

Request for Tenders  
For

Northern Parklands, Stage 2 Sp 1  
Landscape Works

at Nurragingy Precinct

Contract No: WSPT 2015/03

July 2015

Client: Western Sydney Parklands  
Trust

## Consultant Details

### **Landscape Architect**

context

52-58 William Street

East Sydney

NSW 2011

Telephone number: 02 8244 8900

Facsimile number: 02 9460 2088

### **Structural Consultant**

Fleetwood Urban

17 Ormsby Place,

Wetherill Park NSW 2164

Telephone number: 1300 989 100

Facsimile number: 1300 686 670

### **Archaeology**

Artefact Heritage

Level 1, 715 New South Head Road,

Rose Bay NSW 2029

Telephone number: 02 9025 3958

Facsimile number:

### **Ecological**

Eco Logical Australia

Level 6, Sussex Street

Sydney, NSW 2000

Telephone number: 02 8536 8660

Facsimile number: 02 9993 0573

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# Conditions of Tendering

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# Conditions of Tendering

**THERE ARE 8 PAGES IN THIS SECTION**

The Conditions of Tendering do not form part of the Contract.

The Conditions of Tendering include any notices to tenderers.

## 1 General

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### 1.1 Contact Person

Refer requests for information about the Request for Tender (RFT) to:

Name:	Maroon Jumaa [on behalf of Western Sydney Parklands Trust]
Telephone number:	02 8908 9888
Facsimile number:	02 9460 2088
e-mail address:	<a href="mailto:maroon.jumaa@bluevisions.com.au">maroon.jumaa@bluevisions.com.au</a>

### 1.2 NSW Government Code of Practice for Procurement and Implementation Guidelines

#### Terminology

1. The New South Wales Government's Code of Practice for Procurement (NSW Code) and the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice (NSW Guidelines) apply to the project the subject of this procurement process.
2. Terms used in this section 1 of this procurement process (under the heading NSW Code and Implementation Guidelines) have the same meaning as is attributed to them in the NSW Guidelines (as published by the NSW Treasury in July 2013).

#### Primary obligation

3. By submitting a response to this procurement process, the tenderer acknowledges and agrees that it:
  - is aware that the NSW Code and NSW Guidelines apply to the project;
  - is taken to have read and understood the NSW Code and NSW Guidelines and the obligations they impose;
  - will comply with the NSW Code and NSW Guidelines on this project, which includes, but is not limited to giving access to authorised personnel to inspect any work, material, or machinery, inspect and copy any record relevant to the project, and interview any person;
  - will agree, if successful in this procurement process, to contractual terms that give effect to the NSW Code and NSW Guidelines and mechanisms to ensure their compliance and enforcement; and
  - will comply with, and ensure all of its related entities (as defined in the NSW Guidelines) comply with, the NSW Code and NSW Guidelines in respect of any of their building and construction work (including any subsequent privately funded work), on and from the date of submitting a response to this procurement process.

### **Cost, efficiency, productivity and workplace safety**

4. The tenderer agrees that it must include in its response:
  - for projects where the NSW Government or public sector body contribution is \$10million or more or is at least \$5million and represents at least 50 percent of the total construction project value, a Workplace Relations Management Plan and any other

documents and information necessary to meet the requirements of section 6.1 of the NSW Guidelines;

- a Work Health Safety (WHS) Management Plan or Site Specific Safety Management Plan and any other documents and information necessary to meet the requirements of section 9 of the NSW Guidelines; and
- the Schedule of Compliance that is attached to this procurement process, properly executed by or on behalf of the tenderer.

5. The tenderer acknowledges that by submitting this response it agrees to the Client Agency and the CCU taking any steps to investigate claims, statements and assertions made by the tenderer in any of the documents referred to above in paragraph.4 of this clause before any contract is awarded. The tenderer acknowledges and agrees to cooperate with the Client Agency and the CCU in respect of the investigation of compliance with the NSW Guidelines and further agrees that that compliance is a mandatory requirement of the procurement process. The tenderer will allow authorised personnel to:

- access premises and sites controlled by the tenderer or its related entities;
- inspect and copy relevant records and documents;
- inspect any work, material, machinery, appliance article or facility; and
- interview any person;

as is necessary to investigate the claims, statements and assertions made by the tenderer in the response or to demonstrate the tenderer's current or, where relevant, past compliance with the NSW Code and NSW Guidelines during the procurement process.

#### **Disclosure of information**

6. Notwithstanding any other provision of the procurement process, the tenderer agrees and consents to the disclosure of information concerning the tenderer's, and the tenderer's related entities', compliance with the NSW Code and NSW Guidelines, including the disclosure of details of past and present compliance to the NSW Code and NSW Guidelines, the National Code of Practice for the Construction Industry, and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry as varied from time to time, including whether or not sanctions have been imposed on a tenderer or any of its related entities by the Commonwealth or any State or any government agency. This consent is given to the State of New South Wales, including its agencies (including the Client Agency), Ministers and the CCU (and its authorised personnel) for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the NSW Code and NSW Guidelines.

#### **Subcontractors etc**

7. Where the tenderer proposes to subcontract the works, the tenderer agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- the contractual promises in clauses paragraph.3 of this clause (Primary obligation) and paragraph .6 of this clause (Disclosure of information) in respect of the relevant subcontractor or consultant;
- comply with the applicable plans and policies on the project referred to in clause paragraph.4 of this clause (Cost, efficiency, productivity and workplace safety); and
- where a subcontractor or consultant is nominated in procurement process documents, that the nominated party cooperates with authorised personnel during the procurement process for the purposes outlined in paragraph 5 of this clause.

## 2 Tenderer Eligibility

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### 2.1 Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities. The Principal does not contract with firms under any form of external administration. Any tender submitted by an unincorporated business such as a sole trader, partnership or business name must identify the legal entity that proposes to enter into the Contract.

If a tenderer is a trustee, the Principal may require:

- an unconditional undertaking in accordance with Preliminaries Clause - **Additional Security and Obligations for Trustees**; and
- a signed statement from the tenderer, provided before a Contract is awarded, making the following undertaking:

‘If (insert the legal name of the tenderer) is awarded Contract No. (insert the contract number) for (insert the contract description) it will provide security in the amount of (insert the amount of security advised by the Principal) in accordance with Preliminaries Clause - **Additional Security and Obligations for Trustees**, and it undertakes to ensure that, for the duration of the Contract, the total value of the trust beneficiaries’ loans to the trustee is always greater than the total value of trust beneficiaries’ loans from the trustee.’

Failure to provide the signed statement may result in the tender being passed over.

### 2.2 Quality Management

The Principal may elect to pass over a tender from a tenderer that does not demonstrate the capacity to systematically plan and manage the quality of its work in accordance with the NSW Government *Quality Management Systems Guidelines*, available on the ProcurePoint website.

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of Quality Management Information**.

### 2.3 Work Health and Safety Management

Tenderers must demonstrate their capacity to manage WHS in accordance with the NSW Government *Work Health and Safety Management Systems and Auditing Guidelines 5<sup>th</sup> Edition (WHSMS Guidelines)*. The *WHSMS Guidelines* are available on the ProcurePoint website.

Submit with the Tender Form, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information - PART A**.

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information – PART B**.

A tender will only be accepted from a tenderer that has a corporate WHS Management System acceptable to the Principal in accordance with the *OHSM Guidelines*.

### 2.4 Environmental Management

Tenderers must demonstrate their capacity to manage environmental matters in accordance with the NSW Government *Environmental Management Systems Guidelines (EMS Guidelines)* available on the ProcurePoint website.

A tender will only be accepted from a tenderer that has a corporate Environmental Management System acceptable to the Principal in accordance with the *EMS Guidelines*.

Submit when requested, the Schedule and the information required by Tender Schedules - **Schedule of Environmental Management Information**.

### 2.5 Financial Assessment

By tendering for this Contract, the Tenderer agrees that the Principal may engage private sector consultants to financially assess tenderers. Financial details of tenderers may be obtained by an external Financial Assessor for assessment. Financial Assessors have a contract with the Principal to safeguard the financial details obtained. Financial

Assessors must not disclose such details, either in whole or in part to any party other than NSW Government departments or agencies without the express written permission of the tenderer.

A list of Financial Assessors who may be engaged by the Principal is shown at the link labelled ‘**list of prequalified service providers**’ on the webpage at:

<http://www.procurepoint.nsw.gov.au/before-you-supply/prequalification-schemes/financial-assessment-services>

The criteria considered in the financial assessment of tenderers include:

- Net Tangible Assets (total assets, less total liabilities, less intangible assets);
- Current Ratio (ratio of current assets to current liabilities); and
- Working Capital (current assets less current liabilities).

Taking into account the value of work started in the six (6) weeks prior to the financial assessment, the Principal considers a tenderer with the following financial indicators, and no other significant detrimental financial characteristics, to be financially satisfactory in respect of its tender:

- Net Tangible Assets exceed 5% of the tender price;
- Current Ratio exceeds 1;
- Working Capital exceeds 10% of the tender price; and
- Where a tenderer is a trustee, the total value of trust beneficiaries’ loans to the trustee exceeds the total value of trust beneficiaries’ loans from the trustee.

Deviations from the above indicators will not necessarily prevent the Principal from considering any tender.

Submit, within five (5) business days after receiving a request from the appointed financial assessor or the Principal, the information required by Tender Schedules - **Schedule of Financial Assessment Information**.

## 3 Contract Details

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### 3.1 Provisional Allowances

#### Provisional Rate Amounts

The Contract includes provisional items of work subject to payment on the basis of tendered rates. Refer to General Conditions of Contract Clause - **Payment and Retention** and Tender Schedules - **Schedule of Provisional Allowances - Provisional Rate Items**.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Provisional Allowances - Provisional Rate Amounts**.

### 3.2 Insurance

#### Works and Public Liability Insurance

The Contractor is to arrange insurance of the Works (and any temporary works) and public liability insurance and pay all premiums in accordance with General Conditions of Contract Clause - **Insurance**.

#### Other Insurance

The Contractor is to arrange and pay all premiums for all other insurance required by law or under General Conditions of Contract Clause - **Insurance**.

For professional indemnity insurance, a Certificate of Currency or evidence of the ability to obtain the required insurance, such as a letter from a broker or insurer, may be required as a condition of acceptance of the tender.

### 3.3 Design and Documentation Resources

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Design and Documentation Resources** to demonstrate that the key design and documentation consultants/personnel have the qualifications, competencies and experience required to satisfactorily carry out the design specified in Contract Information - **Item 7**.

The Principal may elect to pass over any tender that does not identify design and documentation consultants/personnel with satisfactory qualifications, competencies and experience.

## 4 Current Policies

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### 4.1 Disclosure of Tender and Contract Information

Details of this tender process and any contract awarded as a result of the tender process will be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW) and Premier's Memorandum 2007-01.

### 4.2 Exchange of Information by the Principal

By submitting a tender, the tenderer authorises the Principal to gather, monitor, assess, and communicate to NSW Government agencies or local government authorities information about the tenderer's performance in respect of any contract awarded as a result of the tender process. Such information may be used by those agencies or authorities in considering whether to offer the tenderer future tendering opportunities.

### 4.3 Industrial Relations Management

Complete and submit when requested, Tender Schedules - **Schedule of Industrial Relations Information**.

## 5 Further Information

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### 5.1 Addenda to RFT Documents

If, as a result of a request for clarification from a tenderer or for any other reason, the Principal issues an instruction amending the RFT documents, the instruction will be issued in writing to all tenderers in the form of an Addendum, which becomes part of the RFT documents. Written Addenda issued by the Principal are the only recognised explanations of, or amendments to, the RFT documents.

### 5.2 Pre-tender Meeting

Non mandatory pre-tender meeting will be held on the date, at the time and at the place nominated in the tender advertisement or invitation.

The Contact Person will be available at that time to answer any tenderer's queries regarding the RFT.

## 6 Preparation of Tenders

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### 6.1 Weighted Non-Price Evaluation

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Weighted Non-Price Criteria Information**.

## 7 Submission of Tenders

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### 7.1 Documents to be submitted

Part A: Documents to be Lodged with the Tender

Complete and lodge, by the date, time and method stated in the tender advertisement and/or invitation, the following documents and information:

- **Tender Form**
- **Schedule of Prices – Lump Sum**
- **Schedule of Provisional Allowances**
- **Schedule of Quality Management Information**
- **Schedule of Design and Documentation Resources**
- **Schedule of WHS Management Information**
- **Schedule of Environmental Management Information**
- **Schedule of Weighted Non-Price Criteria Information**
- **Schedule of Compliance with NSW Government’s Implementation Guidelines to the NSW Government Code of Practice for Procurement**

Any tender that is not received in full at close of tenders may be passed over.

Do not change the text on the Tender Form or Tender Schedules, other than to insert the required information.

Acknowledge on the Tender Form that the tender allows for all Addenda issued, if any.

If more than one tender is lodged, mark each tender clearly as to whether it is a copy, an alternative tender, or a tender superseding another submission.

Part B: Documents to be Submitted When Requested:

Complete and submit, by the date, time and method stipulated in any request, the following Tender Schedules, marked ‘**Submit When Requested**’, and any other documents and information requested:

- **Schedule of Financial Assessment Information**
- **Schedule of Industrial Relations Information**

Failure to meet this requirement may result in the tender being passed over.

### 7.2 Tender Lodgement Methods

Electronic Tenders

Tenderers are encouraged to lodge tenders through the NSW Government *eTendering* website at:

[tenders.nsw.gov.au](http://tenders.nsw.gov.au).

Login as an *eTendering* system user, locate the RFT web page and follow on-screen instructions. Access is generally available 24 hours a day, 7 days per week.

Lodgement of a tender electronically is evidence of a tenderer’s acceptance of any conditions shown on the NSW Government *eTendering* website.

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than tenders submitted by other means.

Tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2003, or any other format required by the RFT documents. Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (\*.exe) zip files.

A tender that cannot be evaluated because it is incomplete or electronically corrupted may be passed over.

### 7.3 Late Tenders

In accordance with the NSW Government *Code of Practice for Procurement*, late tenders will not be accepted, except where the integrity and competitiveness of the tendering process will not be compromised.

## 8 Procedures After Closing of Tenders

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### 8.1 Evaluation of Tenders

#### General Evaluation Criteria

In evaluating tenders, the Principal may take into consideration not only price but also other factors affecting value for money, including but not limited to:

- whole-of-life costs, including costs of disposal;
- ability to meet requirements of the NSW Government *Code of Practice for Procurement*;
- innovation;
- delivery time;
- WHS management performance;
- quality offered;
- previous performance and relevant experience;
- organisational, technical and resource capability and capacity to meet RFT requirements, including financial capacity;
- workplace and industrial relations management performance;
- environmental management performance;
- stakeholder, community relations management performance;
- value adding, including economic, social and environmental initiatives; and
- conformity to RFT requirements.

The Principal may treat any detail required by the RFT documents which is omitted, illegible or unintelligible as failing to fulfil the relevant requirement.

The Principal may assess the value of any qualification in any tender without reference to the tenderer, and compare tenders on the basis of the Principal's assessed valuation.

#### Weighted Non-Price Evaluation

Tenders will be evaluated using a weighted scoring process based on information provided with the tender. The ratio of price to non-price criteria will be: 70% price and 30% non-price.

The weighted non-price criteria will be:

- As specified in Tender Schedule 11 "Schedule of Weighted Non-Price Criteria".

If, for any of these weighted non-price criteria, a tender is assessed as scoring less than a threshold score acceptable to the Principal, the Principal may elect to pass over that tender.

### 8.2 Acceptance of Tender

The Principal may accept tenders that do not conform strictly with all requirements of the RFT documents.

The Principal is not bound to accept the lowest or any tender. Tenders which do not comply with any requirement of, or which contain conditions or qualifications not required or allowed by, the RFT documents may be passed over.

No tender, or qualification or departure from the RFT documents, is accepted unless and until the Principal gives an acceptance or agreement in writing.

### 8.3 Protection of Privacy

The tenderer warrants, in respect of any personal information provided in its tender or for the purpose of any contract awarded as a result of the tender process, that the

information is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

- that the information is being collected for the purpose of evaluating tenders and administering contracts and may be made available to NSW government agencies or local government authorities for those purposes;
- of any consequences for the individual if the information (or any part of it) is not provided;
- whether the supply of information by the individual is required by law or is voluntary; and
- of the existence of any right to access or correct the information.

**END OF SECTION – CONDITIONS OF TENDERING**

# Tender Schedules

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# 1 Tender Form

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## Tenderer's Submission Closing Details

**TENDER CLOSING DATE: 2:00pm Thursday 13<sup>th</sup> August 2015**

### Tenderer's Details

Name: .....  
(in block letters) .....

ABN .....

Address: .....  
.....

Telephone .....Facsimile number:.....  
number: .....

e-mail address: .....

hereby tender(s) to perform the work for:

### Tender Details

Contract Name: Northern Parklands Stage2 Sp1 Landscape

Contract Number: WSPT 2015/03

in accordance with the following documents:

- Conditions of Tendering**
- Tender Schedules**
- MW21 General Conditions of Contract**
- Contract Information**
- Preliminaries**
- Specification**
- Appendices**
- Drawings**

and Addenda Numbers: .....

### Tenderer's Offer

For the Contract Price, being the lump sum (including Provisional Allowances, if any) of:

.....  
.....  
(\$.....) including GST.

Signed for the Tenderer by: ..... Date:.....

Name (in block letters): ..... (Authorised Officer)

In the Office Bearer capacity of: .....

