



Managing Contractor – Design and Construction Management – Stage One with option for Stage Two

(Negotiated Guaranteed Construction Sum)

Volume 2 of 4 – Conditions of Contract

Project Name

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Project Number

.....

Guide note: *Delete this guide note*

The Conditions of Contract have been developed by Contract Services, Department of Energy and Public Works, but require completion by the project team to meet project specific requirements. Where this document is being used for a Queensland Government building project, Contract Services should be consulted in accordance with the Building Policy Framework.

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CONDITIONS OF CONTRACT

1. CONSTRUCTION OF CONTRACT

- 1.1 This Contract is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 1.2 Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at Brisbane, Queensland.
- 1.3 Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).
- 1.4 This Contract is not subject to escalation unless expressly stated otherwise.

2. INTERPRETATION

2.1 Definitions

In the Contract, except where the context otherwise requires:

‘Actual Construction Sum’ means a total of:

- (a) the accepted subcontract sums of Subcontracts, inclusive of GST, in respect of Construction Work (which includes Early Works), plus valid adjustments pursuant to the terms of the Subcontracts but excluding any adjustment determined by the Principal’s Representative to be for:
- (i) the cost of rectifying non-complying and defective work; and
 - (ii) any other cost not properly incurred in respect of Construction Work pursuant to this Contract; and
- (b) Subcontractor delay or disruption costs not otherwise paid pursuant to the Contract and payable pursuant to the terms of a Subcontract, except in respect of a breach of the Subcontract on the part of the Managing Contractor; and
- (c) valid claims by the Managing Contractor in respect of Construction Work performed by the Managing Contractor pursuant to Clause 21.2.1(b);

‘Asset Management and Maintenance Database’ means the asset management and maintenance database required by Clauses 16.2 and 20.3;

‘Best Endeavours Process’ means the process set out in the Managing Contractor’s Tender by which the Managing Contractor will use its best endeavours to engage subcontractors who provide terms and conditions of employment, including specific pay rates, for their personnel who perform the work under the Contract, which are at least equivalent to the Best Practice Industry Conditions;

‘Best Practice Industry Conditions’ means the Best Practice Industry Conditions in Schedule 17;

‘Best Practice Principles’ means the Queensland Government guidelines titled “Best practice principles; Quality: safe workplaces” or any guidelines which replace those guidelines;

‘BIF Act’ means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the regulations made under or in respect of that Act;

‘Building Certifier’ means a Queensland Building and Construction Commission licensed Building Certifier;

‘business day’ means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place where the Works will be situated; or

- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

‘Certificate of Practical Completion’ means the certificate referred to in Clause 57.9;

‘Claim’ includes any claim, demand, action, proceeding or suit which the Managing Contractor may make or bring against the Principal or any of the Principal’s agents or employees relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract or the work under the Contract including (without limitation) any claim, demand, action, proceeding or suit seeking the payment of money, or any costs, expenses, loss or damages on any ground whatsoever including (without limitation) pursuant to the Contract, on a quantum meruit, in quasi contract, for unjust enrichment and insofar as is permitted by law, pursuant to any other principle of law;

‘Clerk of Works’ means a person appointed in writing by the Principal’s Representative pursuant to Clause 36;

‘Completion of Stage One’ means the stage in the execution of the work under the Contract when the Managing Contractor has provided to the Principal a GCS Offer in accordance with Schedule 14, which has been either accepted or rejected by the Principal pursuant to Clause 11.2;

‘Construction Work’ comprises work under the Contract including, without limitation:

- (a) Works;
- (b) Early Works;
- (c) Temporary Works;
- (d) plant and equipment required for the performance of the work under the Contract; and
- (e) work and items to establish and maintain the safety, security and amenity of the Site and persons on the Site;
but excluding:
 - (f) On Site Overheads;
 - (g) Off Site Overheads;
 - (h) Design Work;
 - (i) Documentation Work; and
 - (j) any other work performed by Consultants;

‘Consultants’ means the consultants engaged by the Managing Contractor in connection with carrying out the work under the Contract;

‘Consultants Fee’ means the lump sum amount, inclusive of GST, contained in the Managing Contractor’s Tender, payable by the Managing Contractor to the Consultants identified on the Managing Contractor’s Tender Form, for the work to be performed by those Consultants, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment of the Consultants Fee;

‘Contract’ has the meaning in Clause 4;

‘Contract Materials’ means any work produced in the course of performing the work under the Contract and provided to the Principal, including without limitation the Works, Design Documents, and the Subcontract Construction Documentation;

‘Date of Acceptance of Tender’ means the date which appears on the Principal’s written letter of acceptance of the Managing Contractor’s Tender;

‘Date of Commencement of Stage Two’ means the date of acceptance, if any, of the Managing Contractor’s GCS Offer by the Principal pursuant to Clause 11.2;

'Date for Practical Completion' means the last day of the period of time for Practical Completion provided in the Managing Contractor's GCS Offer and accepted by the Principal as the Date for Practical Completion of the Works, or the Date for Practical Completion specified in the Annexure, whichever is applicable, but if any extension of time for Practical Completion is granted by the Principal's Representative it means the date resulting therefrom;

'Date of Practical Completion' means the date certified by the Principal's Representative in a Certificate of Practical Completion issued pursuant to Clause 57.9, as the date upon which Practical Completion was reached;

'day' means calendar day except where the context otherwise indicates;

'Defects Liability Period' means:

- (a) where the Principal's Representative has, during Stage One, specified a period for specific components of the Works, the period so specified;
- (b) otherwise, the period specified in the Annexure;

'Defects Liability Work' means the work required by Clause 51;

'Design Documents' means the documents prepared by the Managing Contractor in the performance of the Design Work;

'Design Work' means all work required to be undertaken or managed by the Managing Contractor to achieve the Developed Design;

'Developed Design' means the stage when, in the opinion of the Principal's Representative, the scope, functionality and quality standards of the Works are specified with sufficient particularity;

'Documentation Work' means all work required to be undertaken or managed by the Managing Contractor to achieve the Subcontract Construction Documentation;

'Early Works' means Construction Work the subject of a direction by the Principal's Representative pursuant to Clause 17;

'Early Works Subcontracts' means the Subcontracts entered into by the Managing Contractor for Early Works;

'Ethical Supplier Mandate' means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

'Ethical Supplier Threshold' means the Ethical Supplier Threshold described in the Queensland Procurement Policy;

'Final Certificate' means a certificate issued by the Principal's Representative to the Principal and to the Managing Contractor pursuant to Clause 57.12;

'Final Payment Claim' means the final payment claim referred to in Clause 57.11;

'Formal Instrument of Agreement' means the formal instrument of agreement in the form in Schedule 12;

'GCS Offer' means the Guaranteed Construction Sum offer to be submitted by the Managing Contractor, during Stage One, in accordance with the requirements set out in Clause 11.1 and Schedule 14;

'GCS Offer Project Brief' means the revised Project Brief to be submitted as part of the GCS Offer, and where the GCS Offer is accepted and Stage Two proceeds, means the GCS Offer Project Brief that is accepted by the Principal;

‘Government Department or Instrumentality’ means:

- (a) any government department responsible for compliance with government policy, including without limitation:
 - (i) the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works;
 - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and
 - (iii) Local Content with the Department of State Development, Infrastructure, Local Government and Planning; and
- (b) any government regulator, including without limitation:
 - (i) the Queensland Building and Construction Commission;
 - (ii) the Office of Industrial Relations;
 - (iii) the Fair Work Commission;
 - (iv) the Australian Taxation Office;
 - (v) the Australian Building and Construction Commission; and
 - (vi) the Office of the Federal Safety Commissioner;

‘GST’ has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

‘Guaranteed Construction Sum’ means the sum, inclusive of GST, contained in the Managing Contractor’s GCS Offer and accepted by the Principal as the maximum price that may be payable by the Principal to the Managing Contractor to perform all Construction Work, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Guaranteed Construction Sum;

‘Latent Condition’ means any of the conditions referred to in Clause 22.1;

‘Local Benefits Test’ means the local benefits test described in the Queensland Procurement Policy;

‘Management Fee’:

- (a) means the lump sum amount, inclusive of GST, contained in the Managing Contractor’s Tender as the Management Fee for Stage One for all costs of any nature related to the Managing Contractor’s obligations under the Contract, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Management Fee;
- (b) if the Principal accepts the Managing Contractor’s GCS Offer pursuant to Clause 11.2.1(a), includes the lump sum amount, inclusive of GST contained in the Managing Contractor’s Tender as the Management Fee for Stage Two, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Management Fee; and
- (c) does not include a cost or expense included in the Actual Construction Sum, the On Site Overheads Fee, the Consultants Fee or the Off Site Overheads and Profit Fee;

‘Managing Contractor’ means the party bound to execute the work under the Contract and includes that party’s heirs, executors and permitted assigns and in the case of a body corporate its successors and permitted assigns;

‘Managing Contractor’s Representative’ means a person appointed in writing by the Managing Contractor under Clause 37.2;

‘Managing Contractor’s Tender’ means the tender submitted by the Managing Contractor and accepted by the Principal;

'Minimum Consultancy Services' means those consultancy services identified in Schedule 5;

'Moral Rights' means the moral rights granted to creators under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws;

'notice' has the meaning given to it by Clause 10;

'Off Site Overheads and Profit Fee' means:

- (a) for Stage One, the lump sum amount, inclusive of GST, contained in the Managing Contractor's Tender; and
- (b) for Stage Two, and in relation to any Early Works directed by the Principal's Representative pursuant to Clause 17, the percentage contained in the Managing Contractor's Tender to be applied to the Actual Construction Sum;

which shall include for all costs associated with the Managing Contractor's obligations related to insurance policies under Clauses 30, 31, 32 and 33, and security, retention moneys, performance undertakings and Deeds of Guarantee and Indemnity under Clause 9, as the Managing Contractor's fee for all costs associated with off site overheads and the Managing Contractor's profit margin;

'On Site Overheads' means the following work or items required for the construction of the Works:

- (a) all work performed by the Managing Contractor's on site management, administrative and supervisory personnel identified in the costed methodology statement for On Site Overheads provided in the Managing Contractor's Tender or otherwise required to be notified by the Managing Contractor to the Principal's Representative pursuant to Clause 37.1.3, including all attendant labour and attendance on Subcontractors, and all on site management, administration, supervision and attendance during the Defects Liability Period; and
- (b) all on site furniture, equipment, hardware, software (including any web based document management system) and consumables required for the on site management, administration, supervision or attendance of work under the Contract, including the provision and maintenance of site safety equipment, clothing and related items required for the Managing Contractor's personnel and visitors to the Site;
- (c) but excluding Construction Work and any items or work the subject of the Management Fee, Consultants Fee or Off Site Overheads and Profit Fee;

'On Site Overheads Fee' means the lump sum amount, inclusive of GST, contained in the Managing Contractor's Tender for all costs associated with On Site Overheads, inclusive of salaries, wages, allowances, on-costs, benefits, bonuses, lodgings, travelling expenses, vehicles, phones and any other expenses associated with the Managing Contractor's on site management, administrative, supervisory and attending personnel, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the On Site Overheads Fee;

'person' includes an individual and a corporation;

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

- (a) the Works are complete except for minor omissions and minor defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
 - (ii) which the Principal's Representative determines the Managing 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 which are required by the Contract to be carried out and passed or satisfied before the Works can be regarded as having reached the stage of Practical Completion, have been carried out and passed or satisfied;

- (c) all specific requirements for Practical Completion set out in the Project Brief or (where there is one) the GCS Offer Project Brief, have been fully satisfied;
- (d) documents and other information required under the Contract which, in the opinion of the Principal's Representative, are essential for the use, operation and maintenance of the Works have been supplied to the Principal's Representative; and
- (e) all other necessary permits, registrations, approvals, certifications, consents, or licences have been provided to the Principal's Representative;

'Prequalified Subcontractor' means a subcontractor who, at the time of entering into a Subcontract, is registered on the whole-of-Government Prequalification (PQC) System for the PQC Rating and Registration Category relevant to the proposed Subcontract;

'Principal' means the person stated in the Annexure as the Principal;

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

'Program' means a program for the purposes of Clause 45.1;

'Project Advisory Group' and 'PAG' have the meanings given to them in Clause 13;

'Project Brief' means the document provided by the Principal in the Tender Documents which describes the Principal's requirements for the work under the Contract including, without limitation:

- (a) the performance;
- (b) the scope;
- (c) the quality;
- (d) the functional and or technical requirements;

of the Works and includes any documents entitled "Functional Requirements", "Terms of Reference", "Technical Requirements", "Principal's Project Requirements", "Project Construction Cost Estimate" and all other such documentation, technical schedules, drawings, diagrams, maps, and plans;

'Project Construction Cost Estimate' means the Principal's project construction cost estimate included in the Project Brief or as revised by the Principal and advised to the Managing Contractor in writing;

'Provisional Delay Allowance' means the allowance provided for in Clause 50;

'Provisional Sum' has the meaning given to it in Clause 57.8;

'Queensland Procurement Policy' means the Queensland Government policy titled "Queensland Procurement Policy" or any policy which replaces that policy from time to time;

'QGP Compliance Branch' means the State of Queensland's Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works;

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

'Site Representative' means a person appointed in writing by the Principal's Representative under Clause 36;

'Stage One' means the stage during which the Managing Contractor produces a GCS Offer pursuant to Clause 11 and Schedule 14, and during which the Managing Contractor may undertake Design Work, Documentation Work and Early Works in accordance with the Contract, including without limitation the activities specified in Schedule 15;

'Stage Two' means, if a notice is given under Clause 11.2.1(a), the stage commencing on the date notice is given under Clause 11.1.5, during which Construction Work and all remaining Design Work, Documentation Work and any other work under the Contract not completed during Stage One is performed by the Managing Contractor;

'Statutory Requirements' includes:

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

'Subcontract' means a subcontract under Clause 21.2;

'Subcontract Construction Documentation' means the documentation prepared by the Managing Contractor in the performance of the Documentation Work;

'Subcontract Tender Documentation' means the documentation prepared by the Managing Contractor to enable the Managing Contractor to call tenders and enter into Subcontracts with proposed Subcontractors to construct and complete the Works;

'Subcontractor' means a person engaged by the Managing Contractor to perform any part of the Construction Work;

'Subcontractors' Charge' means a charge on moneys payable by the Principal to the Managing Contractor under the Contract arising by operation of the BIF Act;

'Supplier Code of Conduct' means the Queensland Government Code titled "Queensland Government Supplier Code of Conduct" or any code that replaces that code;

'Survey Mark' 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;

'Tender Documents' means:

- (a) the Invitation to Tender;
- (b) Volume 1 of 4 – Tender Requirements;
- (c) Volume 2 of 4 – Conditions of Contract;
- (d) Volume 3 of 4 – Conditions of Contract – Schedules;
- (e) Volume 4 of 4 – Project Brief;
- (f) Australian Standard® Code of Tendering (AS4120-1994), as amended by the Conditions of Tender;
- (g) any documents or parts of documents expressly referred to in the Tender Documents; and
- (h) any other document provided to the Managing Contractor by or on behalf of the Principal for the purpose of tendering;

'Variation' means any of the matters specified in Clauses 19.1.1 or 53.1, which the Principal's Representative may direct the Managing Contractor to do pursuant to Clauses 19 or 53;

'work under the Contract' means all work which the Managing Contractor is or may be required to undertake or manage under the Contract;

'Wilful Misconduct' means any intentional act or omission of any person done or omitted to be done after having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from the act or omission, excluding acts or omissions done in good faith;

'Working Day' has the meaning given to it by Clause 44;

'Working Hours' has the meaning given to it by Clause 44;

'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 or a nominee of the Principal.

2.2 General

- 2.2.1 In addition to these definitions, some terms, specific to a clause, are defined in that clause.
- 2.2.2 The clause headings in the Contract shall not form part of the Contract and shall not be used in the interpretation of the Contract.
- 2.2.3 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.
- 2.2.4 If any part of this Contract is or becomes illegal, invalid, or unenforceable, the legality, validity or enforceability of the remainder of the Contract will not be affected and the Contract will read as if the part had been deleted.
- 2.2.5 Except where the context otherwise requires, references to the Annexure shall be read as reference to the Annexure to these Conditions of Contract – Volume 2, references to Schedules shall be read as reference to the Schedules to the Conditions of Contract – Volume 3 and references to a Clause shall be read as reference to a Clause in these Conditions of Contract.

3. NATURE AND SCOPE OF CONTRACT

- 3.1 The Principal engages the Managing Contractor to execute and complete the work required during Stage One.
- 3.2 If the Annexure indicates that the Best Practice Principles apply:
 - (a) the Managing Contractor must uphold any commitments in relation to the Best Practice Principles and the Best Practice Industry Conditions made in the Managing Contractor's Tender when executing and completing the work under the Contract and must ensure that Subcontractors uphold commitments in relation to the Best Practice Principles and Best Practice Industry Conditions in their tenders; and
 - (b) if the Principal is not satisfied, in its absolute discretion, that the Managing Contractor has implemented the arrangements set out in the Managing Contractor's Tender for the Best Practice Principles and the Best Practice Industry Conditions by the date specified in the Managing Contractor's Tender, or if no date is specified within a reasonable time, then the Principal may, by written notice to the Managing Contractor, terminate the Contract. If the Principal terminates the Contract under this Clause, Clauses 60.2.2 to 60.2.6 shall apply as if the termination had been made under Clause 60.2.1.
- 3.3 If the Principal accepts the Managing Contractor's GCS Offer pursuant to Clause 11.2.1(a), the Principal shall engage the Managing Contractor to execute and complete the work required during Stage Two.
- 3.4 For the avoidance of doubt and notwithstanding any other provision of this Contract, there shall be no contract in existence between the parties in respect of Stage Two unless and until the Principal accepts the Managing Contractor's GCS Offer pursuant to Clause 11.2.1(a).

- 3.5 The Managing Contractor shall execute and complete the work under the Contract.
- 3.6 Without limiting the generality of the Managing Contractor's responsibilities, the Managing Contractor shall:
- (a) ensure that the work under the Contract progresses to completion in accordance with the Contract; and
 - (b) be responsible for (and without limitation shall control, coordinate, administer and direct) all activities for the planning of the work under the Contract with proper skill, care, and diligence.
- 3.7 Subject to the provisions of this Contract, the Principal shall pay the Managing Contractor:
- (a) the Management Fee;
 - (b) the Consultants Fee;
 - (c) the On Site Overheads Fee;
 - (d) the Off Site Overheads and Profit Fee;
 - (e) the Actual Construction Sum to the limit of the Guaranteed Construction Sum;
 - (f) any bonus or other amount required to be paid pursuant to Clause 56.1; and
 - (g) any delay damages payable pursuant to Clause 50;
- adjusted by all additions and deductions made pursuant to the provisions of the Contract.

4. EVIDENCE OF CONTRACT

- 4.1 Until a Formal Instrument of Agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the Contract.
- 4.2 Within 10 business days after receiving the Formal Instrument of Agreement in duplicate from the Principal, the Managing Contractor shall (if they are correct) properly execute both copies and return them. Within 10 business days after receiving them, the Principal shall execute both copies, have them stamped as necessary and send one copy to the Managing Contractor.
- 4.3 The Principal's Representative may extend the time under Clause 4.2 by written notice to the parties.
- 4.4 The Formal Instrument of Agreement shall be a Deed in the form in Schedule 12.
- 4.5 If any party to this Contract consists of one or more persons this Contract shall bind such persons and their respective executors, administrators, successors (in the case of the Managing Contractor) and permitted assigns (in the case of the Principal) jointly and severally and this Contract must be read and construed accordingly.

5. CONTRACT DOCUMENTS

- 5.1 The several documents forming the Contract are to be taken as mutually explanatory of one another.
- 5.2 If there is any ambiguity, discrepancy, or inconsistency in or between the documents comprising the Contract, the documents shall rank in order of precedence set out in the Formal Instrument of Agreement.
- 5.3 The Developed Design will comply in all respects with the GCS Offer Project Brief, provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the GCS Offer Project Brief, then the standard to be achieved shall be the higher of the standards prescribed; and
 - (b) if the GCS Offer Project Brief does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.

- 5.4 The Subcontract Construction Documentation will comply in all respects with the Developed Design as varied from time to time pursuant to the terms of the Contract provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the Developed Design, then the standard to be achieved shall be the higher of the standards prescribed; and
 - (b) if the Developed Design does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.
- 5.5 The Construction Work will comply in all respects with the Subcontract Construction Documentation as varied from time to time pursuant to the terms of the Contract provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the Subcontract Construction Documentation, then the standard to be achieved shall be in accordance with the Developed Design; and
 - (b) if the Subcontract Construction Documentation does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.
- 5.6 Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.
- 5.7 No rule of construction shall apply to the disadvantage of one party on the basis that that party put forward the documents comprising the Contract or any of them.
- 5.8 The party discovering an alleged ambiguity, discrepancy or inconsistency shall notify the Principal's Representative in writing of the ambiguity, discrepancy or inconsistency, who shall then direct the Managing Contractor in writing as to the interpretation to be followed by the Managing Contractor in carrying out the work.
- 5.9 The Managing Contractor shall, at the Managing Contractor's own cost and expense comply with any direction given to the Managing Contractor by the Principal's Representative under this Clause 5.
- 5.10 The Managing Contractor acknowledges that it assumes the risk of all delays and increased costs, losses and expenses caused by or resulting from any such ambiguity, discrepancy or inconsistency and that any direction given pursuant to this Clause 5 shall in no event, constitute an approved Variation and the Managing Contractor shall not be entitled to:
- (a) reimbursement or monetary compensation whether for damages for breach of contract or otherwise in respect of the direction or any such ambiguity, discrepancy, and inconsistency; or
 - (b) adjustment to:
 - (i) the Management Fee;
 - (ii) the Consultants Fee;
 - (iii) the On Site Overhead Fee;
 - (iv) the Off Site Overheads and Profit Fee; or
 - (v) the Guaranteed Construction Sum.

6. COLLUSIVE ARRANGEMENTS, CONFLICT OF INTEREST and CRIMINAL ORGANISATIONS

- 6.1 For the purposes of this Clause 6:

'Personnel' means officers, directors, employees, agents, and Subcontractors;

'Conflict of Interest' includes any actual, reasonably anticipated, or perceived conflict of interest whether personal, financial, professional, or otherwise.

- 6.2 The Managing Contractor warrants and represents to the Principal that:
- (a) it had no knowledge of the tender price of any other tenderer, nor did it communicate with any other tenderer in relation to its tender price, or a price above or below which a tenderer may tender (excluding any pricing advised by the Principal), nor had it entered into any contract, arrangement or understanding with another tenderer to the effect that the Managing Contractor or another tenderer would tender a non-competitive price, for the work under the Contract, at the time of submission of the Managing Contractor's Tender;
 - (b) except as disclosed in the Managing Contractor's Tender, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to the Managing Contractor's Tender or this Contract, nor paid or allowed any such money, nor will it pay or allow any such money; and
 - (c) except by prior agreement with the Principal, it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other tenderer for the work under the Contract, nor received any money or allowance from or on behalf of any other tenderer relating in any way to the Managing Contractor's Tender or this Contract, nor will it pay or allow or receive any money as aforesaid.
- 6.3 In the event of the Managing Contractor paying or allowing any money in breach of this Clause 6, the Principal may deduct from payments to the Managing Contractor an equivalent sum as an amount due from the Managing Contractor to the Principal, in addition to any other claim, demand, action or proceeding the Principal may have against the Contractor (whether for damages or otherwise).
- 6.4 Without limitation, if the Managing Contractor commits a breach of this Clause 6, the Principal may at its discretion terminate the Contract and claim damages for breach of contract.
- 6.5 The Managing Contractor warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Works.
- 6.6 The Managing Contractor warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed. If the Principal requests, the Managing Contractor must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Principal.
- 6.7 The Managing Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 1601P of the *Penalties and Sentences Act 1992* (Qld).
- 6.8 The warranties in this Clause 6 are provided as at the date of the Contract and on an ongoing basis. The Managing Contractor warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this Clause 6 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way. In addition to any other remedies available to it under Law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Managing Contractor has breached any warranty in this Clause 6.

7. COMMITMENT AND GOOD FAITH

7.1 Commitment

The parties are committed to working together in a cooperative and collaborative manner with a view to:

- (a) encouraging cooperation and innovation;
- (b) establishing and maintaining an environment which encourages honest, open, and timely sharing of information; and

- (c) sharing and transferring such behavioural aspects to all persons associated with the work under the Contract to achieve a successful outcome in all respects.

7.2 Good Faith

7.2.1 The parties warrant that they shall perform all duties and act in good faith.

7.2.2 Acting in good faith includes:

- (a) being fair, reasonable, and honest;
- (b) doing all things reasonably expected by the other party and by the Contract; and
- (c) not impeding or restricting the other party's performance.

8. QUALITY ASSURANCE

8.1 The Managing Contractor shall establish, implement and maintain a quality plan to the satisfaction of the Principal which shall comply with ISO 9001:2008.

8.2 The Managing Contractor shall ensure that all provisions for quality assurance apply equally to all Consultants and Subcontractors engaged by the Managing Contractor.

8.3 Within 10 business days after the Date of Acceptance of Tender the Managing Contractor shall submit to the Principal's Representative for approval, the Managing Contractor's quality plan including as minimum:

- (a) identification and definition of the key activities and deliverables from the Managing Contractor's Tender;
- (b) identification of how the Managing Contractor proposes to deliver the activities/deliverables in Clause 8.3(a) including what internal controls, methodology and procedures the Managing Contractor is to utilise to complete the deliverables in Clause 8.3(a) and a sample of the Managing Contractor's procedures;
- (c) identification of how the Managing Contractor is to verify its deliverables in Clause 8.3(a) and a sample of the Managing Contractor's verification plan; and
- (d) identification of review and agreement of quality assurance records that the Managing Contractor is to provide to the Principal confirming compliance to the Managing Contractor's Tender.

8.4 The Managing Contractor shall comply with directions by the Principal's Representative to change the Managing Contractor's quality assurance system and quality plan to provide assurance of satisfactory compliance to the documents.

8.5 The Managing Contractor shall participate in and allow reasonable access to the Principal's agents to audit the Managing Contractor's quality assurance program and quality plan. Verification by the Principal's agents shall not relieve the Managing Contractor of any of the Managing Contractor's liabilities and obligations under the Contract.

9. SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

9.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract and for the purpose of providing security of payment to the Subcontractors of the Managing Contractor.

9.2 Provision of Security

The Managing Contractor shall provide security to the Principal in the amount stated in the Annexure.

9.3 Form of Security

- 9.3.1 All security provided by the Managing Contractor shall be in the form of either cash or an approved unconditional undertaking given by an approved financial institution or insurance company. The unconditional undertaking in the form in Schedule 2 is approved.
- 9.3.2 The Principal shall have a discretion to approve or disapprove of the form of unconditional undertaking and the financial institution or insurance company giving it, or other form of security offered.

9.4 Time for Lodgement of Security

Security provided pursuant to Clause 9.2 shall be lodged with the Principal by the Managing Contractor within 10 business days of the Date of Commencement of Stage Two.

