Australian Standard™

General conditions of contract (as amended)
AS 4000 — 1997

General conditions of contract (as amended)

Incorporating:
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Amdt 3—2005
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- Australian Procurement and Construction Council
- AUSTROADS
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- Construction Policy Steering Committee
- Electricity Supply Association of Australia
- Institution of Engineers, Australia
- Institution of Professional Engineers, New Zealand
- Law Council of Australia
- Master Builders Australia
- National Construction Council / MTIA
- Process Engineers and Constructors Association
- Royal Australian Institute of Architects

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Preface

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

This Standard incorporates Amendment 1 (August 1999), Amendment 2 (October 2000), and Amendment 3 (March 2005). The changes required by the Amendments are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure, or part thereof affected.

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

Subclauses 8.6 and 29.2 (prefixed by an asterisk) are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part B or elsewhere that they are not to apply. See paragraph (i) of clause 1 on page 5 for the effect of stating deletions in Annexure Part B.

Warning

Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than work under the Contract (‘WUC’)) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16 (Insurance of the Works) and 17 (Public liability insurance).

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

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

<table>
<thead>
<tr>
<th>Clause</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interpretation and construction of Contract</td>
<td>8</td>
</tr>
<tr>
<td>2</td>
<td>Nature of Contract</td>
<td>14</td>
</tr>
<tr>
<td>2A</td>
<td>Contractor’s Warranties</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Provisional sums and prime cost items</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>Separable portions</td>
<td>16</td>
</tr>
<tr>
<td>5</td>
<td>Security</td>
<td>16</td>
</tr>
<tr>
<td>6</td>
<td>Not Used</td>
<td>17</td>
</tr>
<tr>
<td>7</td>
<td>Service of notices</td>
<td>17</td>
</tr>
<tr>
<td>8</td>
<td>Contract documents</td>
<td>18</td>
</tr>
<tr>
<td>9</td>
<td>Assignment and subcontracting</td>
<td>19</td>
</tr>
<tr>
<td>10</td>
<td>Intellectual property rights</td>
<td>20</td>
</tr>
<tr>
<td>11</td>
<td>Legislative requirements</td>
<td>20</td>
</tr>
<tr>
<td>12</td>
<td>Protection of people and property</td>
<td>21</td>
</tr>
<tr>
<td>13</td>
<td>Urgent protection</td>
<td>21</td>
</tr>
<tr>
<td>14</td>
<td>Care of the work and reinstatement of damage</td>
<td>21</td>
</tr>
<tr>
<td>15</td>
<td>Damage to persons and property other than WUC</td>
<td>22</td>
</tr>
<tr>
<td>16</td>
<td>Insurance of the Works</td>
<td>22</td>
</tr>
<tr>
<td>17</td>
<td>Public liability insurance</td>
<td>23</td>
</tr>
<tr>
<td>17A</td>
<td>Statutory Insurances</td>
<td>23</td>
</tr>
<tr>
<td>17B</td>
<td>Insurance cover does not limit liability</td>
<td>24</td>
</tr>
<tr>
<td>18</td>
<td>Insurance of employees</td>
<td>24</td>
</tr>
<tr>
<td>19</td>
<td>Inspection and provisions of insurance policies</td>
<td>24</td>
</tr>
<tr>
<td>20</td>
<td>Superintendent</td>
<td>25</td>
</tr>
<tr>
<td>21</td>
<td>Superintendent’s Representative</td>
<td>25</td>
</tr>
<tr>
<td>22</td>
<td>Contractor’s representative and personnel</td>
<td>25</td>
</tr>
<tr>
<td>23</td>
<td>Contractor’s employees and subcontractors</td>
<td>26</td>
</tr>
<tr>
<td>24</td>
<td>Site</td>
<td>26</td>
</tr>
<tr>
<td>25</td>
<td>Latent conditions</td>
<td>26</td>
</tr>
<tr>
<td>26</td>
<td>Setting out the Works</td>
<td>28</td>
</tr>
<tr>
<td>27</td>
<td>Cleaning up</td>
<td>28</td>
</tr>
<tr>
<td>28</td>
<td>Materials, labour and construction plant</td>
<td>29</td>
</tr>
<tr>
<td>Page</td>
<td>Section</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Quality</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Examination and testing</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Working hours</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Programming</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Suspension</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Time and progress</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Defects liability</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Variations</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Payment</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Payment of workers and subcontractors</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Default or insolvency</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Termination by frustration</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Notification of claims</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Dispute resolution</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Notices and suspension of WUC under the Security of Payment Act</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>GST</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Occupational Health and Safety</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Principal’s Right of Set Off</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Project Finance</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Industrial Relations</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Wrongs Act</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Personal Property Securities Act</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Emissions and Energy Data</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Dilapidation Report</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Principal’s Drug and Alcohol Policy</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Section 133 of the Water Act 1989 (Vic)</td>
<td></td>
</tr>
<tr>
<td>55</td>
<td>Privacy Obligations</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Data Protection</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Greenhouse Gas Reporting</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Project Management Plan</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Electronic Data Interchange</td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>Risk Assessment</td>
<td></td>
</tr>
</tbody>
</table>
Annexures

Part A............................................................................................................. 52
Part B............................................................................................................. 58
Part C............................................................................................................. 59
Part D............................................................................................................. 60
Part E............................................................................................................. 61
Part F............................................................................................................. 62
Part G............................................................................................................. 63
Part H............................................................................................................. 64
Part I............................................................................................................. 65
Part J............................................................................................................. 66
Park K......................................................................................................... 67
Park L......................................................................................................... 68
Part M......................................................................................................... 69
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1 Interpretation and construction of Contract

In the Contract, except where the context otherwise requires:

**Adjustment**
has the meaning set out in section 195-1 of the GST Act;

**Adjustment Note**
has the meaning set out in section 195-1 of the GST Act;

**Bank Guarantee**
means an unconditional and irrevocable bank guarantee issued by a financial institution approved by the Principal, in a form and on terms that are acceptable to the Principal in the Principal’s absolute discretion and must not contain an expiry date;

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

**Building Act**
means the Building Act 1993 (Vic);

**business day**
means any day that is not:

a) a Saturday or Sunday; or

b) a day that is wholly or partially observed as a public holiday throughout Victoria;