## 2 Schedule of Prices - Lump Sum

(SUBMIT WITH TENDER FORM)

Refer to drawings and Landscape specifications and Insert the amount allowed for each of the following items as a break up of the lump sum tendered.

This Schedule is for information only and does not form part of the Contract. Its purpose is to assist in the evaluation of tenders and the valuation of completed work, but the Principal is not bound to use it.

All amounts must include GST.

Item No.	Description	Amount (incl. GST)
<b>1</b>	<b>Preparations:</b>	
1.1	Provision of Management Plans	\$ .....
1.2	Provision of Dilapidation record	\$ .....
<b>2</b>	<b>Completion of the design of the Works including documentation:</b>	
2.1	Provision of Engineering design for the Boardwalk piles suitable to site conditions.	\$ .....
2.2	Provision of Boardwalk shop drawings.	\$ .....
<b>3</b>	<b>Construction of the Works:</b>	
	<b>Site Preparation</b>	
3.1	Preliminaries and Margin	\$ .....
3.2	Clearing and Demolition	\$ .....
3.3	Stripping	\$ .....
	<b>Earthworks</b>	
3.4	Earthworks (cut to fill/ cut to spoil for a maximum depth of 300mm measured from exiting ground level including lay and compact )	\$ .....
3.5	Shaping of Batters	\$ .....
3.6	Stabilize sub-grade with Lime to 150mm depth	\$ .....
3.7	Supply, place and compact, 120mm layer of DGB40 Sub-base	\$ .....
3.8	Supply, place and compact, 300mm layer of DGB40 Sub-base	\$ .....
3.9	Supply, place and compact, 100mm layer of DGB20 Base course	\$ .....
3.10	Supply, place and compact, 120mm layer of DGB20 Base course	\$ .....
3.11	Supply, place and compact, 150mm layer of DGB20 Base course	\$ .....
3.12	Supply, place and compact, 200mm layer of DGB20 Base course	\$ .....
3.13	Supply, place and compact, 25mm layer of sand bed	\$ .....

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

*TENDER SCHEDULES*

<b>Item No.</b>	<b>Description</b>	<b>Amount (incl. GST)</b>
<b>Asphalt paving</b>		
3.14	Supply and place Primer seal	\$ .....
3.15	Supply, place and compact, 40mm Asphalt wearing course	\$ .....
<b>Concrete Paving</b>		
3.16	110mm thick reinforced concrete paving, refer to drawing 14530-LS-0302/09 & 1A	\$ .....
3.17	110mm thick reinforced concrete strips, refer to drawing 14530-LS-0302/09 & 1A	\$ .....
3.18	125mm thick reinforced concrete path, refer to drawing 14530-LS-0302/ 1A	\$ .....
<b>Decomposed granite</b>		
3.19	100mm Decomposed granite paving, refer to drawing 14530-LS-0302/03	\$ .....
<b>Boardwalk</b>		
3.20	Detailed excavation	\$ .....
3.21	Granular back fill	\$ .....
3.22	Geotech fabric	\$ .....
3.23	250mm thick reinforced concrete footing	\$ .....
3.24	150mm thick reinforced concrete wall	\$ .....
3.25	300 mm thick reinforced concrete wall	\$ .....
3.26	Piling for a 110 metre long Boardwalk	\$ .....
3.27	Boardwalk galvanized steel frame and galvanized grating (Webforge A405-Pattern A) for a 2.15 m Wide and 110 m length boardwalk	\$ .....
<b>Fences and Bollards</b>		
3.28	RMS safety pedestrian fence as per drawing 14530-LS-308	\$ .....
3.29	Fixed Bollards ,refer to drawing 14530-LS-305	\$ .....
3.30	Removable Bollards, refer to drawing 14530-LS-305	\$ .....
<b>Landscape</b>		
3.31	Import 300mm topsoil	\$ .....
3.32	Make good disturbed grass areas	\$ .....
3.33	Supply and install 45L ANGflo	\$ .....
3.34	Supply and install 45L CORmac	\$ .....
3.35	Supply and install 45L EUCamp	\$ .....
3.36	Supply and install 45L EUCmol	\$ .....
3.37	Supply and install 45L EUCter	\$ .....
3.38	Supply and install VITO-Tubes	\$ .....
3.39	Supply and place Mulch	\$ .....
3.40	Supply and install Hardwood stakes	\$ .....
3.41	Steel edging as per drawing no 14530-LS-0302	\$ .....

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

TENDER SCHEDULES

Item No.	Description	Amount (incl. GST)
<b>Drainage</b>		
3.42	Excavate and lay 300 diameter RCP pipe	\$ .....
3.43	Headwall to culvert as per drawing no 14530-LS-0301	\$ .....
3.44	Rock mattress	\$ .....
3.45	Rock boulders	\$ .....
3.46	75 thick gravel mulch	\$ .....
3.47	1200 high culvert fence as per drawing no 14530-LS-0301	\$ .....
<b>Gabion Wall</b>		
3.48	4000 x 1000 x 1400 high gabion wall as per drawing 14530-LS0306	\$ .....
3.49	1525 x 400 high WSP sign, fixed to gabion wall	\$ .....
<b>4 Completion</b>		
4.1	Submit all QA documents	\$ .....
4.2	Submit Maintenance manuals	\$ .....
4.3	Submit Work as executed drawings	\$ .....
<b>5 Maintenance</b>		
5.1	Provide Maintenance program	\$ .....
5.2	Maintenance for 26 weeks	\$ .....
Total of Provisional Rate Amounts (brought forward from Tender Schedules – <b>Schedule of Provisional Allowances</b> )		\$ .....
<b>Total (Lump Sum tendered including GST)</b>		<b>\$ .....</b>

The **Total (Lump Sum tendered including GST)** is to equal the Contract Price shown on the Tender Form. If there is any uncertainty in the tendered price due to a discrepancy, the Contract Price shown on the Tender Form will take precedence.

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

### 3 Schedule of Provisional Allowances

(SUBMIT WITH TENDER FORM)

#### Provisional Rate Amounts

Refer to drawings and Landscape specifications and for or each item listed below, insert the tendered rate under **Rate** and insert under **Amount**, the amount arrived at by multiplying the tendered rate by the quantity.

The quantities shown are for tender evaluation only. The rates tendered will form part of the Contract and will apply from 0% to 200% of the quantities shown. The actual quantities of work completed in accordance with the Contract will be used for payment. The Contractor is not entitled to payment for Provisional Rate Items unless the Contractor has given notice to the Principal before commencing the relevant work and been directed to proceed.

The correct extended amounts and total will be used to evaluate tenders.

All rates and amounts must include GST.

Item No.	Description	Quantity	Unit	Rate	Amount (Incl.GST)
1.	Tree Removal	10	unit	\$ .....	\$ .....
2.	Additional cost for excavating in Rock, measured from rock surface to finish level.	200	m <sup>3</sup>	\$ .....	\$ .....
3.	Additional costs of excavations for more than 300mm that are included in item 3.4 in Schedule of Lump Sum Prices.	400	m <sup>3</sup>	\$ .....	\$ .....
4.	Additional cost for disposing off site of any excess material.	50	m <sup>3</sup>	\$ .....	\$ .....
5.	Supply "General fill ",place and compact	50	m <sup>3</sup>	\$ .....	\$ .....
6.	Supply "Select fill" place and compact	50	m <sup>3</sup>	\$ .....	\$ .....
7.	Supply "Subsoil filter" place and compact	50	m <sup>3</sup>	\$ .....	\$ .....
8.	Drainage treatment at low point as per drawing 14530-LS-0303	1	unit	\$ .....	\$ .....
9.	Supply "Prospect Truss Bench" as specified in Landscape specifications and fixing to suppliers specifications.	2	unit	\$ .....	\$ .....
10.	Additional sections of Boardwalk galvanized steel frame and galvanized grating (Webforge A405-Pattern A) 2.15 m Wide.	60	m	\$ .....	\$ .....
11.	Piling for additional Boardwalk sections.	40	unit	\$ .....	\$ .....
12.	Remove any type of existing fences and dispose	30	m	\$ .....	\$ .....

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

*TENDER SCHEDULES*

Item No.	Description	Quantity	Unit	Rate	Amount (Incl.GST)
13.	Excavator (3 ton including delivery, operator and consumables)	60	hours	\$ .....	\$ .....
14.	Labour	60	hours	\$ .....	\$ .....
15.	Foreman	24	hours	\$ .....	\$ .....
16.	Survey Team	24	hours	\$ .....	\$ .....
<b>Total of Provisional Rate Items (incl. GST)</b>					<b>\$ .....</b>

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

## 4 Schedule of Design and Documentation Resources

(SUBMIT WITH TENDER FORM)

### Consultant Details

If the tenderer proposes to use consultants for its design development and documentation, insert the details listed below, to demonstrate that each consultant has the qualifications, competence and experience required to satisfactorily carry out the design required under the Contract. Refer to Contract Information - **Item 7**. Include a separate Schedule of Design and Documentation Resources for each consultant.

Name of consultant: .....

Telephone number: .....

Facsimile number: .....

email address: .....

Discipline(s): .....

.....

.....

### Consultant's Key Personnel

Name	Discipline	Qualifications, Competence, Experience
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

### Consultant's Relevant Current or Recently Completed Commissions

List the following details for each current or recently completed commission for similar work:

#### Commission Details

Project name: .....

Project value: \$ .....

Client: .....

Client's contact person's name: .....

Telephone number: .....

Actual or anticipated completion date: .....

Value of work constructed as a result of the commission: \$ .....

Signed for the Tenderer by: ..... Date:.....

Name (in block letters): ..... (Authorised Officer)

In the Office Bearer capacity of: .....

*TENDER SCHEDULES*

Internal Resources

If the tenderer proposes to use internal personnel for design development and documentation, insert the details listed below, for each of the the key personnel, to demonstrate that they have the qualifications, competence and experience required to satisfactorily carry out the required design. Include a separate Schedule of Design and Documentation Resources for each of the personnel.

Key Internal Personnel

List the following details for key personnel:

Name: .....  
Position: .....  
Discipline: .....  
Qualifications: .....  
Competence: .....  
Experience: .....  
Proposed function/ work: .....

Relevant Current/Recently Completed Commissions

Include the following details for each current or recently completed commission of similar nature and value:

Project name: .....  
Project value: .....  
Client: .....  
Actual or Anticipated Completion date: .....  
Functions: .....

Signed for the Tenderer by: ..... Date:.....  
Name (in block letters): ..... (Authorised Officer)  
In the Office Bearer capacity of: .....

## 5 Schedule of Quality Management Information

---

(SUBMIT WITH TENDER FORM)

Submit when requested, to demonstrate the capacity to plan and manage the quality of work, one of the following:

- evidence of current full certification of the tenderer's Quality Management System to AS/NZS ISO 9001:2000 or equivalent, by a certifying body registered with the Joint Accreditation System - Australia and New Zealand (JAS-ANZ); **or**
- evidence that the tenderer's Quality Management System complies with the NSW Government *Quality Management Systems Guidelines (QMS Guidelines)*; **or**
- a minimum of three (3) completed examples of Inspection and Test Plans that comply with the requirements of the *QMS Guidelines* and have been used on at least two recent contracts.

Signed for the Tenderer by: ..... Date:.....

Name (in block letters): ..... (Authorised Officer)

In the Office Bearer capacity of: .....

## 6 Schedule of WHS Management Information:

(SUBMIT WITH TENDER FORM)

Submit the documents and information specified below. Refer to Conditions of Tendering Clause– **Work Health and Safety Management**.

### WHS Management System

Submit

- a copy of a letter of certification, along with a completed copy of the checklist shown at Appendix A of the *NSW Government Work Health and Safety Management Systems and Auditing Guidelines 5<sup>th</sup> Edition (WHSMS Guidelines)* signed by an independent OHS Auditor certified as a Principal, Lead or Business Improvement OHS Auditor by a JAS-ANZ personnel certifier, such as RABQSA, certifying that the Tenderer’s WHS Management System complies with the *WHSMS Guidelines*; or
- a copy of a letter from a NSW Government Construction Agency evidencing that the Tenderer’s WHS Management System has been accredited as complying with the *NSW Government Occupational Health and Safety Management Systems Guidelines 4<sup>th</sup> Edition* dated not before 1 October 2010; or
- written evidence from the Office of the Federal Safety Commission evidencing current OFSC accreditation.

Alternatively, if the tenderer does not have an accredited corporate WHS Management System, the tenderer undertakes to submit to the Principal for accreditation, within two (2) calendar weeks after receiving a request from the Principal, a corporate WHS Management System that complies with the *OHSM Guidelines*.

### Evidence of Satisfactory WHS Management

Nominate at least three contracts/projects completed within the last two (2) years that demonstrate successful management of work health and safety by the tenderer:

Client	Name & location of contract <i>Eg. Sutherland Hospital Carpark; Dubbo Water Treatment Plant; Tamworth Coles Shopping Centre; 3 Storey Unit Block, Penrith.</i>	Contract Price/ Project Value	Start Date	Completion Date
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Submit the following additional information for each of the three contracts/projects nominated in the above list:

- a) a client referee report (which may be a NSW Government Agency Contractor Performance Report) commenting on the tenderer’s performance in relation to safety management, identifying the referee’s name, position, organisation, and contact details; **and a copy of:**
- b) a third party audit report or internal audit report; **or**
- c) a Site safety inspection report; **or**
- d) a safety management plan; **or**

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

TENDER SCHEDULES

- e) three (3) safe work method statements; **or**
- f) minutes of three (3) toolbox meetings.

Recent Prosecutions and Fines

Has the tenderer incurred a prosecution or fine for a breach of any Australian health and safety legislation during the past two (2) years?  Yes, or  No.

If ' Yes', list details of every prosecution and fine below:

Description of WHS prosecution or fine	Action taken by tenderer in response
.....	.....
.....	.....
.....	.....

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

## 7 Schedule of Environmental Management Information:

(SUBMIT WITH TENDER FORM)

Submit the documents and information specified below. Refer to Conditions of Tendering Clause - **Environmental Management**.

### Environmental Management System

Submit:

- a copy of an audit report, signed by an independent OHS Auditor certified as a Principal, Lead or Business Improvement Auditor by a JAS-ANZ personnel certifier, such as RABQSA, attesting that the Tenderer’s Environmental Management System:
  - complies with the documentation requirements of AS/NZS 14001:2004 Environmental management systems;
  - appropriately comprehends all current Environmental Legislation and other Environmental requirements; and
  - includes requirements for audit, by an Approved Assessor independent of the Contractor, of compliance, currency and effective implementation at intervals of not less than three years: or
- written evidence that the tenderer’s Environmental Management System is certified in accordance with JSA-ANZ requirements as complying with AS/NZS 14001:2004 *Environmental Management Systems*; or
- a copy of a letter from a NSW Government Construction Agency evidencing that the Tenderer’s corporate Environmental Management System has been accredited under the *EMS Guidelines*, dated not before 1 October 2010.

### Evidence of Satisfactory Environmental Management

Nominate at least three contracts/projects completed within the last two years that demonstrate successful environmental management by the tenderer:

Client	Name & location of contract <i>E.g. Sutherland Hospital Carpark; Dubbo Water Treatment Plant; Tamworth Coles Shopping Centre; 3 Storey Unit Block, Penrith.</i>	Contract Price/ Project Value	Start Date	Completion Date
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

### Implemented Environmental Management Plan

Submit a copy of an environmental management plan implemented by the tenderer for a contract/project, similar in type and value to this Contract that was completed within the last two (2) years.

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

TENDER SCHEDULES

Recent Environmental Prosecutions and Fines

Has the tenderer incurred a prosecution or fine under the Protection of the Environment Operations Act 1997 (POEO Act) or any other Australian environmental legislation during the last two (2) years? [ ] Yes, or [ ] No.

If 'Yes', list details of every prosecution and fine below:

Table with 2 columns: Description of environmental prosecution or fine, Action taken by tenderer in response. Includes dotted lines for text entry.

Environmental Management Objectives and Measures

Submit the additional documents and information specified below. Refer to Conditions of Tendering Clause – Environmental Management.

Submit details of:

- i) the environmental management objectives proposed for the work under the Contract;
ii) the key environmental management actions proposed for the work under the Contract; and
iii) the persons who will be responsible for managing the actions proposed.

Signed for the Tenderer by: ..... Date:.....
Name (in block letters): ..... (Authorised Officer)
In the Office Bearer capacity of: .....

## 8 Schedule of Financial Assessment Information

---

(SUBMIT WHEN REQUESTED)

Submit the documents and information listed below, in relation to the entity submitting the tender (the tenderer). Refer to Conditions of Tendering Clause - **Financial Assessment**.

1. Financial Statements for the last three years, including:
  - i) Balance Sheets;
  - ii) Detailed Profit and Loss Statement, including a Trading Statement;
  - iii) Statement of Cash Flows;
  - iv) Notes to and Forming Part of the Accounts;
  - v) An Accountant's Report; and
  - vi) Where existing, Auditor's Reports.