9.5 Retention Moneys

From the commencement of Construction Work, the Principal may deduct from moneys otherwise due to the Managing Contractor amounts at the rate of 10% of each progress payment up to the limit of the amount stated in the Annexure.

9.6 Subcontract Retentions

Where pursuant to a term in a Subcontract the Managing Contractor withholds any retention money from a payment to a Subcontractor, the Managing Contractor will hold those moneys for the benefit of the Subcontractor, until the retention moneys become payable, in accordance with the terms of the Subcontract, to either:

- (a) the Subcontractor, in which case the moneys shall be paid to the Subcontractor; or
- (b) the Managing Contractor.

9.7 Substitution of Security for Retention Moneys

The Managing Contractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted in Clause 9.3. To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release retention moneys.

9.8 Additional Security – Unfixed Plant and Materials

Security provided by the Managing Contractor for unfixed plant and materials pursuant to Clause 57.7 shall be:

- (a) subject to the terms of Clauses 9.3 and 9.9; and
- (b) in an amount equal to the payment claimed for the plant or materials.

9.9 Conversion of Security and Recourse to Retention Moneys

The Principal may at any time, convert into money, security and retention moneys that does not consist of money whether or not the Principal is then entitled to exercise a right under the Contract in respect of the security or retention moneys. The Principal shall not be liable in any way for any loss occasioned by the conversion. The Principal may have recourse to security, retention moneys or both including moneys obtained by conversion of security and retention moneys where the Principal has become entitled to exercise a right under the Contract in respect of retention moneys or security or is otherwise entitled at law to have recourse to such moneys or security.

9.10 Reduction of Security and Retention Moneys

- 9.10.1 Subject to Clause 9.9, upon issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the amount or percentage thereof stated in the Annexure or, if no amount or percentage is stated, to 50% thereof.

9.10.2 If the Principal's Representative issues a direction pursuant to Clause 51 which provides for a separate defects liability period of a stated duration in respect of the work of rectification, the Principal's Representative may, in its absolute discretion, determine that from the end of the initial Defects Liability Period, the Principal's entitlement to security and retention monies shall be further reduced to such amount or percentage as the Principal's Representative determines in its absolute discretion.

9.11 Release of Security

9.11.1 Where the Managing Contractor has provided additional security pursuant to Clause 57.7, the Principal shall release that additional security within 10 business days of the certification by the Principal's Representative of:

- (a) the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished; and
- (b) that such unfixed plant or materials are in accordance with the terms of the Contract.

9.11.2 Subject to the Principal's rights to set-off under Clause 57.14 and to have recourse to cash security or retention moneys under Clause 9.9, and subject to Clause 9.11.3, the Principal shall release security or retention moneys provided by the Managing Contractor pursuant to Clause 9.2 or 9.7, or so much as may remain after the application of Clause 9.10, within 20 business days of the later of:

- (a) the requirement to do so by Clauses 60.1 and 60.2; or
- (b) the issue of the Final Certificate under Clause 57.12.

9.11.3 Where there is any claim, adjudication or proceeding commenced pursuant to or in connection with the BIF Act, including proceedings commenced by the Principal to recover an amount the subject of a payment claim pursuant to the BIF Act, the Principal is not obliged to release security or retention moneys until 20 business days after the finalisation of such claim, adjudication or proceeding.

9.12 Interest on Security and Retention Moneys

The Principal shall own any interest earned on retention moneys and security provided pursuant to this Contract.

9.13 Deed of Guarantee and Indemnity

Where the Managing Contractor is a related or subsidiary corporation (as defined in the *Corporations Act 2001* (Cth)) the Managing Contractor shall, within 10 business days after receiving a written request from the Principal, provide a Deed of Guarantee and Indemnity by the corporation to which the Managing Contractor is a related or subsidiary corporation duly executed and enforceable. The Deed of Guarantee and Indemnity in the form in Schedule 10 is approved.

10. SERVICE OF NOTICES

10.1 Address

The Principal, the Managing Contractor and the Principal's Representative and the Managing Contractor's Representative shall each notify the others of a change of address and change of facsimile number.

10.2 Service

10.2.1 A notice in connection with the Contract:

- (a) must be signed by a duly authorised representative of the party giving the notice;
- (b) must be in writing;
- (c) must be:
 - (i) delivered by hand to the address of the addressee contained in the Contract or which is subsequently notified under Clause 10.1; or

- (ii) sent by prepaid ordinary post to the address of the addressee contained in the Contract or which is subsequently notified under Clause 10.1; or
 - (iii) sent by facsimile to the facsimile number of the addressee stated in the Contract or which is subsequently notified under Clause 10.1; and
- (d) is deemed to be received:
- (i) in the case of a notice delivered by hand, upon delivery, except if delivery occurs:
 - (A) after 5pm on a business day; or
 - (B) on a day which is not a business day;in which case delivery will be deemed to have occurred at 9am on the next business day;
 - (ii) in the case of a notice forwarded under Clause 10.2.1(c)(ii), within 5 business days of its posting; and
 - (iii) in the case of a notice delivered under Clause 10.2.1(c)(iii), on the production of a facsimile transmission report which indicates that the notice in its entirety was forwarded to the recipient's facsimile number, except if the transmission is completed and confirmed to have occurred:
 - (A) after 5pm on a business day; or
 - (B) on a day which is not a business day;in which case the transmission will be deemed to have been completed and confirmed at 9am on the next business day.

10.2.2 Unless a later time is specified in it a notice, approval, consent, or other communication takes effect from the time it is received.

10.2.3 Notwithstanding Clause 10.2.1, the Principal's Representative may direct that specified notices or other communication may be effected by specified electronic means. In any such direction, the Principal's Representative must specify when such notices and communications shall be deemed to be received.

11. GCS OFFER

11.1 Managing Contractor's GCS Offer

11.1.1 During Stage One of the Contract and within eight (8) weeks of receiving a written request by the Principal, the Managing Contractor shall provide a GCS Offer. The GCS Offer must meet all the requirements of Schedule 14 and this Clause 11.1.

11.1.2 The Managing Contractor's GCS Offer shall account for all matters which are or should reasonably be known to the Managing Contractor at the time of providing the GCS Offer, and shall set out the basis for and quantify the amounts of any adjustments to which the Managing Contractor claims to be entitled under Clause 11.3 or any other provision of the Contract, in respect of:

- (a) the Management Fee;
- (b) the On Site Overheads Fee;
- (c) the Provisional Delay Allowance; and
- (d) the Consultants Fee.

11.1.3 The Managing Contractor's GCS Offer shall include an all up total of the guaranteed construction sum and all matters referred to in Clause 11.1.2, including any adjustments in respect of the amounts listed in Clause 11.1.2 (a) to (d).

11.1.4 Failure to comply with Clause 11.1 will constitute a substantial breach of contract.

11.1.5 The Managing Contractor's GCS Offer shall remain open for acceptance until the Principal notifies the Managing Contractor in writing of the Principal's acceptance or rejection of the GCS Offer in accordance with Clause 11.2, which shall be given within a reasonable time.

11.2 Principal's Options

11.2.1 The Principal shall not be bound to accept the Managing Contractor's GCS Offer but shall, at its sole discretion and without obligation to act reasonably, be free to:

(a) accept the Managing Contractor's GCS Offer, in which case:

- (i) the guaranteed construction sum accepted shall become the Guaranteed Construction Sum under the Contract; and
- (ii) the Managing Contractor's fees may be adjusted in accordance with the Managing Contractor's GCS Offer, provided that the Managing Contractor is entitled to such adjustments under Clause 11.3 or any other provision of the Contract; or

(b) reject the Managing Contractor's GCS Offer.

11.2.2 If the Managing Contractor's GCS Offer is rejected by the Principal, the Managing Contractor will have no further entitlement or remedy, other than for payment of any outstanding amount by the Principal for the work under the Contract in respect of Stage One including payment of any amounts in respect of any Early Works carried out.

11.3 Adjustment of fees at time of GCS Offer

11.3.1 Where the Principal elects to accept the GCS Offer, the Management Fee, On Site Overheads Fee, Consultants Fee and Provisional Delay Allowance shall be subject to adjustments in accordance with this Clause 11.3 at the time of acceptance of the GCS Offer.

11.3.2 The Managing Contractor shall only be entitled to adjustments pursuant to this Clause 11.3, where the Managing Contractor has complied with Clause 11.1.

11.3.3 If there are changes:

- (a) between the scope of Works contained in the Project Brief and the scope of Works in the GCS Offer Project Brief;
- (b) in the scope of the Works caused by a Latent Condition encountered on the Site during Stage One; or
- (c) between the Principal's preliminary completion time contained in the Project Brief and the Managing Contractor's time for Practical Completion contained in the GCS Offer;

which result in a material effect on the tendered resources included in the Management Fee, then the Managing Contractor shall be entitled to a reasonable adjustment to the tendered Management Fee, having regard to any applicable rates or prices provided in the costed methodology statement provided with the Managing Contractor's Tender.

11.3.4 If there are changes:

- (a) between the scope of Works contained in the Project Brief and the scope of Works in the GCS Offer Project Brief; or
- (b) between the Principal's preliminary completion time contained in the Project Brief and the Managing Contractor's time for Practical Completion contained in the GCS Offer;

which result in a material effect on the tendered On Site Overheads, then the Managing Contractor shall be entitled to a reasonable adjustment to the tendered On Site Overheads Fee, having regard to any applicable rates or prices provided in the costed methodology statement provided with the Managing Contractor's Tender.

- 11.3.5 If there are changes between the scope of Works contained in the Project Brief and the scope of Works in the GCS Offer Project Brief, which result in an increase or decrease to the work to be performed by, and fees payable to, one or more of the Consultants listed in the Managing Contractor's Tender Form, then the Managing Contractor shall be entitled to a reasonable adjustment to the tendered Consultants Fee, having regard to the terms of the contract between the Managing Contractor and the Consultant.
- 11.3.6 Where the Principal has nominated a fee basis for Consultants listed in the Managing Contractor's Tender Form that requires application of a percentage to the Guaranteed Construction Sum to be agreed between the Principal and the Managing Contractor at the time of acceptance of the GCS Offer, and the Guaranteed Construction Sum agreed between the Principal and the Managing Contractor is different to the respective amount included in the Project Construction Cost Estimate, then the Managing Contractor shall be entitled to an adjustment to the Consultants Fee, having regard to the difference between the Guaranteed Construction Sum and the respective amount included in the Project Construction Cost Estimate.
- 11.3.7 If there are changes between the scope of Works contained in the Project Brief and the scope of Works in the GCS Offer Project Brief which result in a material effect on the tendered Provisional Delay Allowance, then the Managing Contractor shall be entitled to a reasonable adjustment to the applicable rate or rates contained in the Managing Contractor's Tender in relation to the Provisional Delay Allowance, only to the extent of the material effect of any increase or decrease in the scope of Works between the Project Brief and the GCS Offer Project Brief.

12. WARRANTIES

12.1 Managing Contractor's Warranties

- 12.1.1 The Managing Contractor warrants that at all times the Managing Contractor 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.
- 12.1.2 The Managing Contractor further warrants to the Principal the following:
- (a) in submitting the GCS Offer, the Managing Contractor warrants that it has investigated and satisfied itself of the adequacy and suitability of the GCS Offer Project Brief and the Contract to enable the Managing Contractor to perform all the work under the Contract without limitation in accordance with the Contract. In particular, the Managing Contractor warrants the sufficiency of the Guaranteed Construction Sum;
 - (b) those things referred to in Clause 6;
 - (c) the warranties pursuant to Clause 21.3;
 - (d) the Managing Contractor has assessed the potential for delays, disruption, suspension and extra costs in the performance of the work under the Contract from any cause associated with noise, dust and other nuisances, the presence of other contracts that are notified by the Principal to the Managing Contractor before the time of submission of the GCS Offer, and the use of the premises in which the Site is located and has made due allowance in its GCS Offer and will not claim any extra amount or extension of time from the Principal due to compliance with Clause 25;
 - (e) the Managing Contractor shall perform all duties and act in good faith;
 - (f) in respect of Design Work:
 - (i) in carrying out Design Work, the Managing Contractor will exercise the degree of skill, care and diligence expected of a skilled and competent design professional, who regularly acts in the capacity in which the Managing Contractor is engaged;
 - (ii) the Managing Contractor will prepare the Developed Design in accordance with the GCS Offer Project Brief and other requirements of the Contract so that the Developed Design will be suitable, appropriate, and adequate:
 - (A) for the purpose stated in the GCS Offer Project Brief; and

- (B) to produce an end product that meets the requirements of the GCS Offer Project Brief; having regard to the assumptions that the Managing Contractor can be reasonably expected to make in accordance with sound professional principles; and
 - (iii) where the Managing Contractor changes the GCS Offer Project Brief in accordance with Clause 19.2, such changes will not, without limitation, affect the suitability for purpose of the Developed Design;
- (g) Subject to Stage Two proceeding, in respect of Documentation Work:
 - (i) in carrying out Documentation Work, the Managing Contractor will exercise a degree of skill, care and diligence expected of a skilled and competent design professional who regularly acts in the capacity in which the Managing Contractor is engaged;
 - (ii) the Managing Contractor will complete all Documentation Work in accordance with the Developed Design and the requirements of the Contract so that the Subcontract Construction Documentation will be suitable, appropriate, and adequate:
 - (A) for the purpose stated in the GCS Offer Project Brief; and
 - (B) to produce an end product that meets the requirements of the GCS Offer Project Brief;
 - (iii) having regard to the assumptions that the Managing Contractor can be reasonably expected to make in accordance with sound professional principles;
 - (iv) the Managing Contractor will not modify the Developed Design except insofar as it is necessary to overcome any ambiguity or discrepancy in accordance with Clause 5; and
 - (v) the Managing Contractor has sufficient design resources (including Consultants) to maintain efficient and timely production of all Subcontract Construction Documentation;
- (h) Subject to Stage Two proceeding, in respect of Construction Work:
 - (i) Construction Work and the Works when constructed will be in accordance with the Subcontract Construction Documentation, all other requirements of the Contract and the requirements of all statutory authorities;
 - (ii) the Construction Work will comply with any relevant standards of Standards Australia or the Contract, and if more than one, the highest such standard;
 - (iii) if the Subcontract Construction Documentation does not specify the standard of workmanship, material, finish or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect will be in accordance with the Developed Design, and will be fit for their intended purpose as described in the GCS Offer Project Brief and consistent with the nature and character of the Works; and
 - (iv) all Construction Work and the Works when completed will be free from defects and fit for their intended purpose as described in the GCS Offer Project Brief; and
- (i) the Principal will not pay as the Actual Construction Sum any greater amount than the Guaranteed Construction Sum, and that the Managing Contractor shall meet, pay and discharge to the satisfaction of the Principal all moneys, payments, obligations and liabilities whatsoever over and above the Guaranteed Construction Sum.

12.2 Warranties and Indemnities Unaffected

The Managing Contractor acknowledges that all warranties and indemnities given under the Contract will remain unaffected notwithstanding:

- (a) any advice, review, comment, approval or direction by the Principal, the Principal's Representative, or the employees, consultants, or agents of the Principal in respect of:
 - (i) any matter which the Managing Contractor has an obligation under the Contract to undertake its own investigations; and
 - (ii) Design Work, Documentation Work or Construction Work produced by the Managing Contractor;
- (b) subject to Clause 53.2.4, any Variation under Clause 53;
- (c) any modifications to the Project Brief or GCS Offer Project Brief pursuant to Clause 19; and
- (d) that the Managing Contractor engages any Subcontractor or any Consultant in connection with any of the work under the Contract (whether with or without the consent of the Principal).

12.3 Principal's Reliance on Warranties

The Managing Contractor acknowledges that the Principal has entered into the Contract in reliance upon the warranties set out in the Contract.

12.4 Manufacturers' Performance Warranties

- 12.4.1 The Managing Contractor shall procure a warranty for each of the items listed in Schedule 3, or if none are listed in Schedule 3, shall request from the Principal during Stage One items that require warranties, which are to form part of the Works from the supplier or manufacturer of the materials, goods, plant or equipment and give an executed copy to the Principal's Representative. The warranty shall be in the form in Schedule 3.
- 12.4.2 The warranties which are required by the preceding paragraph shall not be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Managing Contractor, whether under the Contract or otherwise in respect of the materials, goods, plant and equipment the subject of a warranty, and the Managing Contractor must discharge the Managing Contractor's obligations under the Contract in relation to any defective work in respect of materials or goods for which such a warranty has been obtained, despite the Principal having the benefit of the warranty.
- 12.4.3 If requested by the Managing Contractor, the Principal's Representative may issue a direction under Clause 53.3 varying the terms of a warranty to be obtained from a supplier or manufacturer under Clause 12.4.1.
- 12.4.4 When deciding whether a variation referred to in Clause 12.4.3 should be issued, the Principal's Representative shall take into account:
 - (a) the quantum of any additional amount required by a supplier or manufacturer as consideration for providing a warranty in terms of Schedule 3;
 - (b) whether an alternative supplier or manufacturer would be prepared to provide a warranty in those terms;
 - (c) whether the Managing Contractor has used its best endeavours to obtain a warranty in those terms from the manufacturer or supplier; and
 - (d) whether the supplier or manufacturer is not prepared to provide a warranty in the form in Schedule 3 but is prepared to provide a warranty which is generally representative of warranties commercially available for the relevant item.

- 12.4.5 Without limiting the obligations of the Managing Contractor under the Contract, during the currency of the warranties referred to in this Clause 12.4, the Managing Contractor must, at its own cost:
- (a) if required by the Principal, arrange and coordinate any necessary inspections, tests, replacements, or rectification work under such warranties; and
 - (b) assist the Principal in the pursuit of any warranty claims.
- 12.4.6 The Principal's Representative may at any time by notice in writing to the Managing Contractor direct that a performance trial or trials be carried out to verify that the Works or any part of the Works (as the case requires) complies with a performance warranty or specification. Such performance trial or trials shall thereafter be carried out in accordance with Clause 43 as soon as practicable.
- 12.4.7 Performance trials shall be carried out in accordance with the relevant Australian Standard or, if there is no relevant Australian or overseas standard in accordance, with the recognised industry practice. The Managing Contractor shall supply all equipment and suitably qualified and experienced technical staff necessary to conduct the performance trials.
- 12.4.8 The cost of all performance trials shall be borne in accordance with Clause 43.7.
- 12.4.9 In the event that any performance trial shows that the Works or any part of the Works fails to comply with the performance warranty or specification, the Managing Contractor shall at the Managing Contractor's own expense arrange for such modifications or additional work as may be necessary to enable the Works to comply with the performance warranty or specification and conduct a further formal performance trial to verify that the Works or such relevant part of the Works complies with that performance warranty and/or specification. The cost of this and any subsequent performance trials necessary to verify that the Works comply with the performance warranty or specification shall be borne by the Managing Contractor.

13. PROJECT ADVISORY GROUP

13.1 Establishment, Duration and Purpose

- 13.1.1 Within 5 business days after the Date of Acceptance of Tender, a Project Advisory Group ('PAG') shall be established.
- 13.1.2 The PAG shall monitor, decide, and advise on all aspects of the work under the Contract.
- 13.1.3 The first meeting of the PAG shall be convened by the Principal's Representative within 10 business days of the Date of Acceptance of Tender and thereafter meetings shall be held at least once during each month provided that special meetings shall be convened at the request of either party.
- 13.1.4 The PAG shall operate until the issue of the Final Certificate under Clause 57.12 or such other time determined by the Principal's Representative.

13.2 Membership

- 13.2.1 The Principal and the Managing Contractor shall be entitled to have a representation on the PAG as stated in the Annexure. The Principal's Representative shall be one of the Principal's delegates. The Managing Contractor's Representative shall be one of the Managing Contractor's delegates.
- 13.2.2 Each party shall by notice in writing advise the other party of the names, addresses, telephone numbers and facsimile numbers of its delegates.
- 13.2.3 The Chairperson may, at the request of either party, include as attendees of PAG meetings, representatives of Consultants and Subcontractors involved as well as other individuals who may be able to assist the PAG in the performance of its functions.
- 13.2.4 The Chairperson may, at the request of any delegate to the PAG and at the cost of that delegate, call upon any person for a report or other advice to assist the PAG in the PAG's deliberations.
- 13.2.5 The Principal may in the Principal's discretion require each delegate to the PAG to execute a warranty that each delegate to the PAG shall perform all duties and act in good faith as defined in Clause 7.

13.3 Meetings

- 13.3.1 A quorum for the PAG shall be the Principal's Representative and the Managing Contractor's Representative.
- 13.3.2 The Principal's Representative shall determine the agenda, chair, take and distribute minutes of the first meeting of the PAG. Thereafter the Managing Contractor's Representative shall determine the agenda, chair, take and distribute minutes of all meetings of the PAG.
- 13.3.3 Agenda items shall include reviews of:
- (a) the Managing Contractor's activities;
 - (b) the Principal's duties;
 - (c) programming and in particular programming for the period until the next meeting of the PAG;
 - (d) budgeting and costs including where applicable the most recently submitted cost plan report created by the Managing Contractor in accordance with Schedule 15;
 - (e) quality;
 - (f) safety;
 - (g) the Design Work undertaken by the Managing Contractor and any Design Documents submitted to the Principal's Representative for review;
 - (h) Variations which in the opinion of the Managing Contractor require adjustment to the Guaranteed Construction Sum; and
 - (i) any other items identified by the Principal's Representative or the Managing Contractor's Representative.
- 13.3.4 The Chairperson of each meeting of the PAG shall provide to the Principal and the Managing Contractor a written report within 2 business days after each PAG meeting.

13.4 Decisions of the PAG

All matters arising at a meeting of the PAG shall be determined by unanimous agreement of the PAG delegates. If the delegates cannot reach unanimous agreement on any matter it shall be decided by the Principal's Representative.

13.5 Managing Contractor's Reports

- 13.5.1 Within 5 business days of the end of each month, the Managing Contractor shall provide to the Principal's Representative a report for consideration by the PAG.
- 13.5.2 This report shall be in a format and to a level of detail agreed to by the Principal's Representative and without limitation contain:
- (a) procedural matters/outstanding action;
 - (b) Consultant's design and documentation reports including test results and statements advising of any departures from the Project Brief or GCS Offer Project Brief;
 - (c) construction report, which shall include statements from Consultants advising of any departures from the GCS Offer Project Brief;
 - (d) financial report;
 - (e) program report including potential causes of delay;
 - (f) key issues;
 - (g) general business;

- (h) instructions or advices given to the Managing Contractor as these relate to non-conformance issues; and
- (i) defects lists;
- (j) and have appended to it:
- (k) site inspection reports;
- (l) program detail;
- (m) minutes of previous PAG meeting;
- (n) the original of all Consultants reports;
- (o) Non Conformance Register;
- (p) photographs showing the status of Site;
- (q) the Managing Contractor's cost plan report considered at the previous meeting of the PAG and any subsequent cost plan reports the Managing Contractor has been required to create in accordance with Schedule 15; and
- (r) any other matters requested by the Principal's Representative from time to time.

14. DESIGN WORK

The Managing Contractor shall, with skill, care, and diligence:

- (a) in undertaking the Design Work, consider reasonable options and alternatives which satisfy the requirements of the GCS Offer Project Brief or, during Stage One the Project Brief, and present the Managing Contractor's preferred design solution to the Principal's Representative in a timely manner;
- (b) produce the Developed Design:
 - (i) in accordance with the GCS Offer Project Brief or, during Stage One the Project Brief;
 - (ii) so that the Actual Construction Sum is minimised as much as possible; and
 - (iii) so that work under the Contract can be completed by the Date for Practical Completion;
- (c) obtain the Principal's Representative's written approval to the Developed Design;
- (d) manage the Consultants in the production of the Developed Design; and
- (e) decide on the manner in which the Construction Work should be divided into packages for the purpose of facilitating the calling of Subcontract tenders.

15. DOCUMENTATION WORK

The Managing Contractor shall, with skill, care, and diligence:

- (a) produce the Subcontract Construction Documentation in accordance with the Developed Design so that the Subcontract Construction Documentation will be fit for its intended purpose in all respects;
- (b) manage the Consultants in the production of the Subcontract Construction Documentation;
- (c) not modify the Subcontract Construction Documentation except insofar as it is necessary to overcome any ambiguity or discrepancy in accordance with Clause 5; and
- (d) decide and advise the Principal on the manner in which the Construction Work will be divided into Subcontract Construction Documentation.

16. CONSTRUCTION WORK

16.1 Completion of the Works

The Managing Contractor shall, with skill, care and diligence construct and complete the whole of the work under the Contract in accordance with the Contract and without restricting the generality of the foregoing the Managing Contractor shall:

- (a) construct the Works in accordance with the Developed Design and Subcontract Construction Documentation;
- (b) arrange for the supply of all:
 - (i) materials;
 - (ii) labour;
 - (iii) plant and equipment; and
 - (iv) everything else;necessary for the execution and completion of the Works and the Managing Contractor's obligations under the Contract, including (without limitation) the Site establishment, services, and facilities; and
- (c) prepare a comprehensive management plan incorporating the Program and maintain its currency for the duration of the work under the Contract.

16.2 Commissioning Work

The Managing Contractor shall, with skill, care, and diligence, in accordance with best engineering practice:

- (a) provide the Principal and the Principal's employees assistance with the initial occupation and operation of the Works;
- (b) assist the Principal or the nominated agents of the Principal in understanding the performance of the Works;
- (c) ensure the satisfactory operation of all building components, equipment, and contents;
- (d) provide to the Principal a draft version of the Asset Management and Maintenance Database and all operating manuals and maintenance manuals required by the Principal, sufficient to enable the commissioning of the Works;
- (e) record and submit to the Principal's Representative details of all test results;
- (f) give the Principal's Representative reasonable prior notice of the carrying out of any part of the commissioning required by the Program; and
- (g) immediately notify the Principal's Representative if any portion of work under the Contract fails to pass a commissioning requirement, make good that work and after completion of the remedial work promptly carry out further commissioning of that work.

16.3 12 Week Maintenance, Monitoring and Adjustment Period

The Managing Contractor shall at the Managing Contractor's own cost arrange for a team of suitably qualified and equipped personnel to maintain, monitor and adjust the Works or any part of the Works to comply with the Contract during a period of twelve (12) weeks commencing on the Date of Practical Completion. The Managing Contractor shall arrange for the provision of all replacement parts and labour necessary and required for the performance of the Works during this period including without limitation all consumable maintenance parts (including filters and lubricants).

17. EARLY WORKS

17.1 Early Works Direction

- 17.1.1 The Principal's Representative may direct the Managing Contractor to commence to carry out part of the Construction Work as Early Works prior to the Completion of Stage One.
- 17.1.2 A direction by the Principal's Representative pursuant to Clause 17.1 shall not be a direction to accelerate or be a request for an Acceleration Proposal (as those terms are defined in Clause 47.1).
- 17.1.3 The Managing Contractor shall not be entitled to an adjustment of:
- (a) the Management Fee;
 - (b) the Consultants Fee;
 - (c) the On Site Overheads Fee;
 - (d) the Off Site Overheads and Profit Fee; or
 - (e) the Guaranteed Construction Sum;
- on account of the Principal's Representative issuing a direction pursuant to Clause 17.1.
- 17.1.4 The Principal shall provide access to the Site at the time specified in the direction of the Principal's Representative to enable the Managing Contractor to carry out Early Works. Clause 39 shall apply to any such access given to the Managing Contractor.

