

Australian Standard™

**General conditions of contract for
design and construct**

Contractor Prequalification Scheme
Design and Construction



This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 17 February 1995 and published on 5 April 1995

The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Professional Engineers New Zealand
Law Council of Australia
Master Builders Australia
National Construction Council/MTIA
National Public Works Council
Process Engineers and Constructors Association
Railways of Australia
Royal Australian Institute of Architects
The Association of Consulting Engineers Australia

Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about Standards can be found by visiting the Standards Australia web site at www.standards.com.au and looking up the relevant Standard in the on-line catalogue.

Alternatively, the printed Catalogue provides information current at 1 January each year, and the monthly magazine, *The Australian Standard*, has a full listing of revisions and amendments published each month.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at mail@standards.com.au, or write to the Chief Executive, Standards Australia International Ltd, GPO Box 5420, Sydney, NSW 2001.

This Standard was issued in draft form for comment as DR 93139 (in part).

Australian Standard™

General conditions of contract for design and construct

First published as AS 4300—1995.
Incorporating Amendment No. 1 (**October 2000**).

COPYRIGHT

© Standards Australia International

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the written permission of the publisher.

Published by Standards Australia International Ltd
GPO Box 5420, Sydney, NSW 2001, Australia

ISBN 0 7262 9318 0

PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee on General Conditions of Contract and issued as an Australian Standard.

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, note, table, figure, or part thereof affected.

This Standard covers the following types of project procurement methods—

- (a) Design and Construct Contract.
- (b) Design Development and Construct Contract.
- (c) Design, Novate and Construct Contract.

If the project procurement method chosen by the Principal is:

- (i) *Design and construct*—the Principal would provide the Principal's Project Requirements, would not normally provide a detailed Preliminary Design and would not require Novation of any subcontractors (including consultants);
- (ii) *Design development and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design and accordingly would complete Annexure Part A Items 10 and 11;
- (iii) *Design, novate and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 24 stating which subcontractors (including consultants) or Selected Subcontractors are to be novated to the Contractor.

This Standard is part of the suite of contracts based on AS 2124—1992 *General conditions of contract*.

AS 4301—1995 *General condition of tendering and tender form for design and construct contract* and AS 4302—1995 *Form of formal instrument of agreement for design and construct contract* should be used with this Contract.

WARNINGS:

- 1 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~~Clauses 18 (Insurance of the work under the Subcontract) and 19 (Public Liability Insurance).

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

- 2 Where the Principal effects insurance policies under Clause 18 or 19, copies of such policies should be made available to tenderers at the time of tender.**
- 3 For the purposes of Clause 30.2, the inclusion of Quality Assurance requirements in a contract will require detailed ~~clauses~~Clauses in the Contract which have regard to the Quality Standard selected for the work.**

- 4 Principals should ensure that their specific requirements are fully and completely incorporated in the ‘Principal’s Project Requirements’ obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender the parties should give consideration to whether that design should form part of the Preliminary Design.
- 5 Clauses which are prefixed by a dagger symbol (†) require the parties to indicate in the Annexure whether the particular Clause is applicable or not applicable. If words in an Annexure item are prefixed with a dagger symbol (†), the parties are required to delete the words which do not apply, as appropriate. Note Clause 1 which provides that if no deletion is made, the particular Clause applies.
- 6 Items in Annexure Part A which are marked with a hash symbol (#) indicate that these items are to be deleted where the Contract provides for Separable Portions. If so, the items marked with a hash symbol (#) are to be deleted in Annexure Part A and that part of Annexure Part A entitled Separable Portion is to be completed for each Separable Portion.
- 7 Clauses which are prefixed by an asterisk symbol (*) may be omitted without making consequential amendments to these General Conditions of Contract.

A1 |

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.

CONTENTS

	<i>Page</i>
1 CONSTRUCTION OF CONTRACT	6
2 INTERPRETATION.....	6
3 NATURE OF CONTRACT	14
4 WARRANTIES	18
5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS	19
6 EVIDENCE OF CONTRACT	26
7 SERVICE OF NOTICES	26
8 CONTRACT DOCUMENTS.....	27
9 ASSIGNMENT AND SUBCONTRACTING	32
10 NOVATION	39
11 PROVISIONAL SUMS	39
12 LATENT CONDITIONS.....	40
13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS.....	42
14 LEGISLATIVE REQUIREMENTS.....	44
15 PROTECTION OF PEOPLE AND PROPERTY	59
16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE.....	60
17 DAMAGE TO PERSONS AND PROPERTY	61
18 INSURANCE OF THE WORK UNDER THE CONTRACT	62
19 PUBLIC LIABILITY INSURANCE	63
20 INSURANCE OF EMPLOYEES.....	64
21 PROFESSIONAL INDEMNITY INSURANCE	64
22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES.....	64
23 SUPERINTENDENT.....	67
24 SUPERINTENDENT’S REPRESENTATIVE.....	69
25 CONTRACTOR’S REPRESENTATIVE.....	69
26 CONTROL OF CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS.....	69
27 SITE	70
28 SETTING OUT THE WORKS	77
29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT.....	78
30 MATERIALS AND WORK	83
31 EXAMINATION AND TESTING.....	86
32 WORKING HOURS	88
33 PROGRESS AND PROGRAMMING OF THE WORKS.....	89
34 SUSPENSION OF THE WORKS.....	92
35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION	94
36 DELAY OR DISRUPTION COSTS	100
37 DEFECTS LIABILITY.....	100

	<i>Page</i>
38 CLEANING UP.....	101
39 URGENT PROTECTION.....	101
40 VARIATIONS.....	102
41 DAYWORK.....	107
42 CERTIFICATES AND PAYMENTS.....	108
43 PAYMENT OF WORKERS AND SUBCONTRACTORS.....	118
44 DEFAULT OR INSOLVENCY.....	120
45 TERMINATION BY FRUSTRATION.....	125
46 NOTIFICATION OF CLAIMS.....	126
47 DISPUTE RESOLUTION.....	128
48 WAIVER OF CONDITIONS.....	131
ANNEXURE PART A.....	<u>54132</u>
ANNEXURE PART B.....	<u>14362</u>
ANNEXURE PART C.....	<u>63144</u>
ANNEXURE PART D.....	<u>14664</u>
ANNEXURE PART E.....	<u>67151</u>
<u>ANNEXURE PART F.....</u>	<u>159</u>
<u>ANNEXURE PART G.....</u>	<u>163</u>
<u>ANNEXURE PART H.....</u>	<u>165</u>
<u>ANNEXURE PART I.....</u>	<u>173</u>
<u>ANNEXURE PART J.....</u>	<u>181</u>
INDEX.....	<u>69189</u>

STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for design and construct

1 CONSTRUCTION OF CONTRACT

The law governing the Contract, its interpretation and any agreement to arbitrate is the law of the State or Territory stated in Annexure Part A item applicable to Clause 1, or if the State or Territory is not stated, the law of the State or Territory where the Site is located.

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

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

If in the Annexure item relevant to a Clause prefixed with a dagger symbol (†), neither of the expressions † Applicable, † Not Applicable are deleted, the Clause shall apply.

If pursuant to Annexure Part B to these General Conditions of Contract, Clauses or parts of Clauses in these General Conditions are deleted from the Contract, this Contract shall be read and construed as though the Clause or part of the Clause has been deleted whether or not that particular Clause or part of the Clause has been struck from these General Conditions.