**The ABN/ACN on the financial statements must match the ABN/ACN of the tenderer. Consolidation accounts of a parent organisation or group to which the tenderer belongs are not acceptable.**
2. Where the tenderer's latest financial statement is more than 6 months old, the latest management report showing:
  - i) a Balance Sheet;
  - ii) a Detailed Profit and Loss Statement including a Trading Statement.
3. A letter from the tenderer's banker providing details of overdraft and guarantee facilities, including:
  - i) Bank, Branch, and Account Names;
  - ii) Current bank overdraft balance and available limit;
  - iii) Number and amount of bank guarantees outstanding and available limit; and
  - iv) Details of other bank funding facilities available to the tenderer, such as term loans, lines of credit, commercial bills and other debt instruments.
4. Where any financial statement supplied is not audited, copies of the tenderer's taxation returns may be requested.
5. A summarised breakdown of the ageing of trade debtors and trade creditors, i.e. total amount at 30, 60, 90 and 120+ days.
6. Names of the tenderer's subsidiaries and related entities.
7. A description of the tenderer's main operations including ANZSIC Codes (Australia and New Zealand Industry Classification Code).
8. A point form summary of the tenderer's corporate history.
9. Profiles of the tenderer's directors or principals, including position, qualifications and experience.
10. A list of the tenderer's current projects, including project name, client, project value, start date and percentage complete and a list of recently completed projects.
11. Names and contact numbers (phone/facsimile) of the tenderer's:
  - i) Major suppliers;
  - ii) Major subcontractors.

Signed for the Tenderer by: ..... Date:.....  
Name (in block letters): ..... (Authorised Officer)  
In the Office Bearer capacity of: .....

## 9 Schedule of Industrial Relations Information

---

(SUBMIT WHEN REQUESTED)

List the Federal and NSW awards to which the tenderer is bound:

### **Federal and NSW awards**

---

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

List the enterprise, workplace or other enforceable industrial relations agreements to which the tenderer is bound, and attach copies of those agreements to this Schedule.

### **Enterprise, workplace and other enforceable industrial relations agreements**

---

.....  
.....  
.....  
.....  
.....  
.....  
.....

### Undertaking to Provide information

The tenderer, if awarded the Contract, will, on request, provide appropriate information to verify compliance with these awards, enterprise or workplace agreements and all other legal obligations relating to employment.

Signed for the Tenderer by: ..... Date:.....  
Name (in block letters): ..... (Authorised Officer)  
In the Office Bearer capacity of: .....

## 10 Schedule of Weighted Non-Price Criteria Information

(SUBMIT WITH TENDER FORM)

List or reference all information submitted for use in the evaluation of the non-price criteria identified in Subclause - **Weighted Non-Price Evaluation** in Conditions of Tendering Clause – **Evaluation of Tenders**. Attach the relevant information.

<b>Weighted Non-Price Evaluation Criteria</b>	<b>Information provided to address the Criteria</b>
---	---

1. **Capacity, Capability and Experience to deliver the Services**

Experience on Similar Projects	Provide examples of current or previous contracts of similar scope and scale
Key Personnel	Proposed key project personnel (including Sub-contractors) – Name & Title, role in performing the Services, CV's detailing qualifications & recent relevant experience, expected timing & duration of involvement in the Services
Organisation chart	An organisation chart showing major interfaces for the key personnel.

2. **Construction Methodology and Understanding of site specific quality and WHS management**

Proposed construction methodology and Construction Program	Proposed construction methodology and an outline program showing key activities, their duration, start & finish dates, project milestones, project critical path
Quality Management Plan	Demonstrated understanding of the quality of construction objectives and requirements under the contract.
Work, Health and Safety Management	Demonstrated understanding of the on-site WHS objectives and requirements under the contract

3. **Understanding of Site Specific heritage and Environmental Values**

Site Heritage significance, sensitivities and values	Demonstrated understanding of the heritage significance, site sensitivities and overall site values
Project Environmental Management Plan	Demonstrated understanding of the site environmental management objectives and requirements under the contract

Signed for the Tenderer by: ..... Date:.....  
 Name (in block letters): ..... (Authorised Officer)  
 In the Office Bearer capacity of: .....

# 11 Schedule of Compliance with NSW Government's Implementation Guidelines to the NSW Government Code of Practice for Procurement

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(SUBMIT WITH TENDER FORM)

Refer to Conditions of Tendering clause – NSW Government Code of Practice for Procurement and Implementation Guidelines.

Primary acknowledgments and undertakings

1. By completing this Compliance Schedule and submitting an expression of interest or tender response, the tenderer:
  - (a) acknowledges that the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) apply to the project the subject of this tender;
  - (b) undertakes that it, and its related entities, comply with the NSW Code and NSW Guidelines on:
    - (i) the project the subject of this tender;
    - (ii) privately and publicly funded building and construction work to which the NSW Guidelines apply, on and from the date of submitting this expression of interest or response (if not already required to comply on such privately and publicly funded projects);
  - (c) confirms that it and its related entities have complied with:
    - (i) the NSW Code and NSW Guidelines on all its other projects to which the NSW Guidelines apply or have applied; and
    - (ii) all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments;
  - (d) confirm that, where it and its related entities are, or have been, required to comply with the National Code of Practice for the Construction Industry (National Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry as amended from time to time including the Building Code 2013 (National Guidelines), they have done so; and
  - (e) confirms that neither it, nor any of its related entities, are subject to a sanction or other circumstance that would preclude the tenderer from submitting an expression of interest or tender response, or, if successful, being awarded a contract.

Sanctions for non-compliance

2. The NSW Treasury, through the Construction Compliance Unit (CCU), has responsibility for enforcing, and ensuring compliance with, the NSW Code and NSW Guidelines.
3. The tenderer acknowledges that where it, or a related entity, fails to comply with the NSW Code or NSW Guidelines, a sanction may be imposed on the tenderer or its related entity or both. The sanctions that can be imposed include, but are not limited to, one or more of the following:
  - (a) a formal warning that a further breach will lead to severe sanctions;
  - (b) referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action;
  - (c) reduction in tendering opportunities at either agency or government-wide level, for example, by exclusion of the breaching party from tendering for government work above a certain value, or for a specified period;

Signed for the Tenderer by: ..... Date:.....

Name (in block letters): ..... (Authorised Officer)

In the Office Bearer capacity of: .....

*TENDER SCHEDULES*

- (d) reporting the breach to an appropriate statutory body; and
- (e) publicising the breach and identity of the party.

Disclosure of information

- 4. The tenderer agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the tenderer's, and the tenderer's related entities', compliance with the NSW Code, NSW Guidelines (and Victorian counterparts), National Code and National Guidelines, including disclosure of details of past conduct relating to the NSW Code and NSW Guidelines and whether or not sanctions have been imposed on a tenderer or its related entities.
- 5. The tenderer confirms that it has obtained, or will obtain, the consent of each subcontractor or consultant it proposes to use on the project, or that it will use if successful in the tender, to the disclosure of information concerning the subcontractor's and consultant's compliance with the NSW Code, NSW Guidelines (and Victorian counterparts), National Code and National Guidelines including disclosure of details of past conduct relating to the NSW Code and NSW Guidelines and whether or not sanctions have been imposed on the subcontractor or consultant or its related entities.
- 6. The consent (or reaffirmation of consent) by the tenderer, its related entities and any proposed or subsequent subcontractors, is given to the State of New South Wales, its agencies, Ministers and the CCU (and its authorised personnel) for purposes including:
  - (a) the exercise of their statutory or portfolio responsibilities;
  - (b) investigating and checking, claims and assertions made by the tenderer in any documents provided as part of its expression of interest or tender response (including, but not limited to, any Workplace Relations Management Plans or Health and Safety Management Plans);
  - (c) monitoring, investigating and enforcing the NSW Code and NSW Guidelines; and
  - (d) ensuring, facilitating and promoting compliance with the NSW Code and NSW Guidelines.
- 7. The tenderer acknowledges that this consent is not limited to this tender, or this project, as parties are expected to comply with the NSW Code and NSW Guidelines on future projects to which they apply.

Positive obligations

- 8. Without limiting the obligations and requirements in the NSW Guidelines, the tenderer acknowledges and undertakes to comply with its positive obligations under the NSW Code and NSW Guidelines, including to:
  - (a) comply with any Workplace Relations Management Plan and Health and Safety Management Plan;
  - (b) allow NSW Government authorised personnel to:
    - (i) access the project site and other premises;
    - (i) monitor and investigate compliance with the NSW Code and NSW Guidelines;
    - (ii) inspect any work, material, machinery, appliance, article, or facility;
    - (iii) inspect and copy any record relevant to the project; and
    - (iv) interview any person;as is necessary to demonstrate compliance with the NSW Code and NSW Guidelines;
- (c) notify the CCU (or nominee) and the Client Agency of any alleged breaches of the NSW Code and NSW Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;

Signed for the Tenderer by: ..... Date:.....  
Name (in block letters): ..... (Authorised Officer)  
In the Office Bearer capacity of: .....

*TENDER SCHEDULES*

- (d) (for principal contractors only) report any grievance or dispute relating to workplace relations or OHS&R matters that may impact on project costs, related contracts or timelines to the CCU (or nominee) and the Client Agency within 24 hours of becoming aware of the grievance or dispute and to provide regular updates on the grievance or dispute;
  - (e) report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the CCU (or nominee) and the Client Agency within 24 hours and provide regular updates about the steps being taken to resolve the threatened or actual industrial action;
  - (f) take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of the project or other related contracts on time and within budget; and
  - (g) take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the NSW Guidelines, namely supporting outcomes of compliance with the law, productivity in delivering the project on time and within budget, maintaining a high standard of safety and protecting freedom of association.
9. Without limiting the obligations and requirements of the NSW Code and NSW Guidelines, the tenderer acknowledges its obligation to ensure, through contract, that subcontractors and consultants similarly do, or allow for, each of these applicable positive obligations.

Privately funded work

10. The tenderer acknowledges and agrees that in respect of its privately funded building and construction work (to which the NSW Guidelines apply) it, and its related entities, will:
- (a) comply with the NSW Code and NSW Guidelines;
  - (b) maintain adequate records of compliance with the NSW Code and NSW Guidelines (including by contractors);
  - (c) allow NSW Government authorised personnel to:
    - (i) access the sites and premises;
    - (ii) monitor and investigate compliance with the NSW Code and NSW Guidelines;
    - (iii) inspect any work, material, machinery, appliance, article, or facility;
    - (iv) inspect and copy any record relevant to the project; and
    - (v) interview any person;
- as is necessary to demonstrate compliance with the NSW Code and NSW Guidelines; and
- (d) ensure contractors and consultants similarly do, or allow, for each of these obligations.
  - (e) Declaration by tenderer and authorised representative
11. By signing this declaration on behalf of the tenderer, the authorised representative declares that they have full authority to execute it and have obtained any necessary consents and approvals to do so.

**END OF SECTION –TENDER SCHEDULES**

Signed for the Tenderer by: ..... Date:.....  
Name (in block letters): ..... (Authorised Officer)  
In the Office Bearer capacity of: .....

# 1. MW21 General Conditions of Contract

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## MW21 General Conditions of Contract

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### **THERE ARE 35 PAGES IN THIS SECTION**

- 11.1 Definitions
- 1.1 Authorised Person  
The person stated in Contract Information - **Item 1** who is appointed by the Principal to act with its full authority in all matters relating to the Contract.
- 1.2 Business Day  
Any day other than a Saturday, Sunday, Public Holiday in NSW or 27, 28, 29, 30 or 31 December.
- 1.3 Completion  
The state of the work under the Contract or any Milestone when:  
(a) it is capable of use for the purpose stated in the Contract Information;  
(b) it has passed all required tests and is free from any known Defects;  
(c) the Contractor has provided all the required documents; and  
(d) the Contractor has made good the Site and surroundings.
- 1.4 Contract  
The agreement between the parties for the carrying out of the work under the Contract, as set out in the Contract Documents and accepted in writing by the Principal.
- 1.5 Contractor  
The entity that is to carry out the work under the Contract.
- 1.6 Contract Documents  
(a) the documents prepared by the Principal for the Contract and provided to the Contractor;  
(b) the tender submitted by the Contractor as accepted by the Principal; and  
(c) any variations to the documents in (a) and (b) agreed to by the parties in writing or made under the Contract.
- 1.7 Contract Price  
(a) where the Principal accepted only a lump sum, the lump sum; or  
(b) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item in the Schedule of Rates, plus any lump sums in the Schedule of Rates.  
as adjusted in accordance with the Contract.
- 1.8 Day  
A calendar day.
- 1.9 Defect  
Any aspect of the work under the Contract that does not conform with the Contract.
- 1.10 Direct Costs  
Costs incurred by the Contractor excluding costs of supervision, site establishment, general tools, administration, overheads, fees, delay, disruption and profit.
- 1.11 Milestone  
A part of the work under the Contract that is specified as a Milestone in **Contract Information - Item 3**.

- 1.12 Parties  
The Principal and the Contractor.
- 1.13 Post Completion Period(s)  
The period(s) stated in Contract Information - **Item 4**.
- 1.14 Principal  
The entity stated in Contract Information - **Item 5**.
- 1.15 Provisional Allowance  
An amount included in the Contract Price for work for which payment will be made as a Provisional Sum or a Provisional Rate Amount.
- 1.16 Provisional Sum  
An amount included in the Contract Price, which is identified as a provision for the work specified in the Contract against that Provisional Sum.
- 1.17 Provisional Rate Amount  
An amount included in the Contract Price, based on a rate tendered for a provisional item of work.
- 1.18 Senior Executive  
The person stated in Contract Information - **Item 6**.
- 1.19 Site  
The lands and other places made available to the Contractor by the Principal for the purpose of the Contract.
- 1.20 Site Conditions  
The physical conditions on, about or below the Site, excluding conditions resulting from weather.
- 1.21 Subcontractor's Statement  
The Subcontractor's Statement in the form available from the WorkCover website at: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)  
To access, enter the form title in the Search bar on the Home page.
- 1.22 Variation  
Any change to the character, form, quality and extent of the work under the Contract instructed or accepted in writing by the Principal. A Variation shall not invalidate the Contract.
- 1.23 Works  
The works to be designed and constructed under the Contract.
- 1A NSW Code of Practice for Procurement and Implementation Guidelines  
Terminology
- .1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- Primary Obligation
- .2 The parties must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (NSW Code) and the NSW Guidelines.
- .3 The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

- .4 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause (under the heading NSW Code and Implementation Guidelines), including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- .5 The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

#### Access and information

- .6 The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.
- .7 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
  - .2 inspect any work, material, machinery, appliance, article or facility;
  - .3 access information and documents;
  - .4 inspect and copy any record relevant to the project;
  - .5 have access to personnel; and
  - .6 interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.

- .8 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### Sanctions

- .9 The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- .10 If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- .11 Where a sanction is imposed:
  - .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
  - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - .1 record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
    - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

#### Compliance

- .12 The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- .13 Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

- .14 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- .1 the circumstances of the proposed change;
  - .2 the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - .3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan);and
- the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.

## 11.2 The Contract

**2.1** The Contract Documents are mutually explanatory and anything contained in one document but not in another shall be treated as if contained in all.

Headings, arrows and guidance notes are for convenience only and do not affect interpretation.

**2.2** If the Contractor finds any error, discrepancy or ambiguity in the Contract Documents, then the Contractor is to inform the Principal before commencing the affected work and follow any instructions given by the Principal.

**2.3** The Principal may give an instruction in relation to the Contract. The Contractor is to comply with the instruction within the time stated in the instruction or, if no time is stated, within a reasonable time.

**2.4** The Contractor must not:

- (a) subcontract all the work under the Contract; or
- (b) enter into a single subcontract for the majority of the work under the Contract without first obtaining the Principal's written consent.

**2.5** The Contractor is solely responsible for all subcontractors and for their acts and omissions.

**2.6** During claim and dispute resolution procedures undertaken under **Clauses 15 and 16**, the parties must continue to perform their obligations under the Contract.

**2.7** This Contract is governed by the laws of New South Wales.

11.3 Design and Construction

**3.1** The Contractor is to complete the Principal's design to the extent stated in Contract Information - **Item 7**.

**3.2** The Contractor is not to depart from the Principal's design unless instructed by the Principal. The Principal retains responsibility for the design carried out by the Principal.

**3.3** The Contractor has sole responsibility for the Contractor's design. The Principal relies on the Contractor's care, knowledge and skill in carrying out this responsibility.

**3.4** The completed design is to conform with the Contract and be fit for the purpose of the Works stated in Contract Information - **Item 2**.

**3.5** The Contractor is to progressively submit the completed design, comprising drawings, specifications, calculations and any statutory certificates required, to the Principal in accordance with Contract Information - **Item 8**.

**3.6** The Principal is not bound to check the completed design for errors, omissions or conformance with the Contract. No comment made by the Principal relieves the Contractor of the Contractor's obligations and liabilities under the Contract.

The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the completed design.



**3.7** All intellectual property and moral rights in any design created specifically for the Contract shall vest in the Principal upon their creation.

The Contractor grants to the Principal an unconditional and irrevocable licence to use any other design provided by or for the Contractor, to the extent necessary for the Works, including any subsequent repairs, maintenance or servicing (including the supply of replacement parts) or additions or alterations to the Works.

**3.8** The Contractor is to construct the Works in accordance with the completed design, and make good the Site and surroundings.

**3.9** The Contractor is to provide minor items not included in the design that are needed to satisfactorily complete the Works.

**3.10** The Contractor is to carry out work that is the subject of a Provisional Allowance only as instructed by the Principal and under the terms specified in the instruction.

If the Principal requests the Contractor to submit a price for work that is the subject of a Provisional Sum, then the Contractor is to comply within 14 days after the request.

11.4 Care of People, Property and the Environment

**4.1** From the time access to any part of the Site is given to the Contractor until the date of Completion of the Works, the Contractor is responsible for the care of, and is to make good, at the Contractor's expense, any loss or damage which occurs to:

- (a) the Works;
- (b) construction plant; and
- (c) things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract.