17.2 Early Works Subcontracts

- 17.2.1 The Managing Contractor must not let an Early Works Subcontract without the prior written approval of the Principal's Representative. In all other respects, the Managing Contractor must fully comply with Clause 21 in respect of all Early Works Subcontracts.
- 17.2.2 Early Works Subcontracts shall include a right to terminate for convenience.
- 17.2.3 Amounts paid and payable under Early Works Subcontracts shall be included in the Guaranteed Construction Sum and the Actual Construction Sum.
- 17.2.4 If the Principal rejects the Managing Contractor's GCS Offer under Clause 11.2.1, the Managing Contractor shall continue to carry out and complete all Early Works pursuant to the terms of the Contract unless the Principal directs the Managing Contractor to:
- (a) terminate the Early Works Subcontracts; or
 - (b) assign or novate (at no cost to the Principal) all or some of the Early Works Subcontracts to the Principal by entering into and executing a Deed of Novation satisfactory to the Principal.

18. CONSULTANTS

18.1 Engagement of Consultants

- 18.1.1 The Managing Contractor shall engage the Consultants in accordance with the Managing Contractor's Tender and any other Consultants that the Managing Contractor considers are required to undertake:
- (a) the Minimum Consultancy Services (if any) as stated in Schedule 5; and
 - (b) any services in addition to the Minimum Consultancy Services to fulfil its obligations under the Contract.
- 18.1.2 The Managing Contractor shall make its own determinations as to the nature, extent and timing of all consultancy services required by the Managing Contractor including any consultancy services additional to the Minimum Consultancy Services.

- 18.1.3 The Managing Contractor shall not be entitled to an adjustment to the Consultants Fee, the Management Fee, the On Site Overheads Fee or the Off Site Overheads and Profit Fee for costs of any nature whatsoever associated with the engagement or work of a Consultant where that Consultant was not:
- (a) identified in the Managing Contractor's Tender;
 - (b) directed to be engaged by the Principal under Clause 18.2; or
 - (c) required to perform the work of a Variation directed under Clause 19.1 or 53.1.
- 18.1.4 The Managing Contractor shall provide to the Principal's Representative within a reasonable time a copy of all documents evidencing the entire agreement between the Managing Contractor and each of its Consultants under this Clause 18.1.
- 18.2 Other Consultancy Services Required by Principal**
- 18.2.1 The Principal may direct the Managing Contractor to engage additional Consultants or extend the services of an existing Consultant. The Principal shall identify:
- (a) the work to be carried out by such Consultant;
 - (b) the time for performance of such work; and
 - (c) direct the Managing Contractor to procure from the Consultant the Consultant's fee proposal.
- 18.2.2 The Managing Contractor shall advise the Principal, within the time stipulated by the Principal, the terms of the Consultant's fee proposal and the Principal may direct the Managing Contractor to engage the additional Consultant or extend the Consultant's services.
- 18.2.3 If so directed by the Principal, the Managing Contractor shall engage and manage such Consultants as if they and the required services had been identified in the Tender Documents without adjustment to the Management Fee and at no additional cost to the Principal other than an adjustment to the Consultants Fee to take into account the fees of the additional Consultants the subject of the Principal's direction pursuant to this Clause 18.2. This Clause 18.2 does not apply where the direction is a Variation.
- 18.2.4 The Managing Contractor shall provide to the Principal's Representative within a reasonable time a copy of all documents evidencing the entire agreement between the Managing Contractor and each of its Consultants under this Clause 18.2.
- 18.3 Responsibility for Consultants**
- 18.3.1 The Managing Contractor by engaging any Consultant (whether with or without the consent of the Principal) shall not be relieved from any of the Managing Contractor's liabilities or obligations under the Contract.
- 18.3.2 All Consultants engaged by the Managing Contractor shall be accountable to the Managing Contractor on all matters relating to their engagement and the Managing Contractor shall be responsible to the Principal for any acts, defaults and neglects of the Consultants engaged by it.
- 18.3.3 The Managing Contractor shall allow the Principal's Representative to communicate directly with any Consultant and ensure, if requested by the Principal, a Consultant's attendance at any meeting in connection with the services being provided by the Consultant.
- 18.3.4 If requested by the Principal's Representative at any time, the Managing Contractor shall ensure that the Consultant certifies to the Principal that Design Work or Documentation Work carried out by the Consultant complies with the GCS Offer Project Brief.
- 18.4 Co-ordination of Consultants**
- The Managing Contractor shall be responsible for co-ordinating the work of the Consultants and shall provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Consultants so as to ensure the completion of the work undertaken by the Consultants in a suitable manner and at a rate of progress consistent with the completion of the Works in accordance with the Program.

18.5 Termination of a Consultancy Agreement

The Managing Contractor agrees that if a contract or agreement with a Consultant is terminated for any reason, the Managing Contractor remains fully responsible in all respects for the proper completion in accordance with the Contract of the Design Work, the Documentation Work and the Construction Work being carried out by the Consultant. All costs, expenses, or losses of any kind in relation to such termination shall be the responsibility of the Managing Contractor. Neither the Principal nor the Principal's Representative shall be under any obligation to nominate a replacement Consultant.

18.6 Changes in Consultant's Staff

18.6.1 The Managing Contractor shall immediately notify the Principal's Representative upon the Managing Contractor receiving any notice from a Consultant that the effective control of the Consultant has changed or upon the Managing Contractor being aware that the Consultant has engaged or dismissed or removed key staff.

18.6.2 Upon receipt of such notice the Principal's Representative may direct the Managing Contractor to terminate the engagement of the relevant Consultant.

18.7 Consultant's Deed of Obligation

18.7.1 The Managing Contractor shall procure from each Consultant engaged in connection with the work under the Contract the execution of a copy of the Consultant's Deed of Obligation in Schedule 4 (completed with the relevant particulars) within a reasonable time.

18.7.2 If any Consultant fails to execute a copy of the Consultant's Deed of Obligation within a reasonable time, the Managing Contractor shall terminate the engagement of the Consultant and shall engage another Consultant.

18.8 Quantity Surveyor

Unless directed otherwise by the Principal's Representative, Subcontract bills of quantities shall be prepared by a Consultant quantity surveyor engaged by the Managing Contractor. The bills of quantities shall be measured in accordance with Australian Standard Method of Measurement Sixth Edition and individual buildings and external works shall be elementally coded in accordance with the AIQS Australian Cost Management Manual 2000 Volume 1, Appendix A3.

19. DESIGN CHANGE VARIATIONS PRIOR TO ACHIEVEMENT OF DEVELOPED DESIGN

19.1 Changes at the direction of the Principal's Representative

19.1.1 The Principal's Representative may, prior to achievement of the Developed Design, direct the Managing Contractor to:

- (a) change the GCS Offer Project Brief or where the Principal has not accepted a GCS Offer Project Brief then the Project Brief; or
- (b) incorporate an alternative design solution into the Developed Design where the Managing Contractor has complied with Clause 14(a);

by providing the Managing Contractor with a Variation direction in writing.

19.1.2 If the Principal's Representative issues a Variation direction pursuant to Clause 19.1.1, the Principal's Representative shall determine the amount of a reasonable adjustment (if any) to the Management Fee, the Consultants Fee, the On Site Overheads Fee, the Off Site Overheads and Profit Fee for Stage One (if applicable) and Guaranteed Construction Sum (if applicable) and any reasonable adjustment to the Date for Practical Completion (if applicable). The Managing Contractor shall not be entitled to any damages for delay or disruption pursuant to Clause 50 or otherwise, as a result of a Variation direction issued by the Principal's Representative pursuant to Clause 19.1.1.

19.2 Changes for the Convenience of the Managing Contractor

19.2.1 The Managing Contractor may, prior to achievement of the Developed Design, request a change to the GCS Offer Project Brief or where the Principal has not accepted a GCS Offer Project Brief then the Project Brief, as a Variation for the convenience of the Managing Contractor. The Managing Contractor shall keep the Principal's Representative informed of the progress of Design Work so as to give the Principal a reasonable time to consider any request pursuant to this Clause 19.2.

19.2.2 The Principal's Representative may, at its discretion, approve or reject the Managing Contractor's request pursuant to this Clause 19.2, by notice in writing. Any approval may be subject to conditions imposed by the Principal's Representative.

19.2.3 Unless the Principal's Representative otherwise directs in a notice approving the Variation, the Managing Contractor shall not be entitled to:

- (a) any increase to the Management Fee, the Consultants Fee, the On Site Overheads Fee, the Off Site Overheads and Profit Fee, the Project Construction Cost Estimate or the Guaranteed Construction Sum; or
- (b) any extension of time for Practical Completion; or
- (c) damages for delay or disruption pursuant to Clause 50 or otherwise;

in respect of the Variation or anything arising out of the Variation pursuant to this Clause 19.2 which would not have arisen had the Variation not been approved.

20. SUPPLY OF DOCUMENTS

20.1 Supply of Documents by Principal

20.1.1 Unless otherwise stated, the Principal shall supply to the Managing Contractor 4 copies or an electronic copy of the documents required by the Contract to be supplied to the Managing Contractor by the Principal.

20.1.2 Documents supplied to the Managing Contractor by the Principal shall remain the property of the Principal and shall be returned by the Managing Contractor to the Principal on demand in writing.

20.1.3 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.

20.2 Supply of Documents by Managing Contractor

20.2.1 If the Contract requires the Managing Contractor to supply documents to the Principal, the Managing Contractor shall, unless otherwise stated, supply 4 hard copies and an electronic copy in a format which is acceptable to the Principal.

20.2.2 The Managing Contractor shall supply to the Principal's Representative the documents and information as required by the Contract, in a form satisfactory to the Principal's Representative and at those times stated in the Contract or requested by the Principal's Representative or, if no times are stated in the Contract or requested by the Principal's Representative, then in a reasonable time before the work contained in those documents is commenced.

20.2.3 If the Contract provides that the Managing Contractor must obtain the Principal's Representative's direction whether documents are suitable or are not suitable then, within a reasonable time after receipt of the documents, the Principal's Representative shall notify the Managing Contractor that the documents are suitable or are not suitable.

20.2.4 The Principal's Representative's approval to any documentation shall not relieve the Managing Contractor from responsibility for compliance with the requirements of the Contract.

20.2.5 If the Principal's Representative notifies the Managing Contractor that the documents are not suitable, the Principal's Representative shall give reasons why the documents are not suitable, and the Managing

Contractor shall submit new or amended documents for the Principal's Representative's direction pursuant to this Clause 20.2.

20.3 Supply of documentation

20.3.1 The Managing Contractor must maintain a marked up set of all "as constructed" installation drawings and submit these for review to the Principal's Representative within one month of the completion of the relevant trade work.

20.3.2 At least three months prior to the Date of Practical Completion, the Managing Contractor shall provide to the Principal two (2) copies of "interim" operating manuals and maintenance manuals for all components of the Works.

20.3.3 Within two weeks after the Date of Practical Completion, the Managing Contractor shall provide to the Principal:

- (a) three (3) copies of the final Asset Management and Maintenance Database and all operating manuals and maintenance manuals required by the Principal; and
- (b) three (3) complete sets of "as constructed" drawings, trade specifications and other required documents.

20.3.4 All drawings required to be provided by the Managing Contractor must be in both hard copy and electronic format. The hard copy format shall be in accordance with the relevant standards. The electronic format shall be provided on CD-ROM or any other such electronic format acceptable to the Principal for Maintenance Manuals (excluding manufacturer's literature) and in "Auto CAD" drawing format for "as constructed" drawings.

20.3.5 Within two weeks after the Date of Practical Completion, the Managing Contractor shall also provide to the Principal:

- (a) all guarantees and warranties required by the Contract;
- (b) certificates from each of the Consultants certifying that the Works comply with the Subcontract Construction Documentation; and
- (c) all other certificates required by the Contract and evidence of all approvals, consents, and permission from all authorities.

20.4 Availability of Documents

20.4.1 Whilst work under the Contract is being performed, one complete set of written information supplied by the Principal, the Principal's Representative and the Managing Contractor shall be kept by the Managing 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 Principal's Representative and any persons nominated in writing by either of them.

20.4.2 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 Managing Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Principal's Representative and any person nominated in writing by either of them.

20.5 Confidential Information

Drawings, specifications, information, samples, models, patterns and other documents, supplied or produced by either the Managing Contractor, a Consultant or the Principal and which relate in any way to the Contract or the work under the Contract, shall be regarded as confidential and shall not be disclosed to a third party, except with the prior written agreement of the Principal.

20.6 Media Releases

The Managing Contractor, the Managing Contractor's Subcontractors and Consultants shall not issue or be involved with the release of, any information, publication, statement, interview, document, or article for publication concerning the Works or the Site in any media without the prior written approval of the Principal. The Managing Contractor shall refer to the Principal any enquiries concerning the Works from any media and shall advise the Principal of all approaches by any media.

21. ASSIGNMENT AND SUBCONTRACTING

21.1 Assignment

- 21.1.1 The Principal may, at any time, by notice in writing to the Managing Contractor, assign all or any of its rights under the Contract to any person identified in the notice ("the assignee").
- 21.1.2 The Managing Contractor acknowledges and agrees that from the date of any notice given by the Principal pursuant to this Clause 21.1, any assignment by the Principal takes effect as if the assignee had been originally named as a party to the Contract in place of the Principal.
- 21.1.3 The Managing Contractor must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or other right, benefit, or interest under or in respect of the Contract.

21.2 Construction Work

General requirements

- 21.2.1 Construction Work shall be performed:
- (a) under Subcontracts which shall be made between the Managing Contractor and Subcontractors; or
 - (b) with the prior written agreement of and on the conditions imposed by the Principal's Representative, by the Managing Contractor.
- 21.2.2 The obligations of government agencies contained in the Queensland Procurement Policy shall apply equally to the Managing Contractor as though it is a government agency, and the Managing Contractor shall procure Subcontracts for Construction Work in accordance with the requirements of the Queensland Procurement Policy.
- 21.2.3 The Principal may at any time prior to the issue of the Final Certificate, undertake an audit in respect of the Managing Contractor's compliance with Clause 21.2, in accordance with the provisions of Clause 64.4.
- 21.2.4 Where the Principal is of the opinion that the Managing Contractor has not complied with its obligations pursuant to Clause 21.2, the Principal may direct the Managing Contractor to procure a Subcontract for the relevant portion of the Works in accordance with Clause 21.2, and the Managing Contractor shall promptly comply with the Principal's direction. Failure by the Managing Contractor to promptly comply with the Principal's direction shall be a substantial breach of contract.

Subcontract Tender Documentation

- 21.2.5 The Managing Contractor shall prepare and produce all required copies of Subcontract Tender Documentation, which:
- (a) incorporates suitable conditions of contract that reflect the provisions of the Contract;
 - (b) requires Subcontract tenderers and Subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch about the tenderer's or Subcontractor's compliance with government policies and legislation, including without limitation, commitments made in relation to or required by the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);

- (c) requires Subcontract tenderers and Subcontractors to acknowledge that the information referred to in Clause 21.2.5(b), which includes without limitation payroll records, management records, time recordings and records of project-specific training that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch, for information and verification of the Subcontract tenderer's or Subcontractor's compliance with commitments made in relation to or required by government policies and legislation;
- (d) includes terms that evidence the right of the Principal and the QGP Compliance Branch to exercise the discretion in clause 64.10 to publish any information relevant to the Ethical Supplier Mandate, including but not limited to information about the Subcontractor's compliance with the Ethical Supplier Mandate, and prohibits the Subcontractor from exercising any rights at law, including in contract, at common law or in equity, against the Principal or the Managing Contractor in relation to that publication;
- (e) if the Annexure indicates that the Best Practice Principles apply, incorporates the requirements of Clause 21.2.6;
- (f) requires the Subcontractor to submit statutory declarations in the form in Schedule 7, if requested by the Principal's Representative under Clause 58.2(c);
- (g) requires the Subcontractor to execute a deed poll in favour of the Principal in the form set out in Schedule 16 and provide this as part of its tender;
- (h) requires the Subcontractor to make and keep the records referred to in Clause 64.1;
- (i) includes Subcontract Construction Documentation prepared in accordance with Clause 15;
- (j) unless otherwise agreed with the Principal's Representative, includes a professionally prepared bill of quantities in accordance with Clause 18.8 and the requirements of the current Australian Standard Method of Measurement of Building Works with separate buildings elementally coded in accordance with the AIQS Cost Management Manuals (Volumes 1 to 4);
- (k) provides for evaluation of Subcontract tender responses against clear evaluation criteria and weightings; and
- (l) incorporates any other documentation or information required for the tendering or the completion of the relevant Construction Work.

21.2.6 If the Annexure indicates that the Best Practice Principles apply and the total value of the proposed Subcontract is \$20,000 exclusive of GST or more, when preparing Subcontract Tender Documentation the Managing Contractor shall:

- (a) include the following best practice principles in Subcontract Tender Documentation:
 - (i) best practice Workplace Health and Safety systems and standards;
 - (ii) best practice commitment to apprentices and trainees; and
 - (iii) best practice industrial relations;
- (b) provide for evaluation of Subcontract tender responses against clear evaluation criteria, weighted in accordance with the weightings nominated in the Annexure relevant to Best Practice Principles and the Local Benefits Test;
- (c) provide for evaluation of the terms and conditions of employment, including specific pay rates, for the Subcontractor's personnel who will perform work under the Contract, against the Best Practice Industry Conditions (for the avoidance of doubt, although the Best Practice Industry Conditions are set out in the form of an agreement, it is not mandatory for a Subcontractor to enter into an agreement or an agreement in that form in order to demonstrate that terms and conditions of employment are at least equivalent to the Best Practice Industry Conditions. An agreement with named employee organisations is not a mandatory requirement. Subcontractors are able to demonstrate how they will provide terms and conditions of employment which are at least equivalent

to the substantive obligations, entitlements, conditions and amounts contained in the Best Practice Industry Conditions in any manner they choose to nominate;

- (d) provide Subcontract tenderers with the Best Practice Industry Conditions and the following guidance examples of best practice in relation to the best practice principles described at Clause 21.2.6(a), which are examples only and are not comprehensive, compulsory, or exhaustive:
 - (i) demonstrated commitment to training, including the engagement of apprentices and trainees;
 - (ii) demonstrated history of compliance with industrial laws, including work health and safety laws; and
 - (iii) collective agreements that provide wages and conditions that attract a high quality and skilled workforce, and Subcontract tenderers may obtain further examples of such agreements at the following page on the Fair Work Australia website <https://www.fwc.gov.au/agreements-awards/enterprise-agreements>; and
- (e) require Subcontract tenderers to:
 - (i) demonstrate as part of their tender, how their terms and conditions of employment, including specific pay rates, for the Subcontractor's personnel who will perform work under the Subcontract, compare to the Best Practice Industry Conditions;
 - (ii) demonstrate as part of their tender, how they propose to address each of the three best practice principles described at Clause 21.2.6(a); and
 - (iii) acknowledge that information relating to the Subcontractor relevant to the evaluation of the subcontractor's tender or the Subcontractor's compliance with commitments made in its tender relating to the Best Practice Principles and the Best Practice Industry Conditions, which includes without limitation payroll records, management records, time recordings and records of project-specific training that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch for information and verification.

21.2.7 The Managing Contractor shall:

- (a) supply to the Principal's Representative the proposed Subcontract Tender Documentation in a form satisfactory to the Principal's Representative and which complies with Clauses 15, 21.2.5 and if the Best Practice Principles apply, Clause 21.2.6, for that part of the Construction Work the subject of the proposed Subcontract;
- (b) if, for any reason, the Managing Contractor modifies the Subcontract Tender Documentation after it has been supplied to the Principal's Representative in accordance with Clause 21.2.7(a), the Managing Contractor shall supply the modified Subcontract Tender Documentation to the Principal's Representative, together with details of and reasons for the modification.

21.2.8 The Principal's Representative may comment on or issue directions to the Managing Contractor in respect of the Subcontract Tender Documentation. The Principal's Representative shall not be bound to review or comment upon the Subcontract Tender Documentation or to check for errors, omissions, or compliance with the Contract. The Principal's Representative's receipt or review of, or comment on or direction in respect of the Subcontract Tender Documentation or any other documents provided by the Managing Contractor shall not relieve the Managing Contractor from responsibility for the Managing Contractor's obligations in respect of Design Work, Documentation Work, Construction Work or other requirements of the Contract.

21.2.9 The Managing Contractor shall finalise the Subcontract Tender Documentation in accordance with Clauses 15, 21.2.5 and, if the Best Practice Principles apply, Clause 21.2.6, having regard to any comment and in compliance with any direction received from the Principal's Representative.

Subcontract tenderers

21.2.10 The Managing Contractor must ensure that all Subcontractors and any sub subcontractors:

- (a) for the purposes of the Queensland Procurement Policy are:
 - (i) local suppliers as described in the Queensland Procurement Policy, and if a local supplier is unable to be sourced by the Managing Contractor having used its best endeavours to do so, the Managing Contractor shall seek approval from the Principal's Representative to use a supplier who is not a local supplier and in doing so shall provide evidence, satisfactory to the Principal's Representative, of its efforts to source a local supplier;
 - (ii) compliant with the Ethical Supplier Threshold;
 - (iii) not subject to a current sanction under the Ethical Supplier Mandate;
- (b) are informed of the existence of the BIF Act; and
- (c) either:
 - (i) have a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
 - (ii) in relation to the work to be performed under the Subcontract (or sub subcontract):
 - (A) will be paid to achieve a specified result or outcome;
 - (B) are required to supply the plant and equipment or tools of trade needed to perform the work; and
 - (C) will be liable for the cost of rectifying any defect in the work performed.

21.2.11 If the Annexure indicates that the Best Practice Principles apply:

- (a) if the total value of the proposed Subcontract is \$20,000 exclusive of GST or more, the Managing Contractor must diligently apply the Best Endeavours Process when seeking tenders for Subcontracts; and
- (b) if the total value of the proposed Subcontract is \$1,000,000 exclusive of GST or more, the Managing Contractor must ensure that all Subcontractors are Prequalified Subcontractors and, if a Prequalified Subcontractor is unable to be sourced by the Managing Contractor for part of the Construction Work having used its best endeavours to do so, the Managing Contractor must seek approval from the Principal's Representative to engage a subcontractor who is not a Prequalified Subcontractor and in doing so shall provide evidence, satisfactory to the Principal, of its efforts to source a Prequalified Subcontractor.

21.2.12 Where Clause 21.2.11(b) does not apply, the Principal's Representative may direct the Managing Contractor to select Prequalified Subcontractors. The Managing Contractor may not claim and warrants to the Principal that it shall not claim any extra amount or extension of time from the Principal a result of complying with a direction given pursuant to this Clause 21.2.12.

Subcontract tendering

21.2.13 The Managing Contractor shall not commence tendering of a Subcontract until the expiration of 5 Working Days after the receipt by the Principal's Representative of the final version of the respective Subcontract Tender Documentation, unless otherwise agreed in writing with the Principal's Representative.

21.2.14 The Managing Contractor shall:

- (a) unless otherwise agreed in writing with the Principal's Representative, obtain tenders from at least three tenderers for each Subcontract on the basis of the Subcontract Tender Documentation;

- (b) where the Managing Contractor invites select Subcontract tenders including any preferred subcontractors identified in the Managing Contractor's Tender or GCS Offer:
 - (i) finalise the list with the Principal's Representative; and
 - (ii) invite tenders in sufficient time to avoid delays or disruption to the progress of the work under the Contract;
- (c) if required by the Principal's Representative:
 - (i) ensure that sealed Subcontract tenders are lodged in a secure tender box located at the address of the Managing Contractor as advised to the Principal's Representative pursuant to Clause 10;
 - (ii) arrange for the Principal's Representative and the Managing Contractor's Representative or their nominees to be present at and conduct the opening of the tender box; and
 - (iii) forthwith provide a copy of each tender to the Principal's Representative.

21.2.15 Where the Managing Contractor has identified preferred subcontractors in the Managing Contractor's Tender or GCS Offer and the Managing Contractor wishes to involve preferred subcontractors in the work under the Contract during Stage One, the Managing Contractor:

- (a) may involve those preferred subcontractors in the work under the Contract prior to acceptance, if any, of the GCS Offer;
- (b) may not engage a preferred subcontractor as a Subcontractor until after the Date of Commencement of Stage Two, if any, unless otherwise agreed in writing with the Principal's Representative;
- (c) must comply with the requirements of this Clause 21.2 in relation to the tendering of Subcontracts with preferred subcontractors.

21.2.16 Where the Managing Contractor, with the written agreement of the Principal's Representative, proposes to invite a tender from a single Subcontract tenderer, the Managing Contractor must:

- (a) select the single Subcontract tenderer, prepare Subcontract Tender Documentation, evaluate the Subcontract tender and engage the Subcontractor in accordance with the requirements of this Clause 21.2; and
- (b) notwithstanding paragraph (a) above, tender the Subcontract pursuant to Clause 21.2.14 where the scope of Works for the Subcontract differs significantly from the scope of Works when the Principal's agreement was obtained to invite a single Subcontract tenderer for the relevant Subcontract; and

there will be no adjustment to the Management Fee or the Guaranteed Construction Sum as a result of compliance with this Clause 21.2.16.

Subcontract tender evaluation

21.2.17 The Managing Contractor shall examine, analyse and evaluate all Subcontract tenders received and in doing so, the Managing Contractor shall:

- (a) ensure evaluation of Subcontract tender responses against clear evaluation criteria and weightings;
- (b) if the Annexure indicates that the Best Practice Principles apply and the total value of the proposed subcontract is \$20,000 exclusive of GST or more, apply the weightings nominated in the Annexure for non-price criteria relating to the Best Practice Principles and the Local Benefits Test and measure compliance with:
 - (i) the best practice principles described in Clause 21.2.6(a); and
 - (ii) the substantive obligations, entitlements, conditions and amounts contained in the Best Practice Industry Conditions; and
 - (iii) relevant legislation and government policy; and

- (c) prepare and retain written records of the evaluation process undertaken, all evaluation findings and recommendations and, where the Annexure indicates the Best Practice Principles are applicable, if requested, submit these to the Principal's Representative at the completion of each Subcontract tender evaluation.

Subcontractor engagement

21.2.18 The Managing Contractor is required to, unless otherwise approved in writing by the Principal's Representative:

- (a) accept the Subcontract tender which represents the best value for money determined in accordance with the Queensland Procurement Policy;
- (b) ensure all Subcontracts are consistent with the Subcontract Tender Documentation and the Contract and contain all necessary provisions required by it;
- (c) not accept any Subcontract tender which does not include a duly executed deed poll in the form in Schedule 16; and
- (d) if the Annexure indicates that the Best Practice Principles apply:
 - (i) include provisions requiring the Subcontractor to:
 - (A) provide terms and conditions of employment, including specific pay rates, for the Subcontractor's personnel who will perform work under the Contract, in accordance with the accepted Subcontractor's tender; and
 - (B) fulfil the commitments made in the Subcontractor's tender in respect of the best practice principles described in Clause 21.2.6(a).