**certificate of practical completion**
has the meaning in subclause 34.6;

**Claim**
means any claim, assertion of rights, action, demand or proceeding including any claim for monies (including damages) or any adjustments to the contract sum or for any extension of time to the date for practical completion:

a) under, arising out of, or in any way in connection with, the Contract, including any direction of the Superintendent;

b) arising out of, or in any way in connection with the WUC or the Works; or

c) arising otherwise at law or in equity including:
   (i) by statute;
   (ii) in tort for negligence or otherwise, including negligent misrepresentations; or
   (iii) for restitution,

or for any cost, expense, loss or damage on any basis whatsoever to the extent that it is possible to exclude any such claim at law;

**compensable cause**
means any act that is not authorised by the Contract, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);

**construction plant**
means machinery, appliances and things used in the carrying out of WUC but not forming part of the Works;

**contract sum**
means:

a) where the Principal accepted a lump sum, the lump sum;

b) where the Principal accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the priced bill of quantities or schedule of rates;

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

d) where the WUC is comprised of separable portions, the sum total of
the values of all of those separable portions, including provisional sums and prime costs items but excluding any additions or deductions which may be required to be made under the Contract;

Contractor means the contractor stated in Item 3, bound to carry out and complete the WUC;

date for practical completion means:
a) where Item 7(a) provides a date for practical completion, the date;
b) where Item 7(b) provides a period of time for practical completion, the last day of the period,
but if any EOT for practical completion is directed by the Superintendent or allowed in any litigation, it means the date resulting therefrom;

date of practical completion means:
a) the date evidenced in a certificate of practical completion as the date upon which practical completion was reached; or
b) where another date is determined in any litigation as the date upon which practical completion was reached, that other date;

Deed of Confidentiality means the Deed of Confidentiality attached to Annexure Part G;

Deed of Guarantee and Indemnity means the Deed of Guarantee and Indemnity attached to Annexure Part E;

Deed of Novation means the Deed of Novation attached to Annexure Part F;

defects means but not limited to any:
a) defect, shrinkage, movement, error, omission, deficiency or other imperfection in the WUC or the Works (as applicable) in respect of, or arising from, any cause including design, materials or workmanship;
b) aspect of WUC or the Works which are not in accordance with the Contract; or
c) physical damages to WUC or the Works resulting from any of the matters referred to in paragraphs (a) or (b) of this definition;
defects liability period has the meaning in clause 35;
direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
dispute has the meaning in clause 42;

EOT (from ‘extension of time’) has the meaning in subclause 34.3;

EPA means the Environment Protection Authority;

excepted risk has the meaning in subclause 14.3;

final payment has the meaning in subclause 37.2;

final payment claim means the final payment claim referred to in subclause 37.4;

final payment schedule has the meaning in subclause 37.4;
**Formal Instrument of Agreement**

means the document so titled at the beginning of the Contract;

**GST**

means the goods and services tax within the meaning of the GST Act;

**GST Act**

means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any associated legislation including without limitation delegated legislation;

**Intellectual property right**

means any patent, registered design, trademark or name, copyright or other protected right;

**Item**

means an Item in Annexure Part A;

**latent condition**

has the meaning in subclause 25.1;

**legislative requirement**

includes:

(a) Acts, Ordinances, regulations, codes, by-laws, orders, awards and proclamations of the jurisdiction where WUC or the particular part thereof is being carried out;

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

(c) applicable Australian Standards; and

(d) fees and charges payable in connection with the foregoing;

**nearby buildings**

means any buildings or structures on, adjacent to or near the site;

**OH&S**

means occupational health and safety;

**OH&S Act**

means the Occupational Health and Safety Act 2004 (Vic);

**OH&S Regulations**

means the Occupational Health and Safety Regulations 2007 (Vic);

**payment claim**

has the meaning in subclause 37.1;

**payment schedule**

has the meaning in subclause 37.2;

**practical completion**

is that stage in the carrying out and completion of WUC when:

(a) the Works are complete except for minor defects:

   (i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;

   (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and

   (iii) the rectification of which will not prejudice the convenient use of the Works;

(b) those tests which are required by the Contract to be carried out and passed before the Works reach practical completion have been carried out and passed; and

(c) documents and other information required under the Contract which, in the Superintendent’s opinion, are essential for the use, operation and maintenance of the Works have been supplied;

(d) the Contractor has provided to the Superintendent all of the necessary certificates and approvals by all authorities required for the lawful occupation and use of the Works or required pursuant to the terms of this Contract.

(e) the Contractor has removed from the site all rubbish, surplus material and temporary works, plant and equipment (except those items which the Superintendent consents to in writing to remain on
the site during the defects liability period);
(f) all services and installations have been performed by the Contractor as required by the terms of the Contract;
(g) the Contractor has provided to the Superintendent a certificate signed by a licensed surveyor stating:
   (i) that the whole of the Works are within the particular boundaries of the site as may be stipulated in the Contract;
   (ii) that, where so required by the Contract, structural elements of the Works are within the tolerances specified;
(h) the Contractor has complied with subclause 34.10;
(i) the Contractor has provided to the Superintendent three complete sets (in hard copy and electronic formats) of all operation and maintenance manuals as may be required by the Contract or necessary for the use, operation and maintenance of the Works or any part of the Works by the Principal;
(j) further to paragraph (b) above, all testing and commissioning of the Works or any part of the Works, as may be required by the Contract or necessary for the use, operation and maintenance of the Works or any part of the Works by the Principal;
(k) all plant and all other parts of the Works are operating under stable conditions and under all conditions of full and partial load;
(l) the Contractor has sufficiently instructed the Principal’s employees or representatives as to the safe use, operation and maintenance of the Works or any part of the Works including all plant;
(m) the Contractor has provided to the Superintendent certification that capacities and efficiencies of all equipment and systems forming part of the Works satisfy specified requirements; and
(n) the Contractor has rectified any damage to the land or structures within or surrounding the site caused by the Contractor or subcontractors in carrying out the WUC;

**prescribed notice** has the meaning in subclause 41.1;

**prime cost item** means an item (for example, a fixture or fitting) that either has not been selected or whose price is not known, at the time the Contract is entered into and for the cost of supply and delivery of which the Contractor must make a reasonable allowance in the Contract;