2 INTERPRETATION

In the Contract, except where the context otherwise requires—

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

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

'Certificate of Practical Completion' means the certificate referred to in Clause 42.3;

'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;

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

'Consultant' means any person engaged by the Contractor to perform consultancy services in connection with the work under the Contract and includes any consultant of the Principal whose prior contract is novated to the Contractor under ~~Clause 109A~~;

'Consultant Services Category' means each Consultant Services Category set out in Annexure Part A and any other category of consultancy services for which the Contract requires the Contractor to engage an independent third party Consultant as a subcontractor;

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

'Contractor's Management Plans' means the management plans relating to the matters listed in Annexure Part A 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;

'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 Schedule of Rates; or
- (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 Design Obligations' means all tasks necessary to design and specify the Works required by the Contract, including:

- (a) preparation of the Design Documents and, if the documents stated in Annexure Part A as describing the Principal's Project Requirements include a Preliminary Design, developing (including by way of review, connection and completion) the Preliminary Design;
- (b) any other obligations under the Contract which the Contract describes as Contractor's Design Obligations; and
- (c) all obligations of the Contractor set out in Annexure Part G;

'Contractor's Program' is referred to in Clause 33.2;

'Date for Practical Completion' means—

- (a) where Annexure Part A provides a date for Practical Completion, the date; or
- (b) where Annexure Part A provides a period of time for Practical Completion, 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 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 of Practical Completion' means—

- (a) the date certified by the Superintendent in a Certificate of Practical Completion 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;

'Daywork' means work referred to in Clause 41;

'Defects Liability Period' means the period or periods referred to in Clause 37;

'Design Documents' means the designs, drawings, specifications and other information, reports, samples, models, patterns and the like required by the Contract and created or used (and including, where the context so requires, those to be created or used by the Contractor) for the construction of the Works;

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

'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);

'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;

'Excepted Risk' means any of the risks referred to in Clause 16.3;

'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;

'Final Certificate' means a certificate issued by the Superintendent to the Principal and to the Contractor pursuant to Clause 42.6;

'Final Payment Claim' means the final payment claim referred to in Clause 42;

'Government Approvals' includes:

- (a) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out 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;

'Latent Condition' means any of the conditions referred to in Clause 12.1;

'Legislative Requirements' includes—

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out;
- (b) ~~certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Contract~~not used; and
- (c) fees and charges payable in connection with the foregoing;

'Methodology and Resourcing Documents' means:

- (a) the documents listed in Annexure Part A 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;

'Nominated Consultant' means a Consultant identified as such in Annexure Part A and any Consultant nominated by the Principal in the place of any so identified or nominated Consultant;

'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) costs arising in the performance of the Contractor's Design Obligations;

(d) items valued by the application of rates, prices or other amounts which include any amount for Contractor's profit, attendance or on-site or off-site overheads; and

(e) items comprising Contractor's profit, attendance or on-site and off-site overhead;

'Novated Consultant' means a Consultant identified as such in Annexure Part A novated in connection with any Consultant Services Category;

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

'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 ~~the their stated~~ Principal's purpose/Purposes;

(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;

(b) ~~those tests testing~~ which ~~are is~~ required by the Contract to be carried out and passed before the Works reach Practical Completion, ~~has~~ve 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~~required 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 Government Approvals; and

(iii) Work Standards;

(e) any certificate of approval in regard to fire services or fire protection systems installed in the Works has been issued;

(f) the Contractor has provided to the Superintendent:

(i) any certificate of classification, occupancy permit or other Government Approval 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;
- (k) the Contractor has provided to the Superintendent certificates (on terms acceptable to the Superintendent) from all Consultants (and employees of the Contractor) who have carried out design or specification services in respect of the work under the Contract to the effect that:
 - (i) the design carried out by that person complies with the Contract and all Legislative Requirements and Government Approvals;
 - (ii) construction work has been carried out in accordance with the Design Documents in respect of which that person has provided design or specification services; and
- (l) any other requirements which the Contract requires to be satisfied prior to Practical Completion have been satisfied;

'Preliminary Design' means ~~any preliminary design of the Works included in the documents stated in Annexure Part A as describing the Principal's Project Requirements~~ all designs, drawings, specifications, reports, samples, models, patterns and other information provided:

- (a) by or on behalf of the Principal at any time; or
- (b) by the Contractor prior to the Date of Acceptance of Tender (including under any prior agreement with the Principal),

in connection with or relevant to the work under the Contract or the Works whether or not stated in documents expressly identified in Annexure Part A as setting out Preliminary Design (including without limitation those which are set out or referred to in the Principal's Project Requirements);

'Pricing Reference Document' means:

- (a) any document described as a Pricing Reference Document in Annexure Part A 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 Schedule of Rates;

'Principal' means the Principal stated in Annexure Part A;

'Principal's Project Requirements' means the written summary or outline of the Principal's requirements for the Works described in the ~~documents~~ Principal's Project Requirements Documents stated in Annexure Part A and—

- (a) shall include the Principal's Purposes stated purpose for which the Works are intended;

- (b) may include the Principal's design, timing and cost objectives for the Works; ~~and~~
- (c) where stated in Annexure Part A, shall include a Preliminary Design; and
- (d) shall be taken to include all requirements which are necessarily inferred having regard to the Principal's requirements as described in the Principal's Project Requirements Documents or the Contract and the Principal's Purposes;

'Principal's Project Requirements Documents' means the documents stated in Annexure Part A summarising or outlining the Principal's requirements for the Works as they may be developed or updated by the Contractor and approved by the Principal in accordance with the Contract;

'Principal's Purposes' means the purposes for which the Works are intended as described in or necessarily inferred from the Contract or the Principal's Project Requirements Documents;

'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 as such in Annexure Part A) other than Relevant Documents or documents which comprise part of the Contract;

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

'public and products liability policy' means a policy of insurance taken out pursuant to Clause 19;

'Relevant Documents' means the agreements, licences, leases, easements, approvals, policies or other documents listed in Annexure Part A 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;

'Selected Subcontract Work' means that work or the supply of those items subcontracted to a Selected Subcontractor pursuant to Clause 9.4;

'Selected Subcontractor' means a subcontractor carrying out Selected Subcontract Work but excluding any Novated Consultant;

'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 Annexure Part A;

'Standard Work Procedures (SWPs)' means the Principal's Standard Work Procedures **stated in this Contract to be applicable to this Contract;**

'subcontractor' in Clauses 9, 10 and 11(b) includes Consultant; means any person engaged by the Contractor to carry out any part of the work under the Contract including a Consultant or Selected Subcontractor but excluding an employee of the Contractor;

'Superintendent' means the person stated in Annexure Part A 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 by the Superintendent pursuant to Clause 24;

'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;

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

'test' in Clause 31, includes commission, examine and measure;

'work under the Contract' means the work which the Contractor is or may be required to execute under the Contract and includes the Contractor's Design Obligations, variations, remedial work, Constructional Plant and Temporary Works and ENERGEX Supplied Material (as defined in clause 29.4) and any other 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)

'Work Standards' means:

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

The clause headings and sub-clause headings in these General Conditions of Contract shall not form part of these 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" or similar expressions (including "for example") 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 of or schedule or annexure to this Contract.

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, issuing the certificate, making the payment or doing the other act shall be deemed to be on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday.

3 NATURE OF CONTRACT

3.1 Performance and Payment

The Contractor shall execute and complete the work under the Contract in accordance with the requirements of the Contract.

The Principal shall pay the Contractor—

- (a) for work for which the Principal accepted a lump sum, the lump sum; and
- (b) for work for which the Principal accepted rates, the sum 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 Schedule of Rates) 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 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* (Qld) 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 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 Schedule of Rates.