In carrying out the work under the Contract, the Contractor is to minimise inconvenience to others.

The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.

**4.5** Nothing in **Clause 4** relieves the Principal of liability for acts and omissions of the Principal.

**4.6** If:

- (a) action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when instructed by the Principal; or

- (b) urgent action is required, then the Principal may take the action, without relieving the Contractor of its obligations or liabilities.

The Principal's costs in relation to any such action, as certified by the Principal, are a debt due and payable by the Contractor to the Principal.

**4.2** The Contractor indemnifies the Principal against any:

- (a) legal liability for injury, death or harm to the environment;
- (b) breach of intellectual property rights in relation to material provided by or for the Contractor; and
- (c) loss of, or damage to, property of the Principal, or others,

arising out of the carrying out of the work under the Contract.

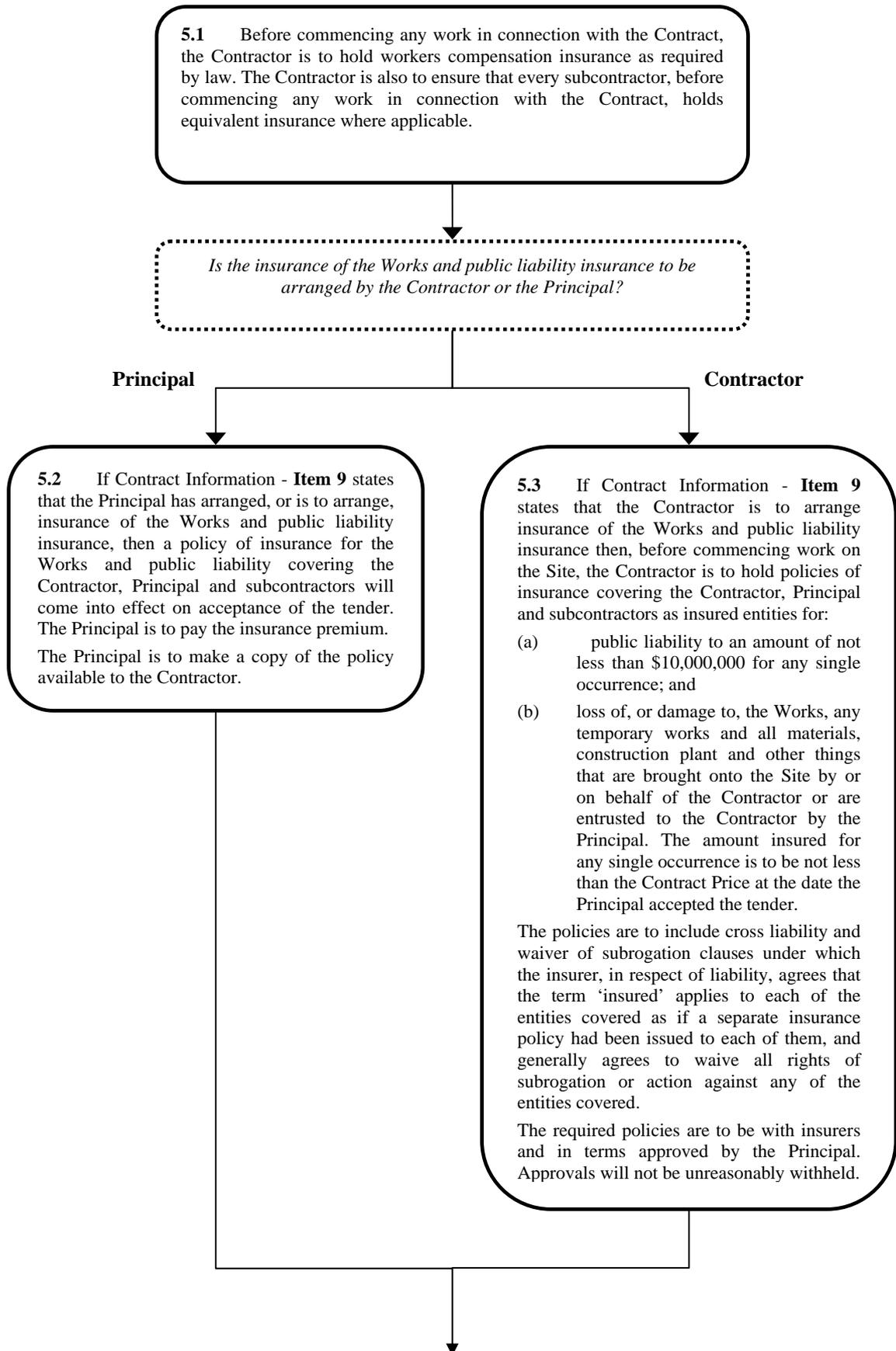
The Contractor's liability to indemnify the Principal is reduced to the extent that an act or omission of the Principal has contributed to the injury, loss or damage.

Part 4 of the *Civil Liability Act 2002* (NSW) does not apply to this Contract.

**4.3** The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the work under the Contract.

**4.4** The Principal may instruct the Contractor to remove a person from the Site and surroundings for failing to meet reasonable standards of conduct.

11.5 Insurance



5. Insurance (Continued)



**5.4** The Contractor or relevant subcontractor is to hold the following additional insurance policies:

- (a) marine liability insurance, if the work under the Contract involves the use of water-borne craft in excess of 8 metres in length; and
- (b) professional indemnity insurance, if stated in Contract Information - **Item 10**.

The policies are to be in place before commencing the relevant work.

The policy under (a) is to be:

- (i) in the name of the Contractor and cover the Contractor, Principal and subcontractors, as insured entities, for their respective rights, interests and liabilities to third parties; and
- (ii) for an amount not less than \$5,000,000 for any single occurrence and include cross-liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The policy under (b) is to cover the Contractor for liability to the Principal for an amount not less than \$500,000 for loss (whether economic loss or any other loss) for any single occurrence arising from errors or omissions in the design of the Works carried out by or on behalf of the Contractor. The insurance is to be held for a period of at least one year after the work under the Contract reaches Completion.

**5.5** For any insurance the Contractor is required to hold under the Contract, the Contractor is:

- (a) responsible for the payment of premiums;
- (b) to maintain all the policies, other than professional indemnity insurance, until the work under the Contract reaches Completion or the end of the Post Completion Period, whichever is later; and
- (c) to provide evidence of the currency of the policies and copies of the Works, public liability and marine liability insurance policies to the Principal before commencing the relevant work.

**5.6** If the Contractor fails, within 7 days after a written request from the Principal, to provide satisfactory evidence of having paid insurance premiums and compliance with other insurance obligations under the Contract, then the Principal may effect or maintain the insurance and pay any premiums. The Contractor is to pay the Principal the amount of any premiums or deductibles paid by the Principal plus, in each and every case, \$500 to cover the Principal's costs. These amounts, once notified, are a debt due and payable by the Contractor to the Principal.

**5.7** The Contractor is responsible for making and managing any claims and meeting the costs of any deductibles.

## 11.6 Site Access

**6.1** The Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start the work under the Contract, by the time(s) stated in Contract Information - **Item 11**.

**6.2** The Principal is to act reasonably for the purposes of **Clause 6.1** but is not required to give the Contractor sole or uninterrupted possession of, or access, to the Site.

**6.3** The Contractor is to start work on the Site as soon as practicable after being given access to sufficient of the Site, but not before satisfying all necessary requirements.

**6.4** The Contractor is to give the Principal, and any third party authorised by the Principal, reasonable access to the Site for any purpose.

## 11.7 Site Conditions

**7.1** If the Contractor encounters Site Conditions that differ materially and adversely from what should reasonably have been expected at close of tenders, then the Contractor is to notify the Principal forthwith in writing and in any event within 7 days after encountering them.

The notification is to include details of the materially adverse Site Conditions and the additional time and cost the Contractor estimates will be required to deal with them.

**7.2** The Contractor is solely responsible for dealing with Site Conditions and is to minimise any additional time and cost.

**7.3** From the time the Principal receives notification complying with **Clause 7.1**, the Contractor is entitled to:

- (a) payment of the Contractor's reasonable additional Direct Costs plus a margin of 15%; and
- (b) an extension of time for delays in reaching Completion,

where the additional cost or delay are necessarily incurred as a result of the materially adverse Site Conditions.

This entitlement is reduced to the extent that the Contractor has not minimised additional time and costs.

The Contractor has no entitlement to additional payment or an extension of time in relation to the period prior to the date of receipt of notification under **Clause 7.1**.

The Contractor has no other entitlements due to materially adverse site conditions except under Clause 7.5.

**7.4** The Contractor is to claim any additional Direct Costs and extensions of time to which it is entitled under **Clause 7.3** within 28 days after completing the relevant work.

The claim is to be made in accordance with **Clause 15.2**.

**7.5** If a Variation is instructed as a result of materially adverse Site Conditions, the Contractor's entitlements under **Clause 7.3** cease from the time of the instruction and **Clause 9** applies to the Variation.

## 11.8 Materials and Work

**8.1** The Contractor is to:

- (a) supply materials which are new (unless otherwise specified), free from defects and fit for purpose; and
- (b) use standards of workmanship (including design) and work methods, which conform with the Contract, the Building Code of Australia, relevant Australian Standards and codes of practice, and the lawful requirements of any authority.

**8.2** When instructed by the Principal, the Contractor is to:

- (a) uncover and re-cover work; and/or
- (b) carry out additional testing.

**8.3** The Contractor is not entitled to additional payment or an extension of time in respect of an instruction under **Clause 8.2** unless the work uncovered or tested conforms with the Contract, in which case the instruction will be dealt with as an instruction under **Clause 9**.

**8.4** The Contractor is to make good any Defect when it becomes apparent.

The Principal may, in its absolute discretion, propose to accept work under the Contract with any specified Defect not made good, on specified terms.

If the Contractor does not accept the Principal's proposal, then the Contractor is to make good the Defect.

**8.5** Nothing in **Clause 8** relieves the Contractor of any obligations or liabilities under the Contract.

11.9 Variations

**9.1** The Contractor is not to change the Works without an instruction from the Principal or written acceptance by the Principal of a proposal from the Contractor.

**9.2** The Contractor is to take all reasonable steps to carry out any Variation concurrently with other work and to otherwise minimise any delays.

**9.3** If the Contractor proposes a Variation for the Contractor's convenience the Principal may, in its absolute discretion, accept the proposal on specified terms.

**9.4** If, in respect of a possible Variation, the Principal requests the Contractor to submit a proposal, including the effect on the Contract Price, the time required to reach Completion and any other implications for the Contract, the Contractor is to comply with the request within 14 days. If the Variation will involve additional work, the proposal should include a margin of no more than 15% on Direct Costs. If the Variation will involve less work, the proposal should include a margin of no less than 5% on the reduction in Direct Costs.

Does the Principal accept the Contractor's proposal?

Yes

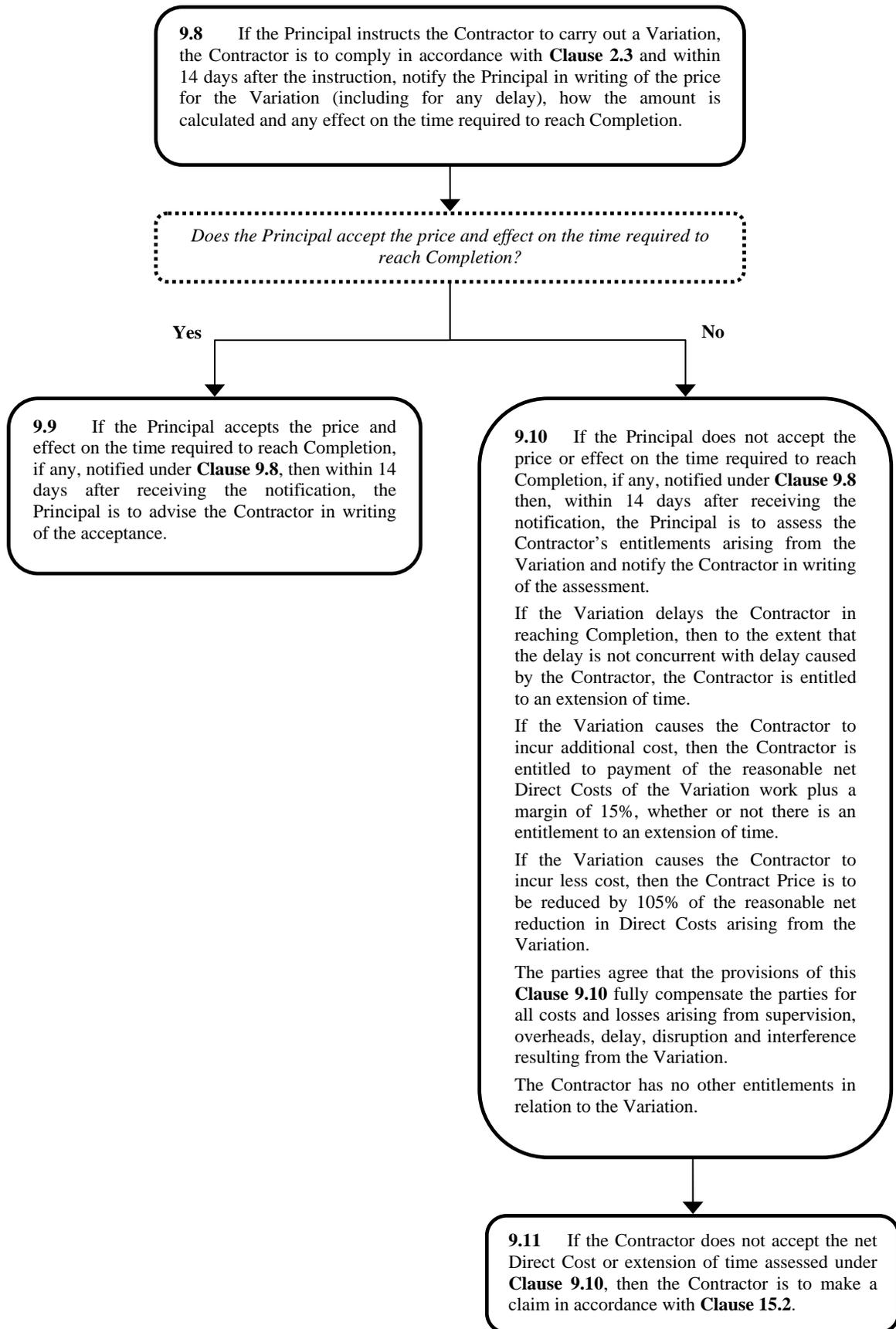
No

**9.5** If the Principal accepts a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is accepted as a Variation.

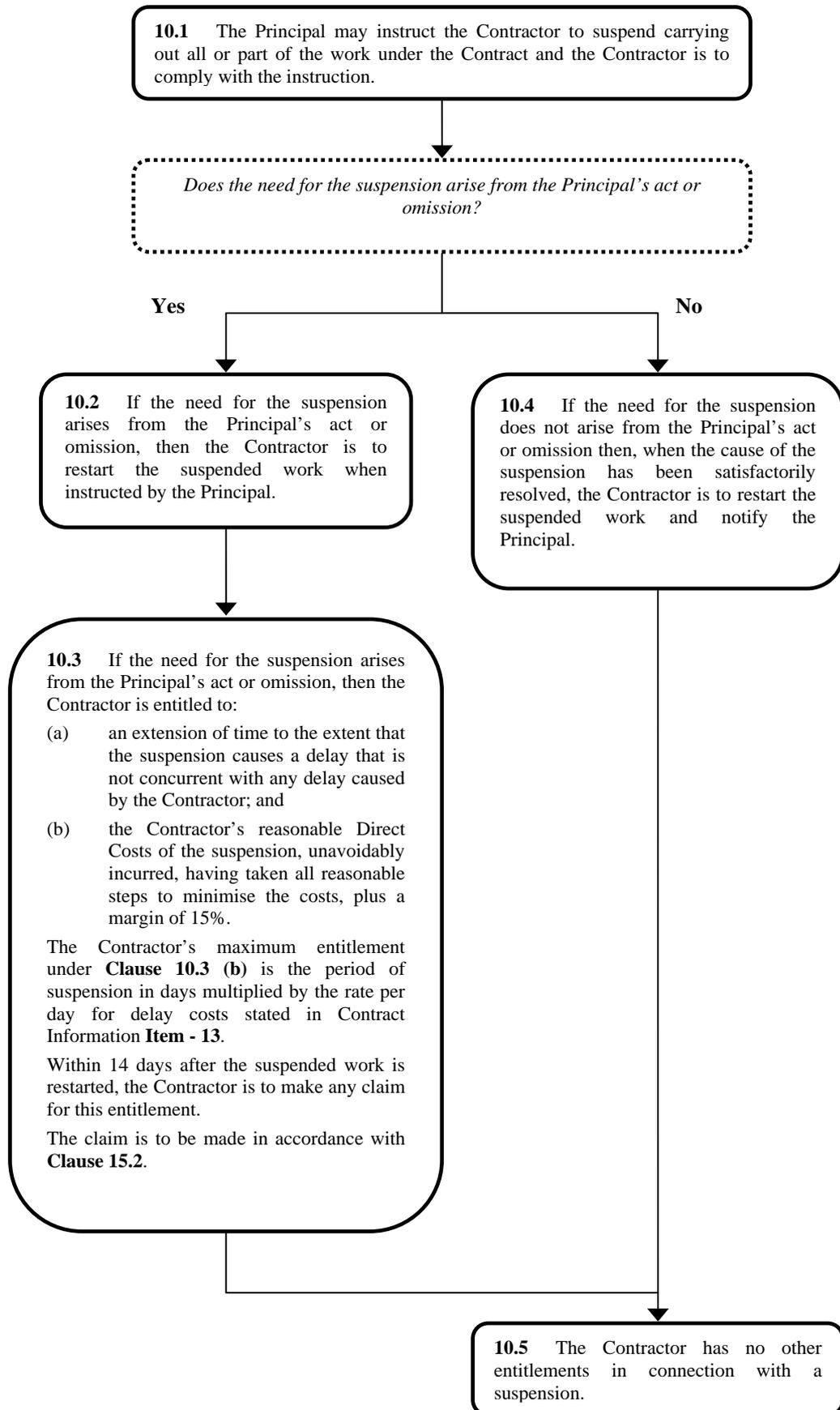
**9.6** If the Principal does not accept a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is not accepted.