**Principal** means the Principal stated in Item 1;

**provisional sum** means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) for which the Contractor, after making all reasonable enquiries, cannot give a definite amount at the date of the Contract and includes monetary sum, contingency sum and prime cost item;

**public liability policy** has the meaning in clause 17;

**qualifying cause of delay** means limited to:
   (a) any act that is not authorised by the Contract, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor);
   (b) state-wide industrial action that affects the site and the cause of this industrial action does not arise from any specific act or omission of the Contractor or the Contractor’s subcontractors on the site or elsewhere;
   (c) a variation directed by the Superintendent under subclause 36.1;
   (d) delay to the WUC caused by compliance by the Contractor with subclause 24.3;
(e) delay in the WUC caused by changes in legislative requirements; or
(f) latent conditions as referred to in subclause 25.3.

Qualifying cause of delay does not mean or include:

(i) any act, default, breach or omission by the Contractor or the Contractor’s subcontractors;
(ii) industrial conditions (whether state-wide or site specific) occurring after the date for practical completion;
(iii) inclement weather occurring before or after the date for practical completion; or
(iv) any other cause of delay stated in Item 23;

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

Security means:

a) cash;

b) retention moneys;

c) Bank Guarantee;

d) bonds or inscribed stock or their equivalent issued by a national, state or territory government;

e) interest bearing deposit in a bank carrying on business at the place stated in Item 9(c);

f) an approved unconditional undertaking (the form in Annexure Part C is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or

g) other form approved by the party having the benefit of the security;

Security of Payment Act means the Building and Construction Industry Security of Payment Act 2002 (Vic);

Selected subcontract work has the meaning in subclause 9.3;

Selected subcontractor has the meaning in subclause 9.3;

Separable portion means a portion of the Works identified as such in the Contract or by the Superintendent pursuant to clause 4;

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

Site conditions is defined in subclause 25.5;

Subcontractor means a subcontractor of the Contractor including a subcontractor of the Contractor engaged in accordance with subclause 9.2 and includes any consultant or supplier engaged by the Contractor;

Superintendent means the person stated in Item 5 as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent’s Representative, includes a Superintendent’s Representative;

Superintendent’s Representative means an individual appointed in writing by the Superintendent under clause 21;
survey mark in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring WUC;

Taxable Supply has the meaning set out in section 195-1 of the GST Act;

Tax Invoice has the meaning set out in section 195-1 of the GST Act;

temporary works means work used in carrying out and completing WUC, but not forming part of the Works;

test has the meaning in subclause 30.1 and includes examine and measure;

the Works means the whole of the work (including the provision of materials) to be carried out and completed in accordance with the Drawings, Specifications, Principal’s Project Requirements and the Contract, including variations provided for by the Contract, which in accordance with the Contract is to be handed over to the Principal;

variation has the meaning in clause 36;

working day has the meaning in clause 31;

WUC (from ‘work under the Contract’) means the work (including the provision of materials) which the Contractor is or may be required to carry out and complete under the Contract in accordance with the Drawings, the Specifications and the Principal’s Project Requirements includes variations, remedial work, construction plant and temporary works, and like words have a corresponding meaning.

In the Contract:

(a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate and references to work include the provision of materials;

(b) time for doing any act or thing under the Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday in Victoria, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday in Victoria;

(c) clause headings and subclause headings in these General Conditions of Contract shall not form part of these General Conditions of Contract and shall not be used in the interpretation of the Contract;

(d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;

(e) references to includes or including means includes or including without limitation;

(f) communications between the Principal, the Superintendent and the Contractor shall be in the English language;

(g) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in Item 8;

(h) unless otherwise provided, prices are in the currency in Item 9(a) and payments shall be made in that currency at the place in Item 9(b);

(i) the law governing the Contract, its interpretation and construction, is the law of the jurisdiction in Item 8; and

(j) reference to any legislation including acts or subordinate legislation including regulations, means any amendment, consolidation, re-enactment or replacement of that legislation or subordinate legislation.
2 Nature of Contract

2.1 Performance and payment

The Contractor shall carry out and complete WUC in accordance with the Contract and directions authorised by the Contract. The Contractor must at its cost obtain all necessary approvals including statutory approvals to commence, perform and complete the Works.

The Principal shall pay the Contractor the contract sum adjusted by any additions or deductions allowed pursuant to the Contract subject to the WUC being performed in accordance with the Contract.

2.2 Bill of quantities

The Alternative in Item 10(a) applies.

Alternative 1

A bill of quantities forms part of the Contract and shall be priced in accordance with subclause 2.3.

Alternative 2

A bill of quantities does not form part of the Contract and shall not be priced in accordance with subclause 2.3 unless so stated in Item 10(b).

2.3 Priced bill of quantities

Where a bill of quantities is to be priced:

(a) all items included in the bill of quantities shall be priced and extended by the Contractor and the prices as extended shall on addition equal the sum accepted by the Principal for carrying out the whole of the work to which the bill of quantities relates;

(b) the Contractor shall lodge the bill of quantities so priced and extended with the Superintendent before the expiration of the time for lodgement stated in Item 10(c) or such further time as may be directed by the Superintendent from time to time;

(c) notwithstanding any other provision of the Contract, the Contractor shall not be entitled to payment until the Contractor has lodged the bill of quantities so priced and extended.

If the aggregate amount in a priced bill of quantities does not equal the sum accepted for the work, the subject of the bill of quantities, the Superintendent shall (unless the parties agree within 7 days of notification) determine an appropriate correction of errors and inconsistencies in rates and prices therein, so that the aggregate amount equals such sum.

2.4 Quantities

Quantities in a bill of quantities or schedule of rates are estimated quantities only.

The Superintendent is not required to give a direction by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in a bill of quantities which forms part of the Contract or schedule of rates.

2.5 Adjustment for actual quantities

Where, otherwise than by reason of a direction to vary WUC, the actual quantity of an item required to perform the Contract is greater or less than the quantity shown in a bill of quantities which forms part of the Contract or schedule of rates:

(a) the Principal accepted a lump sum for the item, the difference shall be a deemed variation;

(b) the Principal accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a schedule of rates are stated in Item 11, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed variation.
If such a bill of quantities or schedule of rates omits an item which should have been included, the item shall be a deemed variation.