3.3 Adjustment for Actual Quantities—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 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 Annexure Part A the rate shall apply to the greater or lesser quantities within the limits; ~~and~~
 - (ii) quantities outside the limits of accuracy stated in Annexure Part A (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

(iii) the Contractor shall otherwise have no other Claim in connection with the difference.

If a 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 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.

3.4 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 bases for a Claim by the Contractor.

(b) Subject to paragraph (a) and (c), 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;
- (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;
- (v) except to the extent a Pricing Reference Document expressly provides otherwise, rates, lump sums or other prices included in the Pricing Reference Document will:
 - (A) be taken to include all costs associated with the relevant item and all the Contractor's preliminaries, attendance, supervision, overhead (off-Site and on-Site) and profit relating to that item;
 - (B) not be subject to rise and fall, foreign exchange adjustment or any other adjustment whatever; and
 - (C) 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 Documents).

- (d) In determining whether to use a Pricing Reference Document for any purpose referred to in paragraph (b), the Superintendent need not have regard to whether the rates, lump sums or other prices are comparable to current market rates, lump sums or other prices.

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 the design of the Works and 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, design, 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 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 design, 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 Consultants, 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.

4 WARRANTIES

4.1 Contractor's Warranties

Without limiting the generality of Clause 3.1, the Contractor warrants to the Principal that the Contractor—

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
- (b) subject to Clauses 9 and 9A, shall engage and retain the Consultants identified in the Contractor's tender and any other Consultants retained in accordance with the Contract who are suitably qualified (including without limitation with all necessary licences, certificates and registration) and experienced;
- (c) has examined and carefully checked any Preliminary Design included in the Principal's Project Requirements and satisfied itself that such Preliminary Design is suitable, appropriate and adequate for the purpose stated in the Principal's Project Requirements;
- (d) shall execute and complete the Contractor's Design Obligations and produce the Design Documents to accord and fully comply with the Principal's Project Requirements and, if Clause 10 applies, accept the novation and retain the Consultants for any work the subject of a prior contract with the Principal; and
- (e) shall execute and complete the work under the Contract in accordance with the Design Documents;
- (f) shall execute and complete the Works so that the Works separately and when interfaced with any part of any Existing Improvements or any works (not included in the Works) which are to be carried out in conjunction with or later interfaced with the Works which are disclosed to the Contractor by or on behalf of the Principal prior to the Date of Acceptance of Tender, shall when completed, shall—
 - (i) be fit for the ~~stated~~ Principal's ~~purpose~~ Purposes; and
 - (ii) comply with all the requirements of the Contract and all Legislative Requirements and Government Approvals.

- (g) has satisfied itself as to the Principal's Purposes; and
- (h) shall execute and complete the Contractor's Design Obligations so that the Design Documents, when completed, will:
 - (i) be fit for the Principal's Purposes provided that, without limitation to any other Clause of this Contract, the Contractor does not provide any warranty to the Principal in regard to:
 - (A) the commercial performance or viability of the Works following their completion in accordance with the Contract; or
 - (B) the total revenue the Principal may derive from the Works following their completion in accordance with the Contract;
 - (ii) comply with all the requirements of the Contract and all Legislative Requirements and Government Approvals; and
 - (iii) except to the extent necessary to ensure compliance with subparagraphs (i) and (ii), be consistent with and not deviate from:
 - (A) any design documents submitted to the Principal as part of or in connection with the Contractor's tender;
 - (B) any Design Documents previously prepared and approved or taken to have been approved by the Principal or Superintendent for the purposes of the Contract,
except to the extent that:
 - (C) the Principal has notified the Contractor that any part of such design documents or Design Documents are not accepted by the Principal; or
 - (D) the Principal has agreed in writing to such inconsistency or deviation..

4.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 4.1 and the Contractor's Design Obligations shall ~~remain unaffected~~ not be limited, restricted or in any way affected notwithstanding—

- (a) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a consultant of the Principal ~~under Clause 10 (if any)~~ and thereafter has retained that consultant in connection with the work under the Contract;
- (c) any receipt or review of, or comment or direction on, ~~approval or consent to the use of the Design Documents (or failure to do so) by the Superintendent or any of the Principal's consultants; and~~
- (d) any variation under Clause 40;-
- (e) changes made or not made to the Design Documents by the Contractor following the Superintendent's or Principal's receipt, review of, comment or direction on, approval or consent in respect of the Design Documents;
- (f) the nomination by the Principal of any Consultant under Clause 9A; and

- (g) any Principal-Supplied Information (including without limitation any inaccuracy, incompleteness or inadequacy in any Principal-Supplied Information).

4A. DESIGN OBLIGATIONS

4A.1 Contractor's Design Obligations

The Contractor shall as part of the Contractor's Design Obligations perform the obligations set out in Annexure Part G.

4A.2 Purpose of Principal's or Superintendent's Consent

The parties agree that:

- (a) neither the Superintendent nor the Principal shall be bound at any time to check the design or specification of the Works for errors, omissions or compliance with the Principal's Project Requirements or the requirements of the Contract;
- (b) the intent of any provision in the Contract for the Principal or Superintendent to give their consent, approval or direction in respect of Design Documents or Principal's Project Requirements Documents is to give the Principal or Superintendent an opportunity to:
- (i) monitor the progress of the design and specification of the Works;
 - (ii) monitor the Contractor's compliance with its obligation to design and specify the Works so that they accord with the Principal's Project Requirements;
 - (iii) ensure the Principal's Project Requirements Documents adequately describe the Principal's Project Requirements; and
 - (iv) require variations to the work under the Contract where the Principal in its discretion so requires, subject to the provisions of the Contract;
- (c) any such consent, approval or direction given by the Principal or the Superintendent shall not relieve the Contractor from responsibility for the design and specification of the Works, the performance of the Contractor's Design Obligations, errors or omissions in the Design Documents, the carrying out of the work under the Contract, any of the Contractor's warranties given under the Contract or compliance with the requirements of the Contract; and
- (d) nothing in this clause shall affect the Principal's or Superintendent's right to direct a variation to the work under the Contract at any time subject to the provisions of the Contract.

4A.3 Preliminary Design

- (a) To the extent that any Preliminary Design is expressed by the Contract to form part of the Principal's Project Requirements, the Contractor agrees:
- (i) as part of the Contractor's Design Obligations, it shall investigate and satisfy itself as to and assume full responsibility for the adequacy and suitability of any aspect of the Preliminary Design (including without limitation, geotechnical reports, surveys and all other Preliminary Design involving, relating to or reliant upon investigations of Latent Conditions) relevant for the purpose of completing the design of the Works and otherwise performing its obligations under the Contract, in accordance with the requirements of the Contract;

- (ii) as part of the Contractor's Design Obligations, it shall rectify any errors, ambiguities, omissions, discrepancies or inadequacies in any aspect of the Preliminary Design relevant to completing the design of the Works;
 - (iii) it has not relied upon any representation, warranty or statement by or on behalf of the Principal, the Superintendent or any agent of the Principal as to the adequacy, suitability or acceptability of, or any other aspect of the Preliminary Design for the purpose of the Contractor performing its obligations and the work under the Contract in accordance with the requirements of the Contract or any matter upon which it is obliged by the Contract to satisfy itself, or for any other purpose;
 - (iv) the Contractor shall not deviate from the Preliminary Design unless:
 - (A) the Contractor has fully advised the Principal in writing as to:
 - (1) the benefits of the alternative design; and
 - (2) the extent (if any) that the alternative design may affect the achievement of the Principal's Project Requirements; and
 - (B) the Principal has consented to the use of the alternative design; and
 - (v) any consent given by the Principal under paragraph (iv) shall not be taken to prejudice or otherwise adversely affect in any way the Contractor's obligations and warranties under the Contract.
- (b) To the extent that any Preliminary Design is not expressed by the Contract to form part of the Principal's Project Requirements, it shall be 'Principal-Supplied Information' for the purposes of the Contract.

