hours of receipt of the minutes. Failure to so notify, will be deemed acceptance by the Contractor of the minutes as a true and accurate record.

### **27B.4 No Direction**

Notwithstanding the recording of the minutes of any Project Meeting, no resolution or communication at any Project Meeting (nor minutes recording any resolution or communication) shall constitute a direction under the Contract unless and until a separate direction is given to the Contractor in writing.

## **27C SIGNAGE**

### **27C.1 Principal's Signage**

The parties agree:

- (a) subject to paragraph (b), the Principal shall be entitled to arrange for any signage required by the Principal to be placed, erected, installed and maintained on any reasonable part of the Site, the work under the Contract or any part of the Constructional Plant or other equipment, and the Contractor shall co-operate with such placement, erection or installation, and the maintenance of such signage by the Principal; and
- (b) the Principal shall in exercising its rights under paragraph (a) not interfere with the Contractor's ability to carry out the work under the Contract.

### **27C.2 Contractor's Signage**

The Contractor shall not place, erect or install any signage on the Site, the work under the Contract or any part of the Constructional Plant or other equipment unless:

- (a) the signage is required in accordance with a Legislative Requirement; or
- (b) the placement, erection or installation is first approved by the Superintendent.

If the Superintendent approves the placement, erection or installation of signage the Contractor must maintain the signage in accordance with the approval.

## **28 SETTING OUT THE WORKS**

### **28.1 Setting Out**

The Superintendent shall supply to the Contractor the information and survey marks necessary to enable the Contractor to set out the Works and the survey marks specified in the Contract. Upon receipt of any necessary information and survey marks, the Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose.

### 28.2 Care of Survey Marks

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

If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall reinstate the survey mark.

If the disturbance or obliteration is caused by a person referred to in Clause 27.2, other than the Contractor or Separate Contractors, the cost incurred by the Contractor in reinstating the survey mark shall be valued under Clause 40.5.

### 28.3 Errors in Setting Out

If the Contractor discovers an error in the position, level, dimensions or alignment of any work under the Contract, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall rectify the error.

If the error has been caused by incorrect information, survey marks or data supplied by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be valued under Clause 40.5.

### 28.4 Survey Mark Defined

'Survey mark' in Clause 28 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract.

## 29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

### 29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

The Contractor must ensure all materials, machinery or equipment used on the Site complies with all relevant Legislative Requirements, Codes of Practice and Australian Standards.

### 29.2 Removal of Materials and Constructional Plant

From time to time the Superintendent may by written notice to the Contractor direct the Contractor not to remove from the Site Constructional Plant or materials. Thereafter, the Contractor shall not remove the materials or the Constructional Plant without the prior written approval of the Superintendent, which approval shall not be unreasonably withheld.

#### 29.2A Constructional Plant Owned by Others

The Contractor shall upon request by the Superintendent, notify the Superintendent in writing of the name and address of the owner of any Constructional Plant used in connection with the work under the Contract and held by the Contractor under an agreement with the owner of the Constructional Plant. The Principal may (but shall be under no obligation to), in order to avoid seizure by the owner of such Constructional Plant, pay to the owner the amount of any overdue instalment or other sums payable under such agreement.

In the event of the Principal doing so, the Principal may recover such amount as a debt due from the Contractor.

### **29.3 Manufacture and Supply of Materials**

The Superintendent may direct the Contractor to supply particulars of—

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under or used in connection with the Contract.

### **29.4 Energex Supplied Material**

Where the Contract requires the Contractor to use, in carrying out work under the Contract, any plant, equipment or materials (whether or not new) supplied by or on behalf of the Principal (including without limitation the items listed in Item 41A) ('Energex Supplied Material'):

- (a) to the extent the Contract does not fully specify the nature or extent of the Energex Supplied Material:
  - (i) the Contractor shall, within 14 days after the Date of Acceptance of Tender and prior to commencement of the work under the Contract, notify the Principal in writing of:
    - (A) the plant, equipment and materials requested by the Contractor to comprise the Energex Supplied Material (from the list of the proposed items of Energex Supplied Material stated in the Contract or otherwise provided by the Principal); and
    - (B) the date from which each particular item of Energex Supplied Material is required to enable the work under the Contract to be carried out within the time required by the Contract and, in the case of Constructional Plant, any other information required by the Principal;
    - (C) the estimated period that each particular item will be required; and
    - (D) any other information required by the Principal;
  - (ii) the Principal shall assess the Contractor's request under paragraph (i) and notify the Contractor of:
    - (A) what the Principal determines should be the Energex Supplied Material and the time at which or in respect of Constructional Plant, the time during which the Energex Supplied Material will be made available to the Contractor; and
    - (B) if the Principal's determination under paragraph (A) differs from the Contractor's request, reasons for the difference;
  - (iii) in the absence of a request by the Contractor under paragraph (i), the Principal may still provide to the Contractor the notice referred to in paragraph (ii);
- (b) subject to paragraph (c):

- (i) the Energex Supplied Material may be determined by the Principal in its absolute discretion;
  - (ii) the Principal gives no warranty and makes no representation to the Contractor as to the Energex Supplied Material (including its availability or quality);
- (c) the Contractor shall have no Claim arising from or in connection with the Energex Supplied Material (including the extent, availability or quality of the Energex Supplied Material) except that:
  - (i) where the Principal fails to make available to the Contractor any Energex Supplied Material at the times set out in a notice given by the Principal to the Contractor under paragraph (ii)(A), the Contractor may claim an extension of time under and subject to the conditions of the Contract;
  - (ii) the Contractor shall not be liable to the Principal for defects in the Works which are caused by defects in the Energex Supplied Material to the extent that:
    - (A) the defect in the Energex Supplied Material could not have been ascertained from a full and complete inspection of the item before the item was used in connection with the work under the Contract; and
    - (B) no acts or omissions of the Contractor have caused or contributed to the defect; and
  - (iii) the Contractor shall be entitled to a valuation under Clause 40.5 to the extent the Principal does not make available to the Contractor any item of the Energex Supplied Material confirmed by the Principal to the Contractor in a notice under subclause (A) in paragraph (a)(ii) above;
- (d) unless otherwise agreed, the Contractor must collect the Energex Supplied Material from the Principal's premises nominated by the Principal in the Contract or any notice in writing to the Contractor ('Principal's Premises');
- (e) subject to the terms of this Clause, from the date the Energex Supplied Material is made available to the Contractor and, in the case of the Constructional Plant, until the date the Energex Supplied Material is returned into the possession and control of the Principal:
  - (i) the Energex Supplied Material shall be taken to be work under the Contract;
  - (ii) the Contractor shall be responsible for the care of the Energex Supplied Material; and
  - (iii) the Contractor shall bear the risk of and be liable for reinstatement of loss or damage to the Energex Supplied Material from any cause other than an Excepted Risk referred to in Clause 16.3.
- (f) unless the parties agree otherwise, the Energex Supplied Material shall be provided by the Principal at no charge to the Contractor;
- (g) the Contractor shall:
  - (i) notify the Superintendent immediately if it becomes aware that any of the Energex Supplied Material is for any reason not fit for its intended purpose;
  - (ii) ensure the safe and secure use and storage of the Energex Supplied Material at all times;
  - (iii) ensure that the Energex Supplied Material is not used otherwise than for the work under the Contract and in accordance with the Contract;



- (iv) not substitute any plant, equipment or materials for the Energex Supplied Material without the Superintendent's consent;
- (v) comply with any lawful direction of the Superintendent as to the use of the Energex Supplied Material;
- (vi) unless the Superintendent directs otherwise, ensure any Energex Supplied Material not used up in the work under the Contract (including all unused materials and Constructional Plant) is promptly returned to the Principal at the Principal's Premises; and
- (h) the Contractor must comply with the Energex Standard Procedures in relation to all Energex Supplied Material.

## **29A WARRANTY REQUIREMENTS**

### **29A.1 Special Warranty Requirements**

- (a) The Contractor shall deliver to the Principal before Practical Completion, warranties on the terms set out in the Contract:
  - (i) from the subcontractors;
  - (ii) in respect of the items of work under the Contract; and
  - (iii) for the periods (which shall be taken to commence from the Date of Practical Completion of the last Separable Portion to achieve Practical Completion) and including the provisions,  
set out in the Annexure or elsewhere in the Contract ('Special Warranties').
- (b) If the Contract does not set out terms to apply to any Special Warranty, the Special Warranty shall be on such terms as the Superintendent may reasonably require having regard to the terms of warranties available in the market for the relevant item of work under the Contract.

### **29A.2 Warranties**

Without limiting Clause 29A.1, the Contractor shall ensure that:

- (a) all warranty entitlements arising from the work under the Contract or the Works include the Principal and the Site Owner and the Contractor as named beneficiaries;
- (b) are in a form approved by the Superintendent; and
- (c) are submitted to the Superintendent prior to Practical Completion being achieved.

### **29A.3 Other Obligations Preserved**

The Contractor agrees that the requirement for or provision of any warranties (including Special Warranties) (on any terms) shall not limit, restrict or affect in any way the obligations, warranties or liabilities of the Contractor under or in connection with the Contract (including as to the rectification of defects during the Defects Liability Period).

### **29A.4 Other Warranties**

The Contractor agrees that despite any other provision of the Contract, where a subcontractor offers or provides a warranty on goods, materials, workmanship or labour, in addition to or on terms more favourable than those required by the Contract, such additional

warranties shall be provided to the Principal by the Contractor at no cost and expense to the Principal.

### 29B TRAINING AND INSTRUCTION

If the Contractor is required to provide any training or instruction to the Superintendent, the Principal, the Site owner or their employees, nominees or contractors in connection with the Works, the Contractor shall:

- (a) ensure that all training or instruction is:
  - (i) carried out by suitably qualified and skilled persons who are familiar with the operation, use and maintenance of the plant, equipment or services;
  - (ii) designed to meet the requirements of the trainee; and
  - (iii) carried out in accordance with the requirements of the Contract; and
- (b) provide the training and instruction prior to Practical Completion being taken to be achieved.

### 29C APPRENTICE/TRAINEE POLICY

If it is provided for in the Annexure the Contract, either directly or indirectly through subcontractors, in its execution of the work under the Contract, must employ apprentices/trainees on the Site of the Works for the number of labour hours no less than the number derived by multiplying the accepted Contract Sum by 0.4208%: viz.  $\text{Contract Sum} \times 0.4208\% = \text{number of labour hours for building projects and multiplying the accepted Contract Sum by } 0.04\%: \text{ viz. } \text{Contract Sum} \times 0.04\% = \text{number of labour hours for civil construction projects}.$

For the purposes of this clause, the term 'apprentices/trainees' shall include any employees engaged in the following arrangements:

- (a) a formal apprenticeship or ~~formal~~-traineeship as provided for in State vocational education and training legislation ~~that results in a nationally recognised building and construction qualification~~;
- (b) a cadetship or scholarship for the purposes of ~~incorporating~~ formal tertiary professional or technical education ~~that results in a nationally recognised building and construction qualifications~~;
- (c) graduate programs;
- (d) a school-based or part-time apprenticeship or traineeship; and
- (e) Indigenous worker that self-identifies as being an Indigenous person.

The Contractor shall:

- (i) provide a written undertaking to the Principal that the Contractor complies with the Queensland Government Building and Construction ~~Contracts Structured Training Policy (10 per cent Training Policy)~~ ("Policy") (based on the deemed hours of on-the-job training) when submitting a tender. This will usually be part of the tender documentation supplied.
- (ii) within 104 days of the Date of Acceptance of Tender submit to CSQDET, ~~with a copy to the Superintendent~~, a completed Compliance Plan in the form in Annexure Part E; and

- (iii) within 107 working days of the expiration of each successive thirteen week period commencing from the Date of Acceptance of Tender submit to CSQDET, with a copy to the Superintendent, a completed Interim Compliance Report in the form in Annexure Part E; and
- (iiiv) within 154 days of the Date of Practical Completion, or if there is more than one, the last occurring Date of Practical Completion, submit to CSQDET, with a copy to the Superintendent, a completed Practical Completion Compliance Report in the form in Annexure Part E. In the event that a large amount of work will have to be undertaken after the Date of Practical Completion, the Contractor can contact CSQ to negotiate an amended completion date.

In addition to these requirements, and as part of the Civil Construction Skilling Strategy on major civil construction infrastructure projects over \$100 million, more specific requirements are required under the Policy as follows:

- (i) the Contractor must develop and implement a Skills Development Plan, with the intent of skilling existing workers and new entrants;
- (ii) training delivery is to be linked to occupational outcomes in applicable nationally accredited training packages that are identified in the Skills Development Plan for the particular project; and
- (iii) a training coordinator is to be employed by the Contractor to ensure the implementation of the Skills Development Plan.

The Contractor acknowledges that failure to comply in part or in whole with this requirement for employment of apprentices/trainees will be is a substantivemandatory factor that will be taken into account in the award of future Contracts by the Principal (or the State of Queensland).

For the purposes of this Clause 29C, the term 'CSQDET' means ~~the Department of Employment and Training~~Construction Skills Queensland or its successor in title having responsibility for Employment Policies and Programs.

## **29D LOCAL INDUSTRY**

The Contractor acknowledges that the Principal is bound by the provisions of the Queensland Government's ~~Charter for Local Industry Policy~~Content ("Charter"). To the extent the ~~Local Industry Policy~~Charter applies, the Contractor must comply with the requirements of the ~~Local Industry Policy~~Charter and any relevant local industry participation plan of the Principal, and comply with the Principal's directions in relation to local industry participation and shall not be entitled to any Claim in respect of Compliance with these obligations.

## **30 MATERIALS AND WORK**

### **30.1 Quality of Materials and Work**

In carrying out the work under the Contract, the Contractor must comply with all Work Standards. The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials and other items which shall be in conformity with their description, of merchantable quality and fit for their purpose.

**30.1A Nominated or Proprietary Items**

Where the Contract or any direction by the Principal or Superintendent:

- (a) nominates or describes (by a proprietary or brand name, model number or other specific means) any material or component to be used in connection with the work under the Contract; or
- (b) nominates or describes the design, manufacturer, supplier or place of manufacture for any material, component or sub-assembly to be used in connection with the work under the Contract.

then:

- (c) such nomination or description shall in no way relieve, limit or exclude any of the Contractor's obligations or liabilities under or in connection with the Contract; and
- (d) the Contractor shall:
  - (i) obtain the prior consent of the Superintendent to any change to or deviation from such nomination or description;
  - (ii) provide the Superintendent with any information that may be reasonably required by the Superintendent to consider any proposal by the Contractor to change or deviate from the nomination or description including:
    - (A) details of the alternative material or component;
    - (B) the method of application or fixing of the alternative material or component;
    - (C) the durability, serviceability, maintenance requirements, cleaning and protection of the alternative material or component;
    - (D) any required variation to the Works as a result of the change or deviation;
    - (E) any test results as to the alternative material or component; and
  - (iii) be responsible for the performance of any alternative material or component approved by the Superintendent.

\*

**30.2 Quality Assurance**

~~The Contractor shall, if requirements are so stated in the Contract~~If the Contract or any Methodology and Resourcing Document confirms the Contractor is quality assured or is implementing a quality system in respect of the Contract or any Relevant Document (including a Principal's Standard Work Procedures ('SWPs') that requires the Contractor to be quality assured) the Contractor shall—

- (a) plan, establish and maintain a quality system which conforms to those requirements;
- (b) provide the Superintendent with access to the quality system of the Contractor and each of the subcontractors of the Contractor to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract notwithstanding-

- (a) the obligation of the Contractor to plan, develop and implement a quality system in accordance with the Contract; or

(b) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the quality system given by or on behalf of the Principal or the Superintendent.

~~NOTE: The inclusion of Quality Assurance requirements in a contract will require detailed clauses in the Specification or elsewhere in the Contract which have regard to the Quality Standard selected for the work.~~

### **30.3 Defective Materials or Work**

If the Superintendent discovers material or work provided by the Contractor which is not in accordance with the Contract, the Superintendent may direct the Contractor to—

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

The Superintendent may direct the times within which the Contractor must commence and complete the removal, demolition, replacement or correction.

If the Contractor fails to comply with a direction issued by the Superintendent pursuant to this Clause 30.3 within the time specified by the Superintendent in the direction and provided the Superintendent has given the Contractor notice in writing that after the expiry of 7 days from the date on which the Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal.

### **30.4 Variations due to Defective Materials or Work**

Instead of a direction under Clause 30.3, the Superintendent may direct a variation pursuant to Clause 40. The variation shall be valued under Clause 40.5 and—

- (a) if the variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a direction under Clause 30.3, regard shall also be had to the difference.

### **30.5 Acceptance of Defective Material or Work**

Instead of a direction under Clause 30.3 or 30.4, the Superintendent may notify the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in the value to the Principal of the Works and any other loss suffered by the Principal shall be valued under Clause 40.5.

### **30.6 Generally**

The Superintendent shall give either a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5 as soon as practicable after the Superintendent becomes aware that material or work is not in accordance with the Contract. The Superintendent may give the direction or notice at any time before the issue of the Final Certificate under Clause 42.8.

Except to the extent that to do so would be inconsistent with a direction under Clause 30.4 or a notice under Clause 30.5 and notwithstanding that the Superintendent has not given a direction under Clause 30.3, the Contractor shall promptly remove, demolish, replace or correct material or work that is not in accordance with the Contract.

A progress payment, or a test or a failure by the Superintendent or anyone else to disapprove any material or work shall not prejudice the power of the Superintendent to subsequently give a direction under Clause 30.3 or 30.4 or a notice under Clause 30.5.

No inspections or tests carried out by the Principal or Superintendent shall prejudice or relieve the Contractor from any of its obligations or liabilities under or in connection with the Contract.

Nothing in Clause 30 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.

The Superintendent shall not be obliged to give a direction under Clause 30.4 or a notice under Clause 30.5 to assist the Contractor.

### **30A STANDARDS AND CODES**

(a) Except where otherwise expressly provided in the Contract, all materials and workmanship shall comply with the current edition (incorporating current amendments) of all relevant standards, codes or specifications of the Standards Association of Australia.

(b) Where:

- (i) the Contract adopts by reference a standard, code or specification, it shall have the same force and effect as if the text of such standard code or specification was incorporated into the Contract; and
- (ii) a standard, code or specification referred to in the Contract makes reference to other standards, those other standards shall apply to the work, to the extent they are applicable.

### **30B HAZARDOUS MATERIALS**

The Contractor shall ensure that all building materials used in connection with the work under the Contract are free of any hazardous or any environmentally deleterious materials such as asbestos fibres.