21.2.19 The Managing Contractor shall, by notice in the form in Schedule 6, advise the Principal's Representative within 5 Working Days of acceptance of the tender which Subcontract tender was accepted by the Managing Contractor, and will provide any other details which may be required by the Principal's Representative.

21.2.20 Where the Subcontract Tender Documentation includes a bill of quantities pursuant to Clause 21.2.5, the Managing Contractor shall ensure the successful Subcontract tenderer submits a fully priced and correctly extended bill of quantities which shall be agreed between the Subcontractor and the Managing Contractor within 10 business days of the date of acceptance of the tender. The rates contained within the successful Subcontract tenderer's agreed priced bill of quantities shall be used for:

- (a) the purpose of payments and for the valuation of variations under the Subcontract; and
- (b) in the event that the Principal's Representative determines that those rates or prices contained in the bill of quantities are applicable, for the purpose of valuations pursuant to Clause 53.4.

21.2.21 The Managing Contractor shall provide the Principal's Representative with two (2) copies of the complete documentation evidencing the agreement and constituting the Subcontract between the Subcontractor and Managing Contractor including (without limitation) the Subcontract Construction Documentation relevant to that agreement within 20 business days after the date of acceptance of the Subcontractor's tender.

Subcontractor assignment and subcontracting

21.2.22 The Managing Contractor must not, without the prior written approval of the Principal's Representative, allow a Subcontractor to assign or subcontract any of the work under the Contract. When seeking approval pursuant to this Clause 21.2.22, the Managing Contractor shall provide to the Principal's Representative such information which the Principal's Representative may reasonably request, including a request for approval to sub subcontract in the form in Schedule 6. The Principal's Representative may in its entire discretion and without giving reasons reject any such request for approval by the Managing Contractor. If approval is given to sub subcontract part of the work under the Contract pursuant to this Clause 21.2.22, the Managing Contractor must ensure the requirements of Clause 21.2 are met.

21.3 Responsibilities, Warranties and Indemnities

- 21.3.1 The Managing Contractor warrants that in procuring Subcontracts the Managing Contractor will comply with:
- (a) the requirements of this Clause 21 in every respect;
 - (b) the requirements of Australian Standards® Code of Tendering (AS4120-1994); and
 - (c) the requirements of the Queensland Procurement Policy, and where the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles.
- 21.3.2 In respect of the procurement of Subcontracts, the Managing Contractor indemnifies and shall keep indemnified the Principal, the Principal's Representative and the employees, consultants and agents of the Principal against all consequences and claims, demands, actions, proceedings or suits by any person, including (without limitation) any person who may have an interest in a Subcontract tender or Subcontract, seeking the payment of money, or any costs, expenses, losses or damages on any ground whatsoever including (without limitation) in relation to the Queensland Procurement Policy.
- 21.3.3 The Managing Contractor warrants that all Subcontractors engaged by the Managing Contractor shall have the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted and the Managing Contractor shall not engage a subcontractor if the Managing Contractor knows of any reason why that subcontractor's tender should not be accepted.
- 21.3.4 By engaging any Subcontractor for the Construction Work (whether or not in accordance with the approval by or direction of the Principal's Representative), the Managing Contractor shall not be relieved from any of the Managing Contractor's liabilities or obligations under the Contract and shall remain responsible for all Subcontractors and for all work which is or may be subcontracted, whether or not any Subcontractors default or otherwise fail to observe or comply with the requirements of a Subcontract.
- 21.3.5 The Managing Contractor's warranties, and indemnity provided pursuant to this Clause 21.3 shall remain unaffected notwithstanding any approval, direction, or advice given by the Principal, the Principal's Representative or the employees, consultants, or agents of the Principal.

21.4 Variations to Subcontracts

- 21.4.1 The Managing Contractor shall provide to the Principal's Representative details sufficient to explain the basis and amount of any valid cost adjustments to the accepted subcontract sums of Subcontracts, which the Managing Contractor considers are included in the Actual Construction Sum, together with any further information reasonably required by the Principal's Representative, within 5 business days of allowing the cost adjustment.
- 21.4.2 The Principal's Representative shall advise the Managing Contractor whether the cost adjustment (if any) is determined to be for:
- (a) the cost of rectifying non-complying or defective work;
 - (b) a cost which has not been properly incurred in respect of Construction Work pursuant to this Contract; or
 - (c) Subcontractor delay or disruption costs which have been otherwise paid pursuant to the Contract or are in respect of a breach of the Subcontract on the part of the Managing Contractor;

in which case, the cost adjustment shall be excluded from the Actual Construction Sum.

21.5 Subcontractor Default

- 21.5.1 If a Subcontractor:
- (a) is in breach of the Subcontractor's obligations under a Subcontract; or

- (b) commits an act of insolvency as defined by Clause 59.11 (as if the words “Managing Contractor” were replaced with “Subcontractor” in that Clause);

then the Managing Contractor shall in writing promptly notify the Principal’s Representative of this fact and take action in accordance with the Subcontract.

21.5.2 If a Subcontract is terminated and another Subcontractor engaged:

- (a) any amount reasonably incurred by the Managing Contractor as payable to a Subcontractor in respect of the replacement Subcontract in addition to the original Subcontract tender price, adjusted in accordance with the Contract, may be included in the Actual Construction Sum;
- (b) the Guaranteed Construction Sum shall not be adjusted; and
- (c) the Principal shall not be liable to pay more than the Guaranteed Construction Sum in respect of the Actual Construction Sum.

22. LATENT CONDITIONS

22.1 Definition

Latent Conditions are physical conditions on the Site or the Site’s surroundings, including artificial things, but excluding weather conditions or the results of such conditions, whether on or off the Site, which differ materially from the physical conditions which should reasonably have been anticipated by a suitably qualified and experienced managing contractor at the time of the submission by the Managing Contractor of the GCS Offer, if that suitably qualified and experienced managing contractor had:

- (a) examined all information referred to in the Project Brief;
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the work under the Contract and obtainable by the making of reasonable enquiries; and
- (c) inspected the Site and the Site’s surroundings.

22.2 Notification

If during the execution of the work under the Contract, the Managing Contractor becomes aware of a Latent Condition, the Managing Contractor shall forthwith and where possible before the Latent Condition is disturbed, provide to the Principal’s Representative a statement in writing specifying:

- (a) the Latent Condition encountered and in what respects it differs materially;
- (b) the additional work and additional resources which the Managing Contractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Managing Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Managing Contractor’s estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Principal’s Representative.

22.3 Cost of Dealing with Latent Condition

If a Latent Condition causes the Managing Contractor to:

- (a) carry out more work;
- (b) use more constructional plant; or
- (c) incur extra cost,

which the Managing Contractor could not reasonably have anticipated at the time of submission of the GCS Offer by the Managing Contractor, a valuation shall be made by the Principal's Representative in accordance with Clause 53.4 (as if the valuation were for a Variation), and the Guaranteed Construction Sum and the Management Fee, the On Site Overheads Fee and/or the Consultants Fee shall be adjusted by the amount of that valuation in accordance with the Contract.

22.4 **Extension of Time**

Delay caused by a Latent Condition may justify an extension of time under Clause 49.3 and costs assessed pursuant to Clause 50.

23. **PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

23.1 **Warranty and Indemnity**

The Managing Contractor warrants to the Principal that the Contract Materials and methods of working will not infringe any patent, copyright, moral right, registered design, trademark or name, or other protected right and the Managing Contractor indemnifies the Principal in respect of any such infringement.

23.2 **Intellectual Property Rights granted to Principal**

23.2.1 The ownership of and copyright in all Contract Materials shall vest absolutely in the Principal upon their creation.

23.2.2 To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal because the Managing Contractor does not own the copyright, the Managing Contractor shall ensure that the Principal is irrevocably licensed to use the relevant Contract Materials.

23.3 **Moral Rights**

23.3.1 To the extent the Managing Contractor has Moral Rights in the Contract Materials, the Managing Contractor consents to:

- (a) the Principal;
- (b) any third party to whom the Principal expressly or impliedly licenses, or grants any other right to use or possess, any Contract Materials ("licensee"); or
- (c) any third party to whom the Principal assigns copyright in any part of the Contract Materials ("assignee");

doing any of the following for purposes connected with this Contract or the Works:

- (d) acknowledging in any manner or failing to acknowledge the Managing Contractor's or any other person's authorship of any Contract Materials;
- (e) modifying, varying, or amending any Contract Materials; or
- (f) altering any Contract Materials by adding to, or removing elements from, any Contract Materials, including by combining elements of any Contract Materials with any other material.

23.3.2 The Managing Contractor must use its best endeavours to obtain a signed, written consent from all individuals who create or may create any Contract Materials to enable the Principal or any licensee or assignee to use the Contract Materials as provided for in Clause 23.3.1.

23.3.3 Upon request by the Principal's Representative, the Managing Contractor will produce to the Principal's Representative the written consents obtained pursuant to Clause 23.3.2.

24. STATUTORY REQUIREMENTS

24.1 Variance with the Contract

24.1.1 The Managing Contractor shall satisfy all Statutory Requirements except those which the Principal's Representative directs are to be satisfied by or on behalf of the Principal.

24.1.2 If a Statutory Requirement is at variance with a provision of the Contract, as soon as the Managing Contractor discovers the variance, the Managing Contractor shall notify the Principal's Representative in writing specifying the difference.

24.2 Changes in Statutory Requirements

If a change to a Statutory 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 GCS Offer Project Brief or where the Principal has not accepted a GCS Offer Project Brief then the Project Brief;
 - (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;
 - (iv) an increase or decrease in a fee or charge or payment of a new fee or charge; or
 - (v) an increase or decrease in GST;
- (b) has effect after the 14th day prior to the date of submission of the GCS Offer; and
- (c) could not reasonably have been anticipated;

then to the extent that such change causes the Managing Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 53.4 (as if the valuation were for a Variation) and the Management Fee, the Consultants Fee, the On Site Overheads Fee and the Guaranteed Construction Sum shall be adjusted in accordance with the Contract.

24.3 Managing Contractor's Declaration and Indemnity

The Managing Contractor agrees that except insofar as it is expressly provided otherwise by the Contract:

- (a) the Managing Contractor does not act as agent of the Principal in complying with any Statutory Requirement; and
- (b) the Managing Contractor indemnifies the Principal against any damages, costs, and consequences of failing to comply with any Statutory Requirement.

24.4 Documents Evidencing Approvals of Authorities

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

24.5 Work Health and Safety

24.5.1 For the purposes of this Clause:

'Act' means the *Work Health and Safety Act 2011* (Qld);

'construction work' and 'principal contractor' have the same meaning as in the Regulation;

'inspector', 'notifiable incident', 'structure', 'regulator' and 'workplace' have the same meanings as in the Act;

'Regulation' means the *Work Health and Safety Regulation 2011* (Qld);

'WHS Laws' means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

24.5.2 From the Date of Acceptance of Tender:

- (a) the Principal engages the Managing Contractor to be the principal contractor under the Regulation in relation to the work under the Contract and authorises the Managing Contractor to:
 - (i) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and
 - (ii) discharge the duties of the principal contractor under the Regulation;
- (b) the Managing Contractor accepts the engagement as principal contractor from the Principal and agrees to fulfil all requirements and give effect to that engagement prior to commencing any of the work under the Contract;
- (c) the Managing Contractor will comply with and discharge all obligations imposed on the Managing Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the WHS Laws;
- (d) the Managing Contractor will consult with the Principal and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable; and
- (e) the Managing Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Managing Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out; and
- (f) without limiting Clause 24.5.2(c), ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers, and agents, discharge their respective duties under the WHS Laws in connection with the work under the Contract.

24.5.3 The Managing Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost, or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:

- (a) any breach of this Clause 24.5 by the Managing Contractor;
- (b) any breach by the Managing Contractor of its obligations under the WHS Laws;
- (c) any enforcement of obligations imposed on the Managing Contractor under the WHS Laws.

24.5.4 If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Managing Contractor must:

- (a) immediately notify the regulator and the Principal's Representative of the notifiable incident and provide copies of any communications, notices or reports provided to or received from the regulator or any Authority regarding the notifiable incident to the Principal's Representative;
- (b) take all reasonably practicable steps to secure the Site where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs;
- (c) conduct a thorough investigation in relation to the root cause and contributing factors of the notifiable incident and provide a copy of the written investigation report within 10 business days of the Principal's Representative's request; and

- (d) if the Principal wishes to conduct its own investigation, provide the Principal with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.

24.5.5 Without limiting any other obligation of the Managing Contractor under this Contract or the WHS Laws, if material which might contain asbestos or other hazardous substance is discovered, the Managing Contractor must:

- (a) immediately notify the Principal's Representative; and
- (b) comply with all applicable obligations and restrictions imposed by the WHS Laws.

24.6 Building Act Compliance

24.6.1 A Building Certifier is required to be engaged by the party stated in the Annexure to provide advice on compliance of the Works with the provisions of the *Building Act 1975* (Qld) and, in the performance of the Building Certifier's duties, must be required to act as an independent party and not as an agent of the Principal.

24.6.2 The Managing Contractor shall ensure the Building Certifier shall have sufficient access to the Works to ensure compliance with the provisions of the *Building Act 1975* (Qld) and any regulations, by laws, orders and proclamations made thereunder but shall have no authority on behalf of the Principal to order a Variation.

24.6.3 Subject to Clauses 24.2 and 53.1 and notwithstanding Clause 20.2, the party stated in the Annexure shall:

- (a) comply with; and
- (b) bear the costs of, and pay any fees due with respect to complying with;

all requirements of the Building Certifier, the Queensland Fire and Emergency Services or other relevant authority, including but not limited to those requirements as set out in Schedule 11.

24.6.4 During construction of the Works, the Managing Contractor shall arrange for the plumbing and drainage installations to be inspected by all relevant authorities. All fees associated therewith shall be included in the relevant Subcontract packages.

24.6.5 Approvals and certificates issued to the Managing Contractor by the Building Certifier and any authorities in respect of the work under the Contract shall be surrendered to the Principal prior to issue of the Final Certificate. Prior to Practical Completion the Managing Contractor shall deliver to the Principal all permits, registrations, approvals, certifications, consents, or licences obtained by the Managing Contractor in respect of the Works. This shall include, but is not limited to, all certificates, approvals or permits required from the Building Certifier and any authority for the lawful occupation or use of the Work.

24.7 Building and Construction Industry (Portable Long Service Leave) Act Compliance

The Principal shall pay the building and construction industry training levy and portable long service leave levy, pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

25. NOISE, DISTURBANCE AND NUISANCE CONTROL

25.1 The Managing Contractor shall take all steps to:

- (a) minimise noise, dust, and other nuisances; and
- (b) prevent the escape of any material from the Site onto property and roads near the Site.

25.2 The Managing Contractor warrants that it has assessed the potential for delays, disruption, suspension and extra costs in the performance of the work under the Contract because of potential noise, dust and all other nuisances and made due allowance in the Managing Contractor's Tender, including taking into account any operational requirements of the Site included in the Tender Documents.

- 25.3 If there are delays, disruption, suspension, or extra costs (including a requirement to alter Working Hours and methods) caused by the Managing Contractor's compliance with this Clause 25 then:
- (a) the Managing Contractor may not claim and warrants to the Principal that it shall not claim any extra amount or extension of time from the Principal; and
 - (b) this Contract shall not be frustrated.
- 25.4 The Managing Contractor shall indemnify the Principal against all costs, damages, and expenses the Principal may sustain as a result of neglect or default of the Managing Contractor in complying with this Clause 25.

26. PROTECTION OF PEOPLE AND PROPERTY

26.1 Protection Measures

26.1.1 The Managing Contractor shall:

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

26.1.2 Without limiting the generality of the Managing Contractor's obligations, they include:

- (a) the provision of:
 - (i) barricades;
 - (ii) guards;
 - (iii) fencing;
 - (iv) temporary roads;
 - (v) footpaths;
 - (vi) warning signs;
 - (vii) lighting;
 - (viii) watching;
 - (ix) traffic flagging; and
 - (x) safety helmets and clothing; and
- (b) removal of obstructions and protection of services.

26.1.3 If the Managing Contractor or the employees or agents of the Managing Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Managing Contractor shall promptly make good the damage and pay any compensation which the law requires the Managing Contractor to pay.

26.1.4 If the Managing Contractor fails to comply with an obligation under Clause 26 the Principal may, in addition to any other remedy, perform the obligation on the Managing Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Managing Contractor to the Principal.

26.2 Occupational Health and Safety Audit

26.2.1 This Clause 26.2 will apply unless otherwise noted in the Annexure.

26.2.2 For the purposes of this Clause 26.2:

'Accredited Auditor (Construction)' means a person accredited by Workplace Health and Safety Queensland as an occupational health and safety auditor to undertake auditing pursuant to the *Work Health and Safety Act 2011* (Qld).

26.2.3 Within 10 Working Days of the Date of Acceptance of Tender, the Managing Contractor must engage an Accredited Auditor (Construction) to perform the functions specified in the Contract.

26.2.4 The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Principal in accordance with the Contract. The reimbursable amount will be a debt due from the Principal to the Managing Contractor.

26.2.5 The Managing Contractor must ensure that the Accredited Auditor (Construction) engaged under Clause 26.2.3 has not:

- (a) in the two years prior to the Date of Acceptance of Tender, had a business or employment relationship with the Managing Contractor including without limitation where the Accredited Auditor (Construction) has, either personally or as an employee or an agent of another person or entity, been involved in the development and/or maintenance of the Managing Contractor's occupational health and safety management system in any capacity other than by reason of having been engaged as an Accredited Auditor (Construction); or
- (b) been engaged by the Managing Contractor as an Accredited Auditor (Construction) more than three times within a 12-month period to perform the functions specified in the Contract.

26.2.6 The Managing Contractor must provide copies of all reports and any corrective action notices received from the Accredited Auditor (Construction) to the Principal's Representative within 3 Working Days of receipt. In relation to corrective action notices, in addition to any other avenues available under the Contract:

- (a) the Principal's Representative may direct the Managing Contractor, by written notice, to carry out any required corrective action within the time specified in the Principal's Representative's notice; or
- (b) the Principal may take action under Clause 27.

26.2.7 A direction given under Clause 26.2.6(a) constitutes a direction under Clause 42.2. If such a direction is given, the Managing Contractor must inform the Principal's Representative in writing immediately upon completion of the corrective actions.

27. URGENT PROTECTION

27.1 If urgent action is necessary to protect the work under the Contract, other property or people and the Managing Contractor fails to take the action, the Principal may take the necessary action. If the action was action which the Managing Contractor should have taken at the Managing Contractor's cost, the cost incurred by the Principal shall be a debt due from the Managing Contractor.

27.2 If time permits, the Principal's Representative shall give the Managing Contractor prior written notice of the Principal's intention to take action under this Clause 27.

28. CARE OF THE WORK UNDER THE CONTRACT AND REINSTATEMENT OF DAMAGE

28.1 Care of the Work Under the Contract

28.1.1 From and including the date of commencement of work under the Contract to 4.00 pm on the Date of Practical Completion of the Works, the Managing Contractor shall be responsible for the care of the work under the Contract.

28.1.2 Without limiting the generality of the Managing Contractor's obligations, the Managing Contractor:

- (a) shall be responsible for the care of:
 - (i) unfixed items for which payment has been received;
 - (ii) things entrusted to the Managing Contractor by the Principal for the purpose of carrying out the work under the Contract;
 - (iii) things brought on the Site by Subcontractors for the purpose of carrying out work under the Contract;
 - (iv) the Works; and
 - (v) the Temporary Works and constructional plant; and
- (b) shall provide the storage and protection necessary to preserve these items and things, and the Works, the Temporary Works and constructional plant.

28.1.3 After 4.00 pm on the Date of Practical Completion the Managing Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Managing Contractor and shall be liable for damage occasioned by the Managing Contractor in the course of completing outstanding work or complying with obligations under Clause 43.1 and Clause 51.

28.2 Reinstatement

If loss or damage occurs to anything while the Managing Contractor is responsible for its care, the Managing Contractor shall promptly ensure the loss or damage is made good unless the loss or damage is a direct consequence, without fault or omission on the part of the Managing Contractor, of an Excepted Risk defined in Clause 28.3.

28.3 Excepted Risks

The Excepted Risks are:

- (a) any negligent act or omission of the Principal, the Principal's Representative or the employees, other contractors, 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, terrorism, 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 Managing Contractor or the Managing Contractor's employees or agents;
- (e) use or occupation by the Principal or the employees or agents of the Principal or other contractors or consultants to the Principal (not being employed by the Managing Contractor) of any part of the Works or the Temporary Works; and
- (f) any part of the design of the work under the Contract that is the Principal's responsibility.

29. DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORK UNDER THE CONTRACT

29.1 Indemnity by the Managing Contractor

29.1.1 The following Clause 29.1.3 shall not apply to:

- (a) the extent that the liability of the Managing Contractor is limited by another provision of the Contract;
- (b) any other right of the Principal to be indemnified by the Managing Contractor;

- (c) things for the care of which the Managing Contractor is responsible under Clause 28.1;
- (d) claims in respect of the right of the Principal to construct the work under the Contract on the Site; or
- (e) damage which is the unavoidable result of the construction of the Works.

29.1.2 Insofar as this Clause 29.1 applies to property, it applies to property other than the work under the Contract.

29.1.3 The Managing Contractor shall indemnify the Principal against:

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; 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 Managing Contractor of the work under the Contract, but the Managing Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal or employees, consultants, other contractors or agents of the Principal (not being employed by the Managing Contractor) may have contributed to the loss, damage, death or injury.

29.2 Indemnity by the Principal

The Principal shall indemnify the Managing Contractor in respect to claims referred to in Clause 29.1.1(d).

30. INSURANCE OF THE WORK UNDER THE CONTRACT

30.1 Before the Managing Contractor commences work on the Site (including Early Works) the Managing Contractor shall take out an insurance policy covering all the things referred to in Clause 28.1 against loss or damage until the Managing Contractor ceases to be responsible for their care.

30.2 Without limiting the generality of the obligation to insure, the policy shall cover the Managing Contractor's liabilities under Clause 28.2 and things in storage off Site and in transit to the Site.

30.3 The insurance cover may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works; and
- (e) loss or damage resulting from the Excepted Risks in Clauses 28.3(b), 28.3(c) and 28.3(d).

30.4 The insurance cover shall be for an amount no less than the sum of:

- (a) the base amount stated in the Annexure;
- (b) the amount stated in the Annexure to provide for costs of demolition and removal of debris;
- (c) the amount stated in the Annexure to cover fees of Consultants;
- (d) the value stated in the Annexure of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (e) the additional amount or percentage of the total of the items referred to in Clauses 30.4(a), 30.4(b), 30.4(c), and 30.4(d) stated in the Annexure.

30.5 The insurance policy shall be in the joint names of the Principal and the Managing Contractor and shall cover the Principal, the Managing Contractor, the 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, if specified elsewhere in the Contract or directed by the Principal's Representative, shall be effected with an insurer and in terms both approved in writing by the Principal (such approval not to be unreasonably withheld). The policy shall be maintained until the Managing Contractor ceases to be responsible under Clause 28.1 for the care of anything.

31. PUBLIC LIABILITY INSURANCE

31.1 Before the Managing Contractor commences work on the Site (including Early Works), the Managing Contractor shall take out a Public Liability Policy of Insurance which notes the Principal as an interested party and which covers the Principal, the Managing Contractor, the Principal's Representative, the Site Representative, the Clerk of Works, the Managing Contractor's Representative and all Subcontractors and all Consultants 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, arising from or in relation to an occurrence in connection with the Managing Contractor's performance of the work under the Contract. The policy shall also cover the Managing Contractor's liability to the Principal and the Principal's liability to the Managing Contractor for loss of or damage to property (other than property required to be insured by Clause 30) 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).

31.2 The Public Liability Policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure and, if specified elsewhere in the Contract or directed by the Principal's Representative, shall be effected with an insurer and in terms both approved in writing by the Principal (such approval not to be unreasonably withheld). The policy shall be maintained until the Final Certificate is issued under Clause 57.12.

32. INSURANCE OF EMPLOYEES

32.1 Before commencing work under the Contract, the Managing Contractor shall insure against liability for death of or injury to persons employed by the Managing Contractor including liability by statute and at common law.

32.2 The insurance cover shall be maintained until all work including Defects Liability Work is completed.

32.3 The Managing Contractor shall ensure that every Subcontractor and Consultant is similarly insured.

33. PROFESSIONAL INDEMNITY INSURANCE

33.1 Managing Contractor to effect Insurance

Within 10 business days of the Date of Acceptance of Tender the Managing Contractor shall effect a Professional Indemnity Policy of insurance and, if specified elsewhere in the Contract or directed by the Principal's Representative, with an insurer approved by the Principal (such approval not to be unreasonably withheld):

- (a) for a total cover not less than the amount stated in the Annexure with any associated excess to be a reasonable amount; and
- (b) covering the Managing Contractor's liability to any person arising from an act or omission of the Managing Contractor in connection with the professional activities and duties of the Managing Contractor.

33.2 Period of Insurance

Professional Indemnity Insurance under this Clause 33 shall be maintained by the Managing Contractor until the expiration of 6 years after the issue of the Final Certificate for the Works.

34. INSPECTION AND PROVISION OF INSURANCE POLICIES**34.1 Proof of Insurance**

34.1.1 Before the Managing Contractor commences work and whenever requested in writing by the Principal, the Managing Contractor shall produce certificates of currency of insurance, and if required by the Principal details of an insurance policy, to the Principal evidencing the insurance effected and maintained, and showing the applicable insurance excess.

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

34.2 Failure to Produce Proof of Insurance

34.2.1 If, after being requested in writing by the Principal so to do, the Managing Contractor fails to produce evidence of compliance with insurance obligations under Clauses 30, 31, 32 or 33 to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Managing Contractor to the Principal.

34.2.2 The Principal may refuse all payment until evidence of compliance with insurance obligations under Clauses 30, 31, 32 or 33 is produced by the Managing Contractor to the satisfaction and approval of the Principal.

34.2.3 The rights given by Clause 34.2 are in addition to any other right.

34.3 Notices from or to the Insurer

34.3.1 The Managing Contractor shall ensure that each policy of insurance contains provisions acceptable to the Principal that provide that a notice of claim given to the insurer by the Principal or the Principal's Representative shall be accepted by the insurer as a notice of claim given by the Managing Contractor.

34.3.2 The Managing Contractor must immediately inform the Principal in writing of any:

- (a) notice of cancellation or other notice concerning the policy provided by the insurer; and
- (b) failure to renew a policy or to pay a premium, and where possible prior to the insurer giving any notice of cancellation.

34.4 Notices of Potential Claims

34.4.1 The Managing 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 Clause 30, 31, 32 or 33 and shall keep the Principal informed of subsequent developments concerning the claim.

34.4.2 The Managing Contractor shall ensure that Subcontractors in respect of their operations similarly inform the Principal.