4A.4 Developed Design

To the extent that the Principal or Superintendent has consented to, approved or reviewed without comment or been given the opportunity to review but has not commented on any Design Documents ('Developed Design') the Contractor agrees:

- (a) the Contractor shall not deviate from the Developed Design unless:
 - (i) the Contractor has fully advised the Principal in writing as to:
 - (A) the benefits of the alternative design; and
 - (B) the extent (if any) that the alternative design may affect the achievement of the Principal's Project Requirements; and
 - (ii) the Principal has consented to the use of the alternative design; and
- (b) any consent given by the Principal under paragraph (a) shall not be taken to prejudice or otherwise adversely affect in any way the Contractor's obligations and warranties under the Contract.

4B MORAL RIGHTS

4B.1 Consent of Authors

The Contractor warrants that:

- (a) the Contractor shall use its best endeavours to obtain a consent from every individual (involved in the carrying out of work under the Contract) who has or may in the future have any moral rights (as the expression is defined in the *Copyright Act 1968*

(Cth)) ('Moral Rights') relating to the Works or anything else provided by the Contractor as part of or in connection with work under the Contract ('Copyright Works') prior to Practical Completion; and

(b) each consent referred to in paragraph (a) must:

(i) allow the Principal or any person authorised by the Principal to do any act or omission (whether before or after the date of the consent) arising from or connected with the exercise by the Principal of its rights of ownership or use of the Copyright Works, which may (but for the consent) infringe the individual's Moral Rights; and

(ii) satisfy the requirements for consent set out in the *Copyright Act 1968* (Cth).

4B.2 Contractor Indemnity

The Contractor shall indemnify the Principal against any costs, expenses, claims losses, damages or other liabilities whatsoever arising from or in connection with any breach of the warranties or obligations of the Contractor under this clause.

4B.3 Exclusion of Claims

The Contractor shall have no Claim arising from or in connection with:

(a) the existence of any Moral Rights; or

(b) the Contractor's obligations under this clause.

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 Annexure Part A that a party shall provide security then the party shall provide security in the amount stated in Annexure Part A and in accordance with this Clause 5.

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 (or other approved form) and the financial institution ~~or insurance company~~ giving it ~~or other form of security offered~~. The unconditional undertaking in the form of Annexure Part C is approved.

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

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

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 5.8) 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 Provision of Security

Security shall be provided 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 obligation under Clause 5.11 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 Retention Moneys

Any retention shall be in accordance with Clause 42.1 and Item 15 of Annexure Part A.

5.6 Conversion of Security and Recourse to Retention Moneys

A party may have recourse to security, retention moneys or both and 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 security, retention moneys or both;
- (b) the party has given the other party notice in writing for the period stated in Annexure Part A or, if no period is stated, 5 days, of the party's intention to have recourse to the security, retention moneys or both; and
- (c) the period stated in Annexure Part A or, if no period is stated, 5 days, has or have elapsed since the notice was given.

5.7 Substitution of Security for Retention Moneys

The Contractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms ~~required~~permitted in Clause 5.3. To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release retention moneys.

* 5.8 Reduction of Security and Retention Moneys

Upon the 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 Annexure Part A or, if no percentage is stated, to 50 per cent thereof.

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

If at any time after Practical Completion the Superintendent is of the opinion that 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 if the Principal has provided its prior written consent to such reduction.

The Principal shall release security and retention moneys in excess of the entitlement within 14 days of the entitlement being so reduced and the Principal providing its prior written consent.

The Contractor shall release security in excess of the entitlement within 14 days of the entitlement being so reduced.

5.9 Release of Security and Retention Moneys

If the Contractor has provided security, retention moneys or both, then the Principal shall release them when required by Clause 42.6. If the Contractor has provided additional security for any item of unfixed plant and materials pursuant to Clause 42.2, the Principal shall release that additional security within 14 days of the incorporation into the Works of the unfixed plant or materials.

If the Principal has provided security, then, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise) the Contractor shall release the security provided by the Principal.

5.9A 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 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.

5.10 Holding of and Interest on Cash Security and Retention Moneys

Alternative 1

~~A party holding cash security, retention moneys or both 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 cash security provided by the Contractor and on retention moneys belongs to the Contractor. Interest earned on cash security provided by the Principal belongs to the Principal.~~

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

Alternative 2

~~A party holding cash security or retention moneys shall own any interest earned on the cash security or retention moneys. Except where cash security or retention moneys are held by a government department or agency or a municipal, public or statutory authority, cash security or retention moneys 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 money held by the Principal shall not be held on trust.~~

5.11 Performance Guarantee

If Annexure Part A 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 F 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.

~~5.11 Deed of Guarantee, Undertaking and Substitution~~

~~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 of the Date of Acceptance of Tender, provide the other party within 14 days of 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 this Clause 5.11, 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 of the Date of Acceptance of Tender, forward it to the Contractor with a request that it be executed in the manner directed in writing by the Principal.~~

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

Within 14 days of 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 this 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 prepared for the purpose of executing the work under the Contract or the completion 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.

Despite any other provision of the Contract, the Contractor shall in no circumstances have any Claim arising from any inconsistency, discrepancy, ambiguity or inadequacy in or between any Design Document or Principal's Project Requirements Document or between a Design Document or Principal's Project Requirements Document and any other document.

If the direction causes the Contractor to incur more or less cost than the Contractor, having complied with Clause 4.1(c), could reasonably have anticipated at the time of tendering, then to the extent that such ambiguity or discrepancy is—

- (a) in the Principal's Project Requirements, the difference shall be valued under Clause 40.5; and
- (b) in the Design Documents or between the Design Documents and the Principal's Project Requirements, such ambiguity or discrepancy shall be at the Contractor's risk and the direction shall not entitle the Contractor to any extra payment or an extension of time.

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 (including without limitation, the Principal's Project Requirement Documents) ('Construction Documents'); and
- (b) it shall immediately upon receipt by it of any further documents provided by the Principal 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 8.1A in relation to the Construction Documents; or
- (d) Further Construction Documents or a direction given by the Superintendent under this Clause 8.1A 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 Annexure Part A or, if no number is stated, then 5 copies of the documents describing the Principal's Project Requirements and other documents required by the Contract to be supplied by the Principal to the Contractor.

Documents supplied by the Principal to the Contractor 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 (including without limitation the Contractor's Design Obligations) 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

In relation to those documents stated in Annexure Part A the Contractor shall supply the number of copies stated in Annexure Part A or, if no number is stated, 5 copies.

The Contractor shall supply to the Superintendent the documents and information required by the Superintendent and as required by the Contract, in a form satisfactory to the Superintendent and at those times or within those design stages applicable to the documents stated in Annexure Part A or, if no times or stages are stated, not less than 14 days before the work contained in those documents is commenced.

A direction by the Superintendent to vary anything in the Design Documents shall be a variation to the work under the Contract only to the extent that the Design Documents,

before such variation, complied, or would have complied, with the Principal's Project Requirements.

Neither the Principal nor the Superintendent shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Superintendent's receipt of, or review of, or consent or approval to the use of or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract.