**9.7** Nothing in **Clause 9.4** or **Clause 9.6** prevents the Principal from instructing a Variation under **Clause 9.8**.

9. Variations (Continued)



11.10 Suspension



11.11 Completion

**11.1** The Contractor is to bring the work under the Contract and any Milestones to Completion within the time(s) stated in Contract Information - **Item 12**, as extended under the Contract.

**11.2** The Contractor is to notify the Principal when, in the Contractor's opinion, the work under the Contract or any Milestone has reached Completion. When the Contract includes Milestones, the work under the Contract will have reached Completion when all Milestones have reached Completion.



**11.3** Upon receipt of notification under **Clause 11.2**, the Principal is to:

- (a) determine if the work under the Contract or Milestone has reached Completion and, if so, the date Completion was reached; and
- (b) promptly give the Contractor written notice of the determination.

**11.4** Before Completion, the Principal may use or occupy any part of the Works which is sufficiently complete, and then:

- (a) the Contractor's responsibilities are not affected, except to the extent that the Principal causes the Contractor's work to be hindered; and
- (b) the Principal becomes responsible for any additional insurance required.

The Principal is to give the Contractor not less than 7 days notice in writing that the Principal (or a third party authorised by the Principal) will be using or occupying a part of the Works and is to specify the part(s) to be used or occupied.

The Contractor is to provide to the Principal, no more than 14 days after receiving the Principal's notice, all documents and other things relevant to the part(s) of the Works specified in the notice. The Contractor is to provide full assistance and cooperation to the Principal in the use and occupation of the parts specified in the notice.

**11.5** The Principal may, in its absolute discretion, notify the Contractor that the work under the Contract or any Milestone has reached Completion.

11.12 Delay to Completion

**12.1** If the Contractor anticipates being delayed in reaching Completion, the Contractor is to promptly notify the Principal.

**12.2** If the Contractor is delayed in reaching Completion, the Contractor is to immediately notify the Principal and, within 7 days after the delay starts, advise the Principal in writing of the cause, relevant facts and actual or expected delay.

**12.3** If a delay in reaching Completion is not concurrent with delay caused by the Contractor, and is caused by:

- (a) an instruction given by the Principal, except under **Clauses 8, 9 or 10**;
- (b) a breach of the Contract by the Principal; or
- (c) any event beyond the control of the Contractor to the extent the Contractor has not contributed to the delay,

then the Contractor is entitled to an extension of the time for Completion, under this **Clause 12.3**, to the extent that the instruction, breach or event caused delay.

The Contractor may also have an entitlement to an extension of the time for Completion under **Clauses 8, 9 or 10**.

If an entitlement to an extension of the time for Completion arises under **Clause 12.3 (a)** or **(b)** and the Contractor is delayed in reaching Completion of the work under the Contract then the Contractor is entitled to delay costs at the rate per day stated in Contract Information - **Item 13**.

The Contractor has no entitlement to costs arising from delays due to causes that are beyond the control of the Principal.

The Contractor has no other entitlement for costs in relation to delays.

**12.4** Within 14 days after a delay ends, the Contractor is to make a claim in accordance with **Clause 15.2**.

The Principal is to assess the Contractor's entitlements and notify the Contractor in writing of the assessment.

If the Principal does not notify the Contractor of the assessed entitlements within 28 days after the claim is received, then the assessed entitlements will be nil.

**12.5** If the Contractor does not accept the assessed entitlements, the Contractor is to proceed in accordance with **Clause 15.3**.

**12.6** If the Contractor does not complete a Milestone or the work under the Contract in accordance with **Clause 11.1**, then:

- (a) if a rate is stated in Contract Information - **Item 14**, the Contractor is to pay to the Principal liquidated damages at that rate from the date immediately after the date for Completion to, and including, the date Completion is reached; or
- (b) if no rate is stated in Contract Information - **Item 14**, then common law damages will apply.

The damages, once notified, are a debt due and payable by the Contractor to the Principal.

**12.7** The Principal may for any reason and at any time extend any time for Completion by written notice.

11.13 Payment and Retention

**13.1** The Contractor is to give a written payment claim to the Principal at the times specified in Contract Information - **Item 15**. The claim is to identify the work carried out, the amount claimed and how the amount is calculated.

The amount the Contractor is entitled to claim is the sum of:

- (a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the relevant quantities of work carried out;
- (b) for work for which the Principal accepted a lump sum, the percentage of the lump sum that reflects the value of the work carried out;
- (c) for completed work for which the Contract Price includes a Provisional Allowance, the amount calculated in accordance with **Clause 13.7**; and
- (d) for any extra entitlement claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under **Clause 16**, the percentage of that amount which reflects the value of the entitlement,

at the date of the payment claim, less amounts previously paid, amounts payable by the Contractor to the Principal and any amounts the Principal is entitled to deduct, including retentions, set-offs and liquidated damages.

With each payment claim, the Contractor is to give to the Principal:

- (i) the conformance records and other information required under the Contract; and
- (ii) a completed and true Combined Subcontractor's Statement and Supporting Statement in the form of the Schedule to these General Conditions; executed on the date of the payment claim.

**13.2** Within 10 Business Days after receipt of the Contractor's payment claim, the Principal is to give to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. If the payment is to be less than the amount claimed, the payment schedule is to state the reasons why it is less.

**13.3** Payment by the Principal of the scheduled amount shown in the payment schedule is to be made within 15 Business Days after receipt of the Contractor's payment claim;

In accordance with the relevant legislation identified in the Combined Subcontractor's Statement and Supporting Statement, the Principal may withhold any payment to the Contractor until this Statement is provided

**13.4** Unless otherwise stated, all payments by the Principal to the Contractor are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Contractor. No payment is due to the Contractor until sufficient details of the nominated account are notified in writing to the Principal. The Contractor is to give the Principal a minimum of 7 days written notice of any changes to the nominated account. The Principal is otherwise not responsible for any payments made into a previously nominated account.

**13.5** Payment is not evidence of the value of work or that the work is satisfactory or an admission of liability, but is payment on account only.

13. Payment and Retention (Continued)

**13.6** The Principal is entitled to withhold, deduct or set-off from any payment due to the Contractor, under or arising out of the Contract or any other contract between the parties, a sum equivalent to any debt due from the Contractor to the Principal.

**13.7** If the Principal instructs the Contractor to carry out work that is the subject of a Provisional Allowance, then the Contract Price is to be adjusted as follows:

- (a) the amount of the Provisional Allowance is to be deducted from the Contract Price; and
- (b) where the Provisional Allowance is a Provisional Sum, the reasonable Direct Costs to the Contractor of work carried out in relation to the Provisional Sum plus 10%, is to be added to the Contract Price; or
- (c) where the Provisional Allowance is a Provisional Rate Amount, the amount calculated by applying the tendered rate to the measured quantity of work carried out, up to the specified limit, is to be added to the Contract Price.

If the Principal does not instruct the Contractor to carry out work which is subject to any Provisional Allowance, then the Provisional Allowance is to be deducted from the Contract Price.

**13.8** The Principal is to retain 4% of the Contract Price when the amount the Contractor is entitled to be paid exceeds 50% of the Contract Price.

The Contractor may, instead of the retention, provide an undertaking in the amount of the retention in the form detailed in Schedule 1 – **Unconditional Undertaking**.

All undertakings are to be provided by a bank, building society, credit union or insurance company acceptable to the Principal.

The Principal may make a demand against an undertaking in payment of any debt due from the Contractor to the Principal.

**13.9** Within 60 Business Days after:

- (a) the work under the Contract reaches Completion;
- (b) the rectification or resolution of all Defects identified prior to the end of the final Post Completion Period (if any); or
- (c) the resolution of all claims made under **Clause 15**,

whichever is the later, the Principal is to issue a final payment schedule accounting for the payment of any retention held under **Clause 13.8** and any amounts the Principal demands from the Contractor, and stating the amount payable by one party to the other.

If payment is due to the Contractor then, within the later of 20 Business Days after the date of issue of the final payment schedule or 5 Business Days after receiving the original of a current Subcontractor's Statement, the Principal is to pay the Contractor any money due in accordance with the final payment schedule and release the balance of any undertakings.

If payment is due to the Principal from the Contractor then the payment is a debt due and payable by the Contractor to the Principal. Within 20 Business Days after the date of issue of the final payment schedule, the Contractor is to pay the Principal any money due in accordance with the final payment schedule. The Principal is to release the balance of any undertakings within 5 Business Days after receiving payment from the Contractor.

If no payment is due from either party to the other then, within 20 Business Days after the date of issue of the final payment schedule, the Principal is to release the balance of any undertakings.

11.14 After Completion

**14.1** At any time after Completion is reached, the Principal may instruct the Contractor to make good a Defect within a specified time and at a time convenient to the Principal.  
All costs associated with making good a Defect are payable by the Contractor.



**14.2** If the Contractor does not make good the Defect within the time specified, then the Principal may have the Defect made good by others. The Contractor remains responsible for the work under the Contract.



**14.3** The Principal is to assess the reasonable cost of having the Defect made good by others and the assessed cost, once notified, is a debt due and payable by the Contractor to the Principal.

11.15 Claims

**15.1** Any claim, other than a claim made under **Clause 13**, is to be made in accordance with this **Clause 15**.

**15.2** A claim by the Contractor on the Principal is to be in writing and contain sufficient information for the Principal to assess the claim, including:

- (a) the legal and factual basis of the claim;
- (b) how the quantum of the claim is calculated; and
- (c) evidence supporting the claim, including applicable subcontractor documentation.

**15.3** Within 14 days after receiving a claim that meets the requirements of **Clause 15.2**, the Authorised Person is to assess the Contractor's entitlement and notify the Contractor.

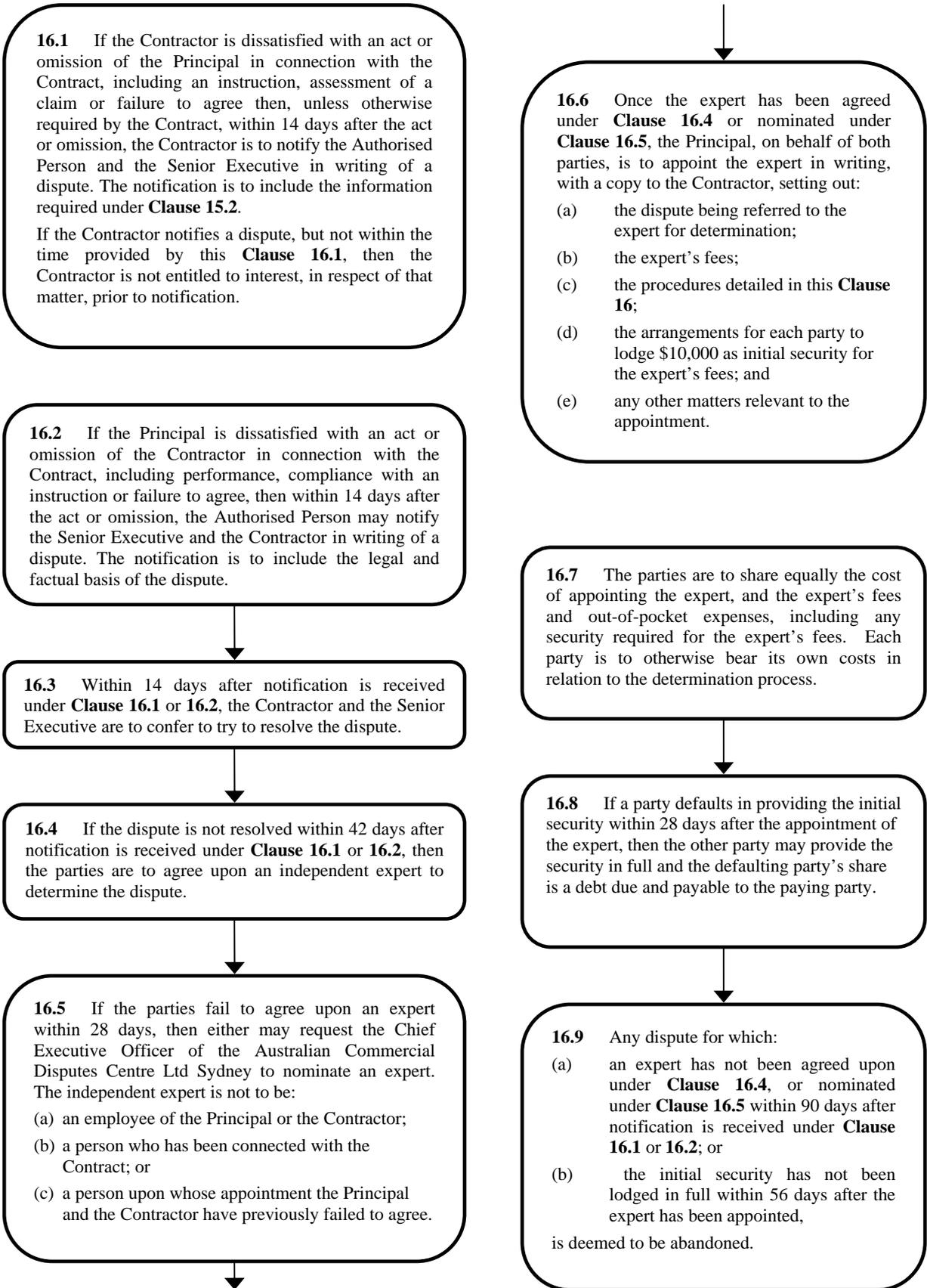
If the Contractor does not accept the Authorised Person's assessment, then the Contractor and Authorised Person are to confer to try to reach agreement.

If agreement is not reached within 28 days after the Contractor receives the Authorised Person's assessment, **Clause 16** will apply.

**15.4** Unless otherwise provided for in the Contract, any claim by the Contractor on the Principal, in relation to events that occurred before the work under the Contract reached Completion, is to be received by the Principal within 28 days after the Contractor receives the Principal's written notice of Completion of the work under the Contract under **Clause 11.3**. Otherwise the claim is barred.

If the Contract includes a Post Completion Period, then any claim by the Contractor on the Principal, in relation to events that occurred during a Post Completion Period, is to be made within 28 days after the end of the final Post Completion Period. Otherwise the claim is barred.

11.16 Disputes



16. Disputes (Continued)

**16.10** Each party is to make written submissions to the expert and provide a copy to the other party as follows:

- (a) Within 21 days after the appointment of the expert, the notifying party is to make its submission on the matter in dispute.
- (b) Within 14 days after receiving a copy of that submission, the other party is to make its submission in response, if any, which may include cross-claims.
- (c) If a cross-claim is made, the notifying party is to make its submission on the cross claim within 14 days after receiving a copy of the submission from the other party.
- (d) The expert may request further information from either party and that party must respond within 14 days after receiving the request.
- (e) The expert must ignore any submission not made within the times given in this **Clause 16.10** and make a determination on the submissions or information provided within time, unless the parties agree otherwise in writing.

**16.11** The expert must determine whether the claimed event, act or omission did occur and, if so:

- (a) when it occurred;
- (b) what term of the Contract or other obligation in law, if any, requires one party to pay the other money or otherwise act in respect of it; and
- (c) the merits in law of any defence or cross-claim raised by the other party.

The expert is then to determine the amount, if any, which one party is legally bound to pay the other on account of the event, act or omission.

The expert must also determine any other question(s) referred by the parties under **Clause 16.6**.