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

34.5 Settlement of Claims

Upon settlement of a claim under the insurance specified by Clause 30:

- (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 Managing Contractor, if the Managing 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 Managing Contractor and the Principal. As the Managing Contractor proceeds to reinstate the loss or damage, the Principal's Representative 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 Managing Contractor, the Managing Contractor shall be entitled immediately to

receive from moneys received, the amount of money so paid in relation to any loss suffered by the Managing Contractor relating to that work under the Contract (including the supply of goods and materials on Site whether or not incorporated into the Works).

34.6 **Cross Liability**

Any insurance required to be effected by the Managing Contractor in joint names in accordance with the Contract shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons 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).

35. **PRINCIPAL'S REPRESENTATIVE**

35.1 **General**

35.1.1 The Principal shall ensure that at all times there is a Principal's Representative and that in the exercise of the functions of the Principal's Representative under the Contract, the Principal's Representative acts in good faith.

35.1.2 If, pursuant to a provision of the Contract enabling the Principal's Representative to give directions, the Principal's Representative gives a direction, then the Managing Contractor shall comply with the direction.

35.1.3 In Clause 35 "direction" includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement.

35.1.4 Except where the Contract otherwise provides, a direction may be given orally but the Principal's Representative shall as soon as practicable thereafter confirm it in writing.

35.1.5 For the purposes of the BIF Act, the Principal's Representative is authorised (but not exclusively) to receive payment claims and to issue payment schedules on behalf of the Principal.

35.2 **Site Accommodation**

The Managing Contractor shall provide adequate furnished Site accommodation for the Principal's Representative.

36. **SITE REPRESENTATIVE AND CLERK OF WORKS**

36.1 **General**

36.1.1 The Principal's Representative may from time to time appoint:

- (a) a Site Representative to exercise any functions of the Principal's Representative under the Contract but not more than one Site Representative shall be delegated the same function at the same time. The appointment of a Site Representative shall not prevent the Principal's Representative from exercising any function; and
- (b) a Clerk of Works, who shall not be empowered to issue instructions but shall at all times deal with and through the Principal's Representative or Site Representative. The Clerk of Works shall be permitted access to:
 - (i) all work under the Contract;
 - (ii) wherever work under the Contract is being performed; and
 - (iii) all places where goods and/or materials are being stored, fabricated, or manufactured for incorporation in the Works;

whether or not on the Site.

- 36.1.2 The Principal's Representative shall forthwith notify the Managing Contractor in writing of:
- (a) the appointment and the name of any Site Representative and Clerk of Works and the functions delegated to the Site Representative; and
 - (b) the termination of the appointment of a Site Representative.
- 36.1.3 If the Managing Contractor makes a reasonable objection to the appointment of a Site Representative, the Principal's Representative shall terminate the appointment.
- 36.1.4 The Managing Contractor shall provide adequate furnished Site accommodation for the Site Representatives and Clerks of Works.

37. MANAGING CONTRACTOR'S REPRESENTATIVE, MANAGEMENT STRUCTURE AND PERSONNEL

37.1 Personnel

- 37.1.1 The Managing Contractor shall have competent and sufficient representatives present on the Site and, if required by the Principal's Representative, at other places at which activities relating to the execution of the work under the Contract are taking place.
- 37.1.2 The Managing Contractor shall ensure that any key personnel nominated in the Managing Contractor's Tender, including those personnel described in the costed methodology statements for On Site Overheads and Management Fee in the Managing Contractor's Tender, remain working on the project to the extent indicated, unless the Principal otherwise consents in writing.
- 37.1.3 Where, for any reason other than to execute a Variation directed under Clause 53.1, the Managing Contractor requires On Site Overheads personnel in addition to those described in the costed methodology statement for On Site Overheads in the Managing Contractor's Tender, the Managing Contractor shall, within 2 days of the personnel commencing work on the Site, notify the Principal's Representative of the names, roles and responsibilities of those personnel, and any further information that the Principal's Representative may reasonably require.
- 37.1.4 The Managing Contractor shall not be entitled to an adjustment to the On Site Overheads Fee or Management Fee for costs of any nature whatsoever associated with personnel required to be notified to the Principal's Representative pursuant to Clause 37.1.3.

37.2 Managing Contractor's Representative

- 37.2.1 The Managing Contractor shall ensure that at all times there is a Managing Contractor's Representative who possesses the appropriate skill, expertise, and qualifications and that in the exercise of the functions of the Managing Contractor's Representative under the Contract, the Managing Contractor's Representative acts in good faith.
- 37.2.2 The Managing Contractor shall forthwith notify the Principal's Representative in writing of the name of the Managing Contractor's Representative and of any subsequent changes.
- 37.2.3 Matters within the knowledge of, and matters which should have been within the knowledge of, the Managing Contractor's Representative shall be deemed to be within the knowledge of the Managing Contractor.

37.3 Management Structure

The Managing Contractor shall ensure that it has at all times appointed to the positions set out in the Managing Contractor's Tender, individuals who possess the appropriate skill, expertise and qualifications and are the individuals identified in the Managing Contractor's Tender or alternative individuals acceptable to the Principal.

38. CONTROL OF MANAGING CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

- 38.1 The Principal's Representative may direct the Managing Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Principal's Representative directs, any person employed in connection with the work under the Contract who, in the opinion of the Principal's Representative, does not meet the requirements of Clause 37.3 or is guilty of misconduct or is incompetent or negligent in relation to any aspect of the work under the Contract.
- 38.2 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 Principal's Representative.

39. SITE**39.1 Access to and Possession of Site**

- 39.1.1 By the time stated in the Annexure, the Principal shall give the Managing Contractor access to the Site sufficient to enable the Managing Contractor to commence and carry out work under the Contract in accordance with the Contract.
- 39.1.2 The Principal shall, on or before the expiration of the time stated in the Annexure, give the Managing Contractor possession of the Site or sufficient part of the Site to enable the Managing Contractor to commence further work under the Contract.
- 39.1.3 If the Principal has not given the Managing Contractor possession of the whole Site, the Principal shall from time to time give the Managing Contractor possession of such further parts of the Site as may be necessary to enable the Managing Contractor to execute the work under the Contract in accordance with the requirements of the Contract.
- 39.1.4 The Principal shall advise the Managing Contractor in writing of the date upon which the Site or any part thereof will be available.
- 39.1.5 A delay by the Principal in giving the Managing Contractor access or possession as required by this Clause 39.1 shall not be a breach of contract but may be a ground for an extension of time.
- 39.1.6 Notwithstanding the provisions of this Clause 39.1, if the Managing Contractor is in breach of Clause 34.1, the Principal may refuse to give the Managing Contractor possession of the Site or any part of the Site until the Managing Contractor has complied with Clause 34.1.
- 39.1.7 Access to or possession of the Site shall confer on the Managing Contractor a right to only such use and control as is necessary to enable the Managing Contractor to execute the work under the Contract.

39.1A Native Title Act

The Principal's obligation to provide access to the Site under Clause 39.1 includes an obligation to undertake any 'Future Act' process under the *Native Title Act 1993* (Cth) which is necessary to enable the Managing Contractor to carry out the work under the Contract on parts of the Site to which access has been given.

39.2 Access for the Principal and Others

- 39.2.1 The Principal and the Principal's employees and agents may at any time after reasonable notice to the Managing Contractor have access to any part of the Site for any purpose.
- 39.2.2 The Managing Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall co-operate with them and coordinate the Managing Contractor's work with their work.
- 39.2.3 If requested by the Managing Contractor, the Principal shall provide to the Managing Contractor the names of the persons so engaged.
- 39.2.4 The Managing Contractor shall at all reasonable times give the Principal, the Principal's Representative and other persons authorised in writing by the Principal or by the Principal's Representative access to the

work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

39.2.5 The Principal shall ensure that the Managing Contractor is not impeded in the execution of the Managing Contractor's work by any persons referred to in Clause 39.2, whilst exercising the right of access given by Clause 39.2.

39.3 **Delivery of Materials to and Work on Site Before Possession**

Until possession of the Site or part of the Site is given to the Managing Contractor under Clause 39.1, the Managing Contractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Principal's Representative.

39.4 **Use of Site by the Managing Contractor**

Unless the Contract otherwise provides or the Principal's Representative gives prior written approval, the Managing 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.

39.5 **Finding of Minerals, Fossils and Relics**

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

39.5.2 If compliance with obligations under Clause 39.5 causes the Managing Contractor to incur more or less cost than the Managing Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 53.4.

39.6 **Extra Land Required by the Managing Contractor**

The Managing Contractor shall procure, at the Managing Contractor's own cost, the right to the occupation or use of any land in addition to the Site which the Managing Contractor may deem necessary for the execution of the work under the Contract or for the purposes of the Contract, and shall, as a condition precedent to the issue of the Final Certificate if so required by the Principal's Representative, provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner or occupier of and from other persons having an interest in such land. Any such release shall be in a form approved by the Principal.

40. **SETTING OUT THE WORKS**

40.1 **Setting Out**

40.1.1 The Principal's Representative shall supply to the Managing Contractor the information and Survey Marks necessary to enable the Managing Contractor to set out the Works.

40.1.2 Upon receipt of any necessary information and Survey Marks, the Managing Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose.

40.2 **Care of Survey Marks**

40.2.1 The Managing Contractor shall keep in their true positions all Survey Marks supplied by the Principal.

40.2.2 If a Survey Mark is disturbed or obliterated, the Managing Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Managing Contractor shall reinstate the Survey Mark.

40.2.3 If the disturbance or obliteration is caused by a person referred to in Clause 39.2, other than the Managing Contractor, the cost incurred by the Managing Contractor in reinstating the Survey Mark shall be valued under Clause 53.4.

40.3 Errors in Setting Out

40.3.1 If the Managing Contractor discovers an error in the position, level, dimensions, or alignment of any work under the Contract, the Managing Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Managing Contractor shall rectify the error.

40.3.2 If the error has been caused by incorrect information, Survey Marks or data supplied by the Principal, the cost incurred by the Managing Contractor in rectifying the error shall be valued under Clause 53.4.

41. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

41.1 Provision of Materials, Labour and Constructional Plant

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

41.2 Removal of Materials and Constructional Plant

41.2.1 From time to time the Principal's Representative may by written notice to the Managing Contractor direct the Managing Contractor not to remove from the Site constructional plant or materials.

41.2.2 Thereafter, the Managing Contractor shall not remove the materials or the constructional plant without the prior written approval of the Principal's Representative, which approval shall not be unreasonably withheld.

41.3 Manufacture and Supply of Materials

The Principal's Representative may direct the Managing 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 or used by the Managing Contractor under or in connection with the Contract.

41.4 Queensland Government Building and Construction Training Policy

41.4.1 For the purposes of this Clause:

'Aboriginal or Torres Strait Islander' means a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives;

'Apprentice' has the same meaning as in the *Further Education and Training Act 2014* (Qld);

'Compliance Plan' means the plan submitted electronically by the Contractor in TPAS demonstrating how the Contractor will comply with its obligations under this Clause and the Training Policy;

'DSDSATSIP' means the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships;

'Deemed Hours' means the number of on-the-job training hours required under this Clause 41.4 and the Training Policy, and are calculated using the following formula:

- (a) for building projects, except for Major building projects - Contract Sum (including GST) x 0.0006;
- (b) for Major building projects - Contract Sum (including GST) x 0.0009;

'DESBT' means the Department of Employment, Small Business and Training;

'Eligible Project' means a contract where:

- (a) the work under the Contract is carried out in Queensland; and
- (b) the Contract Sum is \$500,000 or greater (including GST);

'IEO Plan' means the Indigenous Economic Opportunities Plan developed by the Managing Contractor that complies with the requirements of the Training Policy and is agreed to and signed by:

- (a) the Managing Contractor;
- (b) the Principal; and
- (c) the relevant Aboriginal or Torres Strait Islander council or authority, or where there is no relevant Aboriginal and Torres Strait Islander council or authority, DSDSATSIP;

'Indigenous Project' means an Eligible Project, located in:

- (a) an Aboriginal or Torres Strait Islander community, or in the township of Weipa, as indicated in the Annexure; or
- (b) a part of Queensland not referred to in subparagraph (a) of this definition that is selected as an Indigenous Project by Queensland Government agencies, government owned corporations or by the Director-General of DSDSATSIP, as indicated in the Annexure.

'Major building project' means a project where the Contract Sum (including GST) is \$100 million or greater;

'Practical Completion Report' means the report submitted electronically by the Contractor in TPAS demonstrating compliance by the Contractor with this Clause 41.4 and the Training Policy;

'Trainee' has the same meaning as in the *Further Education and Training Act 2014* (Qld);

'Training Policy' means the Queensland Government policy titled "Queensland Government Building and Construction Training Policy" or any policy which replaces that policy;

'TPAS' means the Training Policy Administration System being the electronic reporting system administered by DESBT for contract compliance reporting under the Training Policy.

41.4.2 Where the work under the Contract constitutes an Eligible Project, the Managing Contractor must:

- (a) within 10 Working Days of the date of commencement of Construction Work on Site, submit the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Compliance Report to the Principal's Representative;
- (b) allocate a minimum of 60% of the Deemed Hours towards the employment of new entrant Apprentices and Trainees, as required by the Training Policy;
- (c) for the remaining Deemed Hours not allocated under Clause 41.4.2(b), undertake other workforce training, as required by the Training Policy;
- (d) provide the privacy statement contained in Schedule 8 to each Apprentice or Trainee regarding the collection and use of personal information; and
- (e) within 15 Working Days of the date of Practical Completion, or, if there is more than one, the last occurring date of Practical Completion, submit the Practical Completion Report electronically in

TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Practical Completion Report to the Principal's Representative.

41.4.3 If the Annexure states that the Contract is an Indigenous Project, the Managing Contractor must also:

- (a) within 10 Working Days of the date of commencement of Construction Work on Site, submit the IEO Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy to the Principal's Representative;
- (b) prioritise the employment of Aboriginal or Torres Strait Islander Apprentices and Trainees, and local Aboriginal and Torres Strait Islander workers to meet the Deemed Hours requirement under Clause 41.4.2(b);
- (c) allocate an additional amount towards the IEO Plan, which must be a minimum of 3% of the Contract Sum including GST; and
- (d) within 15 Working Days of the Date of Practical Completion, or if there is more than one the last occurring Date of Practical Completion, submit the achievement of outcomes against the IEO Plan as part of the Practical Completion Report electronically in TPAS, and as soon as possible afterwards, provide a copy of the submitted achievement of outcomes against the IEO Plan to the Principal's Representative.

41.4.4 For Major building projects, the Managing Contractor must also:

- (a) develop a skills development plan;
- (b) deliver training linked to occupational outcomes in applicable national accredited training packages; and
- (c) employ a training coordinator to ensure the implementation of the skills development plan.

41.4.5 Nothing in Clauses 41.4.2, 41.4.3 or 41.4.4 limits or alters the Managing Contractor's obligation to comply with the Training Policy.

41.4.6 The Managing Contractor acknowledges that failure to comply in part or in whole with the requirements of this Clause 41.4 and non-compliance with the Training Policy will be considered in any review of the Managing Contractor's eligibility to tender for future Queensland Government contracts in addition to any other sanctions that may apply.

41.5 **Queensland Charter for Local Content**

41.5.1 This Clause 41.5 applies if specified in the Annexure.

41.5.2 The Managing Contractor must, and must ensure its Subcontractors, in carrying out the work under the Contract:

- (a) comply with the principles of the Queensland Charter for Local Content ("Charter") and any requirements under the Contract in this regard;
- (b) comply with any Statement of Intent or equivalent local content statement under the Contract; and
- (c) complete and submit a Charter for Local Content – Project Outcome Report (available from www.dsdmip.qld.gov.au/charter) to the Principal at Practical Completion and at such other times as reasonably requested by the Principal, with a copy to qclc@qld.gov.au.

41.6 **Site Personnel Register**

41.6.1 From the commencement of work under the Contract until Practical Completion, the Managing Contractor must maintain a register in the form in Schedule 13 ("Site Personnel Register") of all individuals who carry out work under the Contract on Site.

41.6.2 The Site Personnel Register must be available for inspection at all times by the Principal's Representative.

41.6.3 The Managing Contractor must provide statistical information in the form in Schedule 13 (“Site Personal Register Summary”) to the Principal’s Representative every 13 weeks and at such other times as the Principal’s Representative may direct.

41.7 Queensland Procurement Policy

41.7.1 The Managing Contractor must, and must ensure its Subcontractors, in carrying out the work under the Contract, comply with:

- (a) the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard;
- (b) the Ethical Supplier Threshold;
- (c) the Ethical Supplier Mandate;
- (d) the Supplier Code of Conduct; and
- (e) if the Annexure indicates that the Best Practice Principles apply:
 - (i) the Best Practice Principles when procuring or entering into Subcontracts in relation to work under the Contract; and
 - (ii) any commitments made in the Managing Contractor’s Tender or the Subcontractors’ tenders for work under the Contract in relation to the Best Practice Principles and the Best Practice Industry Conditions.

41.7.2 The Managing Contractor acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Managing Contractor’s obligations under the Contract can result in the imposition of a penalty under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract.

41.7.3 The Managing Contractor:

- (a) consents to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch; and
- (b) authorises the Principal and the QGP Compliance Branch to obtain information;

about the Managing Contractor’s compliance with government policies and legislation, including without limitation the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Supplier Code of Conduct, the Building and Construction Training Policy, the *Work Health and Safety Act 2011* (Qld), and the *Electrical Safety Act 2002* (Qld).

41.7.4 If the Annexure indicates that the Best Practice Principles apply, the Managing Contractor:

- (a) acknowledges that the Principal values a commitment to the Best Practice Principles; and
- (b) acknowledges and agrees that the Managing Contractor’s compliance with its obligations under this Clause 41.7 and Clause 21.2.6 and the results of any audit under Clauses 21.2.3 or 64.4 in connection with the Best Practice Principles and the Best Practice Industry Conditions, may be taken into account in any future tender process or similar procurement process undertaken by the Principal.

42. MATERIALS AND WORK

42.1 Quality of Materials and Work

The Managing Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Managing Contractor shall use suitable new materials.

42.2 Defective Materials or Work

42.2.1 If the Principal's Representative discovers material or work provided by the Managing Contractor which is not in accordance with the Contract, the Principal's Representative may direct the Managing Contractor to:

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

42.2.2 The Principal's Representative may direct the times within which the Managing Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement, or correction.

42.2.3 The Managing Contractor shall comply with a direction pursuant to this Clause 42.2 at the Managing Contractor's own expense.

42.2.4 If the Managing Contractor fails to comply with a direction issued by the Principal's Representative pursuant to this Clause 42.2 within the time specified by the Principal's Representative in the direction and, provided the Principal's Representative has given the Managing Contractor notice in writing that after the expiry of 5 Working Days from the date on which the Managing Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, redesign, reconstruction, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Managing Contractor to the Principal. Until the cost of such work has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Managing Contractor as an amount due from the Managing Contractor to the Principal.

42.3 Variations due to Defective Materials or Work

42.3.1 Instead of a direction under Clause 42.2, the Principal's Representative may direct a Variation pursuant to Clause 53.1.

42.3.2 The Variation shall be valued under Clause 53.4 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 Managing Contractor incurring more or less cost than would reasonably have been incurred had the Managing Contractor been given a direction under Clause 42.2, regard shall also be had to the difference.

42.4 Acceptance of Defective Material or Work

Instead of a direction under Clause 42.2 or 42.3, the Principal's Representative may notify the Managing 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 53.4.

42.5 Generally

42.5.1 The Principal's Representative shall give either a direction under Clause 42.2 or 42.3 or a notice under Clause 42.4 as soon as practicable after the Principal's Representative becomes aware that material or work is not in accordance with the Contract.

42.5.2 The Principal's Representative may give the direction or notice at any time before the issue of the Final Certificate under Clause 57.12.

42.5.3 Except to the extent that to do so would be inconsistent with a direction under Clause 42.3 or a notice under Clause 42.4 and notwithstanding that the Principal's Representative has not given a direction under

Clause 42.2, the Managing Contractor shall promptly remove, demolish, replace or correct material or work that is not in accordance with the Contract.

42.5.4 A payment to the Managing Contractor, or a test or a failure by the Principal's Representative or anyone else to disapprove any material or work shall not prejudice the power of the Principal's Representative to subsequently give a direction under Clause 42.2 or 42.3 or a notice under Clause 42.4.

42.5.5 Nothing in Clause 42 shall prejudice any other right which the Principal may have against the Managing Contractor arising out of the failure of the Managing Contractor to provide material or work in accordance with the Contract.

42.5.6 The Principal's Representative shall not be obliged to give a direction under Clause 42.3 or a notice under Clause 42.4 to assist the Managing Contractor.

43. EXAMINATION AND TESTING

43.1 Principal's Representative May Order Tests

43.1.1 At any time prior to the issue of the Final Certificate the Principal's Representative may direct that any material or work under the Contract be tested.

43.1.2 The Managing Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Principal's Representative.

43.1.3 On completion of the tests, the Managing Contractor shall make good the work under the Contract so that it fully complies with the Contract.

43.2 Covering Up of Work

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

43.3 Who Conducts Tests

Tests shall be conducted as provided in the Contract or by the Principal's Representative or a person (which may include the Managing Contractor) nominated by the Principal's Representative.

43.4 Notice of Tests

43.4.1 Before conducting a test under the Contract, the party conducting the test, being the Principal's Representative or the Managing 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.

43.5 Procedure if Tests Delayed

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

43.6 Results of Tests

Results of tests shall be promptly made available by each party to the other and to the Principal's Representative.

43.7 Costs of Testing

43.7.1 Costs of and incidental to testing shall be valued under Clause 53.4 and shall be borne by the Principal or paid by the Principal to the Managing Contractor unless:

- (a) the Contract provides that the Managing Contractor shall bear the costs, or the test is one which the Managing Contractor was required to conduct other than pursuant to a direction under Clause 43.1;
- (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 Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Managing Contractor to comply with a requirement of the Contract.

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

43.8 Access for Testing

If, during the Defects Liability Period:

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

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

44. WORKING HOURS AND WORKING DAYS

44.1 The Working Days on the Site shall be as stated in the Annexure but excluding public holidays and industry rostered days off. Except where otherwise nominated, Working Hours on the Site shall be up to 9 hours per Working Day between the hours stated in the Annexure.

44.2 The hours and days prescribed in Clause 44.1 shall not be varied without the prior approval of the Principal's Representative except when in the interests of safety of the work under the Contract, or to protect life or property, the Managing Contractor finds it necessary to carry out work outside the hours or on days other than the days as stated or approved by the Principal's Representative. In such cases, the Managing Contractor shall notify the Principal's Representative in writing of the circumstances as early as possible.

44.3 Notwithstanding any approval by the Principal's Representative to otherwise vary the Working Hours or Working Days, events occurring outside of the Working Hours or Working Days stated in Clause 44.1 shall not be grounds for an extension of time.

44.4 In approving a variation to the hours or days prescribed in Clause 44.1, the Principal's Representative may attach conditions. Such conditions may include, but are not limited to:

- (a) a prohibition of or restriction on the performance of work which requires inspection; and
- (b) a requirement that the Managing Contractor meets the costs of contract administration including but not limited to costs of inspections, by or on behalf of the Principal's Representative, of work during times approved by the Principal's Representative that are outside of the hours stated in Clause 44.1.

45. PROGRAMMING

45.1 Submission

45.1.1 Within 10 business days after the Date of Commencement of Stage Two, the Managing Contractor shall submit to the Principal's Representative a program in such detail as the Principal's Representative may require which:

- (a) confirms or revises any program submitted with the Managing Contractor's GCS Offer;
- (b) contains a date for Practical Completion not later than the Date for Practical Completion;
- (c) sets out the manner in which and times by which the various tasks comprising the work under the Contract shall be completed; and

- (d) makes reasonable allowance for the Principal's Representative to consent to or comment on, in accordance with the Contract, the documentation submitted to the Principal's Representative and shall also make reasonable allowance for any resubmission of this documentation which may be required.

45.1.2 The Principal's Representative shall acknowledge receipt and provide any comment on this program within 10 business days of receipt.

45.2 **Rights Not Affected**

A Program shall not affect the Managing Contractor's rights or obligations under Clause 46.1 nor shall it form part of the Contract.

46. **PROGRESS**

46.1 **Rate of Progress**

46.1.1 The Managing Contractor shall:

- (a) proceed with the work under the Contract with due expedition and without delay; and
- (b) reach Practical Completion of the Works by the Date for Practical Completion.

46.1.2 For these purposes and without limiting the generality of the foregoing, the Managing Contractor shall be obliged, in consultation with the Principal's Representative, to take such positive steps to reschedule, re-program, expedite and adjust activities, sequences and the carrying out and execution of the work under the Contract generally so as to ensure that a rate of progress satisfactory to the Principal's Representative is maintained.

46.1.3 The Managing Contractor shall not suspend the progress of the whole or any part of the work under the Contract except where the suspension is under Clause 59.9 or is directed or approved by the Principal's Representative under Clause 48.

46.1.4 The Managing Contractor shall give the Principal's Representative reasonable advance notice of when the Managing Contractor requires any information, materials, documents or instructions from the Principal's Representative or the Principal. The Principal and Principal's Representative shall not be required to give any information, materials, documents, or instructions earlier than would have been reasonably anticipated at the time of submission of Managing Contractor's Tender.

47. **ACCELERATION**

47.1 **Acceleration Proposal**

47.1.1 The Principal's Representative may at any time prior to the Date of Practical Completion direct the Managing Contractor to provide a proposal to accelerate completion of the work under the Contract or any part thereof (in this Clause called the "Acceleration Proposal"). Such direction may require the Managing Contractor to propose:

- (a) a revised Date for Practical Completion;
- (b) the measures the Managing Contractor considers necessary to meet the requirements of the Principal's Representative;
- (c) the adjustment required in the opinion of the Managing Contractor, inclusive of all costs howsoever arising, to the Management Fee, On Site Overheads Fee and/or Consultants Fee to carry out those measures; and
- (d) the Managing Contractor's estimate of:
 - (i) the effect on the Actual Construction Sum; and
 - (ii) the appropriate adjustment to the Guaranteed Construction Sum.

- 47.1.2 Within 5 business days of the direction or such further time as may be agreed, the Managing Contractor shall provide to the Principal's Representative an Acceleration Proposal.
- 47.1.3 The Managing Contractor acknowledges that the adjustments referred to in Clauses 47.1.1(c) and (d)(ii) are contingent upon achievement of Practical Completion on or before the revised Date for Practical Completion, such that if Practical Completion is not achieved on or before the revised Date for Practical Completion, the adjustments may be reversed by the Principal's Representative unless the Managing Contractor establishes to the reasonable satisfaction of the Principal's Representative that the sole reason for the failure to reach Practical Completion on or before the revised Date for Practical Completion is a delay or delays caused by the Principal, the Principal's Representative or one of their servants or agents.