If the Contract (including Annexure Part A) 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 documents in carrying out the work under the Contract and, within the time stated in Annexure Part A or, if no time is stated, within 14 days after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable. 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 pursuant to this Clause 8.4.

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 the Principal's Project Requirements Documents, the Design Documents and other written information supplied by the Principal, the Superintendent and the Contractor, the Contractor's Consultants and subcontractors, 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 persons 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 party Principal 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 42.6 or the earlier termination of the Contract.

Without limiting its other obligations under this Clause 8.6, 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;
- (d) required by law;
- (e) a party's ultimate holding company is required to guarantee the obligations of the Contractor under this Contract and that company has a need to know the information in connection with this Contract and has assumed in favour of the Principal an obligation to keep the information confidential; or
- (f) a party's advisers have a need to know the information in connection with this Contract and have assumed in favour of the Principal an obligation to keep the information confidential.

The Contractor's obligations under this Clause 8.6 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 8.6).

* **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 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 Annexure Part A.

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 Annexure Part A each of the documents and other deliverables listed in Annexure Part A. 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 Ownership of Design Documents

The Principal shall own all Principal's Project Requirements Documents and Design Documents from the time of their creation or use in connection with the Works.

8.11 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 paragraph (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, 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 (which must not be unreasonably withheld).

(b) The Contractor may assign any right under the Contract only with the prior written consent of the Principal (which must not be unreasonably withheld).

9.2 Subcontracting (Including Work Performed by Consultants)

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld—

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

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 of a request by the Contractor for approval, and compliance by the Contractor with its obligations under this Clause 9.2, the Superintendent shall notify the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including—

- (i) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (iii) provision that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of Annexure Part D.

For the purposes of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; ~~and~~

- (iv) where the subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 21₁;
- (v) 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 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 9.2 and Clause 9.2A in approving a 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 I, 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, 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 (which shall not be unreasonably withheld);
- (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.

9.4 Selected Subcontract Work

If the Contract includes Selected Subcontract Work, the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. A Selected Subcontractor is the subcontractor, either required by the Principal to be used (if the Principal has only identified one subcontractor) in the tender documents or otherwise identified in the Contractor's tender from a list of not less than two subcontractors provided by the Principal in the tender documents for Selected Subcontract Work.

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.

9.5 Provisions Applying Generally to Selected Subcontract Work

If the Contractor is required by Clause 9 or 10 to enter into a subcontract, or to execute a deed of novation or to accept an assignment, the Contractor shall proceed promptly to do so and shall notify the Superintendent in writing as soon as the subcontract or novation has been effected or the assignment has been accepted.

~~With the Contractor's consent, t~~The Superintendent may direct the Contractor to perform Selected Subcontract Work.

~~Except as herein provided~~ Despite any other provision of the Contract:

- (a) the Contractor is to be responsible to the Principal for Selected 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 Subcontractor;
- (c) the Contractor shall be liable to the Principal for acts and omissions of Selected 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 Subcontractor shall be taken to be within the reasonable control of the Contractor;
- ~~(a)~~(e) the Principal shall have no liability to a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor; and
- ~~(b)~~(f) the Principal shall not be liable have no obligation or liability to the Contractor for any act, default, or omission, or breach of contract by a Selected Subcontractor arising from the subcontract between the Contractor or insolvency of a and the Selected 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 Selected Subcontractor;

- (ii) change the scope of, or requirements for work to be provided by a Selected Subcontractor.

9.6 Termination of Selected Subcontract

~~The Contractor shall not unreasonably repudiate, terminate or rescind a subcontract for Selected Subcontract Work without the prior written consent of the Principal (which shall not 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 Selected Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent of that fact. The Superintendent shall promptly issue a direction as to the manner of completing the Selected Subcontract Work. With the Contractor's consent, the Superintendent may direct the Contractor to perform Selected Subcontract Work, otherwise the Superintendent shall direct the Contractor—~~

- ~~(a) to choose another subcontractor from the list of subcontractors provided by the Principal in the tender documents for Selected Subcontract Work; or~~
- ~~(b) to enter into a subcontract with a subcontractor chosen by the Superintendent and agreed to by the Contractor.~~

~~The Contractor shall not be obliged to enter into a subcontract with a subcontractor referred to in Clause 9.6(a) against whom the Contractor raises reasonable objection.~~

~~The Contractor shall, as soon as practicable, enter into a subcontract with the subcontractor so chosen and notify the Superintendent accordingly.~~

~~If compliance with such a direction 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 except where a provisional sum for the Selected Subcontract Work has been included in the Contract, in which case the provisions of Clause 11(b) shall apply.~~

9.7 Alternative Selected 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 Subcontractor; or
- (b) the Selected Subcontractor repudiates or abandons the subcontract; or
- (c) the subcontract with a Selected Subcontractor is terminated or rescinded by either party,

then:

- (d) the Contractor shall request the Superintendent to nominate an alternative Selected Subcontractor;
- (e) if the Superintendent does not nominate an alternative Selected 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 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 Subcontractor or failing to nominate an alternative Selected Subcontractor at all.

9A CONSULTANTS

9A.1 Appointment of Consultants

- (a) Where Annexure Part A identifies a Consultant as a Nominated Consultant, the Contractor shall engage the Consultant so identified in connection with the Consultants Services Category to which the nomination relates, unless it obtains the Principal's prior written approval to do otherwise (which may be given unconditionally or subject to the Principal approving an alternative Consultant to be engaged in connection with the Consultants Services Category).
- (b) Where Annexure Part A identifies a Consultant as a Novated Consultant, the Contractor shall contemporaneously with the execution of the Contract execute a deed of novation in the form of Annexure Part E, between the Principal, the Contractor and the Novated Consultant, unless it obtains the Superintendent's prior written approval to do otherwise (which may be given unconditionally or subject to the Principal approving an alternative Consultant).
- (c) The Contractor agrees:
- (i) the novation pursuant to this Clause shall take effect from the Date of Acceptance of Tender; and
 - (ii) the Contractor's full compliance with its obligations under this Clause shall be a condition precedent to the Contractor being entitled to make any Claim for payment or receive any payment under the Contract at any time.
- (d) Where the Contract does not refer to a Nominated Consultant or Novated Consultant for a Consultant Services Category, the Contractor shall engage (as an independent contractor):
- (i) the Consultant nominated by the Contractor in its tender for the work under the Contract; or
 - (ii) if paragraph (i) does not apply, a Consultant who is not an employee of the Contractor or any body corporate related to the Contractor, who has the specialist skill and expertise expected of a specialist consultant practicing in that area and is approved by the Superintendent.
- (e) The Contractor shall obtain the Superintendent's prior approval (with such approval not to be unreasonably withheld) in writing to the terms of engagement of a Consultant who is not a Novated Consultant.
- (f) The Superintendent's approval of the terms of engagement of a Consultant under paragraph (d) may be conditional upon the Contractor satisfying the Superintendent that the Contractor has used its best endeavours to ensure the Consultant executes, in favour of, and delivers to the Principal, a deed in the form set out in Annexure Part J or if no form is set out, in the form reasonably required by the Principal, prior to the Contractor engaging the Consultant.

9A.2 Responsibility for Nominated or Novated Consultants

Despite any other provision of the Contract, the Contractor agrees that in respect of any Nominated Consultant or Novated Consultant:

- (a) the Contractor shall be fully responsible for any work or services provided by the Consultant in connection with work under the Contract (including, where applicable, any Preliminary Design);

- (b) the Contractor shall not be entitled to any Claim in respect of or arising from:
- (i) default by or the acts or omissions of the Consultant (whether wilful, negligent or otherwise);
 - (ii) the terms of engagement of the Consultant (including without limitation any amount payable to the Consultant and the scope of the Consultant's services);
 - (iii) any claims by the Consultant of whatever nature;
 - (iv) the extent that the Consultant has provided work or services under any agreement with the Principal or Contractor (before or after the Date of Acceptance of Tender); or
 - (v) the Principal's nomination of the Consultant under the Contract.