Notwithstanding the preceding provisions of this subclause in respect of a bill of quantities, a variation shall not be deemed for actual quantities of an item pursuant to paragraph (a), or for an omitted item or any adjustment made for actual quantities of an item pursuant to paragraph (b), if the difference, the value of the omitted item or the adjustment respectively is less than $400.

2.6 Trade Breakdown Schedule

The Trade Breakdown Schedule attached to Annexure Part K is included in the Contract solely for the purpose of the Superintendent, assessing payment claims and variations.

2A Contractor’s Warranties

(a) Without limiting the generality of subclause 2.1, the Contractor represents and warrants to the Principal that:

(i) the Works will be carried out in a proper and workmanlike manner and in accordance with the Drawings, Specifications and the Principal’s Project Requirements set out in the Contract;

(ii) all materials to be supplied by the Contractor for use in the Works will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the Contract, those materials will be new;

(iii) the Works will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act and the regulations made under that Act;

(iv) the Works will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the Contract;

(v) if the Contract states the particular purpose for which the Works is required, or the result which the Principal wishes the Works to achieve, so as to show that the Principal relies on the Contractor’s skill and judgement, the Contractor warrants that the Works and any material used in carrying out the Works will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result;

(vi) any provisional sum or prime cost item has been calculated with reasonable care and skill taking into account all of the information reasonably available at the date of the Contract including the nature and location of the site;

(vii) the Contractor at all times shall be suitably qualified and experienced in the construction of the type and scale of the Works contemplated by this Contract, and shall exercise due skill and diligence in the performance and completion of WUC;

(viii) the Contractor is fully aware that there are items not specifically referred to or described in the Contract which nonetheless are required to complete the Works and to achieve the effective and efficient use and operation of the Works;

(ix) the Works will be carried out in accordance with the approvals, permits and consents referred to in subclause 2.1 or attached to the Contract;

(x) all materials to be supplied by the Contractor for use in the Works will conform with current relevant Australian Standards and will be installed in accordance with relevant manufacturers’ recommendations;

(xi) the Contractor has made full allowance for any problems or difficulties with respect to nearby buildings and services and improvements on the site;

(xii) the Contractor will act honestly and with the utmost good faith;

(xiii) the Contractor will at all times be responsible for the correction of any errors or omissions in the Works caused by the Contractor or subcontractors;
(xiv) the Contractor will assist the Principal respond to and otherwise deal with any claims made by any party in connection with the Works against the Principal;

(xv) the Contractor will act within the times prescribed under this Contract, or where no times are prescribed, within a reasonable time;

(xvi) at least one of its directors is registered as a builder under the Building Act and that at least one of its directors for the time being shall remain registered as a builder under the Building Act for the duration of the performance of the Works; and

(xvii) that it is the holder of insurances required, if any, under the Building Act in respect of the Works.

(b) The Contractor acknowledges that, in entering into the Contract the Principal relied on the Contractor’s representations and warranties in subclause 2A(a).

3 Provisional sums and prime cost items

A provisional sum or prime cost item included in the Contract shall not itself be payable by the Principal but where pursuant to a direction the work or item to which the provisional sum or prime cost item relates is carried out or supplied by the Contractor, the work or item shall be priced by the Superintendent, and the difference shall be added to or deducted from the contract sum.

Amounts for installation and profit and overheads for prime cost items are included in the contract sum.

Where any part of such work or item with respect to a provisional sum is carried out or supplied by a subcontractor, the Superintendent shall allow the amount payable by the Contractor to the subcontractor for the work or item, disregarding:

(a) any damages payable by the Contractor to the subcontractor or vice versa; and

(b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated on the difference between the provisional sum and the actual cost of the work or item to which the provisional sum relates, by using the percentage thereon stated in Item 12 or elsewhere in the Contract, or, if not so stated, as assessed by the Superintendent.

4 Separable portions

Separable portions may be directed by the Superintendent, who shall clearly identify for each, the:

(a) portion of the Works;

(b) date for practical completion; and

(c) respective amounts for security, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the Superintendent’s valuation of the separable portion to the contract sum).

5 Security

5.1 Provision

Security shall be provided in accordance with Item 13. All delivered security, other than cash or retention moneys, shall be transferred in escrow.

5.2 Recourse

The Principal may have recourse to security in any case where the Principal believes it may be entitled to payment of money from the Contractor under or otherwise arising out of, the Contract. The Contractor must maintain the security until it is released by the Principal and must not commence any proceedings, exercise any rights or take any steps whatsoever to prevent or restrain the issuer of any security from making payment to the Principal or to prevent or restrain the Principal from having recourse to the security.
5.3 Change of security

The Contractor may substitute another form of security. To the extent that another form of security is provided, the Principal shall not deduct, and shall promptly release and return, retention moneys and cash security.

5.4 Reduction and release

Upon the issue of the certificate of practical completion the Principal’s entitlement to security (other than in Item 13(e)) shall be reduced by the percentage or amount in Item 13(f), and the reduction shall be released and returned within 14 days to the Contractor.

The Principal’s entitlement to security in Item 13(e) shall cease 14 days after incorporation into the Works of the plant and materials for which that security was provided.

If the final payment schedule certifies a payment in favour of the Contractor, the Principal shall release and return the balance of the security held by the Principal to the Contractor within 14 days after issue of the final payment schedule. If the final payment schedule certifies a payment due from the Contractor to the Principal, the Contractor shall not be entitled to the release and return of the balance of the security held by the Principal until 14 days after the Contractor has paid the Principal the amount certified on the final payment schedule as due and payable to the Principal.

Subject to the previous paragraph, the Principal’s entitlement otherwise to security shall cease 14 days after the issue of the final payment schedule.

Upon the Principal’s entitlement to security ceasing, the Principal shall release and return forthwith the security to the Contractor.

5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of security (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the Principal or the Contractor is entitled to receive them.

Interest earned on security not required to be held in trust shall belong to the party holding that security.