## **31 EXAMINATION AND TESTING**

### **31.1 Superintendent May Order Tests**

In Clause 31 'test' includes examine, ~~and~~ measure, commission and re-test.

At any time prior to the issue of the Final Certificate the Superintendent may direct that any material or work under the Contract be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Superintendent. On completion of the tests, the Contractor shall make good the work under the Contract so that it fully complies with the Contract.

### 31.2 Covering Up of Work

The Superintendent may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Superintendent's prior approval.

If the work under the Contract is covered up by the Contractor in contravention of the direction, the work under the Contract shall be opened up by the Contractor without the Contractor having any Claim.

### 31.3 Who Conducts Tests

Tests shall be conducted as provided in the Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent. Where the Contractor conducts tests, the Contractor shall use equipment and methods of testing as required by the Contract or as otherwise approved by the Superintendent in writing.

### 31.4 Notice of Tests

Before conducting a test under the Contract the party conducting the test, being the Superintendent or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

### 31.5 Procedure if Tests Delayed

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

### 31.6 Results of Tests

The Contractor shall maintain accurate and adequate records of all tests. Results of tests shall be promptly made available by each party to the other and to the Superintendent.

Where the Contract or the Superintendent requires any test of any material or work under the Contract, receipt by the Superintendent of an engineering certificate (approved by the Superintendent) and the results of that test showing to the Superintendent's satisfaction that the relevant material or work under the Contract has been carried out in accordance with the Contract shall, unless the Superintendent otherwise agrees, be a condition precedent to the Contractor being entitled to make any claim for payment for such work under the Contract at any time.

### 31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5 and shall be borne by the Principal or paid by the Principal to the Contractor unless—

- (a) the Contract provides that the Contractor shall bear the costs or the test is ~~one which the Contractor was required under the Contract to conduct~~ other than pursuant to a direction under Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent's prior approval where such was required;
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

### **31.8 Access for Testing**

If, during the Defects Liability Period—

- (a) the Principal or the Superintendent asserts that material or work is not in accordance with the Contract; and
- (b) the Contractor requests permission to test the material or work,

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

### **31.9 Access to Superintendent for Testing**

The Contractor shall ensure the Principal, the Superintendent and their agents and employees and anyone else nominated by the Superintendent are allowed access to any place where any part of the Works is situated or any of the work under the Contract is being carried out (including at a location other than the Site or the Contractor's premises), for the purpose of inspection and testing.

### **31.10 Tests Not Evidence of Compliance**

A satisfactory inspection or test of any part of the Works or the work under the Contract shall not constitute evidence of the Contractor having satisfactorily complied with the Contract, and shall not prejudice or relieve the Contractor from any of its obligations or liabilities under or in connection with the Contract.

## **31A COMMISSIONING**

### **31A.1 Commissioning Program**

The Contractor shall:

- (a) prepare and submit to the Superintendent a detailed commissioning program in a form satisfactory to the Principal (including commissioning procedures necessary to establish performance meeting the requirements of the Contract) for those parts of the Works described in the Annexure for the purposes of confirming that the Works separately, and when interfaced with any part of the Existing Improvements, meet the requirements of the Contract; and
- (b) obtain the Superintendent's approval in writing to the commissioning program in sufficient time prior to the Date for Practical Completion to enable the commissioning program to be satisfactorily completed prior to the Date for Practical Completion.

### **31A.2 Commissioning by Contractor Prior to Practical Completion**

The Contractor agrees:

- (a) the successful commissioning of the Works in accordance with the commissioning program and to establish that the Works meets the Principal's requirements shall comprise tests which are required to be carried out and passed before the Works reach Practical Completion;
- (b) all commissioning shall be carried out in accordance with and comply with any relevant Legislative Requirements, Government Approvals or Works Standard;



- (c) the Contractor shall ensure that results of all commissioning are recorded and submitted to the Superintendent as and when requested by the Superintendent;
- (d) the Contractor shall give the Superintendent reasonable prior notice of the carrying out of any part of the commissioning required by the commissioning program and shall allow the Principal and Superintendent to attend such commissioning; and
- (e) the Contractor shall immediately notify the Superintendent if any portion of the Works fails to pass a commissioning requirement and, at the Contractor's cost, make good that portion and after completion of the remedial work promptly carry out further commissioning of that portion.

## 32 WORKING HOURS

Subject to any contrary Legislative Requirement or Government Approval, The the working hours and working days during which the Contractor may carry out the work under the Contract shall be as stated in the Contract and if not so stated as notified by the Contractor to the Superintendent prior to commencement of work on Site and shall not be varied without the prior approval of the Superintendent except when in the interests of safety of the work under the Contract or to protect life or property the Contractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Contract. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Principal of work during times approved pursuant to the previous paragraph shall be borne by the Principal.

The Contractor agrees and acknowledges it has allowed in the Contract Sum for the cost of engaging labour during the working hours and working days during which the Contractor may carry out work under this Clause (including where the hours and days are outside the ordinary hours of work for the persons engaged in carrying out work under the Contract under any applicable industrial Legislative Requirement, enterprise bargaining agreement or other industrial agreement).

### 32A SUPERINTENDENT MAY DIRECT WORKING HOURS

- (a) Despite Clause 32, the Superintendent may at any time direct the Contractor as to different hours and days during which the Contractor must execute the work under the Contract and the Contractor shall not execute the work under the Contract outside those hours or days except in an emergency (in which case the Contractor shall notify the Superintendent in writing of the circumstances as early as possible).
- (b) The Superintendent's direction under this Clause 32A shall be taken to be a direction given under Clause 33.1A.

## 33 PROGRESS AND PROGRAMMING OF THE WORKS

### 33.1 Rate of Progress

The Contractor shall proceed with the work under the Contract with due expedition, ~~and~~ without delay and in accordance with any rate of progress specified in the Contract.

The Contractor shall not suspend the progress of the whole or any part of the work under the Contract except where the suspension is under Clause 44.9 or is directed or approved by the Superintendent under Clause 34.

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor requires any information, materials, documents or instructions (including any Energex Supplied Material) from the Superintendent or the Principal.

The Principal and the Superintendent shall not:

- (a) be obliged to furnish any other information, materials, documents or instructions or otherwise perform any obligation of earlier than the Principal or the Superintendent (including as to the provision of access to any part of the Site); and
- (b) be obliged to approve any construction program which provides for the furnishing of any other information, materials, documents or instructions or the performance of any obligation of the Principal or Superintendent (including as to the provision of access to any part of the Site).

earlier than or other than in accordance with the sequencing of activities the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender or as required by any construction program previously approved by the Superintendent for the purposes of the Contract.

The Contractor shall have no Claim arising from the Principal's or Superintendent's failure to furnish information, materials, documents or instructions or perform any obligation of the Principal or Superintendent earlier than the dates indicated in the last construction program approved by the Superintendent for the purposes of the Contract.

, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender.

### **33.1A Directions to Timing of Stages and Parts of Work**

The Superintendent may direct in what order and at what time the various stages or parts of the work under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall within 48 hours after receipt of the direction notify the Superintendent in writing, giving reasons.

Subject to this Clause 33.1A, if compliance with the direction (except those arising from or in connection with the Contractor's default) causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5.

Despite any other provision of this Clause 33.1A, if at any time the Superintendent gives the Contractor any direction or approval (written or otherwise) which constitutes or involves a direction under this Clause 33.1A (other than a direction or approval which the Superintendent has expressly acknowledged in writing constitutes or involves a direction under this Clause 33.1A), the Contractor must:

- (a) within 48 hours after receipt by the Contractor of the direction or approval, notify the Superintendent of the fact that the direction or approval constitutes or involves a direction under this Clause 33.1A;
- (b) unless the Superintendent requires otherwise, not give effect to the direction or approval within 48 hours after the Contractor has provided notification under paragraph (a); and
- (c) as soon as possible but in no case later than 7 days after receiving the direction or approval, advise the Superintendent in writing of:

- (i) the effect which the Contractor anticipates that the direction or approval will have on the construction program and time for Practical Completion; and
- (ii) an estimate of the cost increase or decrease (including delay costs, if any) arising from the direction or approval (in sufficient detail (including measurements and rates) to enable the Superintendent to assess the estimate).

failing which the Contractor shall not be entitled to any Claim as a result of the direction or approval constituted by or involved in the Superintendent's direction or approval.

### **33.2 Construction Program**

For the purposes of this Clause 33, a 'construction program' is a statement in writing showing the dates by which, or the times within which, the various stages or parts of the work under the Contract are to be executed or completed.

A construction program shall not affect rights or obligations in Clause 33.1.

~~The Contractor may voluntarily furnish to the Superintendent a construction program.~~

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

The Contractor shall not, without reasonable cause, depart from—

- (a) a construction program included in the Contract; or
- (b) a construction program furnished to the Superintendent,

(including but without limitation by achieving the dates by which, or the time within which the milestones set out in the Contractor's Program are to be carried out or completed so that the work comprised in the milestone is completed (including without limitation the provision of all Approvals necessary for use or occupation of that work)).

Departure by the Contractor from the approved construction program without reasonable cause shall constitute a substantial breach by the Contractor for the purpose of Clause 44.2.

The furnishing of a construction program or of a further construction program shall not relieve the Contractor of any obligations under the Contract including the obligation to not, without reasonable cause, depart from an earlier construction program.

Despite any other provision of this Clause 33:

- (a) any program prepared or provided by the Contractor shall not be used as a construction program for the purposes of this Clause 33.2 until it has been approved by the Superintendent;
- (b) the power of the Superintendent to require the Contractor to provide a construction program includes a power to require the provision of an updated construction program whenever the Superintendent requires, after any circumstances affecting the progress of the work under the Contract;
- (c) the construction program must show the anticipated dates for completion of any milestones set out in the Contract; and
- (d) the Contractor shall provide a construction program and any updated construction program at its own cost and expense.

### **33.3 Acceleration**

- (a) The Superintendent may at any time give the Contractor written notice of a proposed direction that the Contractor accelerate the progress of the work under the Contract so as to bring forward the Date for Practical Completion (or any other date by which the Contractor is obliged to achieve any milestone under the Contract) ('Acceleration Request').
- (b) Within 5 days of receipt of the Acceleration Request, the Contractor shall notify the Superintendent as to whether the Contractor can comply with the Acceleration Request, together with details of:
- (i) the effect on the Date for Practical Completion;
  - (ii) all costs to the Principal (including all time related costs) of the Contractor complying with the Acceleration Request;
  - (iii) any other issues requested by the Superintendent; and
  - (iv) if the Contractor cannot comply, written notice of the reasons, in sufficient detail to enable the Superintendent to properly assess the estimate.
- (c) The Superintendent may direct the Contractor to give a more detailed notification for the Acceleration Request by measurements or other evidence of cost.
- (d) Upon consideration of the information provided by the Contractor in response to an Acceleration Request, the Superintendent may direct the Contractor to accelerate the work under the Contract ('Acceleration Direction').
- (e) An Acceleration Direction given under this Clause 33.3 shall be taken to be a direction given under Clause 33.1A.
- (f) The giving by the Superintendent of, or the compliance by the Contractor with, an Acceleration Direction shall not prejudice the Principal's right to claim liquidated damages in accordance with the Contract.

### **33.4 Directions as to Progress**

- (a) If the Superintendent forms the view that progress of the work under the Contract is behind the rate of progress which the Superintendent reasonably determines is required to be met to ensure the requirements of the Contract are met, the Superintendent may direct the Contractor to take such action as the Superintendent considers necessary to make up any delay in the rate of progress (including engaging additional resources, including labour and Constructional Plant) and the Contractor shall comply with the direction and shall have no Claim arising from or in connection with the direction.
- (b) If the Contractor fails to comply with a direction under paragraph (a), the Principal may, without prejudice to any of its other rights or the Contractor's obligations under the Contract, engage the additional resources referred to in the direction as is necessary to make up any delay in the rate of progress and all costs, losses and expenses incurred by the Principal in doing so shall be a debt due and payable from the Contractor to the Principal.

## 34 SUSPENSION OF THE WORKS

### 34.1 Suspension by Superintendent

If the Superintendent considers that the suspension of the whole or part of the work under the Contract is necessary—

- (a) because of an act or omission of—
  - (i) the Principal, the Superintendent or an employee, consultant or agent of the Principal; or
  - (ii) the Contractor, a subcontractor or an employee or agent of either;
- (b) for the protection or safety of any person or property or to avoid or mitigate against the breach of any Work Health and Safety Requirements; or
- (c) to comply with an order of a court,

the Superintendent shall direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Superintendent thinks fit.

### 34.2 Suspension by Contractor

If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 44.9, the Contractor shall obtain the prior written approval of the Superintendent. The Superintendent may approve of the suspension and may impose conditions of approval. The Contractor shall not be entitled to an extension of time or any other Claim in connection with a suspension approved by the Superintendent under this Clause 34.

#### 34.2A Suspension for Convenience of Principal

Without limiting Clause 34.1, the Superintendent may also direct the Contractor to suspend the carrying out of the whole or part of the work under the Contract if required by the Principal in its absolute discretion, for such time as the Superintendent thinks fit.

### 34.3 Recommencement of Work

As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence work on the whole or on the relevant part of the work under the Contract.

If work is suspended pursuant to Clause 34.2 or 44.9, the Contractor may recommence work at any time after reasonable advance notice to the Superintendent.

### 34.4 Costs of Suspension

Any cost, expense, loss or damage (including delay and disruption costs) incurred by the Contractor by reason of any suspension under this Clause shall be borne by the Contractor but if:

- (a) the suspension is directed by the Superintendent or the Principal;
- (b) the suspension has been directed by the Superintendent or Principal for no other reason than:
  - (i) the convenience of the Principal (rather than the Principal being unable to perform its obligations (other than payment obligations) under the Contract as a

result of any matter beyond the reasonable control of the Principal including without limitation:

(A) acts of God, lightening strikes, earthquakes, floods, droughts, storms, mudslides, explosions, fires, epidemics or other natural disasters;

(B) acts of war, acts of public enemies, riots, civil commotions, malicious damage, invasions, sabotage, blockades and revolution;

(C) action or inaction by any government department, regulatory body, instrumentality, minister, agency or other authority;

(D) strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing;

(E) mechanical or electrical breakdown or failure of equipment caused by any of the events referred to in paragraphs (A) to (D) above; and

(F) the failure of a third party supplier to supply goods, works, services or utilities;

(ii) an act or omission of the Principal, the Superintendent or an employee, consultant or agent of the Principal; and

(c) the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension; and

(d) the Contractor has taken all reasonable steps to mitigate the effects of the delay (including without limitation deploying its employees, subcontractors and Constructional Plant during the period of suspension),

the difference in cost shall be valued under Clause 40.5.

~~Any cost incurred by the Contractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Contractor but if the suspension is due to an act or omission of the Principal, the Superintendent or an employee, consultant or agent of the Principal and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.~~

### **34.5 Effect of Suspension**

Suspension shall not affect the Date for Practical Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

## **35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION**

### **35.1 Time for Commencement of Work on the Site**

The Contractor shall give the Superintendent 7 days' notice of the date upon which the Contractor proposes to commence work on the Site.

The Superintendent may reduce the period of notice required.

The Contractor shall commence work on the Site within 14 days after the Principal has given the Contractor possession of sufficient of the Site to enable the Contractor to commence work.

The Superintendent may extend the time for commencement of work on the Site.

### 35.2 Time for Practical Completion

The Contractor shall execute the work under the Contract to Practical Completion by the Date for Practical Completion.

Upon the Date of Practical Completion the Contractor shall give possession of the Site and the Works to the Principal.

### 35.3 Separable Portions

The interpretations of—

- (a) Date for Practical Completion;
- (b) Date of Practical Completion;
- (c) Practical Completion,

and Clauses 5.2, and 5.5, 5-7 (if applicable), 5.8, 8.8, 8.9, 16, 35, 37, 38, 42.3 and 42.5 shall apply separately to each Separable Portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion.

If the Contract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Contract as the value of the Separable Portion bears to the value of the whole of the work under the Contract.

#### 35.3A Additional Separable Portions Provisions

Despite any other provision of the Contract:

- (a) the Contractor's entitlement to a reduction in security held by the Principal upon the issue of the Certificate of Practical Completion shall apply only upon the issue of the Certificate of Practical Completion applying to the last Separable Portion to reach Practical Completion; and
- (b) the Principal may in accordance with the Contract have recourse to security provided in respect of any Separable Portion whether or not the Principal's entitlement to have recourse to security arises in relation to that particular Separable Portion or any other Separable Portion.

### 35.4 Use of ~~Partly Completed Works~~ Separable Portions

If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of Separable Portions, the Superintendent may determine that the respective parts shall be Separable Portions.

In using the Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the work under the Contract.

#### 35.4A Use of Partly Completed Works

The Contractor agrees:

- (a) the Principal may use or occupy any part of the Works (whether or not a Separable Portion) prior to Practical Completion being achieved in respect of that part of the

Works but in doing so shall not hinder the Contractor in the performance of the work under the Contract; and

- (b) despite any other provision of the Contract, such use or occupation by the Principal shall not:
- (i) constitute Practical Completion of that part of the Works having been achieved;
  - (ii) constitute approval of any work or other matter; or
  - (iii) prejudice any claim or right of the Principal under or in connection with the Contract.

### **35.5 Extension of Time for Practical Completion**

For the purposes of this Clause:

'Industrial Dispute' means any national or statewide industrial dispute directly affecting work under the Contract or the Site which is not caused or contributed to by any act or omission of the Contractor, or any person for whom the Contractor is responsible (including a subcontractor), nor originating from or specific to the Site; and

'Inclement Weather' means inclement weather or the effects of inclement weather at, or in the vicinity of, the Site directly affecting work under the Contract on the Site which is not, in respect of the effects of inclement weather, caused or contributed to by any act or omission of the Contractor, or any person for whom the Contractor is responsible (including a subcontractor) or reasonably capable of being avoided by the Contractor (including by varying the sequencing of the work under the Contract).

When it becomes evident to the Contractor that anything, including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall promptly notify the Superintendent in writing with details of the possible delay and the cause.

When it becomes evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall give notice to the Superintendent who shall notify the Contractor in writing of the extent of the likely delay.

If the Contractor is or will be delayed in reaching Practical Completion by a cause described in the next paragraph and within ~~28~~<sup>14</sup> days after the delay ~~occurs~~<sup>commences</sup> the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based, the Contractor shall be entitled to an extension of time for Practical Completion.