**16.12** In making the determination, the expert acts as an expert and not as an arbitrator and is:

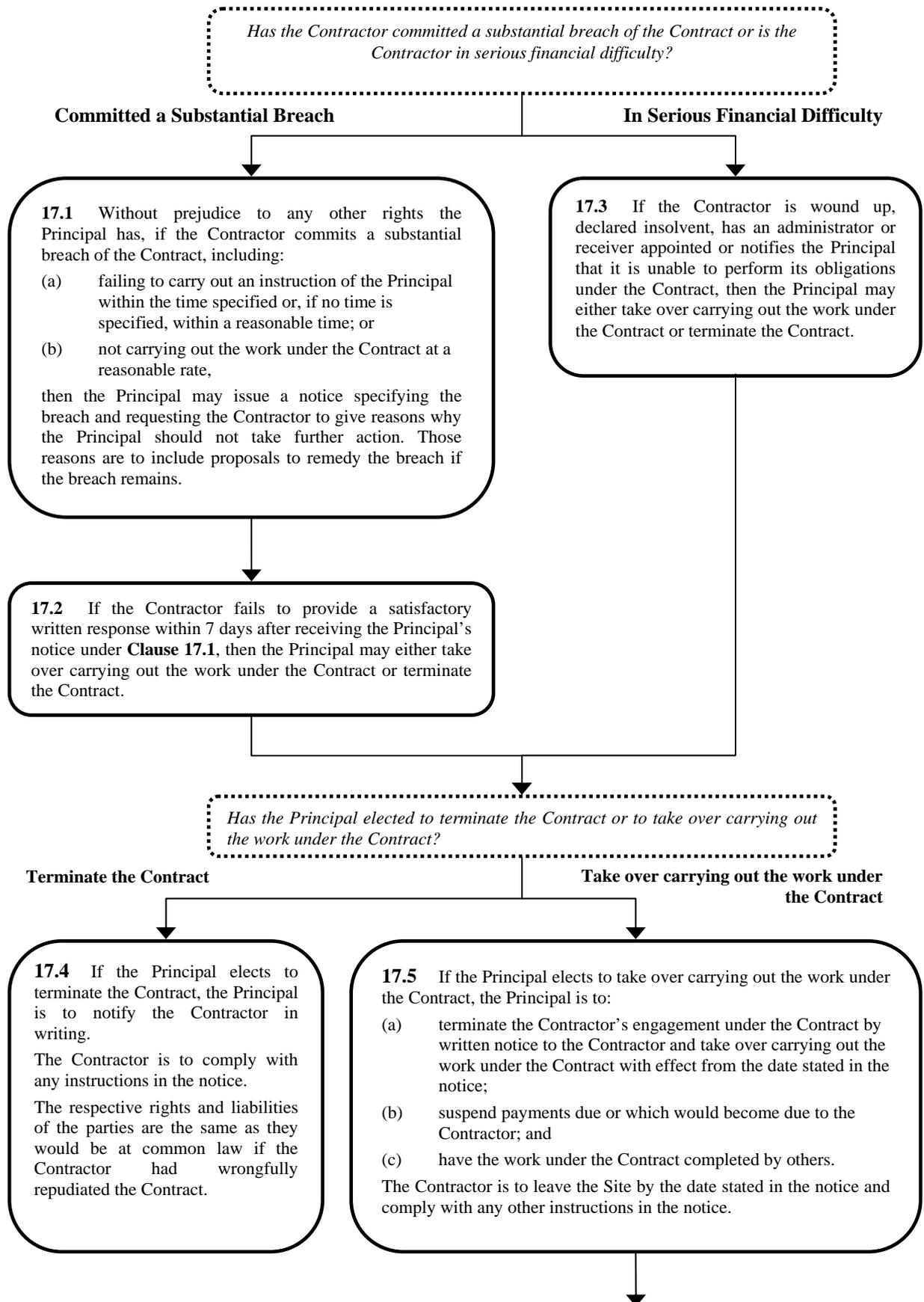
- (a) not liable for acts, omissions or negligence;
- (b) to make the determination on the basis of the Contract and written submissions from the parties without formalities such as a hearing;
- (c) not to incur costs until the initial security has been lodged in full; and
- (d) required to give the determination in writing, with brief reasons, to each party within 28 days after the submissions from the parties have been received or the initial security has been lodged in full, whichever is

**16.13** If the expert determines that one party is to pay the other an amount exceeding \$250,000 (excluding interest) and within 14 days after receiving the determination, either party gives written notice to the other that it is dissatisfied, then the determination is of no effect and either party may commence litigation.

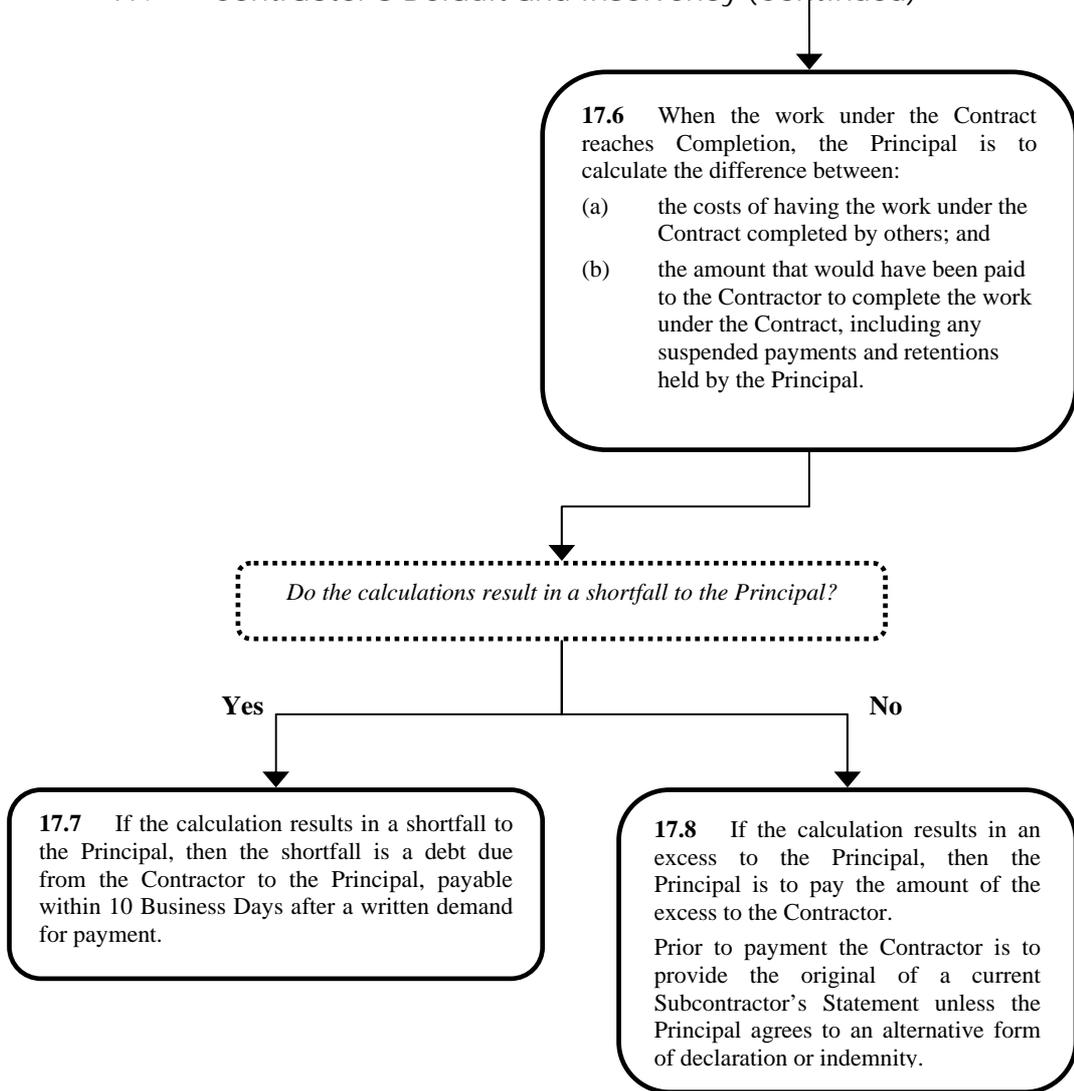
**16.14** Unless a party has a right to commence litigation under **Clause 16.13**:

- (a) the parties are to treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that the Contractor owes money to the Principal, the amount determined is a debt due and payable by the Contractor to the Principal and the Contractor is to pay the money within 20 Business Days after receiving the determination; or
- (c) if the expert determines that the Principal owes money to the Contractor, the Principal is to pay the money within 20 Business Days after receiving the expert determination, or 5 Business Days after receiving the original of a current Subcontractor's Statement, whichever is the later.

11.17 Contractor's Default and Insolvency



17. Contractor's Default and Insolvency (Continued)



11.18 Termination for the Principal's Convenience

**18.1** The Principal may terminate the Contract for convenience and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice.

If the Contract is terminated for the Principal's convenience, then the Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date stated in the notice, determined in accordance with **Clauses 13 and 16**; plus
- (b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 18** are full compensation for termination under this **Clause 18**, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

**18.2** Wherever possible, the Contractor is to include a provision equivalent to this **Clause 18** in all subcontracts, including supply agreements.

11.19

Termination for the Principal's Default

**19.1** If the Principal fails to pay the Contractor any amount that is in accordance with the Contract, and not in dispute, or commits a fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 28 days after receiving the notice.



**19.2** If, within 28 days after receiving the Contractor's notice under **Clause 19.1**, the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract.

**19.3** The Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date of the termination notice, determined in accordance with **Clauses 13** and **16**; plus
- (b) 4% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 19** are full compensation for termination under this **Clause 19**, and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.

**19.4** The Contractor has no other right to terminate the Contract, under common law or otherwise.

**19.5** Wherever possible, the Contractor is to include a provision equivalent to this **Clause 19** in all subcontracts, including supply agreements.

## 12 Schedule 1 – Unconditional Undertaking

Refer to Clause 13.8 of the MW21 General Conditions of Contract.

Name of Financial Institution: .....

The Principal: Western Sydney Parklands Trust

The Contractor: .....

ABN .....

Security Amount \$ .....

The Contract: The Contract between the Principal and the Contractor

Contract Name: Northern Parklands Stage2 Sp1 Landscape Works

Contract Number: WSPT 2015/03

Other words and phrases in this Undertaking have the meaning given in the MW21 General Conditions of Contract.

### Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This Undertaking continues until one of the following occurs:
  - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - .2 this Undertaking is returned to the Financial Institution; or
  - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated ..... at.....

### Execution by the Financial Institution:

## MW21 Contract Information

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### 12.1 Authorised Person

*Mentioned in Clause 1.1*

The Authorised Person is:	Maroon Jumaa
Title:	Senior Project Manager
Office address: (for delivery by hand)	Level 14, 99 Mount street, North Sydney NSW 2060
Postal address: (for delivery by post)	As above
Telephone number:	02 8909 9888
Facsimile number:	02 9460 2088
e-mail address:	<a href="mailto:maroon.jumaa@bluevisions.com.au">maroon.jumaa@bluevisions.com.au</a>

If no name is stated, then the Principal is to name the person in writing within seven days after accepting the tender. The Principal may for any reason and at any time change the Authorised Person by giving notice in writing.

### 12.2 Purpose of the Works

*Mentioned in Clause 3.4*

The purpose of the Works is	To upgrade the existing track network in the Parklands, including new tracks to improve connections to the surrounding residential areas.
-----------------------------	---

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

### 12.3 Milestones

*Mentioned in Clause 1.11*

The Milestones are:	
Milestone 1:	Completion of Boardwalk shop drawings including piling design.
Milestone 2:	Completion of all of the work and obligations under the Contract not included in any other Milestone

### 12.4 Post Completion Period

*Mentioned in Clause 1.13*

The Post Completion Period, which starts when Milestone 2 reaches Completion, is:	26 calendar weeks.
If no time is stated, then no Post Completion Period applies.	

## 12.5 Principal

*Mentioned in Clause 1.14*

The Principal is: Western Sydney Parklands Trust

All correspondence to the Principal is to go to the address of the Authorised Person.

## 12.6 Senior Executive

*Mentioned in Clause 1.18*

The Senior Executive is: Senior Program Manager

Where specified, documents must be copied to the Principal's senior executive at the address or number shown here.

Office address:  
(for delivery by hand) Level 7  
10 Valentine Avenue  
Parramatta  
NSW 2150

Postal address:  
(for delivery by post) PO Box 3064  
Parramatta  
NSW 2124

Telephone number: 02 9895 7523  
Facsimile number: 02 9895 7580  
e-mail address: erin.mccarthy@wspt.nsw.gov.au

If no name is stated, then the Principal is to name the person in writing within 7 days after accepting the tender. The Principal may for any reason and at any time change the Senior Executive by giving notice in writing.

## 12.7 Extent of Design

*Mentioned in Clause 3.1*

The Contractor is to complete the Principal's design to the extent of:

1. design development, documentation, integration with the Principal's design and coordination of engineering and architectural design disciplines for the following elements of the Works:
  - Boardwalk piling design ; and
  - Boardwalk shop drawings
2. for all other elements of the Works, design that is necessary to comply with Clause 3.4 including the design of minor items and shop detailing.

## 12.8 Design Documents

*Mentioned in Clause 3.5*

The time to submit the completed design is: 7 days before it is to be used for construction

If no time is stated, then it is 7 days before the completed design is to be used for construction.

12.9 Works and Public Liability Insurance

*Mentioned in Clause 5.3*

Insurance of the Works and public liability insurance are to be arranged by: The Contractor.

12.10 Professional Indemnity Insurance

*Mentioned in Clause 5.4*

Is a professional indemnity insurance policy to be held by the Contractor and/or relevant subcontractors? Yes  
("No" applies if not filled in)

12.11 Site Access

*Mentioned in Clause 6.1*

The times to give access to the Site are: 7 days after the date of acceptance of the tender.

If no time is stated, then it is 7 days after the date of acceptance of the tender

12.12 Time for Completion

*Mentioned in Clause 11.1*

The times for Completion are:

Milestone 1: 2 calendar weeks from date of acceptance of the tender.

Milestone 2: 8 calendar weeks from acceptance of the tender.

If no time is stated for a Milestone, then a reasonable time is to apply for that Milestone.

12.13 Delay Costs

*Mentioned in Clause 12.3*

The rate per day for delay costs is: \$1,250

12.14 Liquidated Damages

*Mentioned in Clause 12.6*

The rate per day for liquidated damages is:

Milestone 1: \$0

Milestone 2: \$450

If no rate is stated for a Milestone, then common law damages apply for that Milestone.

12.15 Payment Claims

*Mentioned in Clause 13.1*

Payment claims are to be made: Monthly, on the first business day of each calendar month.

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Schedule

# Combined Subcontractor's Statement and Supporting Statement

Refer to clause 58.6.2 of the GC21 General Conditions of Contract

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

The Contractor is both a "head contractor" in terms of the Building and Construction Industry Security of Payment Act 1999, and a "subcontractor" in terms of the Workers Compensation Act 1987, Payroll Tax Act 2007, and Industrial Relations Act 1996, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Workers Compensation Act 1987, s175B, Payroll Tax Act 2007, Schedule 2 Part 5, Industrial Relations Act 1996 s127, and Building and Construction Industry Security of Payment Regulation 2008 cl 4A*

Information, including Notes, Period of Statement, Retention, and Offences under various Acts are included at the end of this Schedule.

---

Main Contract

Contractor:

ABN:

*(Business name of the Contractor)*

of

*(Address of Subcontractor)*

has entered into a  
contract with

ABN:

*(Business name of the Principal)*

Contract number/identifier

Subcontracts

The Contractor has entered into a contract with the subcontractors listed in the  
attachment to this Statement

Period

This Statement applies for work between: \_\_\_\_\_ and \_\_\_\_\_ inclusive,

subject of the payment claim dated:

I, \_\_\_\_\_ a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick  if true and comply with (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick  and only complete (e),to (h) below. You must mark one box.
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated \_\_\_\_\_

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.
- (d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement.
- (e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.
- (f) all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(g) Signature \_\_\_\_\_ Full name \_\_\_\_\_

(h) Position/Title \_\_\_\_\_ Date \_\_\_\_\_

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Attachment

**Schedule of subcontractors paid all amounts due and payable**

<b>Schedule of subcontractors paid all amounts due and payable</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number/identifier</b>	<b>Date of works (period)</b>	<b>Payment claim dated (head contractor claim)</b>

**Schedule of subcontractors for which an amount is in dispute and has not been paid**

<b>Schedule of subcontractors for which an amount is in dispute and has not been paid</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number/identifier</b>	<b>Date of works (period)</b>	<b>Payment claim dated (head contractor claim)</b>

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, section 127 of the *Industrial Relation Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the Industrial Relations Act 1996 states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

## Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

### Offences in respect of a false Statement

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the Workers Compensation Act 1987 and clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

## Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or NSW Industrial Relations, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**END OF SECTION – MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT INFORMATION**

# 2 Preliminaries

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## 2 Preliminaries

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**THERE ARE 35 PAGES IN THIS SECTION**

### 1 General

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#### 1.1 Electronic Communications

Notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

#### 1.2 Use of Qualified Designers

Use persons professionally qualified in the relevant disciplines to carry out all design and documentation. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

#### 1.3 Use of Qualified Tradepersons

Use qualified tradepersons to carry out the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

#### 1.4 Long Service Levy

Before starting the Works:

- pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- give the Principal a copy of the document evidencing payment of the levy.

Additional information and the Levy Payment Form are available from the Corporation's website at:

[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

#### 1.5 Collusive Arrangements

Comply with the NSW Government *Code of Practice for Procurement and Implementation Guidelines* available on the ProcurePoint website.

#### 1.6 Contractor Performance Reporting

The Contractor's performance will be monitored and assessed in accordance with the Procurement Practice Guide *Performance Management* available on the ProcurePoint website.

Note, an alternative simplified proforma may be used.

#### 1.7 Exchange of Information between Government Agencies

The Contractor authorises the Principal and its employees and agents to make information concerning the Contractor and its performance available to NSW Government agencies and local government authorities, which may take such information into account in considering whether to offer the Contractor future opportunities for work.

The Principal regards the provision of information about the Contractor to any NSW Government agency or local government authority as privileged under the *Defamation Act 2005*. The Contractor agrees that it will have no entitlement to make any claim against the Principal in respect of any matter arising out of the provision or receipt of such information.

## 2 Documents

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### 2.1 Contractor's Documents

The Contractor's documents must include, without limitation: all construction documentation required to carry out the Boardwalk Works. Preparation of boardwalk piling design and boardwalk shop drawings.

### 2.2 Program

Not less than 7 days before starting the Works, provide a detailed program for carrying out the work under the contract, including all documentation and construction activities.