5.6 Deed of guarantee and indemnity

Where the Contractor is a related or subsidiary corporation (as defined in the Corporations Act 2001(Cth)) the Contractor shall, within 7 days upon execution of the Contract, provide to the Principal the Deed of Guarantee and Indemnity executed by the parent corporation.

6 Not Used

7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

(a) if addressed or delivered to the relevant address in the Contract or last communicated in writing to the person giving the notice;

(b) if delivered by hand or sent by facsimile or email (subject to the last sentence in subclause 7(b)(ii));
   (i) by 4pm in the place of receipt, on a business day – on that day; or
   (ii) after 4pm in the place of receipt, on a business day or on a day that is not a business day – on the next business day, provided that, with respect to a facsimile, confirmation of correct transmission of the facsimile is received and, with respect to an email, the sender of the email does not receive notification that the email was not delivered. A notice issued pursuant to clauses 39, 40, 41 or 42 may not be delivered by email or facsimile; or

(c) if posted, 3 business days after posting.
8 Contract documents

8.1 Discrepancies and interpretation

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out WUC, that party shall give the Superintendent written notice of it. The Superintendent, thereupon, and upon otherwise becoming aware, shall direct the Contractor as to the interpretation and construction to be followed.

For the purposes of interpreting the Contract, the Superintendent must give precedence to the documents comprising the Contract in the order which they are listed in clause 4 of the Formal Instrument of Agreement.

The Contractor is deemed to have reviewed all Drawings and Specifications forming part of the Contract and to have satisfied itself that such Drawings and Specifications are accurate and will enable the Works to be constructed in accordance with the Contract.

The Contractor is not entitled to any additional payment, EOT or delay costs with respect to any inconsistency, ambiguity or discrepancy in any document, or any compliance with a direction given by the Superintendent under this subclause.

8.2 Principal-supplied documents

The Principal shall supply to the Contractor the documents and number of copies thereof, both stated in Item 15.

They shall:
(a) remain the Principal’s property and be returned to the Principal on written demand; and
(b) not be used, copied nor reproduced for any purpose other than WUC.

8.3 Contractor-supplied documents

The Contractor shall supply to the Superintendent the documents and number of copies thereof, both stated elsewhere in the Contract.

If the Contractor submits documents to the Superintendent, then except where the Contract otherwise provides:
(a) the Superintendent shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract;
(b) notwithstanding clause 20, any Superintendent’s acknowledgment or approval shall not prejudice the Contractor's obligations; and
(c) if the Contract requires the Contractor to obtain the Superintendent’s direction about such documents, the Superintendent shall give, within the time stated in Item 16, the appropriate direction, including reasons if the documents are not suitable.

Copies of documents supplied by the Contractor shall be the Principal’s property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of the Works.

8.4 Availability

The Contractor shall keep available to the Superintendent and the Principal:
(a) on site, one complete set of documents affecting WUC and supplied by a party or the Superintendent; and
(b) at the place of manufacture or assembly of any significant part of WUC off site, a set of the documents affecting that part.
8.5 **Confidential information**

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

The Contractor shall execute and provide to the Principal the Deed of Confidentiality at the time the Contractor executes this Contract.

8.6 **Media**

The Contractor shall not disclose any information concerning the project for distribution through any communications media without the Principal’s prior written approval (which shall not be unreasonably withheld). The Contractor shall refer to the Principal any enquiries from any media concerning the project.

9 **Assignment and subcontracting**

9.1 **Assignment**

Neither party shall, without the other’s prior written approval (including terms) assign the Contract or any payment or any other right, benefit or interest thereunder.

9.2 **Subcontracting generally**

The Contractor shall not without the Superintendent’s prior written approval (which shall not be unreasonably withheld) subcontract any part of the Works until the Superintendent has approved the proposed subcontractor in writing:

(a) subcontract or allow a subcontractor to subcontract any work described in Item 17; or

(b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval to subcontract any work described in Item 17, the Contractor shall give the Superintendent written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the Contractor’s request for approval, the Superintendent shall give the Contractor written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

(a) provision that the subcontractor shall not assign nor subcontract without the Contractor’s written consent; and

(b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor’s obligations to the Principal.

9.3 **Selected subcontract work**

If the Principal has included in the invitation to tender a list of one or more selected subcontractors for particular work, the Contractor shall subcontract that work to a selected subcontractor and thereupon give the Superintendent written notice of that selected subcontractor’s name.

If no subcontractor on the Principal’s list will subcontract to carry out the selected subcontract work, the Contractor shall provide a list for the written approval of the Superintendent.
9.4 Novation

When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a Deed of Novation in the form attached to Annexure Part F, such deed being between the Principal, the Contractor and the subcontractor or selected subcontractor stated in Item 18 for the particular part of the WUC.

9.5 Contractor’s responsibility

Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts, defaults and omissions of subcontractors (including selected subcontractors) and employees and agents of subcontractors as if they were those of the Contractor.

Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

10 Intellectual property rights

The Principal warrants that, unless otherwise provided in the Contract, design, materials, documents and methods of working, each specified in the Contract or provided or directed by the Principal or the Superintendent shall not infringe any intellectual property right.

The Contractor warrants that any other design, materials, documents and methods of working, each provided by the Contractor, shall not infringe any intellectual property right.

Each party shall indemnify the other against such respective infringements.

11 Legislative requirements

11.1 Compliance

The Contractor shall satisfy all legislative requirements except those in Item 19(a) or directed by the Superintendent to be satisfied by or on behalf of the Principal.

The Contractor, upon finding that a legislative requirement is at variance with the Contract, shall promptly give the Superintendent written notice thereof.

11.2 Changes

If a legislative requirement:

(a) necessitates a change:

(i) to the Works;

(ii) to so much of WUC as is identified in Item 19(b);

(iii) being the provision of services by a municipal, public or other statutory authority in connection with WUC; or

(iv) in a fee or charge or payment of a new fee or charge; and

(b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and

(c) causes the Contractor to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

The Contractor acknowledges that notwithstanding subclause 11.2(a) the Contractor bears the risk of the execution of WUC and that changes in working hours, conditions of employment, industrial legislation, occupational health and safety legislation, or changes in or required to be made to the work used by the Contractor in execution of the Works but not forming part of the Works or the Contractor’s method of working, are the sole responsibility of the Contractor and do not constitute a change in legislative requirements for the purpose of this subclause.
12 Protection of people and property

Insofar as compliance with the Contract permits, the Contractor shall:

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

If the Contractor damages property, including but not limited to public utilities and services and property on, adjoining or adjacent to the site including nearby buildings, the Contractor shall promptly rectify the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under this clause, the Principal, after the Superintendent has given reasonable written notice to the Contractor and in addition to the Principal’s other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the Superintendent as moneys due from the Contractor to the Principal.