The causes are—

- (a) the following events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor~~including but not limited to—~~
- (i) ~~Industrial conditions~~Disputes; and
  - (ii) ~~inclement~~Inclement weatherWeather;
- (b) any of the following events whether occurring before, on or after the Date for Practical Completion which are beyond the reasonable control of the Contractor—
- (i) delays caused by—
    - (A) the Principal;
    - (B) the Superintendent;



(C) the Principal's employees, consultants, other contractors or agents (other than Separate Contractors);

(D) subject to Clause 27.2A, an act or omission of a Separate Contractor (except to the extent the delay is caused or contributed to by any act, breach or omission of the Contractor),

which is not specifically referred to in any other sub-paragraph of this paragraph (b).

(ii) actual quantities of work being greater than the quantities in the Contract Bill of Quantities or the quantities determined by reference to the upper limit of accuracy stated in the Annexure (otherwise than by reason of a variation directed under Clause 40);

~~(iii) latent-Latent conditions~~Conditions (excluding Accepted Latent Conditions);

(iv) variations directed under Clause 40;

~~(v) repudiation or abandonment by a Nominated Subcontractor;~~

~~(vi)(v) a changes in the law~~Legislative Requirements (which occurs after the Date of Acceptance of Tender and could not have been anticipated by an experienced and competent contractor);

~~(vii)(vi) directions by a municipal, public or statutory authorities but not where the direction arose from the failure of the Contractor to comply with a requirement referred to in Clause 14.1~~Legislative Requirement or any act, breach or omission of the Contractor, which could not have been anticipated by an experienced and competent contractor;

~~(viii)(vii) delays by municipal, public or statutory authorities not caused by the Contractor which could not have been anticipated by an experienced and competent contractor;~~

~~(ix)(viii) Claims referred to in Clause 17.1(v);~~

~~(x)(ix) any breach of the Contract by the Principal; and~~

(x) any other cause which is expressly stated in the Contract to be a cause for extension of time for Practical Completion,

~~(xi) but excluding any cause in respect of which the Contract provides that the Contractor is not entitled to an extension of time.~~

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in the preceding paragraph, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to—

- whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time;
- whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

With any claim for an extension of time for Practical Completion given after the delay has ended, or otherwise as soon as practicable thereafter within 14 days after the end of a delay the subject of a previous claim for an extension of time for Practical Completion, the

Contractor shall give the Superintendent written notice of the number of days extension claimed and shall set out in detail the facts upon which the claim is based.

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 28 days after receipt of the notice of the number of days extension claimed, grant a reasonable extension of time. If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent shall before the expiration of the 28 days give the Contractor notice in writing of the reason.

~~In determining a reasonable extension of time for an event causing delay, the Superintendent shall have regard to whether not allow any extension of time to the extent the Contractor has not taken all reasonable steps to preclude the occurrence of the cause and minimise the extent and the consequences of the delay.~~

~~Notwithstanding that the Contractor is not entitled to an extension of time the Superintendent may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason.~~

The Superintendent may, at its absolute discretion, have regard to the latest approved construction program in determining whether to grant an extension of time.

A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 28 days shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Contractor to damages.

During the period of any cause of delay which under this Clause 35.5 would entitle the Contractor to claim an extension of time for Practical Completion, the Contractor shall make accurate and adequate written records of the delay and the effect of the delay on the work under the Contract, in a form satisfactory to the Superintendent ('Record of Delay').

The Contractor shall retain the Record of Delay unless otherwise directed by the Superintendent.

The Contractor shall provide a copy of the Record of Delay to the Superintendent at its request and the Superintendent may, in its absolute discretion, have regard to the Record of Delay in assessing any claim by the Contractor under this Clause 35.5 for an extension of time to the extent the Superintendent considers reasonable.

### **35.5A Other Extension by Superintendent**

Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, the Superintendent may, if requested by the Principal, at any time and from time to time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason but the Principal will not in any circumstances be obliged to request the Superintendent to do so.

### **35.5B Conditions Precedent to Extension of Time Claims**

Despite Clause 35.5 the Contractor shall not be entitled to an extension of time to the Date for Practical Completion or any other Claim unless it has:

- (a) complied strictly with Clause 35.5 (including without limitation) given all the notices required by Clause 35.5 in the forms and within the time periods specified in Clause 35.5; and
- (b) with or before the giving of its notice of the number of days extension claimed, demonstrated to the satisfaction of the Superintendent that the delay has affected the

Contractor's current critical path for work under the Contract (including without limitation demonstrating that the critical path of the latest approved construction program is affected).

### **35.5C Reduction of Time for Practical Completion**

Where any direction given or approved by the Superintendent (including any variation or Acceleration Direction) has the effect of reducing the amount of time required by the Contractor to achieve Practical Completion, the Superintendent may give to the Contractor and the Principal a written direction bringing forward the Date for Practical Completion by a reasonable period.

### **35.6 Liquidated Damages for Delay in Reaching Practical Completion**

If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in the Annexure for every day after the Date for Practical Completion to and including the Date of Practical Completion or the date that the Contract is terminated under Clause 44, whichever first occurs.

The Superintendent when issuing a certificate pursuant to Clause 42.1 after the Date for Practical Completion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing to the date of the Superintendent's certificate (despite Practical Completion not having occurred).

If after the Contractor has paid or the Principal has deducted liquidated damages, the time for Practical Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period up to and including the new Date for Practical Completion.

### \* **35.7 Limit on Liquidated Damages**

The Contractor's liability under Clause 35.6 is limited to the amount (if any) stated in the Annexure.

### \* **35.8 Bonus for Early Practical Completion**

If the Date of Practical Completion is earlier than the Date for Practical Completion the Principal shall pay the Contractor the bonus stated in the Annexure for every day after the Date of Practical Completion to and including the Date for Practical Completion.

The total of the bonus shall not exceed the limit stated in the Annexure.

### **35.9 Milestones**

(a) The Contractor must achieve the Milestones set out in the Annexure by the corresponding Milestone Date also set out in the Annexure (as extended or brought forward in accordance with this Clause 35.9).

(b) Clauses 35.2, 35.5, 35.5A, 35.5B, 35.5C and 35.6 and the definition of 'Claim' in Clause 2 shall apply separately to the Milestones and Milestone Dates for the Milestones as follows:

(i) references to 'Practical Completion' shall be taken to include reference to the achievement of a Milestone;

(ii) references to the 'Date for Practical Completion' shall be taken to include reference to the Milestone Dates for the Milestones;

(iii) the rate of liquidated damages applying to the Contractor's failure to achieve a Milestone by the Milestone Date for that Milestone shall be the rate of liquidated damages set out in the Annexure corresponding to that Milestone; and

(iv) the Contractor shall not be liable to the Principal for liquidated damages resulting from the Contractor's failure to achieve Practical Completion to the extent of the liquidated damages for which the Contractor has already become liable for that same period in respect of a Milestone.

### 36 DELAY OR DISRUPTION COSTS

Where the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5 (b)(i) or (ix), the Principal shall pay to the Contractor such extra direct costs as are necessarily incurred by the Contractor by reason of the delay valued by the Superintendent under Clause 40.5.

Where the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay or disruption is provided for in the Annexure or elsewhere in the Contract, the Principal shall pay to the Contractor such extra direct costs as are necessarily incurred by the Contractor by reason of the delay valued by the Superintendent under Clause 40.5.

The Contractor shall not be entitled to any Claim (including valuation) for any delay or disruption costs which:

~~Nothing in Clause 36 shall—~~

(a) could have been reasonably avoided by the Contractor;

~~(a)(b) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract; or~~

~~(b)(c) limit the Principal's liability for damages for breach of contract exceed the maximum daily rates set out in the Annexure which will operate as a maximum aggregate limit on delay or disruption costs which the Contractor may claim in respect of any day on which the Contractor is delayed (whether or not that delay gives rise to an extension of one or more Dates for Practical Completion).~~

Except to the extent expressly set out in this Clause 36, the Contractor shall not be entitled to claim any costs, expenses, damages or other amounts resulting from any delay or disruption arising from any cause (including without limitation breach by the Principal).

### 37 DEFECTS LIABILITY

The Defects Liability Period stated in the Annexure shall commence on the Date of Practical Completion.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the work under the Contract existing at Practical Completion.

At any time prior to the 14th day after the expiration of the Defects Liability Period, the Superintendent may direct the Contractor to rectify any omission or defect in the work under the Contract existing at the Date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence. The direction may provide that in respect of the work of rectification there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in the

Annexure. The separate Defects Liability Period shall commence on the date the Contractor completes the work of rectification. This Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification.

If the work of rectification is not commenced or completed by the stated dates, the Principal may have the work of rectification carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.

If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible and at times agreed by the occupants and users of the Works in their absolute discretion. The Superintendent may notify the Contractor of the times when the rectification work may be carried out and the Contractor must carry out the rectification work within those times nominated by the Superintendent.

### **37A OTHER RIGHTS PRESERVED**

Nothing in this Clause 37A shall prejudice the right of the Principal to recover damages (including costs incurred in rectifying any default at any time) arising from or in connection with any default (whether or not the Superintendent has given any direction to the Contractor requiring the rectification of the default).

### **38 CLEANING UP**

The Contractor shall keep the Site and the work clean and tidy. The Contractor shall regularly remove rubbish and surplus material.

~~Within 14 days after the Date of~~ Subject to the following paragraph, prior to Practical Completion being achieved the Contractor shall remove Temporary Works and Constructional Plant.

The Superintendent may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.

Notwithstanding the provisions of Clause 44, if the Contractor fails to comply with any obligation imposed on the Contractor by this Clause 38, the Superintendent may, after the Superintendent has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to any other right.

### **39 URGENT PROTECTION**

If urgent action is necessary to protect the work under the Contract, other property or people and the Contractor ~~fails to~~ does not take the action for any reason (including the suspension of work under the Contract), the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal shall be a debt due from the Contractor.

If time permits, the Superintendent shall give the Contractor prior written notice of the Principal's intention to take action under this Clause 39.

This Clause 39 also applies if urgent action is necessary or considered desirable by the Superintendent to ensure that:

- (a) the use or operation of the Site, land in the vicinity of the Site or any Existing Improvements is not interfered with or otherwise adversely affect; or
- (b) any actual or threatened harm or damage to the environment is avoided or minimised.

## 40 VARIATIONS

### 40.1 Variations to the Work

The Superintendent may direct the Contractor to—

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the work under the Contract;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by the Principal.

The Contractor shall not vary the work under the Contract except as directed by the Superintendent or approved in writing by the Superintendent under this Clause 40.

The Contractor is bound only to execute a variation which is within the general scope of the Contract.

The Contractor shall not be bound to execute a variation directed after Practical Completion unless the variation is in respect of rectification work referred to in Clause 37.

If the Superintendent directs the Contractor to omit any part of the work under the Contract, the Principal may in its absolute discretion and at any time carry out itself, or engage any other contractor to carry out, any part of the omitted work.

#### 40.1A Notification of Variations

Despite any other provision of the Contract, if at any time the Superintendent gives the Contractor any direction or approval (written or otherwise) which constitutes or involves a variation to the work under the Contract (other than a direction or approval which the Superintendent has expressly acknowledged in writing constitutes or involves a variation of the work under the Contract), the Contractor must:

- (a) within 48 hours after receipt by the Contractor of the direction or approval, notify the Superintendent of the fact that the direction or approval constitutes or involves a variation to the work under the Contract;
- (b) unless the Superintendent requires otherwise, not give effect to the direction or approval within 48 hours after the Contractor has provided notification under paragraph (a); and
- (c) as soon as possible but in no case later than 7 days after receiving the direction or approval, advise the Superintendent in writing of:
  - (i) the effect which the Contractor anticipates that the variation will have on the construction program and time for Practical Completion; and
  - (ii) an estimate of the cost increase or decrease (including delay costs, if any) arising from the variation (in sufficient detail (including measurements and rates) to enable the Superintendent to assess the estimate).

failing which the Contractor shall not be entitled to any Claim as a result of the variation constituted by or involved in the Superintendent's direction or approval.

The Principal shall reimburse the Contractor for the reasonable costs incurred by it in complying with the requirements of paragraph (c) of this Clause 40.1A to the extent the Superintendent has accepted the Contractor's estimates under paragraph (c).

#### **40.1B No Variation**

Despite any other provision of the Contract, the Contractor shall not be entitled to any Claim, if a variation results from:

- (a) a defect in the work under the Contract;
- (b) work under the Contract not in accordance with the Contract;
- (c) the Contractor otherwise being in breach of the Contract;
- (d) a request by the Contractor for a variation for its own convenience or to enable the Contractor to comply with its obligations under the Contract;
- (e) any negligent or wilful act or omission of the Contractor, a subcontractor or their respective employees, contractors or agents; or
- (f) the Contractor performing work required for the normal safe working of the work under the Contract or the protection of the work under the Contract, the Works or the Existing Improvements.

#### **40.2 Proposed Variations**

~~Upon receipt~~ Within 7 days of a notice in writing from the Superintendent advising the Contractor of a proposed variation under Clause 40, the Contractor shall advise the Superintendent whether the proposed variation can be effected. If the variation can be effected, the Contractor shall within 7 days of the Superintendent's notification in the first sentence of this Clause—

- (a) advise the Superintendent of the effect which the Contractor anticipates that the variation will have on the construction program and time for Practical Completion; and
- (b) provide an estimate of the cost (including delay costs, if any) of the proposed variation.

The Principal shall reimburse the Contractor for the reasonable costs of complying with the requirements of this Clause 40.2.

#### **40.2A Work Inconsistent with Proposed Variations**

Where the Superintendent or Principal at any time notifies the Contractor in writing of a possible requirement for:

- (a) a variation to the work under the Contract or Works ('Possible Variation'); or
- (b) the Principal to preserve the option to elect between alternatives for the work under the Contract or Works ('Available Alternatives'),

the Contractor shall notify the Principal in writing before giving effect to any work under the Contract which may impact on the cost to the Principal of giving effect to the Possible Variation or any of the Available Alternatives, failing which the Contractor shall have no Claim in respect of any additional costs arising from the Contractor's breach.

### 40.3 Pricing the Variation

Unless the Superintendent and the Contractor agree upon the price for a variation, the variation directed or approved by the Superintendent under Clause 40.1 shall be valued under Clause 40.5.

The Superintendent may direct the Contractor to provide, at the Contractor's cost, a detailed quotation for the work of a variation supported by measurements or other evidence of cost.

### 40.4 Variations for the Convenience of the Contractor

If the Contractor requests the Superintendent to approve a variation for the convenience of the Contractor, the Superintendent may do so in writing. The approval may be conditional.

Unless the Superintendent otherwise directs in the notice approving the variation, the Contractor shall not be entitled to—

- (a) an extension of time for Practical Completion; or
- (b) extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

The Superintendent shall not be obliged to approve a variation for the convenience of the Contractor.

Where a variation is proposed by the Contractor, the Contractor shall pay the Principal's reasonable costs (including consultant's fees) in assessing the acceptability to the Principal of the proposed variation.

### 40.5 Valuation

Where the Contract provides that a valuation shall be made under this Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal as the case may require, an amount ascertained by the Superintendent as follows—

- (a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in a Priced Contract Bill of Quantities or Contract Schedule of Rates or Pricing Reference Document shall be used to the extent that it is reasonable to use them having regard only to the extent to which the work under the Contract being valued is similar to the work under the Contract to which the rates or prices are stated to apply in the Priced Contract Bill of Quantities, Contract Schedule of Rates or Pricing Reference Document;
- (c) to the extent that neither Clause 40.5(a) or 40.5(b) apply, reasonable rates or prices shall be used in any valuation made by the Superintendent; and
- ~~(d) in determining the deduction to be made for work which is taken out of the Contract, the deduction shall include a reasonable amount for profit and overheads to the extent that neither Clause 40.5(a), (b) nor (c) applies, as Daywork valued in accordance with Clause 41; ÷~~
- ~~(e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.3, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit;~~



- ~~(f) if the valuation relates to extra costs incurred by the Contractor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit;~~
- ~~(g) if Clause 11(b) applies, the percentage referred to in Clause 11(b) shall be used for valuing the Contractor's profit and attendance; and~~
- ~~(h) daywork shall be valued in accordance with Clause 41.~~

For the purposes of a valuation to be made in accordance with Clause 40.5(a), (b) or (c):

(i) in determining the deduction to be made for work which is deleted or omitted from the Contract, the deduction shall include an amount calculated by applying the Deduction Percentage specified in the Annexure to the value of the work taken out of the Contract (excluding any Non-Profit Items) which shall be taken to cover the Contractor's profit, attendance and on-Site and off-Site overheads;

(ii) if the valuation relates to additional work to be carried out by the Contractor, the valuation shall include an amount calculated by applying the Addition Percentage specified in the Annexure to the value of additional work (excluding any Non-Profit Items) which shall be taken to cover the Contractor's profit, attendance and on-Site and off-Site overheads; and

Where the valuation relates to an event in respect of which the Contract expressly permits the Contractor to claim extra costs incurred by the Contractor for delay or disruption, the valuation shall:

(A) include a reasonable amount for overhead but shall not include profit or loss of profit; and

(B) not allow the Contractor any delay or disruption costs to the extent that:

(1) the Contractor is not entitled to an extension of time for the event giving rise to the delay or disruption;

(2) the Contractor could reasonably have avoided the delay or disruption costs; or

(3) the amounts exceed the maximum daily rates for delay or disruption costs set out in the Annexure.

(iii) if Clause 11(b) or (c) applies, paragraph (i) and (ii) of this Clause 40.5 will not apply and the percentage referred to in Clause 11(b) or (c) respectively shall be used for valuing the Contractor's profit, attendance and on-Site and off-Site overheads;

(iv) despite other provisions of this Clause if Clause 40.5(c) applies and the pricing relates to work which is carried out by a subcontractor, the value of the additional work is to be the lesser of:

(A) the reasonable cost claimed by the subcontractor for the work (excluding GST) plus the Addition Percentage; or

(B) the value otherwise determined in accordance with this Clause.

(v) the valuation shall not include any profit, attendance or on-Site or off-Site overhead except to the extent provided in paragraphs (i), (ii), (iii) and (iv) above; and

(vi) in applying or determining whether to apply rates or prices pursuant to paragraphs (a), (b) or (c) of this Clause 40.5, the Superintendent shall have no regard to decreases or increases in market rates or prices since the Date of Acceptance of Tender.