9A.3 Contractor's Responsibility

None of:

- (a) the nomination of any Consultant by the Principal;
 - (b) any description in the Contract of the services or other things required to be provided by any Consultant; or
 - (c) any approval by the Principal or the Superintendent of:
 - (i) any Design Documents or other description of any Work, services or other things to be provided by any Consultant; or
 - (ii) the terms on which the Work, services or things are to be provided by any Consultant,
- shall entitle the Contractor to any Claim.

9A.4 Dealings With Consultants

The Contractor shall not, without the prior written consent of the Principal (which may be given or refused in the Principal's discretion):

- (a) repudiate, terminate or rescind for any reason any Consultant's contract;
- (b) direct, require or allow:
 - (i) the suspension or deferral of any of the Contractor's Design Obligations being carried out by a Consultant; or
 - (ii) any extension of the time within which a Consultant is to complete any of the Contractor's Design Obligations or perform its obligations;
- (c) do any act or thing which:
 - (i) varies, amends or modifies; or
 - (ii) assigns, transfers or novates,any of the Contractor's rights or obligations under any Consultant's contract relating to the work under the Contract;
- (d) withhold any payment due to any Consultant under a Consultant's contract; or
- (e) change or allow any change to the scope of or requirements for services to be provided by the Consultant under any Consultant's contract.

9A.5 Engagement of New Consultants

The Contractor agrees that if a Consultant's contract is terminated or rescinded by either party for any reason:

- (a) the Contractor remains fully responsible in all respects for the proper completion in accordance with the Contract of the Contractor's Design Obligations or other services being carried out by the Consultant; and
- (b) the Principal and the Superintendent may, but shall be under no obligation to, nominate a replacement Consultant including without limitation, a replacement for a Nominated Consultant (without prejudice to the Contractor's obligations under Clause 9A.3).

9A.6 Contractor to Enforce Consultant's Contracts

The Contractor shall ensure that each Consultant complies with its obligations under the relevant Consultant's contract.

9A.7 Novation of Consultant's Contracts

The Contractor agrees to assign or novate its rights and obligations in any agreement with a Consultant 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 Contractor for any reason; and
- (b) the Principal directs the Contractor to do so.

10 NOVATION

This Clause 10 applies only where the Principal's Project Requirements include a Preliminary Design or the Contract includes Selected Subcontract Work.

When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a deed of novation in the form of ~~Annexure Part E~~ reasonably required by the Principal, between the Principal, the Contractor and the ~~subcontractor or the Selected Subcontractor stated in Annexure Part A (as the case may be)~~ particular part of the Preliminary Design or Selected Subcontract Work (as the case may be) work under the Contract being carried out by the Selected 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; and
- (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 an amount for profit on-Site and off-Site overheads and attendance calculated by using the percentage thereon stated in Annexure Part A or, where not so stated, as stated elsewhere in the Contract.

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 Annexure Part A ('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 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;~~

- (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~~
- (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 Annexure Part A; 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, ~~D~~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 more work;

- (b) use more Constructional Plant; or
- (c) incur more cost (including but not limited to extra costs for delay or disruption), ~~than the Contractor~~ than an experienced and competent contractor could reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

12.4 Time Bar

Where pursuant to Clause 12.3 a valuation is to be made under Clause 40.5, regard shall not be had to the value of more work carried out, more Constructional Plant used or more cost incurred earlier 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 and redesign 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 clause 12.3.

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

13.1 Warranties and Indemnities

Unless otherwise provided in the Contract, the Principal shall indemnify the Contractor against the Principal's Project Requirements, the design, materials, documents and methods of working required by the Principal in the Contract or provided or directed by the Principal or the Superintendent infringing any patent, copyright, registered design, trademark or name, or other protected right.

The Contractor warrants that unless otherwise provided in the Contract, the Contractor owns the copyright in those of the Design Documents provided by the Contractor. The Contractor also shall indemnify the Principal against any design, materials, documents and

methods of working provided by the Contractor infringing any patent, copyright, registered design, trademark or name, or other protected right.

13.2 Intellectual Property Rights granted to Principal

Alternative 1

~~The Contractor grants to the Principal an irrevocable licence to use the Design Documents for the work under the Contract. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works.~~

Alternative 2

~~Copyright and property in the Design Documents (and, as between the Principal and the Contractor, any part of the Preliminary Design produced under a prior contract between the Principal and a consultant of the Principal novated under Clause 10) hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the Design Documents for the work under the Contract.~~

~~The Contractor shall do everything necessary to perfect such vesting.~~

~~The Contractor shall ensure that the Design Documents are used, copied and supplied only for the purpose of the work under the Contract. occupies~~

13.2 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 Contractor shall:

- (a) ensure that the Design Documents are used, copied and supplied only for the purpose of the work under the Contract; and
- (b) at the Contractor's cost, deliver all the Design Documents to the Principal on termination of the Contract for any reason.

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

The Contractor shall satisfy all Legislative Requirements and Government Approvals except those which—

- (a) are specified in Annexure Part A; or
- (b) the Superintendent directs are to be satisfied by or on behalf of the Principal.

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

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.

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, the Annexure Part A 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 Changes in Legislative Requirements

If a Legislative Requirement—

- (a) necessitates—
 - (i) a change to the Works;
 - (ii) a change to so much of the Temporary Works, Constructional Plant or method of working as may be specified in the Principal's Project Requirements;

- (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works or Temporary Works; or
- (iv) an increase or decrease in a fee or charge incurred directly by the Contractor or payment of a new fee or charge incurred directly by the Contractor;
- (b) has effect after ~~the 14th day prior to~~ the date of closing of tenders; and
- (c) could not reasonably have been anticipated by an experienced and competent contractor at that prior date,

then to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 40.5 but the Contractor shall not be entitled to any other Claim.

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, Enterprise Bargaining Agreement or otherwise).

14.3 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 Annexure Part A.
- (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 design development, 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.

14.4 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.

14.5 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 Workplace Health and Safety Regulation 2008 (Qld) and such amounts shall not be included in the Contract Sum.

14.6 Workplace Health and Safety

- (a) The Contractor:

- (i) must ensure compliance with the *Workplace Health and Safety Act 1995* (Qld) (including in respect of all work under the Contract) from the commencement of the work under the Contract until the expiry of the last defects liability period;
 - (ii) is appointed and accepts appointment as "principal contractor" under the *Workplace Health and Safety Act 1995* (Qld) in respect of the Site to the extent access to the Site is made available to the Contractor at any time in connection with work under the Contract and in respect of any other obligations required to be performed by the "principal contractor" under the Act prior to access being made available;
 - (iii) must (and must ensure its Consultants) consult with the Principal, the Superintendent, any person nominated by the Principal and any person required under the Act in relation to 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;
 - (iv) shall cease to be the "principal contractor" under the *Workplace Health and Safety Act 1995* (Qld) for any part of the Site only when the Works on such part achieve Practical Completion or the Principal notifies the Contractor in writing that it is no longer the "principal contractor";
 - (v) shall attend to all applicable lodgements required (including providing any lodgement documents to the Principal for signing where this is a requirement for any applicable lodgement) and, except as provided in Clause 14.5, pay all fees, fines and other amounts payable under or in connection with the *Workplace Health and Safety Act 1995* (Qld) (including in connection with its appointment as "principal contractor"); and
 - (vi) shall ensure that all subcontractors and Separate Contractors complete a satisfactory Site induction program (in accordance with any requirements in the Contract or Contractor's Management Plan) before commencing any work on the Site or in connection with the Works having regard to each subcontractor's and Separate Contractor's requirements for access to carry out work.
- (b) The Contractor must:
- (i) notify the Superintendent of any work related illness, injury, or dangerous event which occurs on the Site as soon as possible but not later than 12 hours after such occurrence;
 - (ii) immediately comply with any direction in respect to Site safety issued by any authority having jurisdiction over the carrying out of the work under the Contract or by the Principal or the Superintendent;
 - (iii) comply, and ensure its subcontractors and their respective employees and agents comply, with all requirements of the ENERGEX Standard Procedures relating to safety;
 - (iv) immediately rectify any failure to comply with any Legislative Requirements or the Contract in relation to workplace health and safety issues;
 - (v) without limiting any other right of the Principal, allow the Principal, on reasonable notice, access to the Site and access to records in accordance with Clause 50, to enable the Principal to audit the Contractor's compliance with the

Contractor's construction work plan and any other Contractor's Management Plan;

- (vi) 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 in relation to workplace health and safety, provide a copy of the direction or notice to the Superintendent within 2 business days of receiving the direction; and
- (vii) 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, under any law), arising from or in connection with:
 - (A) any injury, accident or safety related incident on or adjacent to the Site;
 - (B) any breach by the Contractor of its obligations under this Clause; or
 - (C) the Contractor's failure to comply with any Contractor's Management Plan in respect of workplace health and safety.

14.7 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 Annexure Part A 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.

14.8 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; and
 - (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.

14.9 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 Contractor allows for a Rise and Fall adjustment, that this Clause 14.9 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.

14.10 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.

14.11 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, Section 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* (Cth) 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 OBSA REQUIREMENTS

14B.1 Provisions Subject to OBSA Act

To the extent the *Queensland Building Services Authority Act 1991* (Qld) ('OBSA Act') applies to the Contract:

- (a) the rights and obligations of the parties under the Contract are subject to the provisions of the OBSA Act to the extent they apply;

- (b) where there is any inconsistency between the Contract and the QBSA Act, the QBSA Act shall prevail to the extent necessary to avoid the inconsistency; and
- (c) terms used in this Clause and defined in the QBSA Act, shall have the meaning given to them by the QBSA 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 will hold at all times during the Contract all necessary licences (including in respect of the QBSA Act the licence referred to in Annexure Part A) 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 QBSA 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 QBSA 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 Annexure Part A 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 Annexure Part A) 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 Annexure Part A which the Contractor may, but is not obliged to, utilise as Contractor's Management Plans for the purposes of this Clause 14E; 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; and
 - (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 be consistent with the Contract including but without limitation Schedules 4 and 5 of the Instrument of Agreement, all Relevant Documents, Methodology and Resourcing Documents and all Legislative Requirements and Government Approvals; and
 - (ii) the Contract, Relevant Documents and 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 and 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 Annexure Part A.

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 (including designing the Works) 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); 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 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; 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, 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) except to the extent unavoidably required to perform the work under the Contract in accordance with the requirements of the Contract or as expressly permitted by the Contract or agreed with the Superintendent 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, carpark, 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) except to the extent unavoidably required to perform the work under the Contract in accordance with the requirements of the Contract or as expressly permitted by the Contract or agreed with the Superintendent, 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;
- (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 unavoidably required to perform the work under the Contract in accordance with the requirements of the Contract or as 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.

15 PROTECTION OF PEOPLE AND PROPERTY

~~Insofar as compliance with the requirements of the Contract permits, the Contractor shall—~~ 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, in addition to any other remedies of the Principal, the Superintendent may in its absolute discretion after giving reasonable notice in writing to the Contractor, have the subject work carried out by other persons and the reasonable 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 15.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Contract

Except as provided in Clause 16.3, the Contractor shall be responsible for—

- (a) the care of the whole of the work under the Contract from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion, at which time, the responsibility for the care of the Works (except to the extent provided in Clause 16.1(b)) shall pass to the Principal; and
- (b) the care of outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations under Clauses 30, 31 and 37.

Without limiting the generality of the Contractor's obligations in Clause 16.1(a), 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, and things brought onto the Site by subcontractors for that purpose. The Contractor shall provide the storage and protection necessary to preserve those items and things.

16.2 Reinstatement

If loss or damage occurs to the work under the Contract during the period for which the Contractor is responsible for the care thereof (other than loss or damage caused by any of the Excepted Risks referred to in Clause 16.3), the Contractor shall, at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall, if and to the extent directed by the Superintendent, rectify the loss or damage, which shall be deemed to be a variation under Clause 40. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.

16.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Principal is liable, are—

- (a) any negligent act or omission of the 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 Consultants or subcontractors or the employees or agents of any of these;
- (e) use or occupation by the Principal or the employees or agents of the Principal, the Principal's consultants 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;
- (f) acts or omissions of Separate Contractors except acts or omissions caused or contributed to by a breach of the Contract by the Contractor; and
- (g) defects in such part of the design of the work under the Contract, including the Preliminary Design provided by the Principal, as is not included in the Contractor's warranties under Clause 4.

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

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

17.1 Indemnity by Contractor

Insofar as this Clause 17.1 applies to property, it applies to property other than the work under the Contract.

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 act or omission of the Principal, the Superintendent or the employees or agents of the Principal 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; and

- (iv) subject to the Contractor's strict compliance with the terms of the Contract, claims in respect of the right of the Principal to have the work under the Contract carried out.

~~17.2 Indemnity by the Principal~~

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

18 INSURANCE OF THE WORK UNDER THE CONTRACT

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall effect 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 under this Clause 18 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; and
- (f) loss or damage resulting from the Excepted Risks referred to in Clause 16.3(b) and (c).

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

- (i) the Contract Sum;
- (ii) the amount stated in Annexure Part A to provide for costs of demolition and removal of debris;
- (iii) the amount stated in Annexure Part A to cover fees of the consultants;
- (iv) the value stated in Annexure Part A 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 Annexure Part A of the total of the items referred to in Clause 18(i) to (iv).

The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all Consultants, 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 approvals 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 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 Annexure Part A, 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 22 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 be for an amount being no less than the full value of the plant or equipment.
- (b) The provisions of Clause 22 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 effect a public and products liability policy of insurance in the joint names of the Principal and the Contractor which covers the Principal, the Contractor, the Superintendent, all Consultants 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 of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Annexure Part A which must be effected with a reputable insurer. ~~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 approvals shall not be unreasonably withheld.~~ The policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6.

Alternative 2

On or before the Date of Acceptance of Tender, the Principal shall effect in relation to the work under the Contract a public liability 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 the Contractor has an interest therein and the Principal shall pay all premiums.

20 INSURANCE OF EMPLOYEES

Before commencing work under the Contract 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 requirements.

Where permitted by law the insurance policy or policies 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 all Consultants and all subcontractors have similarly insured their employees.

21 PROFESSIONAL INDEMNITY INSURANCE

Before the Contractor commences work under the Contract, the Contractor shall effect a professional indemnity insurance policy with a total limit of liability per Claim and in aggregate cover of not less than the sum stated in Annexure Part A or, if no amount is stated, the amount of \$1,000,000.

The policy and such level of cover shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in Annexure Part A.