13 Urgent protection

If urgent action is necessary to protect WUC, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Superintendent may take the necessary action. If the action was action which the Contractor should have taken at the Contractor’s cost, the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal.

If time permits, the Superintendent shall give the Contractor prior written notice of the intention to take action pursuant to this clause.

14 Care of the work and reinstatement of damage

14.1 Care of WUC

Except as provided in subclause 14.3, the Contractor shall be responsible for care of:

(a) the whole of WUC from and including the date of commencement of WUC to 4:00 pm on the date of practical completion, at which time responsibility for the care of the Works (except to the extent provided in paragraph (b)) shall pass to the Principal; and
(b) outstanding work and items to be removed from the site by the Contractor after 4:00 pm on the date of practical completion until completion of outstanding work or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the Contractor shall be responsible for the care of unfixed items accounted for in a payment schedule and the care and preservation of things entrusted to the Contractor by the Principal or brought onto the site by subcontractors for carrying out WUC.

14.2 Reinstatement

If loss or damage, other than that caused by an excepted risk, occurs to WUC during the period of the Contractor’s care, the Contractor shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the excepted risks (whether or not in combination with other risks), the Contractor shall to the extent directed by the Superintendent, rectify the loss or damage and such rectification shall be a deemed variation. If loss or damage is caused by a combination of excepted risks and other risks, the Superintendent in pricing the variation shall assess the proportional responsibility of the parties.

14.3 Excepted risks

The excepted risks causing loss or damage, for which the Principal is liable, are:

(a) any negligent act or omission of the Superintendent, the Principal or its consultants, agents, employees or other contractors (not being employed by the Contractor);
(b) any risk specifically excepted elsewhere in the Contract;
(c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
(d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its subcontractors or either’s employees or agents;
(e) use or occupation of any part of WUC by the Principal or its consultants, agents or other contractors (not being employed by the Contractor); and
(f) defects in the design of WUC, other than design provided by the Contractor.

15 Damage to persons and property other than WUC

15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than WUC.

The Contractor shall indemnify the Principal against:
(a) loss of or damage to the Principal’s property; and
(b) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the carrying out of WUC, but the indemnity shall be reduced proportionally to the extent that the act or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:
(a) the extent that the Contractor’s liability is limited by another provision of the Contract;
(b) exclude any other right of the Principal to be indemnified by the Contractor;
(c) things for the care of which the Contractor is responsible under subclause 14.1; and
(d) claims in respect of the Principal’s right to have WUC carried out.

15.2 Indemnity by Principal

The Principal shall indemnify the Contractor in respect of claims referred to in paragraph (d) of subclause 15.1.

16 Insurance of the Works

Before commencing WUC, the Contractor shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the Contractor’s liability under subclause 14.2 and things in storage off site and in transit to the site but may exclude:
(a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
(b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
(c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
(d) damages for delay in completing or for the failure to complete the Works;
(e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
(f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The *insurance cover* shall be for an amount not less than the aggregate of the:

(i) *contract sum*;

(ii) provision in *Item 20(a)* to provide for costs of demolition and removal of debris;

(iii) provision in *Item 20(b)* for consultants’ fees;

(iv) value in *Item 20(c)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and

(v) additional amount or percentage in *Item 20(d)* of the total of the items referred to in sub paragraphs (i) to (iv) of this paragraph.

Insurance shall be in the joint names of the parties and note the interest of the *Principal’s* financier (if required), shall cover the parties and all *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

### 17 Public liability insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain for the *duration* of the *Contract*, a *public liability policy*.

The policy shall:

(a) be in the joint names of the parties and note the interest of the *Principal’s* financier (if required);

(b) cover the:

(i) respective rights and interests; and

(ii) liabilities to third parties,

of the parties, the *Superintendent* and *subcontractors* from time to time, *whenever* engaged in *WUC*;

(c) cover the parties’ respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);

(d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;

(e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 21*; and

(f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

### 17A Statutory Insurances

Notwithstanding the other provisions of this *Contract*, the *Contractor* shall effect all insurances that it is required to effect pursuant to any applicable legislation, including, without limitation, pursuant to the *Building Act 1993 (Vic)*. The *Contractor* shall maintain all such insurance for the duration required by the applicable legislation.
17B Insurance cover does not limit liability

The effecting of insurance by the Contractor under clauses 16, 17 and 17A will not limit the liability or obligations of the Contractor under or in relation to this Contract, whether under the law of contract, tort (including negligence), equity, restitution, statute or otherwise.

18 Insurance of employees

Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be maintained until completion of all WUC.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Principal’s statutory liability to the Contractor’s employees.

The Contractor shall ensure that all subcontractors have similarly insured their employees.

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the Contractor commences WUC and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the Contract.

19.2 Failure to produce proof of insurance

If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.

19.3 Notices from or to insurer

The party insuring under clause 16 or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

(a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;

(b) provides that a notice of claim given to the insurer by either party, the Superintendent or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the Superintendent and the subcontractor; and

(c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16 or 17 and shall keep the other party informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the parties.

19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16:

(a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement, insurance moneys received
shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the Contractor reinstates the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and

(b) to the extent that reinstatement has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the Contractor.

19.6 Cross liability

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

20 Superintendent

The Principal shall ensure that at all times there is a Superintendent. The Superintendent shall fulfil all aspects of the role and functions reasonably and in good faith.

Except where the Contract otherwise provides, the Superintendent may give a direction orally but shall as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent does so.