At regular meetings and within 7 days after a request, submit an updated program incorporating any changes required to achieve Completion in accordance with the Contract.

### 2.3 Work As Executed Drawings

During construction of the Works, progressively prepare work as executed drawings. Ensure the content, accuracy and level of detail of work as executed drawings are equivalent to those in the drawings used for construction.

With each payment claim submit 1 hard copy of work as executed drawings on standard sized sheets, showing the work as constructed and any services identified during the payment period. Failure to comply with this requirement will result in no payment being due for the installation or relocation of any services carried out during the payment period.

Not less than 7 days before Completion is reached, submit 3 hard copies of all work as executed drawings, on standard sized sheets, and 1 copy in PDF electronic format. Endorse each drawing to certify its accuracy and completeness. Submit revised work as executed drawings within 7 days after receiving any comments from the Principal.

As a condition of achieving Completion, work as executed drawings, complying with the specification, must be submitted.

### 2.4 NATSPEC Subscription

If any of the Contractor's documents are based on NATSPEC then, on request, give the Principal proof of the Contractor's current NATSPEC subscription.

## 3 Contracting

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### 3.1 Goods and Services Tax

The Contract Price, any associated amount and other amounts specified in the contract are GST inclusive.

GST Law has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Words or expressions used in this Clause – **Goods and Services Tax** which are defined in GST Law have that defined meaning unless otherwise provided.

The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.

The Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.

The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor invoices the Principal for that supply.

Each party must immediately notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirement of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

The Principal will not issue a document that will otherwise be an RCTI, on or after the date when the Contractor or the Australian Taxation Office notifies the Principal that

the Contractor does not comply with any requirement of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

### 3.2 Passing of Property and Risk

Unless otherwise provided, items supplied by the Contractor become the property of the Principal when unloaded on the Site as required by the Contract. Such items remain at the risk of the Contractor until property therein passes to the Principal.

## 4 Administration

### 4.1 Quality Management

#### Requirement

The Contractor must comply with the NSW Government *Quality Management System Guidelines (QMS Guidelines)*, available on the ProcurePoint website.

#### Inspection and Test Plans

Prepare and implement Inspection and Test Plans (ITPs), complying with the *QMS Guidelines*, for work under the Contract. A separate ITP with associated checklists is required for each construction activity, i.e. an element of work or work carried out as a trade. Incorporate the Hold and Witness points specified Contract and listed below:

ITP Activity	Inspection Point	Hold or Witness Point
As specified elsewhere in the Contract	As specified in landscape specification in Appendix A	As specified

Not less than 7 days before starting the work to which they apply, submit the following documents:

- copies of proposed ITPs and checklists; and
- certification that the relevant quality management plans and ITPs of subcontractors and consultants meet the requirements of the *QMS Guidelines*.

Do not start construction work before supplying the above documents.

Give at least 24 hours notice before reaching a Hold or Witness point. Do not proceed beyond a Hold point without authorisation from the Principal. The Principal, at its discretion, may inspect the work at a Witness point, but the work may proceed without authorisation. Endorsement by the Principal at a Hold or Witness point does not relieve the Contractor of its obligations under the Contract.

The Principal, at its discretion, may undertake surveillance (monitoring) of all work under the Contract.

#### Conformance records

Submit copies of conformance records as specified, including:

Conformance records	Time when records are required
Management reports including WHS and Environmental management reports.	With each payment claim and as otherwise specified.
Completed ITPs and checklists, all test results and other quality records.	With each payment claim. Progressively submit checklists, test results and other quality records related to ITPs that are completed over a number of payment periods.
Operation and maintenance manuals and work as executed drawings.	Not less than 7 days before Completion of the Works or Completion of the applicable Milestone is reached.
Product and service conformance records.	Not less than 7 days before Completion of the Works is reached.

## 2. PRELIMINARIES

Approvals of Regulatory Authorities.	Not less than 48 hours before starting on site works
Quality and Test Records obtained from manufacturers and suppliers.	Not less than 7 days before supplying
Contractor's Certification of Quality Conformity and Performance	Not more than 24 hours after the completion of each type of work and each section
Structural Compliance Certificates.	Not more than 7 days after completion of works.

### Failure to Comply

If the Contractor has not carried out its obligations under this Clause – **Quality Management**, the Principal may implement such inspections and tests as the Principal determines and the cost incurred by the Principal shall be a debt due from the Contractor.

### 4.2 Subcontract Requirements

#### General

In this Clause – **Subcontract Requirements**, “subcontract” includes an agreement for the supply of goods or services (including professional services and plant hire) and “subcontractor” includes a supplier of such goods or services.

Ensure that each subcontract, valued at \$25,000 or more that is entered into by the Contractor or any subcontractor in respect of the work under the Contract, includes the provisions contained in this Clause.

#### Options as to Form of Security

Each subcontract that:

- requires the subcontractor to provide a cash security to its principal; or
- allows the subcontractor's principal to deduct retention moneys from any payment, shall allow the subcontractor the option at any time to provide unconditional undertakings in lieu of cash security or retention moneys.

#### Trust for Cash Security and Retention Moneys

Each subcontract shall include the following provisions:

- when a party receives or retains security, that security is held in trust by the security holder who must promptly deposit the money into a trust account;
- the moneys shall be held in trust until they are paid to the party entitled to receive them and the security holder shall maintain proper records to account for such moneys; and
- any interest earned by the trust account shall be owned by the security holder.

When requested by the Principal, provide evidence that the required amount is held in trust for any subcontract. If the Contractor fails to do so, the Principal may withhold an equivalent amount from payment due to the Contractor.

Compliance with this subclause is not required if the security holder has a policy of insurance, equivalent to the HIA Security of Payment Bond, protecting subcontract payments due to the other party.

#### Payments

Each subcontract shall include an obligation, which takes precedence over any inconsistent provision of the subcontract, for the subcontractor's principal to pay, no more than 30 Business Days after receiving a payment claim from the subcontractor, 100% of the value of work, goods or services provided by the subcontractor less only retention moneys paid into trust.

Compliance with this subclause shall not prevent the Contractor from paying a subcontractor an amount in excess of that claimed from the Principal, or paying before the time stipulated in this subclause.

#### Alternative Dispute Resolution

Each subcontract shall include provisions incorporating the dispute resolution procedures outlined in the Contract.

#### Documents to be Provided to Subcontractors

Each subcontract shall include the requirement for subcontractors to be provided with a copy of this Clause and clauses relating to proof of payment of subcontractors, times for payment claims and payment and alternative dispute resolution.

#### Register of Subcontracts

Maintain a register of all subcontracts which have a value of \$25,000 or more, showing brief details of the subcontract work and the name, address and telephone number of the subcontractor. If requested, give the Principal a copy of the register and an unpriced copy of any subcontract agreement.

### 4.3 Additional Security and Obligations for Trustees

If the Contractor is a trustee:

- before starting the Works, give the Principal an unconditional undertaking as security for any amount previously agreed in writing by the parties. The unconditional undertaking must be in the form detailed in Schedule 1 - **Unconditional Undertaking** and from a financial institution acceptable to the Principal.
- The security will be retained by the Principal against the due and proper performance of the Contract. Unless the Principal has made or intends to make a demand against the unconditional undertaking, the Principal will return the unconditional undertaking within 14 days after Completion of the whole of the Works is reached or as otherwise agreed by the Principal.
- The Contractor must not prevent the Principal from making any demand against the unconditional undertaking, or prevent the provider of an unconditional undertaking from complying with the unconditional undertaking or any demand by the Principal, but the Contractor may seek damages if the Principal makes such a demand in breach of the Contract.
- Ensure that for the duration of the Contract, the total value of trust beneficiaries' loans to the trustee is always greater than the total value of trust beneficiaries' loans from the company.

### 4.4 Industrial Relations Management

#### Requirement

The Contractor must comply with the NSW Government *NSW Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction*, available on the ProcurePoint website.

#### Verification of Compliance with Industrial Relations Obligations

Before starting work on the Site, submit a statement on the Contractor's letterhead, signed by an authorised representative, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations including, but not limited to:

- payment of remuneration to employees;
- annual leave;
- Long Service Leave Payment Scheme registration;
- workers' compensation insurance, including self- insurance arrangements;
- superannuation fund membership and contributions; and
- over-award payments such as redundancy fund contributions.

If the Contractor engages an independent industry or employer association or other specialist organisation to provide an auditing service to verify compliance with employment and legal obligations, a statement or declaration from that entity may be submitted instead of the statement by the Contractor.

### Project IR Management Details

Before starting work on the Site, submit a statement detailing:

- the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
- the names of Federal or NSW awards that are likely to cover subcontractors;
- the names of those responsible for coordinating industrial relations on the contract; and
- an outline of:
  - the Contractor's consultation and communication mechanisms with workers, unions and employer or industry associations;
  - the measures to be implemented to coordinate the interfaces between the Contractor, subcontractors, unions and other contractors;
  - the measures for assessing a subcontractor's ability to comply with industrial relations and employment obligations; and
  - the measures to monitor and verify subcontractors' ongoing compliance.

### 4.5 Audit and Review

Make available on request, for the purposes of audit, review or surveillance, all records, including those of or relating to subcontractors, suppliers and consultants. Provide all reasonable assistance during the audits or reviews, including attendance by the Contractor.

Promptly implement effective corrective action on matters disclosed by audit or review and notify the Principal when the corrective action has been completed.

## 5 Site

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### 5.1 Order of Work

The Works under Contract are to be carried out in accordance with the Technical Specification for Landscape Works attached in Appendix A, the Landscape Drawings (cross-referenced with engineering drawings and specifications) and the General Conditions of Contract.

### 5.2. Work Method

If the Contract prescribes a particular work method or the Principal directs that a particular work method must be used to the exclusion of other work methods, then using that work method is a requirement of the Contract.

Otherwise, the Contractor is free to use any work method and is responsible for its suitability.

### 5.3 Site Access and Limitations

#### **Site Access**

Contractor to coordinate proposed access point to site works with WSPT and relevant stakeholders. Access of authorized vehicles to be controlled at all times and roads to be maintained clean and accessible at all times.

A list of vehicles and drivers details to be submitted prior to any works on site can proceed. Any changes or additional access permits requests to be submitted 24 hours before entering site.

Dilapidation report, photographic and written, of the existing track, structures and facilities to be prepared and submitted before starting any site works.

#### **Other contractors**

A number of separate contracts may be let in respect to related engineering works. The Contractor shall liaise with and co-ordinate with these parties as required, to ensure access within the site to all parties is maintained or managed in a co-ordinated manner and so that all parties are forewarned in a timely manner for works which require their input or may impact them or the Contractor.

### **Existing services**

Within the Northern Parklands stage 2 Sp1 there are two main easements Endeavour energy and Jemena. Works to be coordinated and comply with the conditions and restrictions of service owners.

Refer to Appendix F for Endeavour energy conditions and restrictions. Refer to Appendix H for Jemena guidelines for construction activity near and over gas network.

### **Aboriginal Heritage**

Allow 48 hours for the client's consultant to inspect and approve the set out of the works and the site after clearing works completed. Refer to Appendix B' "Draft Due Diligence Aboriginal heritage assessment".

## 5.4 Working Hours and Working Days

Unless the Contract provides otherwise, the Site is available to the Contractor to carry out the Works between 7am and 5pm, Monday to Friday, inclusive, but excluding public holidays.

The Authorised Person may approve additional working hours or working days, subject to conditions which may include, but are not limited to:

- restrictions on the performance of work requiring surveillance; and
- a requirement that the Contractor meet the costs of surveillance, by or on behalf of the Principal, of work performed during any approved additional working hours and days.

## 5.5 Existing Services

### Locating Existing Services

The Contractor is responsible for locating existing services and in doing so, is to comply with the *WorkCover Work Near Underground Assets Guideline* and *Safe Work Australia Code of Practice Managing Risks in Construction*.

Before starting construction work, establish the precise locations of all underground and other existing services at the Site and in areas adjacent to the Site that may be affected by the work under the Contract, and:

- obtain advice from *Dial Before You Dig* and the owners of the services;
- engage a services locator;
- examine the Site and surrounding areas for indications of services;
- where any service is underground, in conjunction with the owner of the service, use pot-holing (or equivalent non-destructive techniques); and
- verify the location of all identified services.

Mark prominently on the Site the locations of all services. Document the locations of services on a site plan and provide a copy of the plan to each subcontractor before the subcontractor starts work on the Site.

### Isolation of Existing Services

Before undertaking any work involving cutting into, penetrating, or otherwise breaking into the building fabric (floor, walls or ceiling), ensure the services are isolated in the relevant work area.

Wherever reasonably practical and with the prior approval of the Authorised Person, isolate electrical and gas services for the whole building where work is being carried out, before starting work on existing building services.

Notify the Authorised Person and the appropriate persons within the facility of any proposed disruption of services in sufficient time to enable affected staff to be informed and any changes to operations to be made. Wherever possible, consult with the Authorised Person prior to issuing the notification.

Include in the notification:

- details of the service to be disrupted;
- the date and time that the disruption will commence;
- the estimated duration of the disruption and when the service will resume operation;
- the possible impact of the disruption (eg. loss of power, loss of gas); and
- any other relevant information.

On completion of the work and the resumption of the service, check all penetrations for live or damaged services and give the following to the Authorised Person:

- a clearance certificate that affected utilities (eg. heaters, boilers, equipment) have been tested and are functioning appropriately; and
- the name and phone of a responsible person who can be contacted if problems are experienced with any of the affected utilities.

#### Interference with Existing Services

Deal with existing services (such as drains, watercourses, public utilities, telecommunications and other services) obstructing the Works or damaged in the course of work under the Contract, as follows:

- if the service is to be continued: repair, divert or relocate as required; or
- if the service is to be abandoned: cut and seal or disconnect and make safe as required.

Notify the Principal immediately upon discovering any damaged services or services that obstruct the Works and are not shown in the Contract Documents.

Where an existing service obstructs the Works and requires diversion or relocation, the Contractor shall be liable for all resulting costs and delays, except to the extent that the Contractor is entitled to an adjustment of the Contract Price or payment for a Variation in accordance with General Conditions of Contract Clause – **Site Conditions**.

Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor shall be liable for all costs and any delays for repairing or disconnecting the service.

### 5.6 Work Health and Safety Management

#### Specification and Statutory Requirements

The Contractor must comply with all statutory requirements including, but not limited to, the *Work Health and Safety Act 2011* (NSW) (*WHS Act*), the *Work Health and Safety Regulations 2011* (NSW) (*WHS Regulations*) and the NSW Government *Work Health and Safety Management Systems and Auditing Guidelines 5th Edition* (*WHSMS Guidelines*). The *WHSMS Guidelines* are available on the ProcurePoint website.

In the event of any inconsistency, the Contractor must comply with the statutory provisions.

#### Engagement as principal contractor

The Contractor, having responsibility for the construction work at all times until the work is completed under the Contract, is engaged as principal contractor and manager and controller of the premises for the construction work under Clauses 293 and 298 of the *WHS Regulations* and is authorised to exercise such authority of the person conducting a business or undertaking that is commissioning the construction project as is necessary to enable it to discharge the responsibilities of principal contractor and manager and controller of premises imposed by the *WHS Act* and Chapter 6 of the *WHS Regulations*.

#### WHS Management Plan

Develop and implement a *WHS Management Plan* that covers the work under the Contract and complies with the *WHSMS Guidelines* and *WHS Regulations 2011*.

No later than 14 days before construction work starts, submit the Site-specific Safety Management Plan. Do not start construction work before a complying Site-specific Safety Management Plan has been submitted.

Ensure the following risks are covered in the Site-specific Safety Management Plan:

- Site access

- Work methods
- Dust and noise
- Public presence
- Hazardous material
- Operation of plant and machinery
- Storage of construction materials
- Underground services
- Power line easement
- Gas main easement

This list of risks is not exhaustive and must not be relied upon by the Contractor. The Contractor must undertake its own identification and detailed analysis of all work, health and safety risks involved with work under the Contract.

#### Site Safety Rules

Develop site safety rules that are equal to or better than the following minimum set of site safety rules. Include them in the WHS Management Plan and ensure implementation. Notwithstanding the development of site safety rules, the rules listed below form part of the Contract.

Site safety rules must make it a condition of entry to the applicable worksite that all employees and visitors comply with their provisions, including:

- **Construction WHS Induction** - All persons must display evidence of completing WHS Induction training before being inducted to start work on the Site.
- **Site Induction** - All persons working on the Site must attend a site induction before entering it. Visitors may enter a worksite if, either, they first attend a site induction, or if they are accompanied by a person who has attended a site induction. Each day, all persons must sign in and out on the site register.
- **Safe Work Method Statements** - Safe Work Method Statements must be prepared and used for all high risk construction work activities.
- **Toolbox Talks** - Weekly or more regular discussions must be held with workers to consult on site safety matters.
- **Safety Helmets, Safety Footwear and Safety Vests** - Safety helmets and steel-capped safety footwear must be worn by all supervisors, employees, and visitors in the construction areas at all times. The footwear must comply with AS 2210. Safety vests must be worn when moving plant is present or work is undertaken near traffic.
- **Personal Protective Equipment (PPE)** - PPE, such as safety eye protection, hearing protection, safety gloves and masks and the like, must be worn when welding, drilling and with all other tasks with similar risks.
- **Accidents and Incidents** - Accidents, incidents and injuries must be reported immediately to the Contractor's and applicable subcontractor's site representative in charge.
- **Alcohol and Drugs** - The consumption of, or being under the influence of, alcohol and illegal drugs on the Site is prohibited.
- **Amenities** - Access to clean toilets and meal facilities, cool, clean drinking water, and the other requirements of the WorkCover [\*Code of practice: Amenities for construction work\*](#) must be provided for all persons.
- **Electrical** - All electrical work and electrical plant must comply with AS/NZS 3012:2010 *Electrical Installations – Construction and demolition sites*.
- **Emergency and Evacuation Plan** - Arrangements must be included in the Site Induction and clearly identified. Consult with any occupier of the Site to coordinate the principal contractor's emergency and evacuation plan with the emergency and evacuation plan of the occupier of the Site.