The Contractor shall ensure that every Consultant, if within a category stated in Annexure Part A, is insured for professional indemnity with a cover not less than the sum stated in Annexure Part A.

Each Consultant's policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in Annexure Part A.

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

Before the Contractor commences work under the Contract 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).

22.2 Failure to Produce Proof of Insurance

If after being requested in writing by the other party to do so, a party fails to produce evidence of compliance with insurance obligations under Clauses 18, ~~18A, 18B,~~ 19 or 20 in accordance with Clause 22.1 ~~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, 20 and 21 is produced by the Contractor to the satisfaction and approval of the Principal. The Contractor's strict compliance with its obligations under Clause 22.1 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 22.2 are in addition to any other right.~~

22.3 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, a Consultant or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Contractor, the Consultant and the subcontractor; and~~
- ~~(c)~~(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 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.

22.4 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.

22.5 Settlement of Claims

Upon settlement of a Claim under the insurance required by Clause 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).

22.6 Cross Liability ~~Not used~~

Any insurance required to be effected in accordance with the Contract by the Contractor in joint names or by the Principal, 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).

22.7 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.

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 42.3 (issue of the Certificate of Practical Completion), Clause 40.5 (valuation of variations), Clause 42.1 (issue of payment certificates), Clause 42.6 (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.

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; and
- (b) the termination of the appointment of a Superintendent's Representative.

If the Contractor makes a reasonable objection to the appointment of a Superintendent's 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. A Superintendent's direction—

- (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,

shall 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 reasonable 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 26.1.

26.2 Key Personnel

The Contractor:

- (a) must ensure the key personnel listed in Annexure Part A are engaged in the provision of the work under the Contract in the respective capacities also set out in Annexure Part A; 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 Access to and Possession of the Site

- (a) By the time stated in Annexure Part A, subject to paragraph (c), the Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations in accordance with the Contract. The Principal shall notify the Contractor in writing of the date when access will be available.
- (b) The Principal shall, on or before the expiration of the time stated in Annexure Part A, subject to paragraph (c), give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence further work under the Contract. 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 notify the Contractor in writing of the date upon which the Site or any part thereof will be available.
- (c) 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;
- (iii) 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.
- (d) Notwithstanding the provisions of this Clause 27.1, if the Contractor is in breach of Clause 22.1, 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 22.1.
- (e) Access to or possession of the Site shall confer on the Contractor a right only to such use and control as is necessary to enable the Contractor to execute the work under the Contract.
- (f) 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.
- (g) 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 22.1;
 - (ii) given to the Superintendent:
 - (A) all Contractor's Management Plans in accordance with Clause 14E;
 - (B) a Contractor's 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.

~~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 after reasonable notice give the Principal 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 the Superintendent whilst exercising the right of access given by Clause 23 or by any persons exercising the right of access given to those persons 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 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 27.2A;

#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 27.2A; 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 the 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 (except as permitted by Clause 27.1 for executing and completing the Contractor's Design Obligations) 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 the Site by the 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 other 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, 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) 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 or Government Approvals 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 Annexure Part A 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.

27B MEETINGS

27B.1 Attendance at Project 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, design 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.
- (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, data 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, data 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 the Superintendent or 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.

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, materials or Constructional Plant. 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 ('ENERGEX Supplied Material'):

- (a) to the extent the Contract does not fully specify the nature, extent or time for provision 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 (a)(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 the Contract or specified in a notice given by the Principal to the Contractor under paragraph (a)(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 proper and reasonable 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 specified in the Contract or in a notice given by the Principal to the Contractor under paragraph (a)(ii)(A);
- (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;
- (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 Annexure Part A 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 0.08%: viz. Contract Sum x 0.08% = number of labour hours for building projects and multiplying the accepted Contract Sum by 0.04%: viz. Contract Sum x 0.04% = 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 traineeship as provided for in State vocational education and training legislation;
- (b) a cadetship or scholarship for the purposes of formal tertiary professional or technical education;
- (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 10 days of the Date of Acceptance of Tender submit to CSQ, a completed Compliance Plan in the form in Annexure Part H; and
- (iii) within 10 working days of the expiration of each successive thirteen week period commencing from the Date of Acceptance of Tender submit to CSQ, a completed Interim Compliance Report in the form in Annexure Part H; and
- (iv) within 15 days of the Date of Practical Completion, submit to CSQ a completed Practical Completion Compliance Report in the form in Annexure Part H. 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 is a mandatory 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 'CSQ' means 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 Local Industry Policy. To the extent the Local Industry Policy applies, the Contractor must comply with the requirements of the Local Industry Policy 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 Material 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 proper and tradesmanlike workmanship and other items which shall be in conformity with their description of merchantable quality and fit for their purpose and of proper and tradesmanlike workmanship.

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 relating to quality assurance 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 where the Principal's Standard Work Procedures ('SWPs') requires the Contractor to be quality assured) the Contractor shall—

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

30.3 Defective Material or Work

If the Superintendent discovers material or work provided by the Contractor which is not in accordance with the Contract, the Superintendent shall as soon as practicable notify the Contractor. The Superintendent may direct the Contractor—

- (a) to remove the material from the Site;
- (b) to demolish the work;
- (c) to redesign, 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, redesign, reconstruction, 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 8 days from the date on which the Contractor receives the notice the Principal intends to have the work of removal, demolition, redesign, reconstruction, replacement or correction

carried out by other persons, the Principal may have that work carried out by other persons and that cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Material or Work

Instead of a direction pursuant to Clause 30.3, the Superintendent may direct a variation under 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 pursuant to Clause 30.3, regard shall also be had to the difference.

30.5 Acceptance of Defective Material or Work

Instead of a direction pursuant to Clause 30.3 or 30.4, the Superintendent may direct 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

If the Superintendent gives a direction pursuant to Clause 30.3, 30.4 or 30.5, the direction shall be given as soon as practicable after the Superintendent becomes aware that material or work is not in accordance with the Contract. The Superintendent may give such a direction at any time before the issue of the Final Certificate under Clause 42.6.

Except to the extent that to do so would be inconsistent with a direction pursuant to Clause 30.4 or 30.5 and notwithstanding that the Superintendent has not given a direction pursuant to Clause 30.3, the Contractor shall promptly remove, demolish, redesign, reconstruct, 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 pursuant to Clause 30.3, 30.4 or 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 pursuant to Clause 30.4 or 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

At any time before the expiry of the Defects Liability Period 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 promptly make good the work tested 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 Superintendent or the Contractor 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.

Such costs 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 a test directed pursuant to 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; or
- (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 before the issue of the Final Certificate—

- (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, after providing reasonable notice to the Contractor and complying with all relevant Site procedures or policies, 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 Superintendent (including commissioning procedures necessary to establish performance meeting the requirements of the Contract) for those parts of the Works described in Annexure Part A 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 in a form satisfactory to the Superintendent and are fit for the Principal's Purposes; 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 working hours and working days during which the Contractor may carry out the work under the Contract for work on the Site 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 pursuant to Clause 44.9 or is directed or approved by the Superintendent pursuant to Clause 34.

The Superintendent shall furnish to the Contractor the information, materials, documents and instructions stated in Annexure Part A by the times or within the periods stated in Annexure Part A.

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor requires any other 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 Contractor's 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:

- (c) 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
- (d) as required by any Contractor's 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 Contractor's 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 as 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, 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 the Contract, 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 Contractor's 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 Contractor's Program

For the purposes of Clause 33, a 'Contractor's Program' is a statement in writing showing the major activities in the work under the Contract, the dates by which or the times within