(+) When under Clause 40.3 the Superintendent directs the Contractor to support a variation with measurements and other evidence of cost, the Superintendent shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

#### 41 DAYWORK

The Superintendent may direct that quantities greater than those determined by reference to the upper limit of accuracy referred to in Clause 3.3 or variations directed by the Superintendent under this Clause 40.1 shall be carried out as Daywork. The Contractor shall thereafter each day record particulars of all resources used by the Contractor for the execution of the Daywork and each day furnish to the Superintendent the particulars and copies of time sheets, wages sheets, invoices, receipts and other documents evidencing the cost of the Daywork. The Superintendent may direct the manner in which matters are to be recorded.

In determining the value of Daywork, where the Contract does not include rates for Daywork, regard shall be had to—

- (a) the amount of wages and allowances paid or payable by the Contractor at the rates ~~obtaining~~ applying on the Site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(a);
- (c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed between the Superintendent and the Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Superintendent;
- (d) the amounts paid for services, subcontracts and professional fees;
- (e) the actual cost to the Contractor at the Site of all materials supplied and required for the work; and
- (f) the charge stated in the Annexure or, if no charge is stated, a charge agreed between the Superintendent and the Contractor to cover on-Site and off-Site overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Superintendent (except to the extent that amounts covered by that charge are included in amounts applied under paragraphs (a) to (c) of this Clause 41 or any other rates applied to the valuation of Daywork by the Superintendent).

Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

## 42 CERTIFICATES AND PAYMENTS

### 42.1 Payment Claims, Certificates, Calculations and Time for Payment

Subject to Clauses 42.1A and 42.1B. At at the times for payment claims stated in the Annexure which occur prior to the issue of a Certificate of Practical Completion and upon issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor shall deliver to the Superintendent claims for payment supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require. Claims for payment shall be in any form required by the Superintendent include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach thereof.

If the Contractor submits a payment claim before the time for lodgment of that payment claim such early lodgment shall not require the Superintendent to issue the payment certificate in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.

Within 14-10 business days after receipt of a claim for payment, the Superintendent shall assess the payment claim and issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the opinion of the Superintendent, is to be made by the Principal to the Contractor or by the Contractor to the Principal. The Superintendent shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference. The Superintendent shall allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal (arising from any circumstances arising prior to the date of the certificate) arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract also set out, as applicable, in any payment certificate issued pursuant to this Clause 42, the allowances made for:

- (a) the value of work carried out by the Contractor in the performance of the Contract to the date of the claim; and
- (b) amounts otherwise due from:
  - (i) the Principal to the Contractor and/or due from the Contractor to the Principal; and
  - (ii) the Contractor to the Principal arising from any circumstances arising prior to the date of the certificate arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract.

If the Contractor fails to make a claim for payment under this Clause 42.1, the Superintendent may nevertheless issue a payment certificate and the Principal or the Contractor, as the case may be, shall pay the amount so certified within 14 days of that Certificate.

Subject to the provisions of the Contract, within 28-15 business days after receipt by the Superintendent of a claim for payment (or within 14-5 business days of issue by the Superintendent of the Superintendent's payment certificate, whichever is the earlier), the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case

may be, an amount not less than the amount shown in the Certificate as due to the Contractor or to the Principal as the case may be, or if no payment certificate has been issued, the Principal shall pay, subject to Clause 42.1D, the amount of the Contractor's claim. A payment made pursuant to this Clause shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys (including without limitation in respect of any variations) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.

Notwithstanding Clause 42.4, the Principal shall be obliged to pay for any item of unfixed plant and materials where that item is—

- (a) to be imported into Australia, provided the Contractor has given the Principal a clean on board bill of lading or its equivalent, drawn or endorsed to the order of the Principal and, where appropriate, a custom's invoice for the item and also an unconditional bank undertaking in a form acceptable to the Principal for the full value of the item of unfixed plant or materials; or
- (b) listed in the Annexure and which is not an item to be imported into Australia, provided the Contractor establishes to the satisfaction of the Superintendent that the Contractor has paid for the item, and the item is properly stored, labelled the property of the Principal and adequately protected and insured in the name of the Principal.

Upon payment to the Contractor of the amount which includes the value of the item, the item shall be the property of the Principal free of any lien or charge.

Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

#### **42.1A Further Conditions for Payments Claims, Certificates, Calculations and Time for Payment**

In addition to the provisions of Clause 42.1:

- (a) if the time for:
  - (i) delivery of any payment claim; or
  - (ii) payment of any payment claim,under Clause 42.1 is expressed in calendar days and falls due on a Saturday, Sunday or public holiday, the claim may be delivered or the payment made on the next date which is not a Saturday, Sunday or public holiday;
- (b) subject to Clause 42.1B, the Contractor shall not be entitled to submit payment claims more frequently or, at any time, earlier than at the times specified in the Contract;
- (c) it shall be a precondition to the Contractor's entitlement to submit any claim for payment under the Contract that the Contractor has provided to the Superintendent, if so requested by the Superintendent, a monthly report containing the following information:
  - (i) daily summary of subcontractors and any other third party on Site;

- (ii) detailed status of work against program;
  - (iii) changes in sequence of activities;
  - (iv) analysis of delay against critical activities and any extension of time that the Contractor has, at the date of submitting its claim, been awarded;
  - (v) changes in duration of times of activities;
  - (vi) extension of time Claims;
  - (vii) description of matters adversely affecting execution of the work under the Contract;
  - (viii) details of preventative or remedial action proposed or implemented;
  - (ix) variation status – pending and approved;
  - (x) summary of Claims and payments;
  - (xi) details of any quality non-conformance;
  - (xii) environment issues and corrective action;
  - (xiii) details of injuries and accidents; and
  - (xiv) details and evidence of superannuation and redundancy arrangements or provisions;
- (d) if, at any time prior to the date on which the Contractor is otherwise entitled to submit its payment claim, the Contract requires or the Superintendent has directed the Contractor to deliver certain material or information in support of its payment claim, then the Contractor submitting that material or information is a precondition to the Contractor becoming entitled to submit its payment claim;
- (e) the amount to be allowed by the Superintendent in any payment certificate under Clause 42.1, 42.8 or a certificate under Clause 44.6 as the amount due to the Contractor arising out of or in connection with the Contract shall be calculated in accordance with provisions of the Contract (including Clause 42.1C).

#### **42.1B Dates for Payment Claims**

- (a) The Contractor shall only be entitled to make a claim for a progress payment from each date stated in or worked out under the Contract (including paragraph (b)).
- (b) Despite any other provision of the Contract, where the Contract provides that a progress payment may not be claimed until the satisfaction of any condition or occurrence of any event ('Claim Precondition'), then the only date from which the Contractor shall be entitled to make a claim for that progress payment shall be the later of:
- (i) the date of satisfaction of the last Claim Precondition to be satisfied; and
  - (ii) the date after which that progress payment can otherwise be claimed.

#### **42.1C Calculation of Progress Payments**

Despite any other provision of the Contract, in calculating any progress payment to which the Contractor is entitled to in relation to the Contract:

- (a) the value of any work under the Contract relevant to the progress payment must:

- (i) be determined having regard to the Contract Sum (with additions or deductions provided for by the Contract);
  - (ii) include a deduction equal to the greater of:
    - (A) the diminution in value of work under the Contract resulting from; and
    - (B) the estimated cost of rectifying in accordance with the Contract, any omitted or defective work under the Contract;
  - (iii) exclude the value of any unfixed plant or materials (unless the Contract expressly provides for payment for the unfixed plant or materials and the Contractor has fully satisfied those requirements which the Contract provides are to be fulfilled before the Principal is required to pay for those items); and
  - (iv) not include any amount in respect of which the Contractor has failed to provide supporting material or information as required by the Contract;
- (b) the following amounts must not be included:
- (i) any amount which the Contract provides cannot be claimed or is not payable because of the failure by the Contractor to take any action (including to give any notice to the Principal or Superintendent);
  - (ii) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
  - (iii) any amount which the Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied; or
  - (iv) any amount in respect of which the obligation of the Principal to make payment has been suspended under the Contract;
- (c) the following amounts must be deducted:
- (i) any amounts which:
    - (A) have become due from the Contractor to the Principal under the Contract;
    - (B) have been claimed by the Principal (acting bona fide) under or in connection with the Contract at any time;
    - (C) the Principal is entitled under the Contract to set off against the progress payment; or
    - (D) are estimated to be amounts likely to become due from the Contractor to the Principal under or in connection with the Contract as a result of any act or omission of the Contractor (including breach of the Contract); or
  - (ii) any amounts which the Principal is entitled under the Contract to withhold, deduct or retain from the progress payment; and
- (d) in determining amounts to be excluded or deducted under paragraphs (b) and (c), regard must be had to matters or circumstances occurring at any time before the date that the determination is being made.

#### **42.1D Failure to Issue Payment Certificate**

Despite any other provision of the Contract:

- (a) the Superintendent may issue a payment certificate at any time after the time allowed in Clause 42.1 but before the date that payment of the progress payment becomes due; and
- (b) if a payment certificate has not been issued by the date that payment of the progress payment becomes due, the Principal shall be obliged to pay the amount it determines, acting in good faith is payable under the Contract.

#### **42.2 ~~Correction of Additional~~ Payment Certificates**

At any time and from time to time, the Superintendent may issue a payment certificate (including without limitation for the purposes of ~~by a further certificate correcting any error which has been discovered in any previous certificate~~), other than a Certificate of Practical Completion or Final Certificate whether or not at a time otherwise provided for the issuing of certificates under the Contract and the Principal or Contractor, as the case may be, shall pay the amount so certified within 14 days of the issue of the payment certificate.

#### **42.2A Ownership of Plant and Materials**

The Contractor:

- (a) warrants and agrees that ownership of and property in any plant or materials incorporated or to be incorporated in the Works or forming part of the Works shall pass to the Principal upon any payment being made to the Contractor in respect of that plant or materials; and
- (b) subject to and without derogating from the obligations of the Contractor under Clause 42.4, shall provide such evidence as the Superintendent requires to establish that ownership of such plant or materials has passed to the Principal before the Contractor is entitled to claim any payment in respect of such plant or materials.

#### **42.3 Retention Moneys**

The Principal may deduct from moneys otherwise due to the Contractor amounts up to the limit of the percentages, if any, stated in the Annexure of so much of the value of the respective items stated in the Annexure as is included in the calculation of a payment.

#### **42.4 Unfixed Plant and Materials**

##### *Alternative 1*

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, the Principal shall not be obliged to make payment for the plant or materials unless the Contractor provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials.

##### *Alternative 2*

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not incorporated the Principal shall not be obliged to make payment for such plant or materials but the Principal may make payment, if the Contractor establishes to the satisfaction of the Superintendent that—

- (a) such plant or materials have reasonably but not prematurely been delivered to ~~or adjacent to the Site;~~

- (b) ownership of such plant and materials will pass to the Principal upon the making of the payment claimed; and
- (c) such plant or materials are properly stored, labelled the property of the Principal and adequately protected and insured in the name of the Principal.

Upon payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Principal free of any lien or charge.

*Alternative 3*

The Contractor shall not be entitled to make any claim for payment or receive any payment for plant or materials not incorporated in the Works.

#### **42.5 Certificate of Practical Completion**

The Contractor shall give the Principal and Superintendent written notice of the date which is the Contractor's best estimate of the date that Practical Completion will be reached, within 7 days of the Principal or Superintendent requesting such notice at any time.

The Contractor shall give the Superintendent at least 14 days notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Superintendent to issue a Certificate of Practical Completion. Within 14 days of the receipt of the request, the Superintendent shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

When the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion whether or not the Contractor has made a request for its issue.

#### **42.6 Effect of Certificates**

The issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Principal or the Contractor.

#### **42.7 Final Payment Claim**

Within 28 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire and the rectification (to the satisfaction of the Superintendent) of all defects including those defects notified to the Contractor in accordance with Clause 37, the Contractor shall lodge with the Superintendent a final payment claim and endorse it 'Final Payment Claim'.

The Contractor shall include in that claim all moneys which the Contractor considers to be due from the Principal under or arising out of the Contract or any alleged breach thereof.

After the expiration of the period for lodging a Final Payment Claim, any claim which the Contractor could have made against the Principal and has not been made shall be barred.

#### **42.8 Final Certificate**

Within ~~14~~5 business days after receipt of the Contractor's Final Payment Claim or, where the Contractor fails to lodge such claim, the expiration of the period specified in Clause 42.7 for the lodgement of the Final Payment Claim by the Contractor, the Superintendent



shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate'. In the certificate the Superintendent shall certify the amount which in the Superintendent's opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.

Unless either party, either before the Final Certificate has been issued or not later than 15 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of—

- (a) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

Within 14 days after the issue of a Final Certificate which certifies a balance owing by the Principal to the Contractor, the Principal shall release to the Contractor any retention moneys or security then held by the Principal.

#### **42.8A Principal's Further Claims**

Despite Clause 42.8, the Final Certificate shall not in any proceedings be evidence of:

- (a) the Works having been completed in accordance with the Contract; or
- (b) any other matter or thing relating to an obligation of the Contractor, to the extent that the Principal did not have actual knowledge of the Works not having been so completed or the other matter or thing at the time the Final Certificate was issued (whether or not the Superintendent had such knowledge).

#### **42.9 Interest on Overdue Payments**

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in the Annexure and if no rate is stated the rate shall be 18 percent per annum. Interest shall be compounded at six monthly intervals.

Subject to any contrary Legislative Requirement, despite any other provision of the Contract, interest shall only accrue on moneys payable by the Principal and the Principal shall only be taken to be in default in payment after the Contractor has given the Principal notice in writing that payment is overdue and the Contractor intends to charge interest if payment is further delayed, and the Principal has continued in default in payment for 7 days after receipt by the Principal of that notice.

#### **42.10 Set Offs by the Principal**

The Principal may deduct from moneys due to the Contractor any money due from the Contractor to the Principal otherwise than under the Contract and if those moneys are insufficient, the Principal may, subject to Clause 5.5, have recourse to retention moneys and, if they are insufficient, then to security under the Contract.

##### **42.10A Additional Set Offs by the Principal**

In addition to the Principal's other rights (including without limitation under Clause 42.10) and despite any certificate by the Superintendent under Clauses 42.1, 42.5 or 42.8, the Principal may deduct from moneys due to the Contractor any moneys claimed by the Principal from the Contractor or payable by the Contractor to the Principal under or in connection with the Contract (including without limitation amounts claimed as unliquidated damages).

#### **42.11 Recourse for Unpaid Moneys**

Where, within the time provided by the Contract, a party fails to pay the other party an amount due and payable under the Contract, the other party may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.

##### **42.12 Notice of Use of Security**

The parties agree that for the purposes of section 67J of the *Queensland Building Services Authority and Construction Commission Act 1991* (Old) ('Relevant Section') to the extent it applies:

- (a) the Principal authorises the Superintendent to give on behalf of the Principal the notices referred to in paragraph (1)(b) of the Relevant Section; and
- (b) to the extent that the Relevant Section applies, the Contractor accepts that any payment certificate issued by the Superintendent under the Contract which refers to an amount owed by the Contractor to the Principal shall be taken to be advice from the Principal of a proposed use of security held by the Principal to obtain the amount owed; and
- (c) to the extent required by the Relevant Section, the Superintendent shall give to the Contractor on the Principal's behalf any notice required pursuant to paragraph (1)(b) of the Relevant Section to ensure the Principal's rights to use security are not prejudiced.

#### **42A. PAYMENTS ACT**

##### **42A.1 Application of Clauses**

- (a) This Clause 42A applies to the extent that the *Payments Act* applies to the Contract.
- (b) Expressions defined or used in the *Payments Act* have the same meaning for the purposes of this Clause (unless the context otherwise requires).

##### **42A.2 Notice of Communications**

The Contractor must:

- (a) when it gives to the Principal any claim or notice under the *Payments Act* immediately give a copy of that claim or notice to the Superintendent; and
- (b) when it receives a claim or notice under the *Payments Act* from any third party (including any subcontractor), give a copy of that claim or notice to both the Principal and Superintendent.

#### **42A.3 Payment Schedules Issued by Superintendent or Others**

- (a) If within the time allowed by the *Payments Act* for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify the Contractor that the Superintendent does not have authority from the Principal to issue the payment schedule on its behalf,  
then a payment certificate issued by the Superintendent under the Contract which relates to the period relevant to the payment schedule shall be taken to be the payment schedule for the purpose of the *Payments Act* (whether or not it is expressly stated to be a payment schedule).
- (b) Unless and until the Principal notifies the Contractor in writing otherwise, the Principal authorises the Superintendent and the solicitors engaged by the Principal generally in connection with the Contract, to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (c) Nothing in paragraphs (a) or (b) shall prejudice the obligations of the Principal relating to the manner in which the Superintendent is to exercise its function of issuing a payment certificate, whether or not the payment certificate is or may also be a payment schedule.
- (d) The Superintendent's failure to set out in a payment schedule any amount which the Principal is entitled to withhold, deduct, set-off or retain does not prejudice the Principal's right to subsequently exercise a right to withhold, deduct, set-off or retain the amount under the Contract.
- (e) Nothing in the Contract shall require a Payment Schedule to be served by the Principal earlier than 10 business days after the Contractor has served a payment claim under the *Payments Act*.
- (f) A Payment Schedule issued by the Superintendent on behalf of the Principal shall not be taken to prejudice any rights of the Principal except to the extent provided by the *Payments Act*.

#### **42A.4 Authorised Nominating Authority**

The Contractor agrees that:

- (a) it has chosen the authorised nominating authority named in the Annexure as the authorised nominating authority to which any adjudication application under the *Payments Act* is to be made; and
- (b) the Contractor must make any adjudication application under the *Payments Act* to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).

#### **42A.5 Contractor's Remedies Limited**

Nothing in the Contract shall be construed to:

- (a) make any act or omission of the Principal's in contravention of the *Payments Act* (including failure to pay an amount becoming due under the *Payments Act*), a breach of the Contract (unless the Principal would have been in breach of the Contract had the Act had no application); or
- (b) give to the Contractor rights or remedies under the Contract which extend or are in addition to rights or remedies given to the Contractor by the *Payments Act* in respect of any act or omission of the Principal in contravention of the *Payments Act*.

#### **42A.6 Suspension by Contractor**

If the Contractor, at any time suspends the whole or any part of the work under the Contract pursuant to the *Payments Act* then, despite any other provision of the Contract:

- (a) the Date for Practical Completion shall not be affected but the suspension shall be a cause of delay for which the Contractor may claim an extension of time in accordance with the Contract;
- (b) except as expressly provided in paragraph (a) Clause 42A.5 shall apply; and
- (c) except to the extent (if any) expressly provided under the *Payments Act*, the Principal shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension.