The Contractor shall promptly comply with the Superintendent’s directions. Should the Contractor consider that any direction which is not given as a written direction in the form of a “Variation Direction”, in fact involves a variation, or has any objection of whatsoever nature to any direction (including any direction of the Superintendent acting as certifier, assessor or valuer under the Contract), then the Contractor shall promptly notify the Superintendent and the Principal in writing. If the Contractor does not notify the Superintendent and the Principal in writing within 28 days of receipt of the direction or before any works in accordance with the direction are undertaken, whichever is first to occur, then the Contractor shall be deemed to have waived any objection to the direction, shall be deemed to have accepted the direction and shall have no Claim against the Principal arising out of or in any way connected with the direction.

21 Superintendent’s Representative

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent’s functions, provided that:

(a) no aspect of any function shall at any one time be the subject of delegation to more than one Superintendent’s Representative;

(b) delegation shall not prevent the Superintendent exercising any function;

(c) the Superintendent forthwith gives the Contractor written notice of respectively:

(i) the appointment, including the Superintendent’s Representative’s name and delegated functions; and

(ii) the termination of each appointment; and

(d) if the Contractor makes a reasonable objection to the appointment of a Superintendent’s Representative, the Superintendent shall terminate the appointment.

22 Contractor’s representative and personnel

The Contractor shall superintend WUC personally or by a competent representative. Matters within a Contractor’s representative’s knowledge (including directions received) shall be deemed to be within the Contractor’s knowledge.
The Contractor shall forthwith give the Superintendent written notice of the representative’s name and any subsequent changes.

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

The Contractor shall allocate adequate supervisory personnel to ensure that WUC is carried out and completed in accordance with the Contract. If the Superintendent is of the opinion that this is not being achieved, the Superintendent may direct the Contractor to allocate additional supervisory personnel to carry out and complete WUC and the Contractor shall comply with the direction at no additional cost to the Principal.

23 Contractor’s employees and subcontractors

The Superintendent may direct the Contractor to have removed, within a stated time, from the site or from any activity of WUC, any person employed on WUC who, in the Superintendent’s opinion, is incompetent, negligent or guilty of misconduct.

24 Site

24.1 Possession

The Principal shall by the date as determined in Item 22, give the Contractor possession of sufficient of the site for commencement of WUC on site. If the Principal has not given the Contractor possession of the whole site, the Principal shall give the Contractor possession of such further portions of the site as may, from time to time, be necessary for carrying out WUC. Subject to subclause 39.7, delay by the Principal in giving possession shall not be a breach of the Contract.

Possession of the site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out WUC and shall exclude camping, residential purposes and any purpose not connected with WUC, unless approved by the Superintendent.

24.2 Access for Principal and others

The Superintendent, the Principal and the Principal’s employees, consultants and agents may at any time after reasonable written notice to the Contractor, have access to any part of the site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the site other than WUC and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.

The Contractor shall at all reasonable times give the Superintendent access to WUC.

The Principal shall ensure that none of the persons referred to in this subclause impedes the Contractor.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:

(a) take precautions to prevent their loss, removal or damage; and

(b) give the Superintendent written notice of the discovery.

All costs so incurred by the Contractor shall be assessed by the Superintendent and added to the contract sum.

25 Latent conditions

25.1 Scope
Latent conditions are physical conditions on the site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the site conditions which should reasonably have been anticipated by an experienced and competent contractor at the time of the Contractor’s tender if the contractor had inspected:

(a) all written information made available by the Principal to the Contractor for the purpose of tendering;

(b) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and

(c) the site and its near surrounds including undertaking the investigation referred to in subclause 25.4.

25.2 Notification

The Contractor, upon becoming aware of a latent condition while carrying out WUC, shall promptly, and where possible before the latent condition is disturbed, give the Superintendent written notice of the general nature thereof.

The Contractor shall, as soon as practicable, give the Superintendent a written statement of:

(a) the latent condition encountered and the respects in which it differs materially;

(b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the latent condition;

(c) the information (as applicable) applying to variations as described in subclause 36.2; and

(d) other details reasonably required by the Superintendent including a claim for cost in accordance with subclause 25.3.

25.3 Deemed variation

The effect of the latent condition shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the Contractor gave the notice required by the first paragraph of subclause 25.2.

The Contractor must give the Superintendent a claim for costs in relation to a deemed variation with respect to a latent condition in the form of a prescribed notice pursuant to subclause 41.1 and costs certified by the Superintendent pursuant to subclause 41.3 shall be due and payable to the Contractor.

The Superintendent may direct the Contractor to give a detailed quotation or provide additional quotations for the latent condition supported by measurements or other evidence of costs.

Nothing in this subclause 25.3 will obligate the Principal to pay costs which have already been included in the value of a variation or any other payment under the Contract.

25.4 Acknowledgement and Warranty

The Contractor acknowledges that:

(a) the Principal, the Superintendent and their consultants may have made available to the Contractor certain material and information relating to the site and to the site conditions (the “site information”);

(b) the site information may not be complete and/or accurate;

(c) the Principal does not guarantee and makes no representation as to the completeness or accuracy of the site information;

(d) the Principal has advised the Contractor to make and rely on its own enquiries with respect to the site information; and

(e) the use of the site information is at the Contractor’s own risk.

The Contractor, prior to the date of the Contract, was required to fully investigate the site and the actual and potential site conditions. The Contractor warrants to the Principal that it has carried out this investigation, not relied on the contents of any of the site information:
(i) and formed its own view on the issues covered in the site information; and

(ii) satisfied itself that there are no site conditions which would or may adversely affect the ability of the Contractor to carry out and complete the Works for the contract sum and by the date for practical completion.

25.5 Site conditions risk

The Contractor will be responsible for, and assumes the risk of any and all site conditions and will have no entitlement to claim a variation, an EOT (other than with respect to inclement weather in accordance with paragraph (d) of the definition of qualifying cause of delay), or any other entitlement whatsoever if it is delayed, disrupted or required to carry out additional work, or incurs any additional costs or expenses as a result of the site information being incomplete or inaccurate.

The Contractor shall release and indemnify and must keep the Principal indemnified, from all such risks assumed by the Contractor in this subclause 25.5.

“site conditions” include but are not limited to:

(i) physical conditions on the site or its surroundings, and all other artificial things and nearby buildings;

(ii) climatic and weather conditions relating to the site;

(iii) the means of access to and around the site;

(iv) hazardous chemicals, substances or other material including contaminated material; and

(v) water, surface and geotechnical conditions of the site.