47.2 **Acceptance of Acceleration Proposal**

Within 10 business days of receiving the Acceleration Proposal from the Managing Contractor or such other time as may be agreed, the Principal's Representative may advise the Managing Contractor:

- (a) that the Acceleration Proposal is:
- (i) acceptable; or
 - (ii) unacceptable, in whole or in part, and agree with the Managing Contractor and accept a revised Acceleration Proposal;
- and direct the Managing Contractor to carry out the measures contained in the accepted Acceleration Proposal, and such direction shall be a direction to accelerate; or
- (b) that the Acceleration Proposal is unacceptable and that no acceleration is required; or
- (c) that the Acceleration Proposal or part thereof is unacceptable and give the Managing Contractor a direction to accelerate in which event Clause 47.3 shall apply.

47.3 **Direction to Accelerate**

47.3.1 Notwithstanding that the Principal's Representative has not requested an Acceleration Proposal the Principal's Representative may nevertheless give the Managing Contractor a direction to accelerate.

47.3.2 A direction to accelerate:

- (a) may, but not necessarily, be in response to an Acceleration Proposal;
- (b) shall be in writing and contain a statement that it is a direction to accelerate under this Clause 47.3;
- (c) shall identify generally the measures which the Principal's Representative requires the Managing Contractor to take to accelerate the execution of the work under the Contract;
- (d) may identify the parts of the work under the Contract which the Principal's Representative requires the Managing Contractor to accelerate;
- (e) shall state:
 - (i) the revised Date for Practical Completion; and
 - (ii) the quantum of adjustment to:
 - (A) the Management Fee;
 - (B) the Consultants Fee;
 - (C) the On Site Overheads Fee; and
 - (D) the Guaranteed Construction Sum;
- (f) where these revised dates or adjustments are not those contained in an accepted Acceleration Proposal, the Principal's Representative shall determine reasonable revised dates and adjustments;

- (g) shall state the time by which the Managing Contractor shall commence to implement the direction to accelerate; and
- (h) may not be given unless the work is capable of being performed by the revised Date for Practical Completion.

47.3.3 If the Principal's Representative gives a direction to accelerate then the Managing Contractor shall comply with the direction to accelerate within the time stated in the direction and the:

- (a) Date for Practical Completion;
- (b) Management Fee;
- (c) Consultants Fee,
- (d) the On Site Overheads Fee; and
- (e) Guaranteed Construction Sum;

shall be revised or adjusted in accordance with the direction to accelerate and the Managing Contractor shall not be entitled to claim further reimbursement of any costs or any damages.

48. SUSPENSION OF THE WORKS

48.1 Suspension by Principal's Representative

If the Principal's Representative considers that the suspension of the whole or part of the work under the Contract is necessary:

- (a) because of an act or omission of:
 - (i) the Principal, the Principal's Representative, or an employee, consultant, or agent of the Principal; or
 - (ii) the Managing Contractor, a Subcontractor or an employee or agent of either; or
- (b) for the protection or safety of any person or property; or
- (c) to comply with an order of a court; or
- (d) for any other reason which the Principal's Representative in the Principal Representative's absolute discretion considers justifiable in the circumstances;

then the Principal's Representative may direct the Managing Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Principal's Representative thinks fit.

48.2 Suspension by the Managing Contractor

If the Managing Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 59.9, the Managing Contractor shall obtain the prior written approval of the Principal's Representative. The Principal's Representative may approve of the suspension and may impose conditions of approval.

48.3 Recommencement of Work

As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Principal's Representative shall direct the Managing Contractor to recommence work on the whole or on the relevant part of the work under the Contract. If work is suspended pursuant to Clause 48.2 or 59.9, the Managing Contractor may recommence work at any time after reasonable advance notice to the Principal's Representative.

48.4 Cost of Suspension

Any cost incurred by the Managing Contractor by reason of a suspension under Clause 48.1 or Clause 48.2 shall be borne by the Managing Contractor, but if the suspension is due to an act or omission of the Principal, the Principal's Representative or an employee, consultant or agent of the Principal and the suspension causes the Managing Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, then the difference shall be valued by the Principal's Representative under Clause 53.4 and the Management Fee, the Consultants Fee, the On Site Overheads Fee and the Guaranteed Construction Sum shall be adjusted accordingly. The entitlement of the Managing Contractor under this Clause 48.4 shall be the Managing Contractor's sole remedy in respect of any suspension.

48.5 Effect of Suspension

A suspension shall not affect the Date for Practical Completion, but the cause of the suspension may be a ground for extension of time under Clause 49.3. Notwithstanding any other provision of the Contract, the Managing Contractor shall not be entitled to any damages for delay or disruption pursuant to Clause 50 as a result of a suspension or the cause of the suspension.

49. TIMES FOR COMMENCEMENT AND COMPLETION

49.1 Time for Commencement

Upon receiving the Principal's letter of acceptance of tender the Managing Contractor shall promptly commence work under the Contract.

49.2 Time for Completion

Subject to Stage Two proceeding, the Managing Contractor shall ensure the Works achieves Practical Completion by the Date for Practical Completion.

49.3 Extension of Time

- 49.3.1 When the Managing Contractor becomes aware of anything including an act or omission of the Principal, the Principal's Representative or the Principal's employees, consultants, other contractors or agents which may delay the work under the Contract, the Managing Contractor shall promptly give written notice of that cause and the estimated delay to the Principal's Representative.
- 49.3.2 The Managing Contractor shall be entitled to such extension of time to the Date for Practical Completion for carrying out work under the Contract as the Principal's Representative assesses, if:
- (a) the Managing Contractor is or will be delayed in reaching Practical Completion by a cause described in Clause 49.3.4;
 - (b) the Managing Contractor has complied with Clause 49.3.1; and
 - (c) the Managing Contractor gives the Principal's Representative, within 20 business days of when the Managing Contractor should reasonably have become aware of that causation occurring, a written claim for an extension of time evidencing the facts of causation and of the delay to work under the Contract including the extent of the delay.
- 49.3.3 If further delay results from a cause described in Clause 49.3.4 evidenced in a claim under Clause 49.3.2(c), the Managing Contractor shall claim an extension of time for such delay by promptly giving the Principal's Representative a written claim evidencing the facts of the delay.
- 49.3.4 The causes are any of the following:
- (a) events whether occurring before, on or after the Date for Practical Completion:
 - (i) delays caused by:
 - (A) the Principal;
 - (B) the Principal's Representative;

- (C) the Principal's employees, consultants, other contractors, or agents;
- (ii) any breach of the Contract by the Principal;
- (iii) any change in Statutory Requirements assessed in accordance with Clause 24.2, irrespective of whether such change causes the Managing Contractor to incur more or less cost than otherwise would have been incurred;
- (iv) delay caused by any statutory authority in granting approvals, agreements or permits or carrying out works or services for which they are responsible, other than where the reason for the delay is the failure of the Managing Contractor or its Subcontractors to:
 - (A) take any reasonable steps to progress the granting of an approval, agreement or permit or the carrying out of works or services; or
 - (B) comply with a Statutory Requirement;
- (v) fire, explosion, lightning, cyclone, flood which may be expected to occur once or less in every 100 years, earthquake, high sea inundation, landslide, and natural disasters, to the extent they are beyond the Managing Contractor's reasonable control; and
- (vi) any event identified in any other provision of the Contract entitling the Managing Contractor to an extension of time;
- (b) industry-wide industrial action not caused by the Managing Contractor occurring on or before the Date for Practical Completion; and

excluding a Variation direction issued by the Principal's Representative pursuant to Clause 19. However, this Clause 49.3 does not prevent the Principal's Representative from exercising its discretion to extend the date for Practical Completion pursuant to Clause 19.

49.3.5 In assessing each claim for extension of time the Principal's Representative shall disregard questions of whether:

- (a) work under the Contract can nevertheless reach Practical Completion by the Date for Practical Completion without an extension of time; and
- (b) the Managing Contractor can accelerate,

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

49.3.6 In determining a claim for an extension of time for an event causing delay, the Principal's Representative may have regard to the program at the date of the event or events on which the claim is based and whether the Managing Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

49.3.7 Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in Clause 49.3.4, then to the extent that the delays are concurrent, the Managing Contractor shall not be entitled to an extension of time.

49.3.8 If the Managing Contractor is entitled to an extension of time to the Date for Practical Completion then the Principal's Representative shall, within 20 business days after receipt of the notice of the number of days extension claimed, grant an extension of time. Such extension shall be granted in calendar days. If the Principal's Representative does not grant the full extension of time claimed, the Principal's Representative shall before the expiration of the 20 business days give the Managing Contractor notice in writing of the reason.

49.3.9 If the adjusted Date for Practical Completion falls on a day which is not a Working Day, the adjusted Date for Practical Completion shall be the next Working Day following that date.

49.3.10 Notwithstanding that the Managing Contractor is not entitled to an extension of time, the Principal's Representative may, at any time and from time to time before the issue of the Final Certificate, by notice in writing to the Managing Contractor extend the Date for Practical Completion for any reason. The power given by this Clause 49.3.10 is exercisable by the Principal's Representative for the sole benefit of the Principal.

49.3.11 Neither:

- (a) a delay caused by the Principal, the Principal's Representative or any of the Principal's employees, consultants, other contractors, or agents; nor
- (b) the failure of the Principal's Representative to grant an extension of time,

shall cause the Date for Practical Completion to be set at large but nothing in this Clause 49.3 shall prejudice any right of the Managing Contractor to damages.

49.4 **Liquidated Damages**

49.4.1 If the Managing Contractor fails to reach Practical Completion by the Date for Practical Completion, the Managing Contractor shall be indebted to the Principal for liquidated damages at the rate stated in the Annexure for every calendar day after the Date for Practical Completion up to and including the Date of Practical Completion or the date that the Contract is terminated, whichever first occurs.

49.4.2 The Principal's Representative may deduct liquidated damages in assessing any amount due to the Managing Contractor under Clause 57.

49.4.3 If, after the Managing Contractor has paid or the Principal has deducted liquidated damages, the Date for Practical Completion is extended, the Principal shall forthwith repay the Managing Contractor any liquidated damages paid or deducted in respect of the period up to and including the extended Date for Practical Completion.

49.5 **Separable Portions**

49.5.1 The interpretations of:

- (a) Date for Practical Completion;
- (b) Date of Practical Completion;
- (c) Practical Completion; and
- (d) Clauses 9.2, 9.5, 9.10, 9.11, 28, 49, 50, 51, 52, 53, and 57.9;

shall apply separately to each separable portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant separable portion.

49.5.2 If the Contract does not make provision for the amount of security, retention moneys, liquidated damages or damages for delay or disruption applicable to a separable portion, the respective dates and amounts applicable shall be such proportion of those items applicable to the whole of the work under the Contract as the value of the separable portion bears to the value of the whole of the work under the Contract.

49.5.3 For the purposes of the Contract, separate Subcontracts shall not of itself or themselves be separable portions unless identified as such in the Contract.

49.6 **Use of Partly Completed Works**

49.6.1 If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of separable portions, the Principal's Representative may determine that the respective parts shall be separable portions.

49.6.2 In using the separable portion that has reached Practical Completion, the Principal shall not hinder the Managing Contractor in the performance of the work under the Contract.

50. DELAY OR DISRUPTION COSTS

50.1 Principal's Obligation and Liability

Nothing in Clause 50 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in any other payment under the Contract.

50.2 Damages for Delay or Disruption

50.2.1 The Managing Contractor shall only be entitled to damages for any delay in the completion of or disruption in the progress of the work under the Contract if:

- (a) an extension of time to the Date for Practical Completion has been or should properly have been allowed under Clause 49.3.4(a)(i) or (ii);
- (b) the cause of the delay:
 - (i) is beyond the control of the Managing Contractor; and
 - (ii) arises out of a breach of the provisions of the Contract by the Principal or out of any other act or omission on the part of the Principal, the Principal's Representative, any agent, consultant or contractor of the Principal or any employee of the Principal;
- (c) the Managing Contractor has taken all proper and reasonable steps necessary and within its control both to preclude the occurrence of the cause of the delay and/or to minimise the consequences thereof; and
- (d) any costs, expenses or damages suffered or incurred by the Managing Contractor as a result of any such delay have not been included in the value of any Variation and are not payable by virtue of any other provision of the Contract.

50.2.2 Subject to compliance with the provisions of this Clause 50.2, the Managing Contractor shall in respect of any such delay or disruption encountered by it in the execution of the work under the Contract be entitled to be paid by the Principal an amount by way of damages for every Working Day of delay calculated and determined by reference to the relevant daily rate for agreed damages contained in the Managing Contractor's Tender.

50.2.3 Except to the extent that such amounts form part of the Actual Construction Sum, the amount due by the Principal to the Managing Contractor under this Clause 50.2 is the agreed damages due by the Principal to the Managing Contractor and is in full satisfaction of all Claims for damages or any other payment or compensation whatsoever, for breach of contract or otherwise according to law, which the Managing Contractor may make or bring against the Principal arising in connection with all and any delay or disruption howsoever caused or encountered by the Managing Contractor in the execution of the work under the Contract.

50.2.4 The amount due by the Principal to the Managing Contractor under this Clause 50.2 includes (without limitation) all Claims for damages or any other payment or compensation whatsoever which Subcontractors of the Managing Contractor may make or bring against the Managing Contractor arising in connection with delay or disruption caused by the Principal, the Principal's Representative, or any of the Principal's employees, consultants, other contractors or agents.

50.2.5 All amounts due in respect of such damages shall be separately identified in claims for payment under Clause 57.2 and be included in claims pursuant to Clause 57.2.6(f).

50.3 Provisional Delay Allowance

50.3.1 The Managing Contractor's Tender shall include a Provisional Delay Allowance for delay days as calculated by reference to the provisional number of delay days as stated in the Contract multiplied by the rate per day contained in the Managing Contractor's Tender.

50.3.2 If the total amounts due by the Principal to the Managing Contractor pursuant to Clause 50.2.2 is greater or less than the Provisional Delay Allowance, the amount of such difference shall be included in payment certificates issued by the Principal's Representative pursuant to Clause 57.

51. DEFECTS LIABILITY

- 51.1 As soon as possible after the Date of Practical Completion, the Managing Contractor shall rectify any defects or omissions in the work under the Contract existing at the Date of Practical Completion.
- 51.2 At any time prior to the expiration of the Defects Liability Period, the Principal's Representative may direct the Managing Contractor to rectify any omission or defect in the work under the Contract existing at the Date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Managing Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence.
- 51.3 The direction may provide that in respect of the work of rectification there shall be a separate defects liability period of a stated duration not exceeding the period stated in the Annexure. The separate defects liability period shall commence on the date the Managing Contractor completes the work of rectification. Clause 51 shall apply in respect of the work of rectification and the defects liability period for that work of rectification.
- 51.4 If the work of rectification is not commenced or completed by the stated dates, the Principal may have the work of rectification carried out by others at the Managing Contractor's expense, but without prejudice to any other rights that the Principal may have against the Managing Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Managing Contractor. Until the cost of the work of rectification has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Managing Contractor as an amount due from the Managing Contractor to the Principal.
- 51.5 The Managing Contractor shall carry out work of rectification at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.

52. CLEANING UP

- 52.1 The Managing Contractor shall keep the Site and the work under the Contract clean and tidy. The Managing Contractor shall regularly remove rubbish and surplus material.
- 52.2 The Managing Contractor shall ensure that rubbish and surplus materials are removed from areas adjacent to occupied or operational areas on a daily basis, and that access to such areas is not impeded by materials, rubbish, or debris.
- 52.3 The Managing Contractor shall ensure that the removal of all rubbish and surplus material is done in an environmentally conscious manner, with recycling options being utilised at every opportunity.
- 52.4 Within 10 business days after the Date of Practical Completion the Managing Contractor shall remove Temporary Works and constructional plant.
- 52.5 The Principal's Representative may extend the time for removal of Temporary Works or constructional plant necessary to enable the Managing Contractor to perform remaining obligations.
- 52.6 Notwithstanding Clause 59, if the Managing Contractor fails to comply with any obligation imposed on the Managing Contractor by Clause 52 the Principal's Representative may, after the Principal's Representative has given reasonable notice in writing to the Managing Contractor, have the work of cleaning and tidying up carried out by other persons and the cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Managing Contractor to the Principal. The rights given by this Clause are in addition to any other right.

53. VARIATIONS

53.1 Variations to the work under the Contract

53.1.1 The Principal's Representative may in writing direct the Managing Contractor, pursuant to Clause 53.1, to:

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work or anything described in the Developed Design or the Subcontract Construction Documentation;
- (c) change the levels, lines, positions, or dimensions of anything described in the Developed Design or the Subcontract Construction Documentation or any part of the work under the Contract;
- (d) execute additional work; and/or
- (e) demolish or remove material or work no longer required by the Principal;

except where a Variation may be directed by the Principal's Representative pursuant to Clause 19.

53.1.2 The Managing Contractor is bound only to execute a Variation which is within the general scope of the Contract.

53.1.3 The Managing Contractor shall not be bound to execute a Variation directed after the Date of Practical Completion unless the Variation is in respect of rectification work referred to in Clause 51.

53.2 Proposed Variations

53.2.1 Within 5 business days of receipt of a notice in writing from the Principal's Representative advising the Managing Contractor of a proposed Variation pursuant to Clause 53.2, the Managing Contractor shall advise the Principal's Representative:

- (a) in respect of the Managing Contractor's assessment as to whether the proposed Variation can be effected; and
- (b) details of the work performed by Consultants and associated costs in providing that assessment.

53.2.2 The Principal shall not reimburse the Managing Contractor any of the Managing Contractor's costs of complying with the requirements of this Clause 53.2 other than:

- (a) the reasonable costs incurred for work performed by Consultants; and
- (b) the reasonable costs incurred by the Managing Contractor in engaging additional resources specifically for the purpose of complying with the requirements of this Clause 53.2.

The costs described in Clause 53.2.2(a) and (b) above will only be paid if the proposed Variation does not proceed.

53.2.3 If the Variation can be effected, the Managing Contractor shall:

- (a) advise the Principal's Representative of the effect (if any) which the Managing Contractor anticipates that the Variation will have on the Program and time for Practical Completion, and the amount of any delay or disruption costs under Clause 50; and
- (b) provide:
 - (i) a detailed quotation of the cost of the proposed Variation, inclusive of GST, including any proposed adjustments to the Management Fee, Consultants Fee, On Site Overheads Fee and Guaranteed Construction Sum; and
 - (ii) advice as to the effect of the proposed Variation on any applicable warranty.

- 53.2.4 Following receipt of the Managing Contractor's quotation pursuant to Clause 53.2.3, the Principal's Representative may, in writing:
- (a) accept the quotation provided by the Managing Contractor and direct a Variation under Clause 53.1 and, in doing so, accept or reject advice (if any) given by the Managing Contractor pursuant to Clauses 53.2.3(a) and 53.2.3(b)(ii); or
 - (b) reject the quotation, in which case the Principal's Representative may nevertheless direct the Variation under Clause 53.1 and the Variation so directed shall be valued under Clause 53.4.2.

53.3 Variations for the Convenience of the Managing Contractor

53.3.1 If the Managing Contractor requests the Principal's Representative to approve a Variation for the convenience of the Managing Contractor, except where the Managing Contractor has requested a Variation pursuant to Clause 19.2, the Principal's Representative may do so in writing pursuant to this Clause 53.3. The approval may be conditional.

53.3.2 Unless the Principal's Representative otherwise directs in the notice approving the Variation, the Managing Contractor shall not be entitled to:

- (a) any extension of time for Practical Completion; or
- (b) extra costs, any extra payment, or an adjustment to:
 - (i) the Management Fee;
 - (ii) the Consultants Fee;
 - (iii) On Site Overheads Fee; or
 - (iv) the Guaranteed Construction Sum;

in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

53.3.3 Unless the Principal's Representative determines that the Variation relates to the rectification of defective or non-compliant work under the Contract, any further or reduced costs for Construction Work the subject of an approved Variation under this Clause 53.3 shall form part of the Actual Construction Sum for which the Off Site Overheads and Profit Fee shall be payable in accordance with the terms of the Contract.

53.3.4 The Principal's Representative shall not be obliged to approve a Variation for the convenience of the Managing Contractor.

53.4 Valuation of Variations

53.4.1 If the Managing Contractor provides a detailed quotation for the work of a Variation under Clause 53.2 which is accepted by the Principal's Representative, then the actual Subcontract cost in respect of Construction Work the subject of the Variation shall form part of the Actual Construction Sum against which the Off Site Overheads and Profit Fee shall be payable, and the Management Fee, Consultants Fee, On Site Overheads Fee and Guaranteed Construction Sum shall be adjusted in accordance with the accepted quotation.

53.4.2 Where Clause 53.4.1 does not apply, a Variation shall be valued as set out in (a) to (e) as follows.

- (a) Where a Variation requires further or reduced Construction Work:
 - (i) the value for the Variation shall be calculated in accordance with:
 - (A) the rates or prices included in the Contract; or

- (B) in any bill of quantities, schedule of rates or schedule of prices under any relevant Subcontract;

to the extent to which the Principal's Representative determines that those rates or prices are applicable to the Variation.

- (ii) to the extent that the Principal's Representative determines that the rates or prices do not apply to a Variation, the value for the Variation shall be:

- (A) as determined by agreement between the Managing Contractor and the Principal's Representative; or

- (B) if an agreement cannot be reached, by the Principal's Representative who shall determine such rate or price as the Principal's Representative considers reasonable.

The value calculated pursuant to this Clause 53.4.2 (a) shall be the amount, inclusive of GST, of the adjustment to the Guaranteed Construction Sum and shall form part of the Actual Construction Sum against which the Off Site Overheads and Profit Fee shall be payable.

- (b) Where a Variation requires additional or reduced work by a Consultant, the Consultants Fee shall be adjusted by the amount agreed between the Principal's Representative and the Managing Contractor, or in the absence of agreement, the amount determined by the Principal's Representative for the additional or reduced work, having regard to:
 - (i) any fee proposal provided by the Consultant to the Managing Contractor for the work of the Variation; and
 - (ii) the contract between the Managing Contractor and the Consultant.
- (c) Provided that the Managing Contractor is not entitled to damages for any delay in the completion of or disruption in the progress of the work under the Contract pursuant to Clause 50, the Managing Contractor shall be entitled to claim an amount of 5% of the sum calculated under Clause 53.4.2(a) which amount will be deemed to represent the Managing Contractor's full and final entitlement (inclusive of GST), in respect of the amount of adjustment to the Management Fee for that Variation.
- (d) Where a Variation requires On Site Overheads personnel in addition to those personnel described in the costed methodology statement for On Site Overheads in the Managing Contractor's Tender and required to be notified by the Managing Contractor to the Principal's Representative pursuant to Clause 37.1.3, the following shall apply:
 - (i) where the Managing Contractor has an entitlement to be paid damages for delay or disruption in accordance with Clause 50 in respect of the Variation, there shall be no adjustment to the On Site Overheads Fee; and
 - (ii) where the Managing Contractor does not have an entitlement to be paid damages for delay or disruption in accordance with Clause 50 in respect of the Variation, then the On Site Overheads Fee shall be adjusted by the amount determined by agreement between the Managing Contractor and the Principal's Representative, or if an agreement cannot be reached, by such amount that the Principal's Representative considers reasonable for the work of the additional On Site Overheads personnel that is directly attributable to the execution of the Variation.
- (e) Where a Variation causes the Managing Contractor to require fewer On Site Overheads personnel than those described in the costed methodology statement for On Site Overheads in the Managing Contractor's Tender, then the On Site Overheads Fee shall be adjusted by the amount determined by agreement between the Managing Contractor and the Principal's Representative, or if an agreement cannot be reached, by such amount that the Principal's Representative considers reasonable for the fewer On Site Overheads personnel, having regard to the costed methodology statement provided in the Managing Contractor's Tender.

53.5 Omissions

53.5.1 If the Principal's Representative instructs a Variation omitting any part of the work under the Contract, the Principal may thereafter either perform the omitted work or employ or engage another person to carry out and execute the omitted work.

53.5.2 The Managing Contractor shall have no entitlement to make a claim as a result of any part of the work under the Contract being omitted therefrom, whether or not the Principal thereafter performs the omitted work or employs or engages another person to carry out and execute the omitted work.

53.5.3 The work which has been omitted shall be valued in accordance with Clause 53.4.

53.6 Notice of Variations

If the Managing Contractor considers that a direction given by the Principal's Representative while not expressly identified as a Variation constitutes a Variation, the Managing Contractor shall promptly, and within 20 business days after the receipt of such direction, notify the Principal's Representative of such.

54. NOT USED**55. RATES OF EXCHANGE AND DUTY****55.1 Customs Tariff (Anti Dumping) Legislation**

55.1.1 The Managing Contractor shall be responsible for the payment of and indemnify the Principal in respect to, any amount which is due or that may become due under the *Customs Tariff (Anti-Dumping) Act 1975 (Cth)* and in respect to any security that is due or may become due under the *Customs Act 1901 (Cth)* for duty that may become due under the *Customs Tariff (Anti-Dumping) Act 1975 (Cth)*.

55.1.2 The Guaranteed Construction Sum shall include all amounts due under this Clause 55 and the Managing Contractor shall not be entitled to any additional remuneration whatsoever in respect of any such amounts that are due or that may become due.

55.2 Variations in Rates of Exchange and Duty

55.2.1 Subject to Clause 55.2.2, if it is shown to the satisfaction of the Principal's Representative:

- (a) that the Managing Contractor has placed its orders for any materials, machinery, or other goods, forming part of the Works and required to be imported from overseas sources, in time to achieve a rate of progress satisfactory to the Principal's Representative; and
- (b) that at the time of the Managing Contractor's payment of an invoice for any materials, machinery or other goods forming part of the Works a difference has occurred in comparison to the price obtained and included in the GCS Offer of such materials, machinery or other goods, which difference is solely attributable to an alteration in the rates of exchange or duty;

the value of such difference shall, upon application in writing to the Principal's Representative by the Managing Contractor or upon notification in writing to the Managing Contractor by the Principal's Representative, be taken into account in the Final Certificate, and the value of such difference shall be calculated in accordance with the entire example calculation included in Schedule 9.

55.2.2 For the purposes of this Clause 55.2 and the example calculation included in Schedule 9, the evaluation of such difference shall be based upon:

- (a) the selling rate for the appropriate foreign currency as published by the Reserve Bank of Australia at the closing of business on the date the Managing Contractor's GCS Offer was submitted to the Principal;
- (b) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia as applied at the time of payment of the invoice by the Managing Contractor for the material, machinery, or other goods;

- (c) the rate of duty payable at the closing of business on the date the Managing Contractor's GSC Offer was submitted to the Principal; and
- (d) the rate of duty paid at the time of payment of the invoice by the Managing Contractor for the material, machinery, or other goods.

55.2.3 Clause 55.2.1 shall apply only to those goods listed by the Managing Contractor on a form which complies with Schedule 9, properly completed and submitted with the GCS Offer, or, in the case of goods required by a Variation to the Contract, to those listed on a Schedule 9 submitted at the time of submission of the Managing Contractor's price for the Variation.

56. CONTRACT BONUSES

56.1 Contract Bonuses

56.1.1 If the Actual Construction Sum included in the Final Certificate is less than the Guaranteed Construction Sum adjusted in accordance with the Contract, the Managing Contractor shall be entitled to a bonus ("Construction Bonus") equal to the amount calculated by reference to the following formula:

If Guaranteed Construction Sum – Actual Construction Sum = \$X (where X is a positive value) then the Managing Contractor shall receive:

Percentage, stated in the Annexure, of \$X up to maximum of the amount equal to 2% of the Actual Construction Sum included in the Final Certificate.