#### **42A.7 Suspension by Subcontractors**

If any subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the work under the Contract) or takes any other action pursuant to the *Payments Act*, despite any other provision of the Contract:

- (a) the Contractor shall not be relieved of any of its obligations under the Contract and the suspension or other action by the subcontractor shall not entitle the Contractor to any Claim (including without limitation for any extension of time under Clause 35.5 or delay or disruption costs under Clause 36); and
- (b) the Contractor shall immediately provide to the Principal full details of the circumstances giving rise to the subcontractor's right or alleged right to suspend or take other action.

#### **42A.8 Construction of Contract Provisions**

To the extent any provision of the Contract is (or may, if not for the operation of this Clause 42A.8, be) found to be void under the *Payments Act*, the provision shall be construed or severed from the Contract in a manner which:

- (a) avoids the provision or any other provision of the Contract being void; and
- (b) subject to paragraph (a), preserves to the maximum possible extent:
  - (i) the enforceability of the provision and the other provisions of the Contract; and
  - (ii) the original effect and intent of the Contract.

#### **42A.9 Time for Payment of Payment Claims Under the Payments Act**

Where the Contractor becomes entitled to a progress payment for which the Contractor has made a payment claim under the *Payments Act*, the progress payment becomes payable 15 business days after the payment claim is made.

### 43 PAYMENT OF WORKERS AND SUBCONTRACTORS

- (a) Before the Principal makes each payment to the Contractor, the Superintendent may, ~~not less than 5 days before a Payment Certificate is due,~~ in writing request the Contractor—
- (i) to give the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on work under the Contract have at the date of the request been paid all moneys due and payable to them in respect of their employment on the work under the Contract; ~~and~~
  - (ii) to provide documentary evidence to the Superintendent that at the date of the request all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and
  - ~~(ii)~~ (iii) to give the Superintendent a statutory declaration by the subcontractors specified by the Superintendent from time to time (in the Superintendent's absolute discretion), or where a subcontractor is a corporation, by a representative of that subcontractor who is in a position to know the facts declared that the subcontractor has, at the date of the declaration been paid all moneys due and payable to the subcontractor in respect of work under the Contract carried out by it.
- (b) Not earlier than 14 days after the Contractor has made each claim for payment under Clause 42.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors have been paid all moneys due and payable to them in respect of work under the Contract and also as to the matters referred to in this Clause 43B.
- (c) If the Contractor fails—
- (i) within five days after a request by the Superintendent under Clause 43(a), to provide the statutory declaration, or the documentary evidence (as the case may be) required pursuant to this Clause 43; or
  - (ii) to comply with Clause 43(b),
- ~~notwithstanding Clause 42.1, the Principal may withhold~~ the Contractor shall not be entitled to claim any payment of moneys due to the Contractor until the statutory declaration or documentary evidence (as the case may be) is received by the Superintendent.

If the Contractor provides to the Superintendent satisfactory proof of the maximum amount due and payable to workers and subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.

At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 43(a) or (b) and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in

the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Act 2001 (Cth)) the making of a sequestration order or a winding up order in respect of the Contractor, the Principal shall not make any payment (other than a payment made pursuant to a Legislative Requirement) to a worker or subcontractor without the concurrence of the official receiver or trustee in bankruptcy of the estate of the bankrupt or the liquidator as the case may be.

#### **43A DIRECT PAYMENT OF WORKERS AND SUBCONTRACTORS BY PRINCIPAL**

Despite any other provision of the Contract, the Principal may in its absolute discretion pay out of any moneys due or to become due to the Contractor any moneys owing by the Contractor to any subcontractors or workers in relation to the execution of the work under the Contract and any payment under this Clause shall be deemed to have been paid to the Contractor under the Contract. If an amount equal to or greater than the amount paid by the Principal on the Contractor's behalf is not or never becomes due by the Principal to the Contractor, the amount paid by the Principal shall be a debt due from the Contractor to the Principal. The Principal shall not pay under this Clause any amount greater than the amount specified as payable in the declarations or documents provided to the Superintendent under Clause 43, an adjudicated amount (as defined in the Payments Act) or any judgment in favour of a subcontractor or worker.

#### **43B SUBCONTRACTOR CLAIMS**

Despite any other provision of the Contract, the declaration to be provided by the Contractor under Clause 43(b) must also include a declaration that the Contractor has no knowledge of any actual or threatened lodgement by any subcontractor of:

- (a) a subcontractors charge under the Subcontractors' Charges Act 1974 (Qld) (which has not been withdrawn); or
  - (b) a notice to suspend under sections 19, 20 or 30 of the Payments Act,
- other than as detailed in the declaration.

### **44 DEFAULT OR INSOLVENCY**

#### **44.1 Preservation of Other Rights**

Subject to Clause 44.2A, ~~if~~ if a party breaches or repudiates the Contract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

#### **44.2 Default by the Contractor**

Subject to Clause 44.2A, ~~if~~ if the Contractor commits a substantial breach of contract ~~and the Principal considers that damages may not be an adequate remedy,~~ the Principal may give the Contractor a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) suspension of work, in breach of Clause 33.1;
- (b) failing to proceed with due expedition and without delay, in breach of Clause 33.1;
- (c) failing to lodge security in breach of Clause 5;

- (d) failing to use the materials or standards of workmanship required by the Contract, in breach of Clause 30.1;
- (e) failing to comply with a direction of the Superintendent under Clause 30.3, in breach of Clause 23;
- (f) failing to provide evidence of insurance, in breach of Clause 21.1; ~~and/or~~
- (g) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue;
- (h) failing to comply with any environmental obligations of the Contractor including without limitation Clause 14.9; and
- (i) failing to comply with any of the Contractor's obligations in Clause 9 to the extent they relate to subcontractors listed in the Annexure.

#### **44.2A Default by the Contractor in Relation to Safety or Licence and Competency Requirements**

Despite Clause 44.2, if the Contractor commits a breach of:

- (a) Clause 14.1A in relation to Licence and Competency Requirements;
- (b) any obligation of the Contractor relating to safety including without limitation Clause 14.8 or any of the Energex Standard Procedures relating to safety; **or**
- (c) **any Work Health and Safety Requirements.**

the Principal may, at any time after the breach and without giving a notice to show cause, exercise a right under Clause 44.4(a) or Clause 44.4(b). The rights given by this Clause 44.2A are in addition to any other rights of the Principal.

#### **44.3 Requirements of a Notice by the Principal to Show Cause**

A notice under Clause 44.2 shall—

- (a) state that it is a notice under Clause 44 of the General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 44.4;
- (d) specify the time and date by which the Contractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Contractor); and
- (e) specify the place at which cause must be shown.

#### **44.4 Rights of the Principal**

If by the time specified in a notice under Clause 44.2 the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in Clause 44.4, the Principal may by notice in writing to the Contractor—

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

The Contractor agrees that the Principal may determine in its absolute discretion whether the Contractor has failed to show reasonable cause why the Principal should not exercise a right referred to in this Clause 44.4 (for the purposes of this Clause 44.4).

Upon giving a notice under Clause 44.2, the Principal may suspend payments (whether or not the subject of a payment certificate) to the Contractor and the Contractor may not make any claim for payments until the earlier of—

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 44.4(a) or (b); or
- (iii) the date on which is 7 days after the last day for showing cause in the notice under Clause 44.2 the relevant breach by the Contractor is rectified.

If the Principal exercises the right under Clause 44.4(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 44.6.

#### **44.5 Procedure when the Principal Takes Over Work**

If the Principal takes work out of the hands of the Contractor under Clause 44.4(a) the Principal shall complete that work and the Principal may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.

If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant and, subject to Clause 44.6, on completion of the work the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause which are surplus.

#### **44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor**

When work taken out of the hands of the Contractor under Clause 44.4(a) is completed the Superintendent shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate to the Principal and the Contractor certifying the amount of that cost.

In assessing the cost incurred in relation to work taken out of the Contractor's hands, the Superintendent must include the following additional items of cost to the Principal:

- (a) any costs associated with the ownership or holding of the Site or the Works for any additional period;
- (b) any additional costs of funding (including interest); and
- (c) any other costs, losses, expenses or damages arising from or in connection with the Contractor's breach.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal. The Principal shall keep records of the cost in a similar manner to that prescribed in Clause 41.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other



things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

#### 44.7 Default of the Principal

If the Principal commits a substantial breach of contract and ~~the Contractor considers that~~ damages ~~are~~ may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) failing to make a payment, in breach of Clause 42.1 for a period in excess of 14 days;
- (b) failure by the Superintendent to either issue a Certificate of Practical Completion or give the Contractor, in writing, the reasons for not issuing the Certificate within 14 days of receipt of a request by the Contractor to issue the Certificate, in breach of Clause 42.5;
- (c) failing to produce evidence of insurance, in breach of Clause 21.1;
- (d) failing to give the Contractor possession of sufficient of the Site, in breach of Clause 27.1, but only if the failure continues for longer than the period stated in the Annexure; and/or
- (e) failing to lodge security in breach of Clause 5.

#### 44.8 Requirements of a Notice by the Contractor to Show Cause

A notice under Clause 44.7 shall—

- (a) state that it is a notice under Clause 44 of the General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 44.9;
- (d) specify the time and date by which the Principal must show cause (which shall not be less than 7 clear days after the notice is given to the Principal); and
- (e) specify the place at which cause must be shown.

#### 44.9 Rights of the Contractor

If by the time specified in a notice given under Clause 44.7 the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 44.9, and the substantial breach in relation to which the Principal fails to show reasonable cause is a failure by the Principal to pay an amount due and payable by the Principal to the Contractor under the Contract, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

The Contractor shall lift the suspension if the Principal remedies the breach but if within 28 days ~~after the date of suspension of the failure by the Principal to show cause under this Clause 44.9,~~ the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor ~~may~~ must within a further period of 7 days elect by notice in writing to the Principal to either:

- (a) terminate the Contract; or
- (b) lift the suspension immediately.

The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

#### 44.10 Rights of the Parties on Termination

If the Contract is terminated under Clause 44.4(b) or Clause 44.9 the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

#### 44.11 Insolvency

If—

- (a) a party informs the other party in writing or creditors generally that the party is insolvent;
- (b) a party commits an act of bankruptcy;
- (c) a bankruptcy petition is presented against a party;
- (d) a party is made bankrupt;
- (e) a meeting of creditors of a party is called with a view to—
  - (i) entering a scheme of arrangement or composition with creditors; or
  - (ii) placing the party under ~~official management~~administration;
- (f) a party enters a scheme of arrangement or composition with creditors;
- (g) a resolution is passed at a meeting of creditors to place a party under ~~official management~~administration;
- (h) a party is placed under ~~official management~~administration;
- (i) a receiver of the property or part of the property of a party is appointed;
- (j) an application is made to a court for the winding up of a party and not stayed within 14 days;
- (k) a winding up order is made in respect of a party; ~~and/or~~
- (l) execution is levied against a party by creditors, debenture holders or trustees or under a floating charge—i
- (m) the shareholders or directors of a party attempt to pass or pass a resolution which has an object the winding up of that party; or
- (n) a party goes into voluntary administration;
- (o) a controller is appointed under the Corporations Act 2001 (Cth):-  
then:
  - (i) where the other party is the Principal:
    - (A) the Principal may, without giving a notice to show cause, exercise the right under Clause 44.4(a) or Clause 44.4(b); and
    - (B) the Principal may suspend payments (whether or not the subject of a payment certificate) to the Contractor and the Contractor may not make any claim for payment under the Contract; or

- (ii) where the other party is the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Clause 44.9.

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

#### 44A PRINCIPAL MAY REMEDY CONTRACTOR'S BREACH AT CONTRACTOR'S EXPENSE

In addition to any other rights of the Principal, the Principal may perform or have others perform at the Contractor's cost, any obligation of the Contractor which the Contractor has failed to perform after reasonable notice from the Principal requiring such performance.

#### \* **45 TERMINATION BY FRUSTRATION**

If, under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor—

- (a) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had made a progress claim on the date of frustration;
- (b) the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;
- (c) costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal; and

~~(d) all retention moneys and security;~~

~~(e)~~ (d) the reasonable cost of demobilising the Site including removal of Constructional Plant;

~~(f) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration.~~

and the Contractor shall have no other Claim against the Principal for any overhead, loss of profits, costs, expenses, damages, losses or other liabilities arising from or in connection with the termination.

#### 45A TERMINATION FOR CONVENIENCE

The Principal may at any time terminate the Contract for its convenience (including where there has been no default or insolvency of the Contractor) by 7 days prior notice to the Contractor in which case the Contractor shall, upon receipt of the notice:

- (a) cease carrying out the work under the Contract;
- (b) if directed by the Principal to do so:
- (i) assign or novate in favour of the Principal any subcontracts (including, without limitation, for the provision of any materials) or rights under any subcontracts entered into or obtained by the Contractor in connection with the carrying out of the work under the Contract or completion of the Works; and
- (ii) terminate any other outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of the Principal or the Superintendent;

(c) deliver to the Principal, all property, documentation or information of the Principal provided to the Contractor in connection with it carrying out the work under the Contract; and

(d) deliver to the Principal any of the materials or the work under the Contract which under the Contract has become the property of the Principal.

Upon termination of the Contract under this Clause:

(e) Clause 45 shall apply as if the Contract had been terminated for frustration;

(f) the Contractor shall have no other Claim against the Principal for any overhead, loss of profits, costs, expenses, damages, losses or other liabilities arising from or in connection with the termination; and

(g) any rights of the Principal arising from prior breaches by the Contractor shall not be affected.

Any notice by the Principal purporting to terminate the Contract pursuant to any other provision of the Contract, or under the general law, will be taken to be a notice terminating the Contract under this Clause, to the extent that the Principal is not entitled to terminate the Contract pursuant to that other provision or the general law.

#### **45B PROVISIONS TO CONTINUE AFTER TERMINATION**

Unless the context otherwise requires, rights and obligations (including warranties and indemnities) of the parties capable of taking effect after the expiration or termination of this Contract shall do so.

## **46 TIME FOR NOTIFICATION OF CLAIMS**

### **46.1 Contractor's Prescribed Notice**

The Principal shall not be liable upon any ~~claim~~ Claim by the Contractor and shall be released for all time from any Claim in respect of or arising out of a breach of the Contract unless within:

(a) 7 days after the first day upon which the Contractor could reasonably have been aware of the circumstances giving rise to the Claim, the Contractor has given to the Superintendent the first notice; and

(b) 28 days after the first day upon which the Contractor could reasonably have been aware of the ~~circumstances giving rise to the Claim~~ breach, the Contractor has given to the Superintendent the prescribed notice.

The Principal shall not be liable upon any other claim by the Contractor for any extra cost or expense in respect of or arising out of any direction or approval by the Superintendent unless within 42 days after the first day upon which the Contractor could reasonably have been aware of the entitlement to make the claim, the Contractor has given to the Superintendent the prescribed notice.

The first notice is a notice in writing which must include the Contractor's intention to make a Claim together with the general nature of basis of the Claim.

The prescribed notice is a notice in writing which must include particulars of all of the following—

(a) the ~~breach, act, omission, direction, approval or~~ facts and circumstances on which the claim is or will be based including any act or omission of the Principal or Superintendent which forms part of the basis for the Claim;

- (b) the provisions of the Contract or other legal basis for the ~~claim~~ Claim or proposed claim; and
- (c) full details of the quantum or likely quantum of the ~~claim~~ Claim (including without limitation a detailed breakdown of the quantum of the Claim).

This Clause 46.1 shall not have any application to—

- (i) any ~~claim~~ Claim for payment to the Contractor of an amount or amounts forming part of the original Contract Sum or any part thereof;
- (ii) any ~~claim~~ Claim for payment for a variation directed by the Superintendent to which Clause 40.1A applies or which the Superintendent has expressly acknowledged in writing constitutes or involves a variation to be made pursuant to Clause 12.3;
- (iii) any ~~claim~~ Claim for an extension of time for Practical Completion; or
- ~~(iv) the provisions of Clause 46.2.~~
- (iv) any other Claim in respect of which another provision of the Contract requires notice to be given by the Contractor within a specified time from the date the circumstances of the Claim arise or become known to the Contractor as a condition of the Contractor being entitled to enforce or pursue the Claim.

#### **46.1A Occurrence of Events**

For the purposes of Clause 46.1, the first day on which the Contractor could reasonably have been aware of the circumstances giving rise to the Claim shall be:

- (a) if the Claim relates to changes or particular circumstances which are disclosed in any drawings, then the date of receipt of those drawings by the Contractor;
- (b) if the Claim relates to changes or particular circumstances which are disclosed in other documents, then the date of receipt of those documents by the Contractor;
- (c) where the Claim relates to changes or particular circumstances affecting a subcontractor of the Contractor, and the subcontractor has received drawings or documents which disclose changes or particular circumstances which may give rise to a Claim, then the date of receipt of those drawings or documents by the subcontractor; and
- (d) in any other case, the date upon which an experienced and competent contractor should reasonably have known that such circumstances may give rise to a Claim.

#### **46.2 Time for Disputing Superintendent's Direction**

If the Superintendent—

- ~~(a) has given a direction (other than a decision under Clause 47.2)(including without limitation any decision or certification) pursuant to the Contract; and~~
- ~~(b) has served a notice in writing on each party that if a party wishes to dispute the direction then that party is required to do so under Clause 47,~~

the direction shall not be disputed by the Contractor unless a notice of dispute in accordance with Clause 47.1 is given by one party—the Contractor to the other party—Principal and to the Superintendent within 56-28 days after the date of service on that party of the notice pursuant to Clause 46.2(b)the Superintendent's direction referred to in paragraph (a).

## 47 DISPUTE RESOLUTION

### 47.1 Notice of Dispute

~~The provisions of this Clause 47 apply subject to the provisions of the Commercial and Consumer Queensland Civil and Administrative Tribunal Act 2003 (Old) and the Payments Act.~~

~~If a dispute between the Contractor and the Principal arises out of or in connection with the Contract, including a dispute concerning a direction given by the Superintendent, then either party shall ~~may~~ deliver by hand or send by certified mail to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute.~~

Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract, and subject to Clause 44, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clause 42.1.

~~A claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.~~

### 47.2 Further Steps Required Before Proceedings

#### *Alternative 1*

Within 14 days after service of a notice of dispute, the parties shall confer at least once, and at the option of either party and provided the Superintendent so agrees, in the presence of the Superintendent, to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to ~~arbitration or litigation~~ their respective Chief Executive Officers in accordance with Clause 47.5.