- **Excavations** - Barricading and signage for all excavations must be provided, with excavations 1.5 metres or more deep also to be benched, battered or shored unless a geotechnical report has been provided which determines this support is not required.
- **Fire Prevention** - Fire prevention must be used by all persons on the Site. An appropriate fire extinguisher must be on hand for all welding sets and oxy acetylene work.
- **First Aid** - All persons requiring first aid treatment must contact the first aid officer who will administer the treatment and record the injury in the WorkCover Register of Injuries, including the person's name and the nature of the injury.
- **Hazardous Substances** - Chemicals and hazardous substances must be used and stored in compliance with up to date Safety Data Sheets (SDS) and details recorded in the Register of Hazardous Substances.
- **Housekeeping** - Work areas must be kept clean and tidy, with rubbish and other safety hazards cleaned up promptly. All protruding nails must be removed immediately from timber.
- **Leads and Power Tools** - All leads, power tools and electrical equipment must be inspected and tagged by a qualified person prior to their use and then at three monthly intervals.
- **Mobile Plant** - Every owner of plant must ensure plant is registered with WorkCover when required and operators are appropriately qualified. Plant must be fitted with working hazard lights/reversing lights and beepers. See the WorkCover [Code of Practice: Moving Plant on Construction Sites](#).
- **Overhead Power Lines** - The requirements of the WorkCover [Code of Practice: Work near Overhead Power Lines](#) must be complied with.
- **Site Security and Public Access** - Security measures, including perimeter fencing, must be used to prevent unauthorised access to construction areas and ensure safe access and passage for all those on and adjacent to the Site.
- **Underground Services** – Refer to Preliminaries – **Locating Existing Services**.
- **Working at Heights** - Working at heights must be in accordance with WorkCover requirements, including certification of formwork and scaffolding. See the WorkCover [Guide: Safe Working at Heights](#).

Relevant Codes and Guides can be accessed from the WorkCover website.

#### WHS Management Monthly Report

No later than the 5<sup>th</sup> Business Day of each month, submit a WHS Management Monthly Report, signed by the Contractor's Representative, detailing implementation of *Risk management, WHS Training, Incident Management and Safe Work Method Statements*, and including the information listed below, as evidence of the implementation of the Site-specific Safety Management Plan during the previous month.

**Contract details** – the names of the Contract, Contractor and Contractor's representative, the report date and the period covered.

**Implementation of Risk management**, –summary of WHS inspections and reviews carried out to identify risks and hazards and ensure risk management controls are being implemented for:

- plant and equipment;
- incoming products;
- worksite conditions;
- adherence to and completeness of Risk Assessments, Safe Work Method Statements and Site Safety Rules;
- worksite access and exits; and
- personal protective equipment.

**Implementation of WHS training**, – an up to date copy of the Induction Register and details of WHS training carried out.

**Implementation of Incident management** – details of:

- any WHS incidents or WHS issues, including non-compliance with WHS processes and procedures and near misses;
- implementation of incident management;
- implementation of corrective action; and
- WHS statistics for all the work under the Contract including:

	This Month	Total Cumulative
Number of Lost Time Injuries		
Number of Hours Worked		
Number of Hours Lost Due to Injury		
Lost Time Injury Frequency Rate (LTIFR)		
Number of WHS Management Audits		
Number of WHS Inspections		

**Implementation of Safe Work Method Statements**, – an up to date copy of the register of Safe Work Method Statements, including confirmation that the principal contractor has ensured that all Safe Work Method Statements comply with the *WHS Regulation* and that their implementation is being monitored.

#### Notifiable Incident Report

Ensure compliance with the notification and other requirements of the *WHS Act* Sections 35-39 for any notifiable incident including immediate notification of WorkCover.

Immediately notify the Principal of any notifiable incident.

Provide a written report to the Principal within twenty-four hours after the incident, giving details of the incident and evidence that notification requirements have been met.

When requested, provide an incident investigation report, including identification of the root cause of the incident and corrective actions taken, in the form directed.

#### Prohibition, Improvement Non-disturbance and Penalty Notices

Immediately notify the Principal of any Prohibition, Improvement, Non-disturbance or Penalty Notice issued by WorkCover for any work under the Contract. Provide the Principal with a copy of the Notice and written details of the corrective action taken by the Contractor and/or the applicable subcontractor to rectify the breach and to prevent recurrence.

#### Electrical Work on Energised Electrical Equipment

In compliance with sections 154-156 of the *WHS Regulations*, ensure that electrical work is not carried out on electrical equipment while the equipment is energised, except when, in accordance with sections 157–163 of the *WHS Regulations* it is necessary in the interests of health and safety that the electrical work be carried out on the equipment while the equipment is energised.

#### Independent Certification of Formwork

Ensure that formwork complies with AS 3610-1995 *Formwork for Concrete* and is designed, constructed and maintained so as to support safely all loads that are to be placed on it.

Ensure that, before a concrete pour where the deck of formwork:

- is 3 metres or higher above the lowest surrounding; or
- the area of the formwork deck is 16 square metres or greater and is designed to hold 2.5 cubic metres or 6 tonnes of wet concrete,

an independent qualified engineer inspects and certifies the forwork as complying with AS 3610–1995 *Formwork for Concrete*.

‘Qualified engineer’ means a person qualified for member grade of the Australian Institution of Engineers, having not less than 4 years post-qualification professional engineering experience in formwork.

The qualified engineer must not be a proprietor, director, officer, or employee either of the entity carrying out the formwork erection or a related entity. If the Contractor carries out the design of the formwork, then the qualified engineer must not be a proprietor, director, officer or employee either of the Contractor or a related entity to the Contractor.

The Contractor and any subcontractors involved must include the inspection and certification as actions in Safe Work Method Statements for the erection and use of formwork, and they must be hold points in the Contractor’s and subcontractors’ Inspection and Test Plans.

Submit formwork certification before commencing the use of the formwork. Do not use the formwork before this certification is submitted.

## 5.7 Hazardous substances

### Definition

‘Hazardous substance’ means a substance that is listed in the document entitled *List of Designated Hazardous Substances* published by Worksafe Australia; or a substance that fits the criteria for a hazardous substance set out in the document entitled *Approved Criteria for Classifying Hazardous Substances* published by Worksafe Australia.

Asbestos, material containing asbestos, polychlorinated biphenyl (PCB) and lead based paints are hazardous substances. Other substances in certain situations are also considered hazardous and therefore require controlled handling. Examples are glues, solvents, cleaning agents, paints and water treatment chemicals.

For work under the Contract involving stone, rock, concrete, masonry or materials containing silica, the Contractor is responsible for the control of any hazard which may arise from the presence of any of these materials.

### Response to Unexpected Discovery

Hazardous substances, that are not identified in the Contract Documents, are dealt with in accordance with this clause. General Conditions of Contract clause – **Site Conditions** does not apply. If any hazardous substance not identified in the Contract Documents is discovered on the Site, suspend all work which may result in exposure to such substance and notify the Principal immediately of the type of hazardous substance and its location. The suspension shall be deemed to be a suspension by the Principal under General Conditions of Contract Clause – **Suspension** to the extent that it was required to prevent such exposure.

With the initial notification, or as soon as practicable thereafter, submit details including:

- the additional work and resources the Contractor estimates will be necessary to deal with the substance so that work and subsequent use of the Works may proceed safely and without risk to health;
- the Contractor’s estimate of the cost of the measures necessary to deal with the substance; and
- other details reasonably required by the Principal.

In planning and carrying out any work dealing with the hazardous substance, take all reasonable steps to:

- carry out the work concurrently with other work wherever possible; and
- otherwise minimise any delays to reaching Completion.

### Responsibility For Decontamination

Control of any hazardous substances and the decontamination of the Site are the responsibility of:

- the Contractor, in respect of any such substances identified in the Contract Documents; and
- the Principal, in respect of any such substances not identified in the Contract Documents, which are discovered on the Site.

Where the Principal is responsible for the control of hazardous substances and the decontamination of the Site, the Principal may:

- suspend the whole or any part of the Works, in accordance with General Conditions of Contract Clause – **Suspension**, until the hazardous substances are isolated or removed; or
- direct the Contractor, in accordance with General Conditions of Contract Clause – **Variations**, to take responsibility for the control of hazardous substances and the decontamination of the Site.

#### Decontamination Requirements

Where the Contractor is required, under the Contract or following an instruction of the Principal, to take responsibility for the control of hazardous substances and the decontamination of the Site, the Contractor must handle, use, isolate, remove and dispose of such substances in accordance with statutory requirements.

The Environmental Protection Authority or Waste Service NSW may advise suitable disposal sites.

#### Working Hours

Where the Contractor is required to decontaminate occupied sites containing hazardous substances, carry out all such decontamination outside normal hours of occupation, unless otherwise approved in writing by the Principal. Normal hours of occupation are:

- Monday to Friday from 7 am to 5 pm excluding public holidays

### 5.8 Asbestos removal

#### Requirement

Comply with the relevant statutory requirements, standards, codes and guidelines in respect of any asbestos removal work, including but not limited to the:

- WorkCover Authority of NSW requirements
- Safe Work Australia Code of Practice *How to manage and control asbestos in the workplace*
- Safe Work Australia Code of Practice *How to safely remove asbestos*
- *Environmentally Hazardous Chemicals Act 1985* (NSW)
- *Waste Avoidance and Resource Recovery Act 2001* (NSW)

#### Notification and Permit

Not less than 7 days prior to starting any asbestos removal work, notify the local office of WorkCover and the Principal of the intention to carry out that work.

Where the regulations require a licence for asbestos removal work, before the work commences, submit a copy of the current licence held by the entity that will undertake the work and a copy of any WorkCover permit required for the work.

#### Monitoring

Provide air monitoring by an independent licensed asbestos assessor on each day during asbestos removal and on completion of each area where removal has been undertaken.

#### Clearance Certificate

Submit to the Principal a clearance certificate from an independent licensed asbestos assessor at the completion of the asbestos removal work.

## 5.9 Principal's Site Office

### General Requirements

Provide a site office for the use of the Principal and nominees, in a position agreed with the Principal. Make the office ready for occupation before any major site activities start. If it becomes necessary to move the office during the progress of the Works, do so without charge. Service, clean and maintain the office for the duration of the Works. Provide safe access to the office at all times. Remove the office at Completion, but not until the Principal's permission is obtained.

### Site Office Accommodation

Proposed location of the site office to be submitted for principal's approval. A pre-fabricated modular building system may be substituted subject to the approval of the Principal. In this event the dimensions and standards shown and specified are the minimum required.

## 6 Environmental Protection

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### 6.1 Environmental Management

#### Requirement

The Contractor must comply with the current NSW Government *Environmental Management Systems Guidelines (EMS Guidelines)*, available on the ProcurePoint website.

#### Project Environmental Management Plan

Develop and implement a Project Environmental Management Plan (Project EMP) that complies with the *EMS Guidelines*.

Submit the Project EMP no later than 7 days before construction work starts. Do not start construction work before a complying Project EMP has been submitted.

The Project EMP must address the following risks:

- Control movement of pedestrians, materials, vehicles and plant
- Conserve heritage items
- Control discharges and emissions from vehicles and plant
- Prevent pollution of Creeks, stormwater, land and vegetation
- Control soil erosion
- Waste management
- Tree protection
- Minimise air pollution from dust and emissions
- Minimise noise and vibration impacts
- Protect flora and fauna

This list is not exhaustive and must not be relied upon by the Contractor. The Contractor must undertake its own identification and detailed analysis of all environmental risks involved with work under the Contract.

#### Environmental Management Monthly Report

With each claim for payment, submit an Environmental Management Monthly Report signed by the Contractor's representative. Include the information specified below, as evidence of implementation of the Project EMP.

**Contract details** - the names of the Contract, Contractor and Contractor's representative, the report date and the period covered.

**Implementation of environmental management** - details of:

- the environmental risks and opportunities, and significant environmental impacts associated with the work;
- environmental objectives, targets and measures of performance (where practical); and

- management actions, including environmental controls, training, inspections and testing.

**Implementation of incident management, including emergency response** - details of all environmental incidents or emergencies, including non-compliance with environmental procedures and near misses, implementation of incident and emergency response management, and implementation of corrective action.

**Implementation of reviews** - details of internal reviews, audits and inspections undertaken to verify that on-site environmental processes and practices conform with the Project EMP, including:

- monitoring, measurement, evaluation and review of activities;
- the consequences of non-conformances;
- investigation, analysis, evaluation and follow-up verification; and
- corrective and preventive action taken.

#### Incident Reports

Ensure compliance with the notification and other requirements of the *Protection of the Environment Operations Act 1997 (NSW) (POEO Act)*.

Immediately notify the Principal of any pollution incident that may cause material harm to the environment, providing evidence that notification requirements of the *POEO Act* have been met, where applicable.

Report immediately the details of any waste removed from the Site and not disposed of at a lawful facility.

When requested, provide an incident investigation report, including identification of the cause of the incident and corrective actions taken, in the form directed.

### 6.2 Ecologically Sustainable Development

#### Requirement

Apply strategies to maximise the achievement of ecologically sustainable development in the design, construction and operation of the Works, including reducing pollutants, greenhouse gas emissions and demand on non-renewable resources such as energy sources and water.

### 6.3 Waste Management

#### Requirement

Implement waste minimisation and management measures, including:

- recycling and diverting from landfill surplus soil, rock, and other excavated or demolition materials, wherever practical; and
- separately collecting and streaming quantities of waste concrete, bricks, blocks, timber, metals, plasterboard, paper and packaging, glass and plastics, and offering them for recycling where practical.

Ensure that no waste from the Site is conveyed to or deposited at any place that cannot lawfully be used as a waste facility for that waste.

#### Monitoring

Monitor and record the volumes of waste and the methods and locations of disposal.

Submit a progress report no later than the 5<sup>th</sup> Business Day of every second month, and a summary report before reaching Completion of the Works, on the implementation of waste management measures, including the total quantity of material purchased, the quantity purchased with recycled content, the total quantity of waste generated, the total quantity recycled, the total quantity disposed of and the methods and locations of disposal. Submit the report in the form of a *Waste Recycling and Purchasing Policy Report (WRAPP Report)* available on the ProcurePoint website.

With the *WRAPP Report*, submit waste disposal certificates and/or company certification confirming appropriate, lawful disposal of waste.

#### 6.4 Pest Control

Do not use any chemical pesticides or termiticides for new construction work. Use preventive treatment by physical means to minimise the risk of pest infestations.

Chemical treatments may be used in existing buildings only as a last resort for the eradication of pest and termite infestations. Chemical pesticides used for this purpose must be registered by the National Registration Authority for Agricultural and Veterinary Chemicals and applied by a Pest Control Operator licensed by WorkCover.

Pest preventive methods must comply with AS 3660.1-2000 Protection of Buildings from Subterranean Termites (except for references to chemical soil barriers), as well as supplementary standards for existing buildings.

## 7 Materials and Workmanship

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### 7.1 Standards

Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code shall be the one current at close of tenders, except for the Building Code of Australia, which shall be the one current at Completion.

Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.

### 7.2 Cleaning up

Prior to Completion, remove unwanted materials and dispose of any vermin. Remove all marks, dirt and dust from visible surfaces, including fittings, fixtures and equipment.

### 7.3 Samples

Match any approved samples throughout the Works. Unless samples have been approved, give notice before starting work requiring approval of samples. Keep approved samples in good condition on the Site until Completion of the Works is reached.

### 7.4 Testing

#### Independent Testing Authority

Any testing required to be by an independent authority shall be carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

### 7.5 Proprietary Items

Identification by the Principal of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

The Contractor may offer an alternative to any proprietary item. Apply in writing for approval to use the alternative. Provide technical information and describe how, if at all, the alternative differs from the proprietary item and how its use would affect other parts of the Works, including performance and operation. .

Except to the extent that the approval, if any, of the Principal includes a contrary provision, the approval is deemed to include the conditions that:

- use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- the Contractor must indemnify the Principal against any increase in such costs; and
- use of the alternative must not directly or indirectly cause any delay to reaching Completion of the Works and if it does, the Contractor will compensate the Principal for any loss which the delay causes.

## 7.6 Guarantees

### Generally

Obtain, and ensure that Western Sydney Parkland Trust will have the benefit of, all warranties or guarantees specified in the Contract or offered by suppliers, including warranties or guarantees that are offered to, or obtained by, subcontractors of the Contractor.

# Appendices

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## **Appendix A.**

### **Landscape Specifications**

# Appendices

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## **Appendix B.**

### **Draft Due Diligence Aboriginal heritage assessment**

# Appendices

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## **Appendix C.**

### **Geotechnical Site Investigation**

# Appendices

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## **Appendix D.**

### **Western Sydney Parkland Design Manual**

**Appendix E.**

**Contractor Induction Checklist**

**Appendix F.**  
**Endeavour Energy**

**Appendix G.**

**Survey**

# Appendices

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## **Appendix H.**

### **Jemena Guidelines**