56.1.2 If the Actual Construction Sum is anticipated to be less than the Guaranteed Construction Sum, the Principal may, in its absolute discretion, at any time allow for the early release of part of the anticipated Construction Bonus provided for in Clause 56.1.1. The anticipated Construction Bonus utilised for the purpose of this Clause 56.1.2 shall be considered interim only and shall be subject to a final calculation pursuant to Clause 56.1.1. Any payment pursuant to this Clause 56.1.2 shall be considered a payment on account, and any over-payment shall be recoverable by the Principal as a debt due and payable.

56.1.3 This Clause 56.1.3 shall only apply if stated in the Annexure.

- (a) If the Date of Practical Completion is earlier than the Date for Practical Completion, the Principal shall pay the Managing Contractor the bonus amount stated in the Annexure for every day after the Date of Practical Completion to and including the Date for Practical Completion (the "early completion bonus").
- (b) The total of the early completion bonus payable pursuant to this Clause 56.1.3 shall not exceed the limit stated in the Annexure.
- (c) The Managing Contractor acknowledges and agrees that it is not entitled to Claim against the Principal for any failure to become entitled to all or any portion of the early completion bonus pursuant to this Clause 56.1.3.

57. CLAIMS, CERTIFICATES AND PAYMENTS

57.1 GOODS AND SERVICES TAX (GST) and PAY AS YOU GO (PAYG)

57.1.1 For the purposes of Clause 57.1:

'ABN', 'adjustment event', 'adjustment note', 'amount', 'Australian resident', 'consideration', 'GST', 'GST Law', 'input tax credit', 'recipient created tax invoice', 'registered', 'tax invoice' and 'taxable supply' have the meaning given to that term in *A New Tax System (Australian Business Number Act 1999)* (Cth);

'PAYG Law' means any Act dealing with or relating to the PAYG system referred to in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

- 57.1.2 Where a party is obliged to provide consideration to another party for a taxable supply made under or in connection with the Contract:
- (a) any amount which the Contract provides:
 - (i) is to be the amount of the consideration;
 - (ii) is to (or may) be used to calculate the amount of the consideration (and the amount of the consideration so calculated); or
 - (iii) is included (provisionally or otherwise) in the consideration;shall be taken to include GST payable in connection with the taxable supply unless the amount is specifically stated to exclude GST;
 - (b) where, despite Clause 57.1.2(a), any consideration to be provided for a taxable supply is exclusive of GST, the party providing the consideration must also pay the GST payable in respect of the taxable supply, when the consideration is provided; and
 - (c) no other provision of the Contract shall apply to give the Contractor any claim in connection with GST.
- 57.1.3 Where under or in connection with the Contract a party is required to pay an amount which is (or is to be calculated by reference to) any cost, expense, loss or other liability suffered or incurred by another party that amount shall be (or be calculated by reference to) the cost, expense, loss or other liability net of any input tax credits available to the other party or the representative member of its GST Group.
- 57.1.4 The Managing Contractor warrants to the Principal that:
- (a) the Managing Contractor is registered for GST; and
 - (b) the Managing Contractor's ABN stated in the Contract (or otherwise notified by the Contractor to the Principal) is correct.
- 57.1.5 The Managing Contractor must notify the Principal immediately if it ceases to be registered for GST at any time.
- 57.1.6 Whenever the Managing Contractor does not have an ABN or the Principal becomes aware that the Managing Contractor's ABN notified to it is incorrect or the Principal otherwise reasonably considers itself bound by PAYG Law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Managing Contractor under or in connection with the Contract, amounts calculated and to be withheld in accordance with the PAYG Law.
- 57.1.7 Each time the Managing Contractor makes a claim for any payment under or in connection with the Contract, the Managing Contractor shall be taken to warrant to the Principal that it is an Australian resident for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth), except where the Managing Contractor has notified the Principal in writing that it is not an Australian resident before any claim for payment is made.
- 57.1.8 Except to the extent the Principal at any time gives to the Managing Contractor written notice that it does not intend issuing recipient created tax invoices for any taxable supplies to the Principal by the Managing Contractor under or in connection with the Contract:
- (a) the Principal shall issue tax invoices and adjustment notes in respect of those supplies;
 - (b) the Managing Contractor shall not issue tax invoices or adjustment notes in respect of those supplies;
 - (c) the Principal acknowledges that it was registered for GST when it entered into the Contract and that it will notify the Managing Contractor if it ceases to be registered; and
 - (d) the Managing Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring in respect of those supplies.

- 57.1.9 If the Principal gives a written notice that it does not intend issuing recipient created tax invoices for a taxable supply to the Principal by the Contractor under or in connection with the Contract:
- (a) a party making a taxable supply the subject of the notice must issue to the other a tax invoice or adjustment note (as the case may require) within 5 business days after each of the following occurring in relation to that taxable supply:
 - (i) the party submitting a claim for payment;
 - (ii) the Principal's Representative certifying an amount for payment different to the amount claimed;
 - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified; and
 - (b) for the purposes of GST Law, upon the occurrence of each of the events specified in Clause 57.1.9(a), the Principal shall be taken to have requested the Managing Contractor to provide to the Principal the tax invoice or adjustment note referred to in Clause 57.1.9(a).
- 57.1.10 Until the Principal notifies the Managing Contractor otherwise, the Principal's Representative is authorised to provide to or receive from the Managing Contractor tax invoices or adjustment notes (as the case may be) on the Principal's behalf.
- 57.2 Payment Claims**
- 57.2.1 Subject to the prior receipt by the Principal's Representative of the information required by Clause 58, the Managing Contractor shall deliver to the Principal's Representative payment claims:
- (a) at the times for payment claims under the Contract stated in the Annexure;
 - (b) upon completion of Stage One;
 - (c) upon the issue of a Certificate of Practical Completion; and
 - (d) within the time prescribed by Clause 57.11.
- 57.2.2 The payment claim shall be supported by sufficiently detailed evidence of the amount claimed to be due to the Managing Contractor and such information as the Principal's Representative may reasonably require including but not limited to:
- (a) evidence satisfactory to the Principal's Representative that the Managing Contractor has complied with Clause 58 so far as applicable and that all amounts included in previous payments to the Managing Contractor in respect of Consultants and Subcontractors and then due for payment have been paid or otherwise discharged;
 - (b) certificates from Consultants (signed by a principal of each Consultant) and from Subcontractors certifying that the work comprised in the payment claim has been carried out in accordance with the consultancy agreements or Subcontracts as the case may be; and
 - (c) payment claims from Consultants for amounts which form part of the Consultants Fee.
- 57.2.3 If the time for any payment claim falls due on a day which is not a business day, the Managing Contractor shall submit the payment claim on the next business day following that date.
- 57.2.4 If the Managing Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Principal's Representative to issue a payment certificate in respect of that payment claim earlier than would have been the case had the Managing Contractor submitted the payment claim in accordance with the Contract.
- 57.2.5 If the Managing Contractor fails to make a payment claim, the Principal's Representative may nevertheless issue a payment certificate.

57.2.6 The Managing Contractor shall be entitled to make a payment claim for the total of:

- (a) the portion of the Actual Construction Sum representing the cost of Construction Work, excluding amounts determined by the Principal's Representative under Clause 21.4.2 to be for:
 - (i) the cost of rectifying non-complying or defective work;
 - (ii) a cost which has not been properly incurred in respect of Construction Work pursuant to this Contract; or
 - (iii) Subcontractor delay or disruption cost which have been otherwise paid pursuant to the Contract or are in respect of a breach of the Subcontract on the part of the Managing Contractor;
- (b) carried out on the Site to the date of the payment claim provided that the progressive total of that value shall not exceed the Guaranteed Construction Sum adjusted in accordance with the Contract;
- (c) the portion of the Management Fee equal to the portion of each of the:
 - (i) Design Work;
 - (ii) Documentation Work; and
 - (iii) Construction Work;
- (d) carried out by the Managing Contractor to the date of the payment claim;
- (e) the portion of the On Site Overheads Fee representing the cost of Construction Work carried out on the Site to the date of the payment claim, having regard to the commencement of Construction Work and the forecast time for Practical Completion as agreed with the Principal's Representative or failing agreement as determined by the Principal's Representative;
- (f) the portion of the Consultants Fee representing the value of the work carried out by Consultants in accordance with the Contract in the performance of work under the Contract to the date of the payment claim;
- (g) in respect of the Off Site Overheads and Profit Fee:
 - (i) during Stage One, the portion of the Off Site Overheads and Profit Fee for Stage One, having regard to the progress of Stage One, as agreed with the Principal's Representative, or failing agreement as determined by the Principal's Representative; and
 - (ii) during Stage Two, and in relation to any Early Works directed by the Principal's Representative pursuant to Clause 17, the percentage contained in the Managing Contractor's Tender as the Off Site Overheads and Profit Fee for Stage Two multiplied by that portion of the Actual Construction Sum claimed pursuant to Clause 57.2.6(a); and
- (h) all other amounts due to the Managing Contractor arising under or out of the Contract.

57.2.7 In making a payment claim the Managing Contractor shall:

- (a) not be entitled to make any claim for costs of:
 - (i) rectifying Developed Design or Subcontract Construction Documentation faults; or
 - (ii) defective or damaged work, or work not in accordance with the Contract, unless such costs have been caused by the Principal, the Principal's Representative, or the Principal's employees, consultants, other contractors, or agents; and
- (b) take account of Clause 57.7.

57.3 Payment Certificates

57.3.1 Within 10 business days of receipt of a payment claim, the Principal's Representative shall assess the payment claim and determine whether the Managing Contractor has satisfied the provisions of the Contract and issue a payment certificate or give reasons in writing for not issuing the certificate.

57.3.2 The Principal's Representative shall:

- (a) assess the amount claimed by the Managing Contractor under Clause 57.2; and
- (b) issue a payment certificate as its assessment of the amount claimed after adjustment for:
 - (i) liquidated damages due to the Principal;
 - (ii) delay or disruption costs due to the Managing Contractor pursuant to Clause 50 to the date of the payment certificate;
 - (iii) payments already made;
 - (iv) retention moneys; and
 - (v) all other adjustments which may be required to be made pursuant to the provisions of the Contract.

57.4 Payment

57.4.1 The Principal shall pay to the Managing Contractor or the Managing Contractor shall pay to the Principal as the case may be, either:

- (a) the amount shown in a payment certificate; or
- (b) if no payment certificate has been issued the amount of the Managing Contractor's payment claim.

57.4.2 In making any payment, the Principal shall be entitled to deduct any sum under Clause 57.14.

57.4.3 The Principal shall make payment to the Managing Contractor or the Managing Contractor shall make payment to the Principal:

- (a) within:
 - (i) 15 business days after receipt by the Principal's Representative of a payment claim; or
 - (ii) 5 business days after issue by the Principal's Representative of a payment certificate; and
- (b) within 5 business days after the issue of a Final Certificate.

57.5 Amount Properly Due

57.5.1 A payment made pursuant to this Clause 57 shall not prejudice the right of either party to dispute under Clause 62 whether or not the amount so paid is the amount properly due. On determination (whether under Clause 62 or as otherwise agreed) of the amount so properly due, the Principal or the Managing Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due.

57.5.2 Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 57.12. Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract.

57.6 Audit of Actual Construction Sum

The Principal may at any time prior to the issue of the Final Certificate, undertake an audit in respect of all matters pertaining to the Actual Construction Sum including (without limitation) the value of Subcontracts comprising the Actual Construction Sum and the Managing Contractor shall comply in all respects with any request for information and further information which the Principal may make.

57.7 Unfixed Plant and Material

The Principal shall not be obliged to pay for plant or materials intended for incorporation in the Works but not yet incorporated unless:

- (a) the item is listed in a list to be provided by the Managing Contractor with the GCS Offer or the item is listed in the Annexure or is such that, in the opinion of the Principal's Representative, an early payment is reasonable;
- (b) the Managing Contractor provides additional security pursuant to Clause 9.8; and
- (c) the Managing Contractor establishes to the satisfaction of the Principal's Representative that:
 - (i) the payment claimed is not in excess of any amount paid by the Managing Contractor in respect of the unfixed plant and materials; and
 - (ii) the item is:
 - (A) properly stored and labelled the property of the Principal;
 - (B) is adequately protected; and
 - (C) landed in Australia.

57.8 Provisional Sums

57.8.1 A Provisional Sum included in the Contract shall not itself be payable to the Managing Contractor by the Principal.

57.8.2 Where at the direction of the Principal's Representative the work or item to which the Provisional Sum relates is performed or supplied by:

- (a) the Managing Contractor, the work or item shall be valued under Clause 53.4; and
- (b) a Subcontractor to the Managing Contractor, the Principal shall pay the Managing Contractor the total of the amount payable by the Managing Contractor to the Subcontractor for the work or item. This amount is to be taken to be the net cost to the Managing Contractor disregarding any addition of charges for late payment and disregarding any damages payable by the Managing Contractor to the Subcontractor or vice versa.

57.8.3 The Management Fee, On Site Overheads Fee, Off Site Overheads and Profit Fee and Consultants Fee shall include for work under the Contract the subject of Provisional Sums.

57.8.4 The Guaranteed Construction Sum includes all Provisional Sums included in the Contract. The Guaranteed Construction Sum shall be adjusted so as to include only the amount calculated pursuant to Clause 57.8.2 and that amount shall be included in the Actual Construction Sum.

57.9 Certificate of Practical Completion

57.9.1 The Managing Contractor shall give the Principal's Representative at least 10 business days' notice of the date upon which the Managing Contractor anticipates that Practical Completion will be reached.

57.9.2 When the Managing Contractor is of the opinion that Practical Completion has been reached, the Managing Contractor shall in writing request the Principal's Representative to issue a Certificate of Practical Completion. Within 10 business days of the receipt of the request, the Principal's Representative shall give to the Managing Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the reasons in writing for not issuing the Certificate of Practical Completion.

57.9.3 Where the Principal's Representative has given reasons for not issuing a Certificate of Practical Completion the Managing Contractor shall proceed to complete the work under the Contract and give the Principal's Representative at least 3 days' notice of the date upon which the Managing Contractor anticipates that Practical Completion will be reached.

57.9.4 When the Principal's Representative is of the opinion that Practical Completion has been reached, the Principal's Representative may issue a Certificate of Practical Completion, whether or not the Managing Contractor has made a request for its issue.

57.10 **Effect of Certificates**

57.10.1 The issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter, nor shall it prejudice any claim by the Principal or the Managing Contractor.

57.10.2 At any time and from time to time, the Principal's Representative may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Practical Completion or Final Certificate.

57.11 **Final Payment Claim**

57.11.1 Within 20 business days after the expiry of the Defects Liability Period, or where there is more than one, the expiry of the last to expire, the Managing Contractor shall provide the Principal's Representative with a final payment claim and endorse it 'Final Payment Claim'. Such Final Payment Claim shall include any Notice or Notices of Claim pursuant to Clause 61.3.1(b).

57.11.2 After the expiration of the period for lodging a Final Payment Claim, any Claim:

- (a) which the Managing Contractor could have made against the Principal and has not been made; or
 - (b) for which the Managing Contractor has not given to the Principal's Representative a Notice of Claim;
- shall be barred absolutely.

57.12 **Final Certificate**

57.12.1 If the Managing Contractor has not notified a Claim or Claims in accordance with Clause 61, then within 10 business days of receipt of the Managing Contractor's Final Payment Claim or, where the Managing Contractor fails to provide such Final Payment Claim, the expiration of the period specified in Clause 57.11 for the lodgement of the Final Payment Claim by the Managing Contractor, the Principal's Representative shall issue to the Managing Contractor and to the Principal a final certificate endorsed 'Final Certificate' or give the Managing Contractor in writing the reasons for not issuing the certificate.

57.12.2 In the Final Certificate the Principal's Representative shall certify the amount which, in the Principal's Representative's opinion, is finally due from the Principal to the Managing Contractor or from the Managing Contractor to the Principal arising out of the Contract or any alleged breach thereof.

57.12.3 In such Final Certificate the Principal's Representative shall also set out:

- (a) amounts paid under the Contract and amounts otherwise due from the Principal to the Managing Contractor and/or due from the Managing Contractor to the Principal arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract;
- (b) the Guaranteed Construction Sum adjusted as necessary according to the terms and conditions of the Contract;
- (c) the amount of any bonus payable under Clause 56.1; and
- (d) the total value of all previous certificates, claims and securities issued pursuant to the Contract.

57.12.4 If the Managing Contractor has given the Principal a Notice or Notices of Claim in accordance with Clause 61:

- (a) within 3 months of receipt of the Managing Contractor's Final Payment Claim the Principal's Representative and the Managing Contractor shall endeavour to agree the Claim or Claims notified in accordance with Clause 61;
- (b) at the end of 3 months of receipt of the Managing Contractor's Final Payment Claim:
 - (i) if the Claim or Claims have been agreed, issue to the Managing Contractor and to the Principal a final certificate endorsed "Final Certificate" and 57.14 shall apply;
 - (ii) if the Claim or Claims have not been agreed in whole or in part, the Principal's Representative shall issue a further certificate for any Claim or Claims agreed to which Clause 57 shall apply. The failure to agree a Claim or Claims shall entitle the Managing Contractor to dispute the Claim or Claims which have not been agreed and Clause 62 shall apply.

57.12.5 Unless either party, either before the Final Certificate has been issued or not later than 21 days after the issue thereof, serves a notice of dispute under Clause 62, the Final Certificate shall be evidence that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract, except in the case of:

- (a) fraud, dishonesty, or fraudulent concealment relating to the work under the Contract or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation; and
- (d) security provided pursuant to Clause 9.

57.13 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be due thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be 12% per annum or such higher amount as may be required by statute. Interest shall be compounded at six monthly intervals.

57.14 General right of set off by the Principal

57.14.1 Without limiting the Principal's rights under any other provision in the Contract and notwithstanding the provisions of or the issue of a certificate by the Principal's Representative under Clause 57, the Principal may deduct from any moneys due to the Managing Contractor any sum which is payable by the Managing Contractor to the Principal or the State of Queensland ('State') whether or not the right to payment of the Principal or the State arises by way of damages, debt restitution or otherwise and whether or not the factual basis giving rise to the right to payment arises out of this Contract, any other contract, or is independent of any Contract.

57.14.2 If the moneys payable to the Managing Contractor are insufficient to discharge the liability of the Managing Contractor to pay such sum to the Principal or the State, the Principal may have recourse to:

- (a) retention moneys and any security provided in lieu of retention moneys under Clause 9.7, and if they are insufficient;
- (b) security provided under Clause 9.2 of the Contract.

57.14.3 Where the Principal exercises a right under this Clause 57.14 in respect of an amount payable to the State of Queensland, the Principal must account to the State of Queensland for any amount received by the Principal pursuant to the exercise of that right.

57.14.4 Nothing in this Clause 57.14 shall affect the right of the Principal to recover from the Managing Contractor the whole of such moneys or any balance that remains owing.

58. PAYMENT OF WORKERS AND SUBCONTRACTORS

58.1 Payment direct to worker or Subcontractor

At the request of the Managing Contractor and out of moneys due to the Managing Contractor the Principal may on behalf of the Managing Contractor make payment directly to a worker or Subcontractor.

58.2 Statutory Declaration

The Managing Contractor must deliver to the Principal with each payment claim:

- (a) a statutory declaration, in the form in Schedule 7, signed by a representative of the Managing Contractor who is in a position to know the facts, attesting that:
 - (i) any Subcontractor performing work under the Contract has been engaged in accordance with Clause 21.2;
 - (ii) any sub subcontractors performing work under the Contract have been approved by the Principal's Representative in accordance with Clause 21.2;
 - (iii) the Site Personnel Register is current and correct, maintained in accordance with Clause 41.6;
 - (iv) the Managing Contractor has fulfilled or complied with any commitments made in Managing Contractor's Tender for the work under the Contract relating to:
 - (A) the Local Benefits Test; and
 - (B) if the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles and the Best Practice Industry Conditions;
 - (v) all the Managing Contractor's workers who at any time have been engaged on work under the Contract by the Managing Contractor have been paid, in accordance with the relevant award or industrial instrument or the Managing Contractor's obligations in relation to the Best Practice Principles and the Best Practice Industry Conditions (if applicable), all moneys due to them up to the date of submission by the Managing Contractor of a progress claim, in respect of their engagement on the work under the Contract;
 - (vi) if a project trust account is required for the Contract under the BIF Act, all Subcontractors have been paid via the project trust account to the extent required by the BIF Act, and all withdrawals from the project trust account have been made in accordance with the BIF Act; and
 - (vii) if required by the BIF Act, all retention moneys in relation to Subcontractors have been paid into the Managing Contractor's retention trust account and all withdrawals from the retention trust account have been made in accordance with the BIF Act;and, if requested in writing, reasonable supporting documentary evidence thereof;
- (b) either in the statutory declaration required by Clause 58.2(a) or by separate document, a supporting statement for the payment claim required by the BIF Act; and

- (c) if previously requested by the Principal's Representative, the Managing Contractor must deliver a statutory declaration, in the form in Schedule 7, by any Subcontractor, or where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts, attesting that:
- (i) all workers who have been engaged by a Subcontractor of the Managing Contractor have been paid, in accordance with the relevant award or industrial instrument or Subcontractor's obligations in relation to the Best Practice Principles and the Best Practice Industry Conditions (if applicable), all moneys due and payable to them up to the date of submission by the Managing Contractor of a progress claim in respect of their engagement on the work under the Contract;
 - (ii) all subcontractors of the Subcontractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Managing Contractor of a progress claim in respect of the work under the Contract; and
 - (iii) the Subcontractor has fulfilled or complied with any commitments made in its tender for the Subcontract works relating to:
 - (A) the Local Benefits Test; and
 - (B) if the Annexure indicates that Best Practice Principles are applicable, the Best Practice Principles and the Best Practice Industry Conditions;

and, if requested in writing, reasonable supporting documentary evidence thereof.

58.3 Provision of information to Subcontractor

The Managing Contractor acknowledges that the Principal may release to a Subcontractor details of payments in percentage terms made by the Principal to the Managing Contractor in respect of the Subcontract to which the Subcontractor is a party unless the Managing Contractor shows reasonable grounds why such details should not be released or satisfies the Principal that all payments due to the Subcontractor by the Managing Contractor have been paid.

58.4 Court Order

Unless under the BIF Act a project trust is required for the Contract, if a worker, Subcontractor or subcontractor of a Subcontractor obtains a court order in respect of any moneys unpaid to the worker, Subcontractor or subcontractor of a Subcontractor the subject of a statutory declaration under Clause 58.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker, Subcontractor or subcontractor of a Subcontractor and the amount paid shall be a debt due from the Managing Contractor to the Principal.

58.5 Project Trusts

58.5.1 Terms defined by the BIF Act as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this Clause 58.5, shall have the meaning given to them by the BIF Act.

58.5.2 If:

- (a) at the time of entry into this Contract, a project trust is not required; and
- (b) the Contract later becomes a contract for which a project trust is required,

the Managing Contractor must give the Principal's Representative and Principal written notice of that change promptly (and within 5 business days) of the date on which the Contract becomes a contract for which a project trust is required.

58.5.3 If a project trust is required for the Contract:

- (a) the Managing Contractor must open and maintain a project trust account and retention trust account in accordance with the BIF Act; and

- (b) if a notice is required by the BIF Act to be given to the Principal in respect of or relating to the project trust or project trust account, the Managing Contractor shall give that notice in writing to the Principal's Representative and Principal at the address stated in the Contract or last communicated in writing to the Managing Contractor.

58.5.4 Nothing in this Clause affects the requirements of Clause 21.2.

58.5.5 The Managing Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the BIF Act.

59. DEFAULT OR INSOLVENCY

59.1 Preservation of Other Rights

If a party breaches or repudiates the Contract, nothing in this Clause 59 shall prejudice the right of the other party to recover damages or exercise any other right.

59.2 Default by the Managing Contractor

59.2.1 If the Managing Contractor commits a substantial breach of Contract the Principal may give the Managing Contractor a written notice to show cause.

59.2.2 Substantial breaches include but are not limited to:

- (a) failing to comply with or breaching, in any respect, the requirements of Clause 6;
- (b) failing to comply with Clause 9;
- (c) failing to comply with Clause 11.1;
- (d) failing to do those things which the Managing Contractor warranted it would do or has done in accordance with the terms of the Contract including but not limited to the warranties pursuant to Clause 12;
- (e) failing to produce the Developed Design in accordance with Clause 14;
- (f) failing to engage the Consultants in accordance with Clause 18.1;
- (g) failing to comply in any respect with the requirements of Clause 21.2;
- (h) failing to maintain all necessary licences that are required for the Managing Contractor to perform all of its obligations under the Contract, in breach of Clause 24;
- (i) failing to establish a project trust account as required by the BIF Act, in breach of Clause 24 and Clause 58.5;
- (j) failing to establish a retention trust account as required by the BIF Act, in breach of Clause 24 and Clause 58.5;
- (k) failing to comply with an obligation of the Contractor set out in Part 2, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 24;
- (l) failing to comply with an obligation of the Contractor set out in Part 3, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 24;
- (m) providing with a payment claim a supporting statement required by the BIF Act which is false or misleading, in breach of Clause 24;
- (n) failing to comply in any respect with the requirements of Clause 26.2;
- (o) failing to provide evidence of insurance in accordance with Clause 34.1;
- (p) failing to comply in any respect with the requirements of Clause 41.4;

- (q) failing to comply in any respect with the requirements of Clause 41.5;
- (r) failing to comply in any respect with the requirements of Clause 41.6;
- (s) failing to comply in any respect with the requirements of Clause 41.7;
- (t) failing to use the materials or standards of workmanship in accordance with Clause 42;
- (u) failing to comply with a direction of the Principal's Representative in accordance with Clause 42.3;
- (v) failing to proceed with the work under the Contract with due expedition and without delay in accordance with Clause 46.1;
- (w) failing to suspend the work under the Contract in accordance with Clause 48.1;
- (x) failing to comply with any requirement or request made in accordance with Clause 58;
- (y) providing a statutory declaration pursuant to Clause 58 which is false, misleading, or deceptive in any respect; and/or
- (z) committing an act of insolvency as defined by Clause 59.11.

59.3 Requirements of a Notice by the Principal to Show Cause

A notice given under Clause 59.2 shall:

- (a) state that it is a notice under Clause 59 of the Contract;
- (b) specify the alleged substantial breach;
- (c) require the Managing Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 59.4;
- (d) specify the time and date by which the Managing Contractor must show cause; and
- (e) specify the place at which cause must be shown.

59.4 Rights of the Principal

59.4.1 If, by the time specified in a notice given under Clause 59.2, the Managing Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in this Clause 59.4, the Principal may by notice in writing to the Managing Contractor:

- (a) take out of the hands of the Managing Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

59.4.2 Notwithstanding any other provision of this Contract, upon giving a notice under Clause 59.2:

- (a) the Managing Contractor is not entitled to make a claim for payment; and
- (b) the Principal may suspend payments to the Managing Contractor;

until the earlier of:

- (i) the date upon which the Managing Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 59.4.1; or
- (iii) the date which is 5 business days after the last day for showing cause in the notice given under Clause 59.2.