#### *Alternative 2*

A party served with a notice of dispute may give a written response to the notice to the other party and the Superintendent within 28 days of the receipt of the notice.

Within 42 days of the service on the Superintendent of a notice of dispute or within 14 days of the receipt by the Superintendent of the written response, whichever is the earlier, the Superintendent shall give to each party the Superintendent's written decision on the dispute, together with reasons for the decision.

If either party is dissatisfied with the decision of the Superintendent, or if the Superintendent fails to give a written decision on the dispute within the time required under this Clause 47.2 the parties shall, within 14 days of the date of receipt of the decision, or within 14 days of the date upon which the decision should have been given by the Superintendent confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved or if at any time after the Superintendent has given a decision either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may, by notice in writing delivered by hand or sent by certified mail to the other party, ~~refer such dispute to arbitration or litigation~~ refer the dispute to their respective Chief Executive Officers in accordance with Clause 47.5.

### **47.3 ~~Arbitration~~ Not Used**

~~Arbitration shall be effected by a single arbitrator who shall be nominated by the person named in the Annexure, or if no person is named, by the Chairperson for the time being of the Chapter of the Institute of Arbitrators Australia in the State or Territory named in the Annexure. Such arbitration shall be held in the State or Territory stated in the Annexure.~~

~~Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.~~

~~Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.~~

~~If one party has overpaid the other, whether pursuant to a Superintendent's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.~~

### **47.4 Summary or Urgent Relief**

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 42 or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

### **~~47.3~~47.5 Chief Executive Officers**

The Chief Executive Officers shall negotiate in good faith with a view to resolving the dispute within 14 days of the dispute being referred to them, failing which either party may (without prejudice to any of their other rights) at any time after that date commence court proceedings in respect of the dispute.

### **47.5A Expert Determination**

The Principal may at any time elect by notice in writing to the Contractor to refer a dispute to expert determination and in such case, the dispute shall be referred to the person referred to in the Annexure (or, if that person is not reasonably available, to such other independent person as is nominated by the Principal) ('the Expert') for determination and, unless the parties agree otherwise, the following applies:

- (a) the Expert shall, subject to the provisions of this Clause, determine and notify the parties of the rules to apply to its determination;
- (b) each party is entitled to lodge written submissions with the Expert on the dispute;
- (c) the Expert may, after receiving written submissions from the parties and before making any determination, require the parties to attend a conference and to address at the conference such matters as the Expert decides;

- (d) the Expert must make a determination in respect of the dispute and provide the parties with written advice as to that determination within 30 days after the date of the appointment of the Expert;
- (e) each party must bear its own costs and share equally the costs of the Expert or the process of expert determination, unless the Expert determines otherwise;
- (f) the Expert must, in conducting the process of expert determination, ensure procedural fairness;
- (g) the Expert is not bound by the rules of evidence;
- (h) the Expert's decision shall be final and binding on the parties except where the amount determined as payable to a party exceeds \$100,000 and either party notifies the other in writing within 10 business days of the decision being notified to that party that it intends to litigate the dispute; and
- (i) where the Expert's decision results in a party becoming entitled to be paid or repaid any amount under or in connection with the Contract, the other party shall pay or repay such amount as a debt due and payable within 14 days of the date of the Expert's decision being made.

Where the Principal has referred a dispute to expert determination under this Clause, Clauses 47.1 to 47.5 inclusive no longer apply to the dispute (and any reference of the dispute under Clauses 47.1 to 47.5 inclusive shall cease).

#### **48 WAIVER OF CONDITIONS**

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released (in whole or in part), except with the prior consent in writing of the Principal in each instance. Failure by the Principal, or by the Superintendent, acting on behalf of the Principal, at any time, or from time to time, to enforce or require strict compliance with, or performance of, any terms or conditions of the Contract will not constitute a waiver of, or affect, or impair such terms or conditions in any way, nor shall such failure affect the right of the Principal to avail itself at any time of such remedies it may have for any subsequent breach of the terms and conditions by the Contractor.

#### **49 PRIVACY ACT**

- (a) In relation to any Personal Information (as defined in the *Privacy Act 1988* ('Act')) provided or to be provided by the Contractor in connection with the work under the Contract (whether as part of its tender or otherwise), the Contractor warrants to the Principal:
  - (i) the Contractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the Act) is provided; and
  - (ii) the Contractor has or will within the time required by the Act ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
    - (A) in relation to disclosure of the Personal Information to the Principal, any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Principal, the Superintendent and any consultant of the Principal requiring the information for the purposes set out in paragraph (B); and



(B) disclosing that the entities referred to in paragraph (A) shall use the Personal Information for the purposes of reviewing and assessing matters relevant to the work under the Contract from time to time.

(b) The Contractor will comply with the provisions of the Act in relation to any Personal Information provided to the Contractor by the Principal, any Related Body Corporate of the Principal, the Superintendent and any consultant of the Principal.

## **50 RECORDS AND ACCESS TO RECORDS**

### **50.1 Contractor to make and retain records**

The Contractor must, at its own cost, make and retain, and ensure all subcontractors make and retain, accurate and adequate records of all matters relating to the Contract and the performance of the work under the Contract including, but not limited to:

- (a) the progress of the work under the Contract including:
  - (i) site meeting minutes;
  - (ii) directions to the Contractor from the Superintendent and directions from the Contractor to subcontractors;
  - (iii) complete photographic records;
- (b) the costs and expenses incurred by the Contractor and cost to complete including arising as a result of delays and variations;
- (c) manning and equipment records;
- (d) matters relevant to workplace, health and safety obligations and issues;
- (e) matters relevant to quality systems and quality assurance;
- (f) any other fact, matter or thing required by the Contract or directed by the Superintendent, whether in writing, in electronic form or in any other form.

### **50.2 Contractor to allow access to records**

Subject to any law, the Contractor must allow and ensure subcontractors allow the Principal or Superintendent upon request to have access to, inspect and copy any of the records retained by the Contractor or any subcontractor, or under its control, in respect of the Contract.

### **50.3 Records not in writing**

Where a record under Clause 50.1 is retained in a form other than in writing, the Contractor is only deemed to provide access to the record where the Contractor also provides any facility or equipment which enables a legible and readable reproduction of the record by the Principal or Superintendent.

### **50.4 Retention and handover of records**

The records retained under Clause 50.1 shall:

- (a) be retained by the Contractor until the Principal or Superintendent notifies the Contractor otherwise in writing;
- (b) at the direction of the Principal or Superintendent, be handed over to the Principal on expiration of the defects liability period; and

(c) must not be destroyed within 7 years of Final Completion without the Principal's written approval.

#### **50.5 Use of confidential records**

The Principal shall not, without the consent of the Contractor, disclose to any person other than the Principal's employees and agents, the contents of any record copied or provided to the Principal under this Clause which is confidential to the Contractor, except:

- (a) where required or permitted by law;
- (b) to the Principal's Shareholding Ministers as that term is defined in the *Government Owned Corporations Act 1993 (Qld)*;
- (c) to its legal advisers and consultants;
- (d) in enforcing the Contract or in a proceeding arising out of or in connection with the Contract or resolving any dispute between the parties under the Contract.

#### **50.6 Reports**

Without limiting any other provision of this Clause 50, the Contractor must provide the Principal with any report required by the Contract or otherwise reasonably required by the Principal from time to time as reasonably required by the Principal.

**ANNEXURE to the Australian Standard  
General Conditions of Contract**

# PART A

This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

---

- 1. The law applicable is that of the State or Territory of: Queensland  
(Clause 1)
  
- 2. Payments under the Contract shall be made at: Brisbane  
(Clause 1)
  
- 3. The Principal: Energex Limited  
(Clause 2)
  
- 4. The address of the Principal: 26 Reddacliff Street  
Newstead Qld 4006
  
- 5. The Superintendent: .....  
(Clause 2) [TBC].....  
.....
  
- 6. The address of the Superintendent: .....  
[TBC].....  
.....
  
- 7. Site Owner: [TBC].....  
(Clause 2)
  
- ~~7~~8. Limits of accuracy applying to quantities for which the Principal accepted a rate or rates: [TBC].....  
(Clause 3.3(b))
  
- 8. ~~Bill of Quantities the alternative~~ applying: .....  
(Clause 4.1)
  
- 9. The time for lodgement of the priced copy of the Contract Bill of Quantities: [TBC].....  
(Clause 4.2)
  
- 10. Pricing Reference Documents: \_\_\_ Schedule of payments dated [TBC]  
(Clauses 2 and 4.5)

<p><del>#4</del> <u>11.</u> Contractor shall provide security in the amount of: (Clause 5.2)</p>	<p>.....% of the Contract Sum</p>
<p><del>#44</del> <u>12.</u> Principal shall provide security in the amount of: (Clause 5.2)</p>	<p>Nil</p>
<p><u>13.</u> <u>Form of Security:</u> <u>(Clauses 5.3 and 5.6)</u></p>	<p>Unconditional bank undertaking in the form of Annexure Part C from a bank approved by the Principal</p>
<p><del>#12</del> <u>14.</u> The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)</p>	<p>No notice required</p>
<p><del>13</del><u>15.</u> The percentage to which the entitlement to security and retention moneys is reduced: (Clause 5.7)</p>	<p>Such amount as is required to be released so that the Principal continues to hold security to the value of ...% of the security originally required to be provided by the Contractor under the Contract in Item 11. (if nothing stated 50%)</p>
<p><del>44</del><u>16.</u> Interest on retention moneys and security—the alternative applying: (Clause 5.9)</p>	<p>Alternative 2</p>
<p><del>45</del><u>17.</u> The number of copies to be supplied by the Principal: (Clause 8.3)</p>	<p>[TBC].....</p>
<p><u>18.</u> <u>Principal-Supplied Information:</u> <u>(Clause 8.3A)</u></p>	<p>Any information as to the: (a) extent, nature or cost of any excavation or underground cabling required under the Contract; (b) equipment required for the performance of the work under the Contract; (c) As-built drawings; (d) Geotechnical reports; (e) [TBC]</p>
<p><del>46</del><u>19.</u> The number of copies to be supplied by the Contractor: (Clause 8.4)</p>	<p>[TBC].....</p>
<p><u>20.</u> <u>Documents in relation to which the Contractor must obtain the</u> [TBC] <u>Superintendent's direction</u> <u>(Clause 8.4(c))</u></p>	<p>.....</p>

# Where there are Separable Portions, these items shall be deleted

# Where there are Separable Portions, these items shall be deleted

<p><del>17</del>21. The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies: (Clause 8.4)</p>	<p>[28 days]</p>
<p>#22. <u>Documents and other deliverables to be delivered to the Superintendent prior to Practical Completion:</u> <u>(Clause 2, definition of Practical Completion, paragraph (c) and Clause 8.8)</u></p>	<p>[TBC].....</p>
<p>#23. <u>Documents and other deliverables to be delivered to the Superintendent after Practical Completion:</u> <u>(Clause 8.9)</u></p>	<p>Documents or other deliverables: [TBC]..... Days after Practical completion: [TBC]..... days</p>
<p><del>18</del>24. Work which cannot be subcontracted without approval: (Clause 9.2)</p>	<p>No work to be subcontracted without consent</p>
<p><del>19</del>25. The percentage for profit and attendance: (Clause 11(b))</p>	<p>[TBC]..... %</p>
<p><del>20</del>26. The amount or percentage for profit and attendance: (Clause 11(c))</p>	<p>[TBC]..... %</p>
<p>27. <u>Rated Provisional Sum Work or Items:</u> <u>(Clause 11B)</u></p>	<p>[TBC]</p>
<p>28. Accepted Latent Conditions: (Clause 12.1)</p>	<ul style="list-style-type: none"> <li>• Subsurface conditions under or in the vicinity of the Site including rock</li> <li>• The existence or location of underground services or connections</li> <li>• Any other risks the Contractor was required to satisfy itself as to in its tender</li> </ul> <p>4. • [TBC]</p>
<p>29. Government Approvals to be obtained by Principal: (Clause 14.5)</p>	<p>[TBC].....</p>
<p>30. QBSA Registration Number: (Clause 14B.2)</p>	<p>[TBC].....</p>
<p>31. Relevant Documents: (Clause 14C)</p>	<p>The following policies and other requirements of the Principal in their current version as to the date of the Contract:</p> <ul style="list-style-type: none"> <li>• 'As Constructed' Drawing Standard</li> </ul>

- Safety Manual (BMS 01984)
- Safety Specification for Contracted Work (BMS 03385)
- Queensland Code of Practice for the Building and Construction Industry
- Safety Management System (BMS 01983)
- Customer Care Requirements
- Quality Assurance Requirements
- WCS Nos [TBC];
- [TBC]

4

32. Methodology & Resourcing Documents: (Clause 14D)	[TBC].....
33. Contractor's Management Plans: (Clause 14E)	<ul style="list-style-type: none"> <li>• Site Management Plan</li> <li>• Traffic Management Plan</li> <li>• Workplace Health and Safety Plan</li> <li>• Construction Work Plan</li> <li>• Works Method Statement for High Risk Activities</li> <li>• Environmental Management Plan</li> <li>• Fire Ant Risk Management Plan</li> <li>4. • [TBC]</li> </ul>
34. Dilapidation Survey: (Clause 14F)	A dilapidation survey [is/is not] required
<del>24</del> 35. Insurance of the Works—the alternative applying: (Clause 18)	Alternative 1 2
The assessment for insurance purposes of the costs of demolition and removal of debris: (Clause 18(ii))	[TBC].....
The assessment for insurance purposes of consultants' fees: (Clause 18(iii))	[TBC].....
The value of materials to be supplied by the Principal: (Clause 18 (iv))	[TBC].....
The additional amount or percentage: (Clause 18(v))	[TBC].....
<del>36</del> . <u>The amount of motor vehicle third party bodily injury and property damage liability insurance:</u> (Clause 18A)	[TBC].....
<del>22</del> 37. <u>Public and Products Liability Insurance—the alternative applying:</u>	Alternative 21

(Clause 19)

~~23~~38. The amount of Public and Products Liability Insurance shall be not less than: \$10 million  
(Clause 19)

39. Contractor's Key Personnel (Clause 26.2)	Name                      Position
	[To be tendered] [To be inserted by tenderer]

~~24~~40. The time for giving possession of the Site: [TBC]..... days from the Date of Acceptance of Tender  
(Clause 27.1(a))

40A. Site Areas of third parties for which Principal will obtain access authority: [TBC].....  
(Clause 27.1(b))

41. Access or Possession of the Site: [TBC].....  
(Clause 27A.2)

41A. Energex supplied Material [TBC].....  
(Clause 29.4)

42. Special Warranties: [TBC].....  
(Clause 29A.1)

43. Works to be included in a Commissioning Program: [TBC].....  
(Clause 31A.1)

~~#25~~ 44. The Date for Practical Completion: [TBC].....  
(Clause 35.2)

~~#26~~ 45. Liquidated Damages per day: **Prompt Note –**  
(Clause 35.6)

**Option 1 – If Liquidated Damages are applicable insert relevant details:**

[TBC]

**Option 2 – If there are no Liquidated Damages the following clause is to be inserted:**

No Liquidated Damages apply but Energex's right to claim general law damages is preserved.....

~~#27~~ 46. Limit of Liquidated Damages: **[Prompt Note –**  
(Clause 35.7)

**Option 1 – If applicable, insert cap on Liquidated Damages:**

[TBC]

# Where there are Separable Portions, these items shall be deleted

Option 2 – If the Contract does not include a limit on Liquidated Damages, this should be completed:

No Limit

#28	Bonus per day for early Practical	
47.	Completion: (Clause 35.8)	[TBC].....
#29	Limit of bonus:	[TBC].....
48.	(Clause 35.8)	
49.	<u>Milestones and Milestone Dates:</u> (Clause 35.9)	[TBC].....
#30	Extra costs for Delay or Disruption:	<u>Event</u>
50.	(Clause 36)	[Not applicable]
51.	<u>Maximum rate per day for delay or disruption costs:</u> (Clause 36(c))	[TBC].....
#34	The Defects Liability Period:	[TBC].....
52.	(Clause 37)	
53.	<u>Deduction Percentage:</u> (Clause 40.5(i))	[TBC]..... %
54.	<u>Addition Percentage:</u> (Clause 40.5(ii))	[TBC]..... %
3255.	The Charge for <u>on-Site and off-Site</u> overheads, profit, etc. for Daywork: (Clause 41(f))	[TBC].....
3356.	Times for Payment Claims: (Clause 42.1)	Monthly on the [insert day] of each calendar month
3457.	Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.1(iii))	[TBC].....
3558.	Retention Moneys on: (Clause 42.3)	[TBC].... % of the value of the work incorporated into the Works until [TBC]....% of the Contract Sum is held
3659.	Unfixed Plant or Materials—the alternative applying: (Clause 42.4)	Alternative 3
3760.	The rate of interest on overdue payments: (Clause 42.9)	[TBC]..... per cent per annum



<del>39</del> 61. <u>Authorised nominating authority:</u> <u>Clause 42A.4)</u>	[TBC].....
62. The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7)	[TBC].....
<del>39</del> 63. The alternative required in proceeding with dispute resolution: (Clause 47.2)	Alternative 1
64. <u>Expert</u> (Clause 47.5A)	[TBC].....
The person to nominate an arbitrator: (Clause 47.3)	.....
Location of arbitration: (Clause 47.3)	.....

### ¶ Separable Portions

1. Separable Portion:	[TBC] .....
2. Contractor shall provide security in the amount of: (Clause 5.2)	[TBC]... % of the Contract Sum
2A Principal shall provide security in the amount of: (Clause 5.2)	[Nil]
2B <u>Form of Security:</u> (Clauses 5.3 and 5.7)	[Unconditional bank undertaking in the form of Annexure Part C from a bank approved by the Principal]
2C The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)	No notice required
2D <u>Documents and other deliverables to be delivered to the Superintendent prior to Practical Completion:</u> (Clause 2, definition of <i>Practical Completion</i> , paragraph (c) and Clause	[TBC] .....

¶ Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Contract. Make a separate column for each Separable Portion.

8.8)

2E Documents and other deliverables to be delivered to the Superintendent after Practical Completion: (Clause 8.9)

Documents or other deliverables: [TBC] .....  
 Days after Practical Completion: [TBC] ..... days

3. The Date for Practical Completion: [TBC] (Clause 35.2)

4. Liquidated Damages per day: (Clause 35.6)

**Prompt Note –**  
Option 1 – If Liquidated Damages are applicable insert relevant details:  
 [TBC]  
Option 2 – If there are no Liquidated Damages the following clause is to be inserted:  
No Liquidated Damages apply but Energex’s right to claim general law damages is preserved. ....