59.4.3 If the Managing Contractor by notice in writing advises the Principal that the Managing Contractor is unable or unwilling to complete performance of the Contract, the Principal may forthwith exercise the rights under Clause 59.4.1.

59.4.4 If the Principal exercises the right under Clause 59.4.1(a), the Managing Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Managing Contractor unless a payment becomes due to the Managing Contractor under Clause 59.6.

59.5 Procedure when the Principal Takes Over Work

59.5.1 If the Principal takes work out of the hands of the Managing Contractor under Clause 59.4.1(a), the Principal shall complete that work and the Principal may without payment of compensation:

- (a) take possession of such of the constructional plant and other things on or in the vicinity of the Site or on or in the vicinity of any land in addition to the Site procured by the Managing Contractor pursuant to Clause 39.6 as are owned by the Managing Contractor and are reasonably required by the Principal to facilitate completion of the work;
- (b) take possession of the documents, information, materials, and the like produced by the Managing Contractor, which are reasonably required by the Principal to facilitate completion of the work; and
- (c) take an assignment of the Managing Contractor's rights and benefits under Subcontracts including all warranties and guarantees in connection therewith.

59.5.2 If the Principal takes possession of constructional plant, or other things, the Principal shall maintain them and, subject to Clause 59.6, on completion of the work, the Principal shall return to the Managing Contractor the constructional plant and any things taken under this Clause 59.5 which are surplus.

59.5.3 The Managing Contractor agrees to:

- (a) execute all documents and do all things necessary (including giving all necessary notices to Subcontractors and third parties) to allow the Principal to exercise its rights under this Clause 59.5; and
- (b) appoint the Principal as its agent for this purpose which appointment shall not be revoked at any time prior to issuance of the Final Certificate.

59.6 Adjustment on Completion of the Work Taken Out of the Hands of the Managing Contractor

59.6.1 The Principal's Representative shall ascertain the cost incurred by the Principal in completing the work completed under Clause 59.5 and the amount of any damages sustained by the Principal for delay in completion and shall issue a certificate pursuant to this Clause 59.6 to the Principal and the Managing Contractor certifying:

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

59.6.2 If the cost and damages incurred by the Principal are greater than the amount which would have been paid to the Managing Contractor if the work had been completed by the Managing Contractor, the difference shall be a debt due from the Managing Contractor to the Principal.

59.6.3 If the cost and damages incurred by the Principal are less than the amount that would have been paid to the Managing Contractor if the work had been completed by the Managing Contractor, the difference shall be a debt due to the Managing Contractor from the Principal.

59.6.4 If the Managing Contractor is indebted to the Principal, the Principal may retain constructional plant or other things taken under Clause 59.5 until the debt is satisfied. If after reasonable notice, the Managing Contractor fails to pay the debt, the Principal may sell the constructional plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Managing Contractor.

59.7 Default of the Principal

59.7.1 If the Principal commits a substantial breach of Contract and the Managing Contractor considers that damages may not be an adequate remedy, the Managing Contractor may give the Principal a written notice to show cause.

59.7.2 Substantial breaches include but are not limited to:

- (a) failing to give the Managing Contractor possession of the Site or sufficient of the Site to enable the Managing Contractor to commence the work under the Contract but only if the failure continues for longer than the period stated in the Annexure;
- (b) failing to make a payment payable under the Contract; and
- (c) failure by the Principal's Representative either to issue a Certificate of Practical Completion or give the Managing Contractor the reasons in writing for not issuing that Certificate within 10 business days of receipt of a request by the Managing Contractor to issue that Certificate, in breach of Clause 57.9.

59.8 Requirements of a Notice by the Managing Contractor to Show Cause

A notice given under Clause 59.7 shall:

- (a) state that it is a notice under Clause 59 of the Contract;
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Managing Contractor should not exercise a right referred to in Clause 59.9;
- (d) specify the time and date by which the Principal must show cause; and
- (e) specify the place at which cause must be shown.

59.9 Rights of the Managing Contractor

59.9.1 If by the time specified in a notice given under Clause 59.7, the Principal fails to show reasonable cause why the Managing Contractor should not exercise a right referred to in this Clause 59.9, the Managing Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

59.9.2 The Managing Contractor shall lift the suspension if the Principal remedies the breach within 20 business days of the date of suspension under this Clause 59.9. If:

- (a) within 20 business days of the date of suspension the Principal fails to remedy the breach; or
- (b) the breach is not capable of remedy and the Principal fails to make other arrangements to the reasonable satisfaction of the Managing Contractor;

then the Managing Contractor may by notice in writing to the Principal terminate the Contract.

59.9.3 The Managing Contractor shall be entitled to recover from the Principal any damages incurred by the Managing Contractor by reason of the suspension.

59.10 Rights of the Parties on Termination

59.10.1 If the Contract is terminated pursuant to Clause 59.4.1 or Clause 59.9.2, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

59.10.2 The Principal may also, without payment of compensation, take possession of drawings, specifications and other information, samples, models, patterns, and the like created for the construction of the Works and take an assignment of Subcontracts and consultancy agreements.

59.11 Insolvency

59.11.1 If:

- (a) the Managing Contractor informs another party in writing or creditors generally that the Managing Contractor is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against the Managing Contractor by a creditor;
- (c) the Managing Contractor, being an individual person, or a partnership including an individual person and that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;
 - (iv) is made bankrupt;
 - (v) under part IX of the *Bankruptcy Act 1966* (Cth):
 - (A) makes a written proposal for a debt agreement; and
 - (B) the proposal becomes a debt agreement; or
 - (vi) makes a proposal for a deed of assignment, deed of arrangement or a composition; or
 - (vii) under Part X of the *Bankruptcy Act 1966* (Cth):
 - (A) has a deed of assignment or deed of arrangement made;
 - (B) accepts a composition;
 - (C) is required to present a debtor's petition; or
 - (D) has a sequestration order made; or
- (d) the Managing Contractor, being a corporation and if:
 - (i) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the Managing Contractor enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) a meeting of creditors is called with a view to:
 - (A) entering a scheme of arrangement or composition with creditors; or
 - (B) appointing a controller or administrator;
 - (v) a receiver of the property or part of the property of the Managing Contractor is appointed;
 - (vi) the Managing Contractor takes or commences or has taken, commenced or instituted against it any process, action or proceeding whether voluntary or compulsory which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Managing Contractor's business for the benefit of creditors or any of them;
 - (vii) a winding up order is made; or

(viii) execution is levied by creditors, debenture holders or trustees or under a floating charge;

then the Principal may, without giving a notice to show cause, exercise the rights under Clause 59.4.1.

59.11.2 The rights given by this Clause 59.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract.

59.12 Stay on Rights

The rights given by this Clause 59.11 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).

60. TERMINATION

60.1 Termination by Frustration

60.1.1 If under the law governing the Contract, the Contract is frustrated, the Principal shall (subject to the Principal's rights under or in connection with the Contract including to withhold or set off payments and recover damages, and subject to any other legal rights or obligations of the Principal):

- (a) pay the Managing Contractor:
 - (i) the amount due to the Managing Contractor shown in any unpaid payment certificate;
 - (ii) for work executed prior to the date of frustration, the amount which would have been due if the Contract had not been frustrated and the Managing Contractor had been entitled to and had made a payment claim on the date of frustration;
 - (iii) the cost of materials and equipment which:
 - (A) were required to be ordered by the Managing Contractor to comply with Clause 46;
 - (B) the Managing Contractor is liable to accept; and
 - (C) become the property of the Principal upon payment;
 - (iv) costs reasonably incurred by the Managing Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
 - (v) the reasonable cost of removal of Temporary Works and constructional plant; and
 - (vi) the reasonable cost of return to their place of recruitment of the Managing Contractor's employees engaged in the work under the Contract at the date of frustration;

provided that and notwithstanding all other provisions of the Contract the payment of the On Site Overheads Fee shall be reduced to such extra costs as are necessarily incurred by the Managing Contractor; and

- (b) release security and retention moneys.

60.1.2 The Principal may also take possession of drawings, specifications and other information, samples, models, patterns, and the like created in relation to the Contract.

60.2 Principal's Rights of Termination

60.2.1 In addition to any other right available to the Principal to terminate the Contract, the Principal may, at any time, at its sole discretion and without obligation to act reasonably, by written notice to the Managing Contractor terminate the Contract.

- 60.2.2 Upon receipt of the Principal's written notice of termination in accordance with Clause 60.2, the Managing Contractor shall immediately cease the work under the Contract and comply with any directions by the Principal's Representative including, but without limitation, any directions to:
- (a) protect property in the possession of the Managing Contractor in which the Principal has or may acquire an interest;
 - (b) demobilise from the Site persons, construction or plant, vehicles, equipment, and other things;
 - (c) assign to the Principal all rights and benefits under contracts with third parties (including Subcontractors and Consultants);
 - (d) provide the Principal with possession of all plant and equipment, materials, and other things on and off the Site, which are required for the work under the Contract or for incorporation in the Works; and
 - (e) deliver to the Principal all documentation and other information prepared or created by the Managing Contractor in connection with the work under the Contract (including but not limited to the Developed Design).
- 60.2.3 Where the Principal terminates the Contract pursuant to Clause 60.2, the Principal may have the remaining work under the Contract not completed by the Managing Contractor prior to termination of the Contract carried out by others.
- 60.2.4 Within 10 business days after the issue of the notice of termination in accordance with this Clause 60.2 the Principal shall (subject to the Principal's rights under or in connection with the Contract including to withhold or set off payments and recover damages, and subject to any other legal rights or obligations of the Principal):
- (a) pay the Managing Contractor:
 - (i) the amount due to the Managing Contractor shown in any unpaid payment certificate;
 - (ii) for work executed prior to the date of the notice of termination, the amount which would have been due if the Contract had not been terminated and the Managing Contractor had been entitled to and had made a payment claim on the date of the notice of termination;
 - (iii) the cost of materials and equipment which:
 - (A) were required to be ordered by the Managing Contractor to comply with Clause 46;
 - (B) the Managing Contractor is liable to accept; and
 - (C) become the property of the Principal upon payment;
 - (iv) costs necessarily incurred by the Managing Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
 - (v) the reasonable cost of removal of Temporary Works and constructional plant; and
 - (vi) the reasonable cost of return to their place of recruitment of the Managing Contractor's employees engaged in the work under the Contract at the date of frustration;

provided that, and notwithstanding all other provisions of the Contract, the payment of the On Site Overheads Fee shall be reduced to such extra costs as are necessarily incurred by the Managing Contractor; and
 - (b) release any security and retention moneys.
- 60.2.5 The Principal may also take possession of drawings, specifications and other information, samples, models, patterns, and the like created in relation to the Contract.
- 60.2.6 The Principal shall not otherwise be liable to the Managing Contractor for any cost, loss, expense, or damage incurred by the Managing Contractor under or in connection with the Contract or its termination, including without limitation compensation for loss of profits.

61. NOTIFICATION OF CLAIMS

61.1 Notice of Intention to Claim

61.1.1 The Managing Contractor shall give to the Principal's Representative a Notice of Intention to Claim as soon as practicable after the Managing Contractor becomes aware of any breach, act, omission, direction, approval, or circumstance which may entitle the Managing Contractor to Claim.

61.1.2 The Notice of Intention to Claim shall detail the general basis and quantum of the Claim.

61.1.3 This Clause 61.1 shall not apply to any Claim which is required to be notified by another provision of the Contract.

61.2 Liability for Failure to Give Notice of Intention to Claim

The failure of the Managing Contractor to comply with Clause 61.1 or to notify the Principal's Representative in accordance with the relevant provision of the Contract shall:

- (a) entitle the Principal to damages from the Managing Contractor for breach of Contract. Such damages shall be assessed by the Principal's Representative and included in a certificate pursuant to Clause 57;
- (b) neither bar nor invalidate the Claim; and
- (c) disentitle the Managing Contractor to interest pursuant to Clause 57.13 in respect of the Claim.

61.3 Notice of Claim

61.3.1 If a Claim is based on a breach, act, omission, direction, approval, or circumstance:

- (a) which occurs, is given or commences prior to the Date of Practical Completion, then the Managing Contractor shall give to the Principal's Representative the Notice of Claim not later than 60 days after the Date of Practical Completion;
- (b) which occurs, is given or commences on or after the Date of Practical Completion, then the Managing Contractor shall give to the Principal's Representative the Notice of Claim not later than 60 days after the Managing Contractor becomes aware of the breach, act, omission, direction, approval, or circumstance. However, such Notice of Claim shall not be given to the Principal's Representative after the date for lodgement of the Final Payment Claim pursuant to Clause 57.11.

61.3.2 A Notice of Claim shall include particulars of:

- (a) the breach, act, omission, direction, approval, or circumstances on which the Claim is based;
- (b) the provision of the Contract or other basis for the Claim; and
- (c) the quantum of the Claim.

61.3.3 This Clause 61.3 shall not apply to any Claim which is required to be notified by another provision of the Contract.

61.4 Liability for Failure to Give Notice of Claim

The Principal shall not be liable upon any Claim by the Managing Contractor in respect of or arising out of the Contract unless the Managing Contractor complies with Clause 61.3 or notifies the Principal's Representative in accordance with the relevant provision of the Contract.

62. DISPUTE RESOLUTION

62.1 Notice of Dispute

62.1.1 If a dispute or difference (hereafter called a "dispute") between the Managing Contractor and the Principal (hereafter called individually "a party" and collectively "the parties") arises in connection with the Contract or the subject matter thereof, then a party shall deliver by hand or send by certified mail to the other party and

to the Principal's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.

62.1.2 Notwithstanding the existence of a dispute, the Principal and the Managing Contractor shall continue to perform the Contract and, subject to Clause 59, the Managing Contractor shall continue with the work under the Contract and the Principal and the Managing Contractor shall continue to comply with Clauses 57.2 and 57.4.

62.2 Further Steps Required Before Expert Determination

Within 10 business days after the service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

62.3 Expert Determination Notice

62.3.1 If the dispute has not been resolved within 15 business days of service of the notice of dispute, or such other time as may be mutually agreed by the authorised representatives of the Principal and the Managing Contractor prior to the expiry of 15 business days of the service of the notice of dispute, either party shall be able to refer the dispute to expert determination by giving a notice in writing to the other party and to the Principal's Representative which complies Clause 62.4.

62.3.2 The party that gives a notice under this Clause 62.3 shall hereafter be referred to as "the dissatisfied party".

62.4 Requirements of Expert Determination Notice

The notice in writing given by the dissatisfied party pursuant to Clause 62.3 shall:

- (a) be in writing and specify that it is a notice given under Clause 62.3;
- (b) identify the clause of the Contract (if any) under which the dispute or difference has arisen; and
- (c) be accompanied with adequate particulars and any relevant written material which identifies the matters the subject of the dispute or difference.

62.5 Notification to Expert

After receiving the notice under Clause 62.3, the authorised representatives of the Principal and the Managing Contractor shall inform the Expert specified in the Annexure, or in default of such specification the appointee of the Chairperson for the time being of the Board of the Queensland Building and Construction Commission, of the existence of the relevant dispute. The Principal's Representative shall then promptly dispatch to the Expert the Expert Determination Notice provided by the dissatisfied party pursuant to Clause 62.3 to the Expert.

62.5.1 The parties must execute and provide to the Expert a release in favour of the Expert, releasing the Expert from all liability to which the Expert may otherwise be subject in making a decision upon the dispute or difference under this Clause 62 other than any liability arising from fraud of the Expert.

62.5.2 Neither party shall have any contact with the Expert except for the purpose of agreeing administrative details with regard to the time and location of the meeting referred to in Clause 62.6.

62.6 Meeting with Expert

As soon as practicable after the receipt by the Expert of the Expert Determination Notice under Clause 62.5 the parties shall meet with the Expert to agree the procedure to be adopted in resolving the dispute or difference, and failing agreement the procedure shall be determined by the Expert.

62.7 Powers of Expert

The Expert shall have the power:

- (a) to open up, review and revise any direction of the Principal's Representative which has been referred to the Expert as if no such direction had been given and substitute the exercise of the Expert's discretion for that of the Principal's Representative;
- (b) to proceed to the resolution of the dispute or difference in such manner and subject to such rules as the Expert and the parties agree or failing agreement as the Expert in the Expert's absolute discretion determines is suitable for the nature of the dispute or difference and the Expert shall not be bound by rules of evidence;
- (c) to engage and consult with any advisors, legal or technical, as the Expert may see fit; and
- (d) to seek further information from either party.

62.8 Expert to Give Decision

The parties shall require the Expert to notify the parties in writing of the Expert's decision and to give reasons for that decision within 5 business days after the conclusion of the dispute resolution procedure determined under Clause 62.6 and in any event within 20 business days after the receipt by the Expert of the Expert Determination Notice under Clause 62.3.

62.9 Expert not Arbitrator

In making the Expert's decision the Expert shall act as an expert and not as an Arbitrator. The parties shall pay the Expert's costs (including the costs of engaging any consulting advisors pursuant to Clause 62.7(c)) equally.

62.10 Litigation

Compliance with Clauses 62.1 to 62.9 as appropriate shall be a binding preliminary to the commencement of litigation by the Principal or the Managing Contractor provided that nothing shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 57 or to seek urgent injunctive or declaratory relief in respect of any matter arising under the Contract.

63. WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing in each instance of the party against whom a waiver, discharge or release is claimed.

64. RECORDS AND ACCESS TO RECORDS

64.1 The Managing Contractor shall make and keep and shall ensure that every Subcontractor makes and keeps accurate and complete records of:

- (a) the Managing Contractor's Tender or a Subcontractor's tender, including without limitation the preparation and submission of that tender;
- (b) tenders received by it, whether accepted or not;
- (c) the execution and completion of the work under the Contract or of the work under the Subcontract; and
- (d) compliance with commitments made in the Managing Contractor's Tender or a Subcontractor's tender relating to or required by government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Building and Construction Training Policy and where the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles and the Best Practice Industry Conditions.

- 64.2 The records referred to in Clause 64.1 shall include records that are required to be created or provided, or that are otherwise referred to, under the Contract or under the Subcontract, as well as other records including but not limited to those that:
- (a) relate to the Managing Contractor's Tender or a Subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
 - (b) relate to design, including design calculations, option studies, opinions, reviews, and reports;
 - (c) relate to the execution and completion of the work under the Contract or a Subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
 - (d) are required to demonstrate compliance with the matters referred to in Clause 64.1(d) including without limitation payroll records, management records, time recordings and records of project-specific training; and
 - (e) are in any format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media.
- 64.3 The records referred to in Clause 64.1 shall not be destroyed without the prior written approval of the Principal.
- 64.4 Without limiting any other rights or obligations under this Clause 64, the Principal and the QGP Compliance Branch may, at any time after giving written notice to the Managing Contractor that an audit shall be undertaken pursuant to this Clause, undertake an audit in respect of the Managing Contractor's compliance with Clause 21.2. In undertaking the audit, the Principal and the QGP Compliance Branch shall have the right to inspect and copy any record referred to in Clause 64.1 and to access any of the Managing Contractor's systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this Clause 64.4, the Managing Contractor shall promptly and at its own cost provide the Principal and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:
- (a) providing to the Principal and the QGP Compliance Branch any record requested by them for inspection or copying pursuant to Clause 64.5;
 - (b) making staff available to the Principal and the QGP Compliance Branch to access or explain systems, processes or any record referred to in Clause 64.1; and
 - (c) arranging and providing access to the Managing Contractor's or Subcontractor's workplaces, sites, premises, or facilities.
- 64.5 Subject to the Managing Contractor's (or a Subcontractor's) right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal and the QGP Compliance Branch shall have the right to inspect and to copy at any time any record referred to in Clause 64.1. In the case of any records referred to in Clause 64.1 stored on a medium other than in writing, the Managing Contractor shall make available forthwith upon request such facilities as may be necessary to enable a legible, operable reproduction thereof to be provided to the Principal and the QGP Compliance Branch.
- 64.6 Where a record referred to in Clause 64.1 is created, maintained or stored by the Managing Contractor or a Subcontractor in an electronic format, it shall be provided to the Principal and the QGP Compliance Branch in its native, operable form or such other format as may be reasonably required by or acceptable to the Principal and the QGP Compliance Branch.
- 64.7 Where a record referred to in Clause 64.1 is stored on a medium licensed from a third party, where the Principal is a party to the communication, the Managing Contractor must provide the Principal with a copy of such records in an external electronic storage device, readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month until the issue of the Final Certificate.

- 64.8 The Managing Contractor shall comply in all respects with any request made pursuant to Clause 64.5 to inspect or copy records referred to in Clause 64.1, or any audit undertaken pursuant to Clause 64.4, and shall not be entitled to refuse audit, inspection or copying of any record referred to in Clause 64.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
- 64.9 Records accessed under Clauses 64.4 or 64.5 may be used to assess the Managing Contractor's or its Subcontractors' compliance with the Contract, the Subcontract, the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Building and Construction Training Policy and may be shared with relevant Government Departments or Instrumentalities for the purposes of making a recommendation about compliance with the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Building and Construction Training Policy.
- 64.10 The Principal and the QGP Compliance Branch may in their absolute discretion, publish information about the Managing Contractor's or a Subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Principal nor give rise to any other right or remedy of the Managing Contractor at law or in equity against the Principal or the QGP Compliance Branch.

65. INFORMATION PRIVACY

- 65.1 For the purposes of this Clause:

'Personal Information' means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

- 65.2 If the Managing Contractor collects or has access to Personal Information in order to carry out work under the Contract, the Managing Contractor must:
- (a) if the Principal is an "agency" within the meaning of the *Information Privacy Act 2009* (Qld) ("IPA"), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Managing Contractor was the Principal;
 - (b) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
 - (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
 - (d) ensure that its officers, employees, agents, and Subcontractors do not access, use, or disclose Personal Information other than in connection with carrying out work under the Contract;
 - (e) ensure that its Subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Managing Contractor under this Clause 65;
 - (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.
- 65.3 On request by the Principal, the Managing Contractor must obtain from its employees, officers, agents, or Subcontractors carrying out work under the Contract, an executed deed of confidentiality in a form acceptable to the Principal.
- 65.4 The Managing Contractor must immediately notify the Principal on becoming aware of any breach of Clause 65.

- 65.5 The Managing Contractor acknowledges that, in accordance with the Contract, the Principal's Representative, the Principal and the QGP Compliance Branch:
- (a) will collect information for the purposes of administering the Contract that may contain Personal Information, which will be used in accordance with the Contract and may be disclosed to the Principal's Representative, the Principal, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Managing Contractor's consent unless authorised or required by law or the Contract; and
 - (b) may collect information containing Personal Information for the purposes of determining the Managing Contractor's compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the Managing Contractor's consent unless authorised or required by law or the Contract.
- 65.6 Personal Information will be handled in accordance with the IPA.
- 65.7 This Clause 65 will survive the termination or expiry of the Contract.

ANNEXURE

This Annexure shall be read as part of the Contract.

Name of the Principal (Clause 2):	The State of Queensland through
Address of the Principal (Clause 10):	.....
Name of the Principal’s Representative (Clause 2):	To be advised in the letter of acceptance of tender
Address of the Principal’s Representative (Clause 10):	To be advised in the letter of acceptance of tender
Address of the Site (Clause 2):	.....
Date for Practical Completion (Clause 2):	.....
Payments under the Contract shall be made at:	Brisbane
Defects Liability Period (Clause 2 and 51.3):	12 months from the Date of Practical Completion
The amount of security (Clause 9.2):	Nil
The amount of retention moneys and security in lieu of retention moneys (Clause 9.5 and 9.7):	5% of the accepted Guaranteed Construction Sum minus GST
The Principal’s entitlement to security shall be reduced to upon issue of the Certificate of Practical Completion (Clause 9.10):	50%
The Principal’s entitlement to retention moneys shall be reduced to upon issue of the Certificate of Practical Completion (Clause 9.10):	\$..... OR%
The Principal’s entitlement to representation on the PAG (Clause 13.2):	.... delegates
The Managing Contractor’s entitlement to representation on the PAG (Clause 13.2):	.... delegates
Application of the Best Practice Principles to the Contract (Clauses 3.2, 21.2, 41.7, 58.2 and 64):	Applicable* / Not Applicable* <i>(*delete one)</i>
Weightings for Subcontractor non-price criteria, if Best Practice Principles are applicable (Clause 21.2.6(b)):	Best Practice Principles:% Local Benefits:% <i>(If nothing stated – Contractor to determine weightings)</i>
The party responsible for engaging the Building Certifier is (Clause 24.6):	.....
The party responsible for bearing the costs of and paying any fees due and complying with the requirements of the Building Certifier is (Clause 24.6):	.....

Occupational Health and Safety Audit (Clause 26.2):	Applicable
The base amount of insurance (Clause 30.4(a)):	The Guaranteed Construction Sum (or, for any Early Works directed before the Date of Commencement of Stage Two, the Principal’s Project Construction Cost Estimate contained in the Project Brief)
The assessment for insurance purposes of the costs of demolition and removal of debris (Clause 30.4(b)):	2.5% of the amount stated in Clause 30.4(a)
The assessment for insurance purposes of Consultants Fee (Clause 30.4(c)):	5% of the amount stated in Clause 30.4(a)
The value of materials to be supplied by the Principal (Clause 30.4(d)):	\$
The additional amount or percentage (Clause 30.4(e)):	5%
The amount of Public Liability Insurance shall be not less than (Clause 31):	\$..... million <i>If nothing stated: \$20 million</i>
The amount of Professional Indemnity Insurance shall be not less than (Clause 33):	\$..... million <i>If nothing stated: \$5 million</i>
The time by which access to the Site shall be given (Clause 39.1):	..... Date of Acceptance of Tender
The time by which possession of the Site shall be given (Clause 39.1):	.....
The Contract is an Indigenous Project (Clause 41.4.3):	Yes* / No* <i>(*delete one)</i>
Queensland Charter for Local Content (Clause 41.5):	Applicable* / Not Applicable* <i>(*delete one)</i>
The Working Days shall be (Clause 44.1):	Monday to Friday
The Working Hours shall be (Clause 44.1):	Between the hours of 7:00 am and 6:00 pm
Liquidated Damages (Clause 49.4):	.....
Construction Bonus Percentage (Clause 56.1.1):	.....% <i>(Maximum 30%, if nothing stated 30%)</i>
Early Completion Bonus (Clause 56.1.3):	Applicable* / Not Applicable* <i>(*delete one)</i>
The amount of Early Completion Bonus (Clause 56.1.3):	.....
Limit of Early Completion Bonus (Clause 56.1.3):	.....
Time for payment claims (Clause 57.2):	Monthly

Unfixed plant and materials for which payment claims
may be made before they are incorporated in the Works
(Clause 57.7):

The period of delay in giving access to and possession of 13 weeks
the Site which shall be a substantial breach (Clause
59.7):

The Expert (Clause 62):