5. Limit of Liquidated Damages: (Clause 35.7)

**Prompt Note –**  
Option 1 – If applicable, insert cap on Liquidated Damages:  
 [TBC]  
Option 2 – If the Contract does not include a limit on Liquidated Damages, this should be completed:  
No Limit.....

6. Bonus per day for early Practical Completion: (Clause 35.8)

[TBC] .....

7. Limit of bonus: (Clause 35.8)

[TBC] .....

Event

8. Extra costs for Delay or Disruption: (Clause 36)

[Not applicable]

8A. Maximum rates for delay or disruption costs: (Clause 36(c))

[TBC]..... per day

9. Defects Liability Period: (Clause 37)

[TBC]..... months

**APPROVED FORM OF UNCONDITIONAL UNDERTAKING**

~~(Clause 5.3)~~

~~At the request of ..... ('the Contractor') and in consideration of ..... ('the Principal') accepting this undertaking in respect of the contract for .....~~

~~..... ('the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of \$.....~~

~~(.....)~~

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

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

~~Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of \$.....~~

~~(.....)~~

~~less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.~~

DATED at ..... this ..... day of ..... 19.....

**PERFORMANCE GUARANTEE**  
**(Clause 5.10)**

THIS DEED OF GUARANTEE is given this ..... day of ..... ,20

BY: #Name and ACN of Guarantor# of #address of Guarantor# ("Guarantor")

IN FAVOUR OF: **Energex Limited (ABN 40 078 849 055) of 26 Reddacliff Street, Newstead**

**BACKGROUND:**

- A. The Principal and #Name and ACN of Contractor# (the ("Contractor")) have entered into a contract dated #date# ("Contract") in relation to the construction of #Description of Project# ("Project").
- B. The Principal has entered into the Contract:
- (a) at the request of the Guarantor (which request is confirmed by the Guarantor's execution of this Deed); and
  - (b) conditionally upon the Guarantor signing this Deed.

**THE PARTIES AGREE:**

**1. GUARANTEE OF PERFORMANCE**

The Guarantor guarantees to the Principal the due and punctual performance of every legal, equitable, contractual, statutory or other duty, undertaking, warranty, guarantee, indemnity, covenant, agreement or other obligation ("Obligation") on the part of the Contractor which at any time arises under or in connection with the Contract including without limitation:

- (a) any Obligation on the part of the Contractor to pay the Principal any costs, expenses, damages or other liabilities, whether present, future, actual or contingent, liquidated or unliquidated;
- (b) any Obligation arising from any variation to the Contract:
  - (i) agreed between the Contractor and the Principal; or
  - (ii) made in accordance with the Contract,
 at any time, whether or not the Guarantor is aware of or consents to the variation; and
- (c) the Unenforceable Contractor's Obligations referred to in Clause 6 of this Deed, (called for the purposes of this Deed, "Contractor's Obligations").

**2. INDEMNITY FOR LOSS**

The Guarantor indemnifies the Principal and agrees at all times hereafter to keep the Principal indemnified from and against all damages, costs, losses, expenses and liabilities which the Principal may suffer or incur consequent upon or arising out of the Contractor's Obligations not being performed, observed or fulfilled and the Guarantor agrees that the indemnity given by the Guarantor under this clause:

- (a) is a separate and additional Obligation of the Guarantor under this Deed;
- (b) is given by the Guarantor as a principal indemnifier and not as a surety;
- (c) applies even though the Principal may not be entitled for any reason to recover those amounts from the Contractor, with the effect that the moneys are not recoverable from the Guarantor on the basis that the Guarantor has otherwise only given a guarantee in respect of payment of those amounts; and

- (d) is given on the other terms of this Deed (with all necessary changes being made) so far as those other terms can apply.

### **3. CONTINUING GUARANTEE AND INDEMNITY**

- (a) This Deed and all Obligations of the Guarantor to the Principal under this Deed shall be continuing Obligations and security and shall not be considered as wholly or partially satisfied or discharged by the payment at any time of any sum of money for the time being due to the Principal under the Contract or by any settlement, account or the performance of any other Obligation or any other matter or thing.
- (b) This Deed and all Obligations of the Guarantor to the Principal extends to and are security for all sums of money at any time due to the Principal under or in connection with the Contract despite any special payment, settlement of account, the performance of any other Obligation or other matter or thing.

### **4. LIABILITY NOT DISCHARGED BY OTHER EVENTS**

The liability of the Guarantor and the rights of the Principal under this Deed shall not be affected by:

- (a) the granting of time or other indulgence or concession to the Contractor;
- (b) the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Principal against the Contractor;
- (c) any neglect or omission to enforce such rights;
- (d) the liquidation of the Contractor;
- (e) the variation, termination, cancellation, rescission, assignment or novation of the Contract in whole or in part;
- (f) the Contract being or becoming void or voidable in whole or in part;
- (g) the variation of any of the Contractor's Obligations under the Contract (including by the variation of the Project); or
- (h) any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from its Obligations under this Deed or any part of them.

### **5. ASSIGNMENT BY THE PRINCIPAL**

The Principal may assign the benefit of this Deed to the extent that the assignee also accepts an assignment of the whole or any part of the Contractor's Obligations. The Principal shall be entitled to provide any information it may have concerning the Guarantor to any proposed assignee.

### **6. INVALIDITY OF CONTRACTOR'S OBLIGATIONS**

Despite any other provisions of this Deed, the guarantee and indemnity given by the Guarantor under this Deed shall also extend to and apply to Obligations on the part of the Contractor which were void from the beginning, or have been subsequently avoided or are otherwise unenforceable by the Principal as a result of:

- (a) any legal limitation, disability or incapacity relating to the Contractor;
- (b) any delay, neglect or failure to register or perfect the Contract or obtain any consent or authorisation necessary to give legal effect to the Contract (other than by reason of an act or omission of the Principal);
- (c) the Contractor's failure to comply with any law; or
- (d) any death, mental incapacity, winding up, liquidation, bankruptcy, insolvency, voluntary administration, composition of debts, scheme of reconstruction, official management, receivership, assignment of property, scheme of arrangement or other incapacity, insolvency or demise on the part of or entered into by the Contractor,

whether or not the Principal should have known about the same ("Unenforceable Contractor's Obligations").

### **7. GOVERNING LAW**

This Deed and any matter arising in connection with it shall be governed by the laws of the State of Queensland, and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

**8. PARTIES SUCCESSORS AND ASSIGNS**

References in this Deed to the Guarantor, the Principal and the Contractor shall be taken to include their respective successors and assigns.

**9. GST****9.1. Goods and Services Tax**

Any Consideration to be paid or provided for any supply made under or in connection with this Deed, unless expressly described in this Deed as including GST, does not include an amount on account of GST.

Despite any other provision in this Deed, if a party ('Supplier') makes a Taxable Supply under or in connection with this Deed on which GST is imposed:

- (a) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under this Deed but for the application of this clause is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

**9.2. Reimbursements**

If a payment to a party under or in connection with this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

**9.3. Adjustment Events**

If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Deed, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 9.1. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

**9.4. GST Group**

If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

**9.5. Non Monetary Consideration**

If a supply made under this Deed is a Taxable Supply made for non-monetary consideration then:

- (a) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Deed is GST inclusive.

**9.6. Definitions**

Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related imposition and amending Acts have the same meaning in this clause.

**9.7. Survival**

This clause will continue to apply after expiration or termination of this Deed.

The parties have signed, sealed and delivered this Deed on the day and year mentioned above.

**EXECUTED AS A DEED**

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered **Energex Limited**  
by its attorney under power of attorney dated [2  
August 2007] in the presence of:

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

\_\_\_\_\_  
Attorney Signature

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

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

\*sealing clause of Contractor\*

THE COMMON SEAL of #Name of Contractor# ) \_\_\_\_\_  
was affixed in the presence of: ) Director  
)  
)  
) \_\_\_\_\_  
) Director/Secretary

Witness

\*sealing clause of Guarantor\*

THE COMMON SEAL of #Name of Guarantor# ) \_\_\_\_\_  
was affixed in the presence of: ) Director  
)  
)  
) \_\_\_\_\_  
) Director/Secretary

Witness

**ANNEXURE to the Australian Standard  
General Conditions of Contract**

# PART E

*Better purchasing guide*

## COMPLIANCE PLAN

(Form to be completed and returned within 10 working days of the date of acceptance of tender)

### CONTRACTOR

Legal name: \_\_\_\_\_  
 Trading name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone no: ( ) \_\_\_\_\_ Fax no: ( ) \_\_\_\_\_  
 Contact person \_\_\_\_\_

### PRINCIPAL

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Postcode: \_\_\_\_\_  
 Phone no: ( ) \_\_\_\_\_ Fax no: ( ) \_\_\_\_\_  
 Contact person \_\_\_\_\_

### CONTRACT DESCRIPTION:

Contract name: \_\_\_\_\_ Project number: \_\_\_\_\_

As a successful tenderer, you have given a pre-tender commitment to comply with the 10 per cent Training Policy. You are now required to provide an outline of how you intend to comply in broad terms. Please provide details of where you intend to source your workers under structured training.

\* Note: This is simply a guide to indicate your intentions.

CONTRACT SUM:\$ \_\_\_\_\_ x 0.08% (building) = \_\_\_\_\_ total hours of compliance (a)  
 or x 0.04% (civil) = \_\_\_\_\_ total hours of compliance (b)

- Employing your own apprentices/trainees/cadets = \_\_\_\_\_ hrs
- Using Group Training Scheme apprentices/trainees/cadets = \_\_\_\_\_ hrs
- Using QBuild apprentices/trainees/cadets = \_\_\_\_\_ hrs
- Using subcontractor apprentices/trainees/cadets = \_\_\_\_\_ hrs
- Up-skilling your existing workers = \_\_\_\_\_ hrs
- Using the Indigenous workforce = \_\_\_\_\_ hrs
- Other (please specify) = \_\_\_\_\_ hrs

Note: If up-skilling constitutes more than 25% of total hours of compliance, a written variation seeking approval must be lodged with the Department of Education, Training and the Arts.

\_\_\_\_\_  
 (Signature of contractor or authorised person) Date

Form to be completed and returned to: Construction Skills Queensland, PO Box 3294, SOUTH BRISBANE QLD 4101



**INTERIM COMPLIANCE REPORT**

(To be submitted within 10 working days of the expiration of successive 13-week periods commencing from the date of acceptance of tender)

**CONTRACTOR**

Legal name: \_\_\_\_\_

Trading name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone no: ( ) \_\_\_\_\_ Fax no: ( ) \_\_\_\_\_

Contact person \_\_\_\_\_ Position: \_\_\_\_\_

**PRINCIPAL**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Postcode: \_\_\_\_\_

Phone no: ( ) \_\_\_\_\_ Fax no: ( ) \_\_\_\_\_

Contact person \_\_\_\_\_

**CONTRACT DESCRIPTION:**

Contract name: \_\_\_\_\_ Project number: \_\_\_\_\_

CONTRACT PRICE :\$ \_\_\_\_\_ x 0.08% (building) = \_\_\_\_\_ total hours of compliance

or x 0.04% (civil) = \_\_\_\_\_ total hours of compliance

Structured training hours achieved \_\_\_\_\_

for the period / / to / / - \_\_\_\_\_ hours

\_\_\_\_\_ Date \_\_\_\_\_

(Signature of contractor or authorised person)

Form to be completed and returned to: Construction Skills Queensland, PO Box 3294, SOUTH BRISBANE QLD 4101

### PRACTICAL COMPLETION REPORT

(To be submitted within 15 working days of the date of practical completion, or if there is more than one, the last occurring date of practical completion)

#### CONTRACTOR

Legal identity: \_\_\_\_\_  
 Trading name: (if different to legal) \_\_\_\_\_  
 PQC registration no: \_\_\_\_\_ PQC level: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Postcode: \_\_\_\_\_  
 Phone no: ( ) \_\_\_\_\_ Fax No: ( ) \_\_\_\_\_  
 Contact person: \_\_\_\_\_

#### PRINCIPAL

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Postcode: \_\_\_\_\_  
 Phone no: ( ) \_\_\_\_\_ Fax No: ( ) \_\_\_\_\_  
 Contact person: \_\_\_\_\_

#### CONTRACT DESCRIPTION:

Contract name: \_\_\_\_\_ Project number: \_\_\_\_\_

#### DEEMED HOURS FOR TRAINING

CONTRACT SUM :\$ \_\_\_\_\_ x 0.08% (building) = \_\_\_\_\_ (hours)  
 or x 0.04% (civil) = \_\_\_\_\_ (hours)

#### TRAINING DETAILS

If insufficient space, or up-skilling has occurred, please see over

Apprentice/trainee/ Indigenous worker name	Training agreement no.	Apprenticeship/ traineeship/ cadetship	Period of engagement on project	Total hours	Employer

Form to be completed and returned to: Construction Skills Queensland, PO Box 3294, SOUTH BRISBANE QLD 4101

The above information is true and correct

\_\_\_\_\_ Date \_\_\_\_\_  
 (Signature of contractor or authorised person)

Contractor name: \_\_\_\_\_

Project number: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Apprentice/ trainee name	Training agreement no.	Apprenticeship/ traineeship/ cadetship	Period of engagement on project	Total hours	Employer

#Hours of training will be based on the nominal hours of the competency unit/s provided it culminates in a nationally recognised building/civil construction competency or qualification. Time spent conducting skills assessments to identify skill gaps will not be counted towards contractor 10 per cent Training Policy compliance requirements (e.g. recognition of prior learning is not considered as training under the 10 per cent Training Policy).

Student/employee name	Qualification/ competency code	Start date of training	Name of registered training organisation	#Hours of training

The above information is true and correct

\_\_\_\_\_ Date \_\_\_\_\_  
(Signature of contractor or authorised person)

AS 212

(Signature of contractor or authorised person)

Construction Skills Queensland  
PO Box 3294  
South Brisbane Qld 4001  
or phone (07) 3846 8700

Industry competency standards/qualifications for the building and construction industry may be selected from the General Construction or the Civil Construction Training Package. All codes will start with either a BCC or BCG prefix.

Contractors must comply with the 10 per cent Training Policy compliance requirements.

ANNEXURE to the Australian Standard  
General Conditions of Contract

# PART F

Subcontractor's Side Deed

Subcontractor's Side Deed

\*

-

\*

-

[Name of Subcontractor]

\*

-

DateParties

Energex Limited (ABN 40 078 849 055) incorporated in Queensland of 26 Reddacliff Street, Newstead 4006 (the *Principal*);

[Name of Subcontractor] [(ABN [\*])] incorporated in [\*] of [\*] (the *Contractor*);

[Name of Subcontractor] [(ABN [\*])] incorporated in [\*] of [\*] (the *Subcontractor*).

Recitals

The Principal and the Contractor have entered into a construction Contract dated [ ] (*Contract*) in relation to the construction of the [TBC] (*Project*).

The Contractor and the Subcontractor have entered into a subcontract dated [ ] (*Subcontract*) under which the Subcontractor agrees to carry out part of the work under the Contract (*Subcontract Work*).

**IT IS AGREED** as follows.

## **1. Subcontractor's Obligations to Also Benefit the Principal**

1.1 Subject to Clause 1.2:

- (a) **(Warranty to the Principal)** the Subcontractor warrants to the Principal that it shall perform its obligations under the Subcontract and complete the Subcontract Work in a proper and workmanlike manner, using only new materials which are fit for their purpose and in accordance with the Subcontract;
- (b) **(Warranties and Indemnities)** the Subcontractor gives to the Principal the same warranties, guarantees and indemnities that it has given to the Contractor under the Subcontract;
- (c) **(Insurance)** the Subcontractor agrees that where the Subcontractor is obliged by the Subcontract to effect insurance in the name of the Contractor, the Subcontractor shall:
  - (i) also effect the insurance in the name of the Principal for its respective interest as if the Principal were named separately in the Subcontract as a person in whose name insurance is to be effected; and
  - (ii) comply with all its other obligations under the Subcontract relating to insurance for the benefit of the Principal;
- (d) **(Access and Information)** the Subcontractor shall, whenever reasonably requested by the Principal:
  - (i) allow the Principal or any authorised agent of the Principal access to any part of the Project, the Subcontract Work or any place where Subcontract Work is being carried out for inspection or testing purposes; and

(ii) provide the Principal with copies of any documents (including without limitation correspondence, notices, reports, directions, certificates, Approvals, plans, drawings, agreements, insurance policies) relating to the Subcontract, the Project, the Subcontract Work or the performance by the Subcontractor of its obligations under the Subcontract in the possession or control of the Subcontractor.

The Contractor agrees to reimburse the Subcontractor for the reasonable additional costs directly incurred by the Subcontractor in complying with the Principal's request under this clause;

(e) (Subcontracting) without limiting the Subcontractor's obligations in Clause 2.1 the Subcontractor agrees if the Subcontractor subcontracts or enters into any supply agreement in connection with the Subcontract Work;

(i) the Subcontractor shall ensure that the sub-subcontract or supply agreement is on terms which are consistent with the Subcontractor's compliance with its obligations to the Principal under this Deed;

(ii) the Subcontractor shall be responsible for ensuring compliance by any sub-subcontractor or supplier with the terms of this Deed; and

(iii) the Subcontractor shall not be relieved of complying with any of the Subcontractor's obligations under this Deed by reason of it entering into any sub-subcontract or supply agreement; and

(f) (Performance Security) where the Subcontractor is obliged under the Subcontract to provide to the Contractor any directors' or related company guarantee, the Subcontractor shall ensure that the guarantee is provided on terms which expressly permit it to be assigned to and enforced by any person who becomes entitled to the benefit of the Subcontractor's obligations under the Subcontract without the need to obtain any consent from the guarantor.

1.2 The Subcontractor's liability to the Principal for breach by the Subcontractor of Clause 1.1 shall be limited or excluded to the same extent (if at all) that the Subcontractor's liability to the Contractor is expressly limited or excluded by the Subcontract.

1.3 The obligations of the Subcontractor under Clause 1.1:

(a) take effect immediately upon the execution of this Deed; and

(b) are additional to and do not derogate from or replace the obligations of the Subcontractor under the Subcontract.

## **2. Dealings With or Enforcement of Subcontract**

2.1 The Subcontractor agrees:

(a) (Termination) the Subcontractor shall not terminate, rescind, cancel or suspend the Subcontract for any reason without:

(i) giving the Principal prior written notice of the Subcontractor's intention to do so; and

(ii) allowing the Principal a prior reasonable period after the giving of that notice (in no case exceeding thirty (30) days) to:

(A) consult with the Subcontractor in relation to the proposed termination, rescission, cancellation or suspension; and

(B) remedy or rectify the default or event, if the Subcontractor's right to terminate, rescind or cancel arises from a default by or the occurrence of an event in relation to the Contractor,

where the Principal decides in its discretion to do so (the Principal being under no obligation to do so);

- (b) **(Variation)** the Subcontractor shall not vary or agree to vary the Subcontract without the prior written consent of the Principal, which shall not be unreasonably withheld or delayed;
- (c) **(Enforcement)** the Subcontractor shall also provide to the Principal a copy of any notice, request, demand, claim or other written communication given by the Subcontractor to the Contractor, a superintendent or a principal's representative or any other person under or in connection with the Subcontract which:
  - (i) raises any dispute between the Subcontractor and the Contractor under the Subcontract or in connection with the Project or the Subcontract Work;
  - (ii) requests the Contractor to rectify or remedy any breach of the Subcontract by the Contractor; or
  - (iii) notifies the Contractor of any intention of the Subcontractor to terminate, cancel, rescind or suspend the Subcontract for any reason,  
at the same time that the communication is given to the Contractor;
- (d) **(Assignment)** the Subcontractor shall not assign, novate or otherwise deal with the Subcontract or any rights of the Subcontractor under or in connection with the Subcontract without:
  - (i) the prior written consent of the Principal, which shall not be unreasonably withheld or delayed; and
  - (ii) firstly procuring from the person in whose favour the assignment, novation or other dealing is to be made and delivering to the Principal a deed in terms reasonably acceptable to the Principal under which the person agrees in favour of the Principal to be bound by the provisions of this Deed as if the person were named in this Deed as the Subcontractor; and
- (e) **(Subcontracting)** the Subcontractor shall not subcontract any of the Subcontract Work without:
  - (i) obtaining the prior written consent of the Principal, which shall not be unreasonably withheld or delayed; and
  - (ii) firstly procuring from the sub-subcontractor and delivering to the Principal a deed in similar terms to this Deed with such changes as may be reasonably required by the Principal.

2.3 The obligations of the Subcontractor under Clause 2.1 take effect immediately upon the execution of this Deed.

### **3. Novation of Subcontract**

- 3.1 If at any time the Principal gives to the Subcontractor a written notice stating that the Principal requires the novation of the Subcontract to the Principal or the nominee of the Principal named in the notice (*New Contractor*), then subject to Clause 3.2:
  - (a) the Subcontractor shall be bound to observe and perform the Subcontract for the benefit of the New Contractor;
  - (b) the New Contractor shall have the benefit of and be bound to observe and perform the Subcontract; and
  - (c) the Contractor assigns to the New Contractor and the New Contractor shall be entitled to the benefit of any security for the Subcontractor's performance under the Subcontract, from the date of the Principal giving the notice (*Novation Date*) as if the New Contractor had originally entered into the Subcontract in the place of the Contractor.
- 3.2 Clause 3.1 shall not:
  - (a) oblige the New Contractor to observe or perform any condition or obligation under the Subcontract which relates to a period prior to the Novation Date (whether or not all conditions and obligations under the Subcontract have been duly observed or performed by the Contractor up to the Novation Date);

- (b) allow the Subcontractor to claim or enforce against the New Contractor any right or remedy which relates to a period prior to the Novation Date (including without limitation any right of set off or counterclaim); or
- (c) limit, extinguish or otherwise affect the entitlement of the Subcontractor to recover from the Contractor damages, compensation or other moneys payable under or in connection with the Subcontract in relation to a period prior to the Novation Date.

3.3 Upon the novation of the Subcontract in accordance with this clause the Subcontractor and Contractor shall promptly do and the Principal shall do or procure that the New Contractor do (as the case may require) all acts, matters and things reasonably required by the Principal or the Subcontractor for the purpose of evidencing or perfecting the novation of the Subcontract and assignment of performance security in accordance with Clause 3.1 but the failure by any party to do so shall not affect the validity or enforceability of the novation or assignment.

3.4 The Principal shall not be entitled to require the novation of the Subcontract under this clause unless it becomes entitled to terminate the Contract or take out of the hands of the Contractor the Subcontract Work.

#### **4. The Principal's Liability to Subcontractor**

The parties agree that none of:

- (a) the execution of this Deed;
- (b) any consent or approval given by the Principal under this Deed or in connection with the Property; or
- (c) any action taken by the Principal under or pursuant to this Deed,  
shall impose on the Principal any obligation or duty to the Subcontractor (including without limitation to pay for the Subcontract Work) except to the extent expressly provided by this Deed.

#### **5. Notices**

5.1 All notices, requests, demands, claims or other communications to or upon the respective parties to this Deed shall be deemed to be duly given or made:

- (a) (in the case of delivery in person or by post or cable) when delivered; or
- (b) (in the case of facsimile) on receipt by the sender, from its machine, of notification that all pages were transmitted to the number of the recipient provided that if the time of dispatch is not before 5.00pm (local time) on a business day, it shall be deemed to have been received on the next business day.

to the party to which such notice, request, demand, claim or other communication is required or permitted to be given under this Deed addressed to its address shown on page 1 of this Deed or such other address as the relevant addressee may specify for such purpose to the others by notice in writing from time to time.

5.2 A written notice includes a notice by letter, telex, facsimile transmission or cable.

#### **6. Stamp Duty**

The Contractor shall pay all stamp and other duties (together with any fines or penalties for late payment) on or in connection with the execution, delivery and performance of this Deed and the transactions contemplated by this Deed.

#### **7. Assignment**

7.1 Neither the Contractor nor the Subcontractor shall assign, transfer, mortgage, charge or otherwise deal with any of its rights or obligations under or pursuant to this Deed without the prior written consent of the Principal.



7.2 The Principal shall be entitled to assign, transfer or otherwise deal with its rights or obligations under this Deed without the consent of any other party.

## **8. GST**

8.1 **(Goods and Services Tax)** Any Consideration to be paid or provided for any supply made under or in connection with this Deed, unless expressly described in this Deed as including GST, does not include an amount on account of GST.

Despite any other provision in this Deed, if a party ('Supplier') makes a Taxable Supply under or in connection with this Deed on which GST is imposed:

- (a) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under this Deed but for the application of this clause is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

8.2 **(Reimbursements)** If a payment to a party under or in connection with this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

8.3 **(Adjustment Events)** If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Deed, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 8.1. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

8.4 **(GST Group)** If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

8.5 **(Non Monetary Consideration)** If a supply made under this Deed is a Taxable Supply made for non-monetary consideration then:

- (a) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Deed is GST inclusive.

8.6 **(Definitions)** Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition and amending Acts have the same meaning in this clause.

8.7 **(Survival)** This clause will continue to apply after expiration or termination of this Deed.

## **9. Interpretation and General Provisions**

9.1 In this Deed:

- (a) headings are inserted for convenience of reference only and shall be ignored in construing this Deed;
- (b) words importing the singular number include the plural and vice versa and words importing persons include firms and corporations;

- (c) references to any document (including this Deed, the Contract and the Subcontract) include any amendment to or substitute for such document;
- (d) references to any party to or in this Deed or any other document includes its successors and permitted assigns; and
- (e) any covenant or agreement on the part of two or more persons under this Deed shall bind them and each of them and their and each of their successors and assigns jointly and severally.

To the extent of any inconsistency between this Deed and the Subcontract, this Deed prevails.

- 9.2 No failure to exercise and no delay in exercising, on the part of the Principal, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.
- 9.3 The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 9.4 Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall be ineffective in that jurisdiction to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of such provision in any other jurisdiction.
- 9.5 This Deed may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

The parties have signed, sealed and delivered this Deed on the day and year mentioned above.

**EXECUTED AS A DEED**

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Signed Sealed and Delivered Energex Limited** by its attorney under power of attorney dated 2 August 2007 in the presence of:

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

\_\_\_\_\_  
Attorney Signature

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

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

**The Common Seal of [\* Limited]** was affixed in the presence of:

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

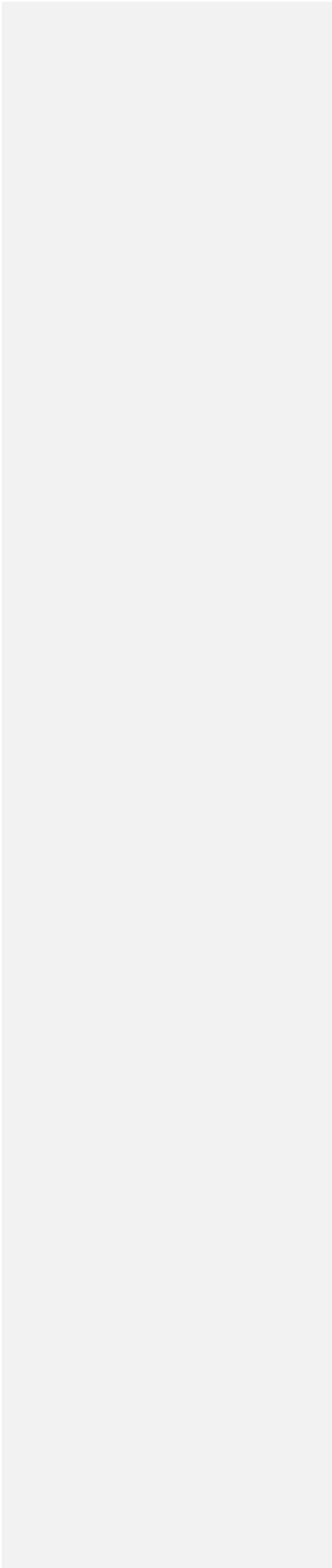
\_\_\_\_\_  
Director/Secretary Signature

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

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

**Delete text if Side Deed is not used and include "Not Used"**

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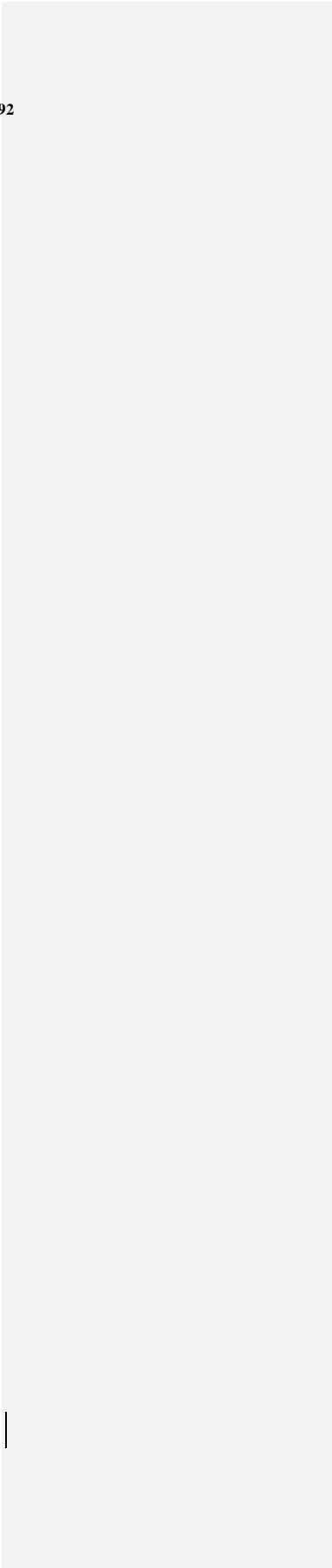
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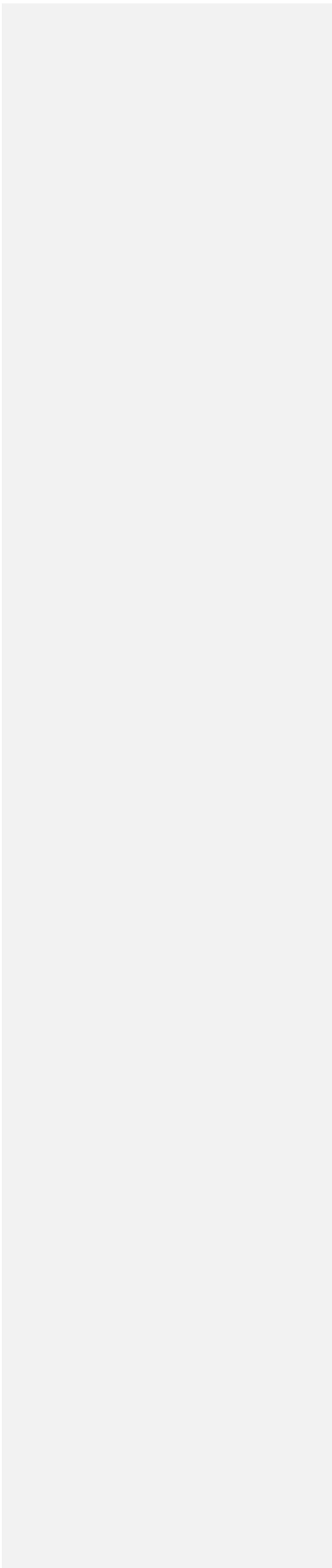
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**AUSTRALIAN STANDARD  
GENERAL CONDITIONS OF TENDERING AND FORM OF TENDER**

1. The documents, upon which the tenderer is to tender are:

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

(They should be listed in each case. No general description suffices.)

2. Tenderers must complete the Tender Form provided and lodge it with any accompanying schedules or information in a sealed envelope endorsed with the Contract number at the place and by the time stated in the invitation to tender.

3. The Principal is not bound to accept the lowest or any tender.

**TENDER FORM**

Name of person,  
firm or company  
tendering  
USE BLOCK  
LETTERS

.....

address

of .....  
hereby tender(s) to perform the work for:

Description  
of works

.....

.....

..... (Contract No. ....) in  
accordance with the following Documents:

.....

.....

List Documents

.....

.....

No general description

.....

.....

suffices

.....

.....

.....

.....

When the tender documents  
provide that the tender is  
to a lump sum only, (2)  
does not apply.  
When the tender documents  
provide that the tender is  
to be a Schedule of Rates  
only, (1) does not apply.

1. For the lump sum of .....

(\$ .....); and .....

2. At the rates in the attached Schedule of Rates

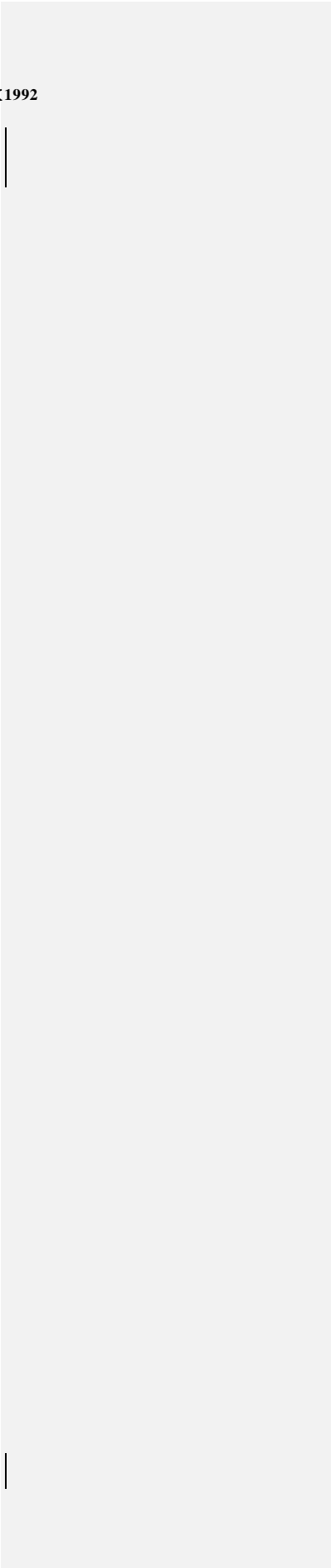
If the tenderer is a firm the  
full names of the individual  
members of the firm must  
be stated here.

.....

Insert date.

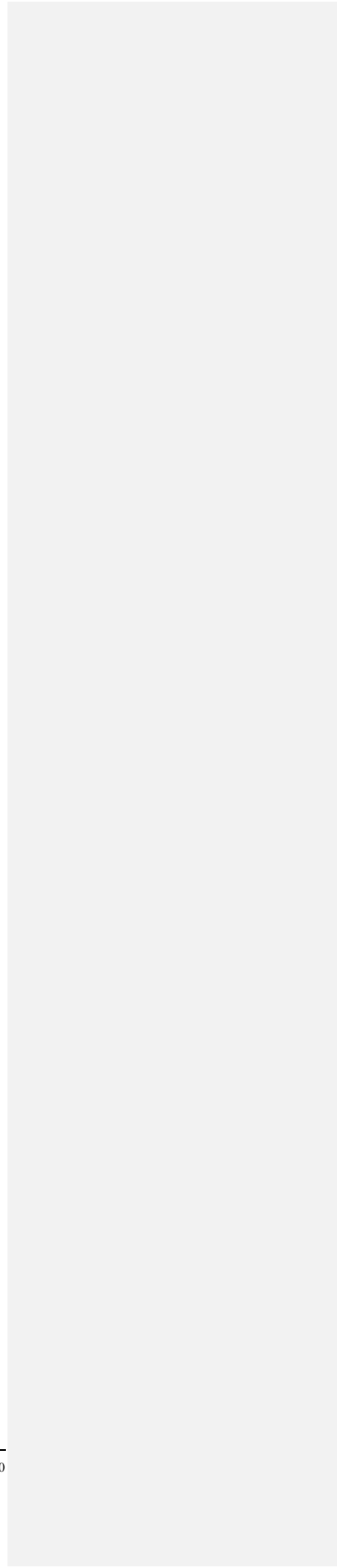
DATED this ..... day of ..... 19.....

.....  
Signature of Tenderer



|

NOTES



**AUSTRALIAN STANDARD  
FORM OF FORMAL INSTRUMENT OF AGREEMENT**

AGREEMENT made ..... day of ..... 19.....

BETWEEN .....  
.....  
..... (the Contractor)

AND .....  
..... (the Principal)

IT IS AGREED that the annexed documents marked as follows:

TITLE ..... MARK

Tender, dated .....

Letter of acceptance, dated .....

AS 2124-1992 General Conditions of Contract and Annexure.

(Agreement Signed and all pages initialled by parties)

Specification .....

Dwg Nos:

Other Documents:

(Use extra sheets if necessary to list all documents and drawings)

..... shall together comprise the contract between the parties AND if the Contractor or the Principal is two or more persons then they shall be bound jointly and severally.

Signed by the Contractor .....

Signed by the Principal .....

|

NOTES

#### Standards Australia

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