26 Setting out the Works

26.1 Setting out

The Contractor must obtain the data, survey marks and like information necessary for the Contractor to set out the Works, together with those survey marks specified in the Contract. The Contractor shall set out the Works in accordance with the Contract.

26.2 Errors in setting out

The Contractor shall rectify every error in the position, level, dimensions or alignment of any WUC after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

26.3 Care of survey marks

The Contractor shall reinstate any survey mark disturbed, after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

If the disturbance was caused by the Superintendent or a person referred to in subclause 24.2 other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be assessed by the Superintendent and added to the contract sum.

27 Cleaning up

The Contractor shall keep the site and WUC clean and tidy and regularly remove rubbish and surplus material.

Prior to the date of practical completion, the Contractor shall remove temporary works and construction plant. The Superintendent may extend the time to remove temporary works and construction plant to enable the Contractor to perform remaining obligations pursuant to the Contract.
If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.

If:

(a) the Contractor fails to comply with such a direction; and

(b) that failure has not been made good within 5 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

Except where the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor’s obligations and discharge of the Contractor’s liabilities.

In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Contract, the Superintendent may direct the Contractor to:

(a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and

(b) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.

The Superintendent may give the Contractor a written direction not to remove materials or construction plant from the site. Thereafter the Contractor shall not remove them without the Superintendent’s prior written approval (which shall not be unreasonably withheld).

29 Quality

29.1 Quality of material and work

Unless otherwise provided the Contractor shall use suitable new materials and proper and tradesmanlike workmanship.

29.2 Quality assurance

The Contractor shall:

(a) plan, establish and maintain a conforming quality system; and

(b) ensure that the Superintendent has access to the quality system of the Contractor and subcontractors so as to enable monitoring and quality auditing.

The quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not discharge the Contractor’s other obligations under the Contract.

29.3 Defective work

If the Superintendent becomes aware of work done (including material provided) by the Contractor which does not comply with the Contract, the Superintendent shall as soon as practicable give the Contractor written details thereof. The Superintendent may direct the Contractor to do any one or more of the following:

(a) remove the material from the site;

(b) demolish the work;

(c) reconstruct, replace or correct the work; and

(d) not deliver it to the site.
and the Contractor must comply with that direction to the satisfaction of the Superintendent or the Principal at the Contractor’s cost.

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

If:

(a) the Contractor fails to comply with such a direction within the time specified by the Superintendent in the direction; and

(b) that failure has not been made good within 8 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work rectified by others,

the Principal may have that work so rectified and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal.

29.4 Acceptance of defective work

Instead of a direction pursuant to subclause 29.3, the Superintendent may direct the Contractor that the Principal elects to accept the subject work, whereupon the contract sum shall be decreased by the resulting decrease in value to the Principal of the Works and any other loss which the Principal is likely to incur, including any increase in operational and maintenance costs which may be incurred by the Principal as assessed by the Superintendent.

29.5 Timing

The Superintendent may give a direction pursuant to this clause at any time before the expiry of the last defects liability period.

30 Examination and testing

30.1 Tests

At any time before the expiry of the last defects liability period, the Superintendent may direct that any WUC be tested. The Contractor shall give such assistance and samples and make accessible such parts of WUC as may be directed by the Superintendent.

30.2 Covering up

The Superintendent may direct that any part of WUC shall not be covered up or made inaccessible without the Superintendent’s prior written direction.

30.3 Who conducts

Tests shall be conducted as provided elsewhere in the Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent.

30.4 Notice

The Superintendent or the Contractor (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the test. If the other does not attend, the test may nevertheless proceed.

30.5 Delay

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

30.6 Completion and results
On completion of the tests, the Contractor shall make good WUC so that it fully complies with the Contract.

Results of tests shall be promptly made available by each party to the other and to the Superintendent.

30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the Principal except where the Contract otherwise provides or the test is consequent upon, or reveals a failure of the Contractor to comply with the Contract (including this clause).

31 Working hours

If the working hours with respect to working days on the site are not stated in Item 22A they shall be as notified by the Contractor to the Superintendent before on-site commencement of the WUC. The working hours and working days must not be varied without the Superintendent’s prior written approval, except when, in the interests of safety of persons or property, the Contractor finds it necessary to carry out WUC otherwise, whereupon the Contractor shall give the Superintendent written notice of those circumstances as early as possible.

The Contractor acknowledges that the working hours and working days must comply with all laws and regulations governing working hours and working days including, but not limited to, those specified by Latrobe City Council and the EPA or any other governing body that may be affected by or have any jurisdiction over the WUC.

If the Contractor seeks the Superintendent’s prior written approval to vary the working hours or working days, the Contractor must provide written consent from Latrobe City Council and the EPA (if necessary) if the varied working hours or working days do not fall within those allowed by the relevant authority.

The Contractor indemnifies the Principal with respect to any cost, penalty, loss or damage the Principal incurs in the event that the Contractor carries out any of the Works during hours or on days that do not comply with the laws and regulations governing working hours and working days.

32 Programming

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor needs information, materials, documents or instructions from the Superintendent or the Principal.

The Principal and the Superintendent shall not be obliged to give any information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the date of the Contract.

A construction program is a written statement showing the dates by which, or the times within which, the various stages or separable portions of WUC are to be carried out or completed. It shall be deemed a Contract document.

The Superintendent may direct the Contractor to give the Superintendent a construction program or an updated construction program within the time and in the form directed.

The construction program shall clearly show for each item of work or activity, its planned start and finish date. It shall contain information including but not limited to:

(a) a clearly indicated critical path which shall indicate the sequence of activities which constitute a critical path;
(b) a breakup of the WUC to enable the Superintendent to accurately monitor progress of WUC both on and off the site;
(c) all activities necessary for the completion of the WUC;
(d) the time for provision of required plans, drawings, prototypes and samples;
(e) the time for commissioning, final inspections and handovers;
(f) off-site activities including prefabrication and equipment orders; and
(g) the date for practical completion.

The Contractor shall not, without reasonable cause, depart from the construction program. A construction program including an updated construction program shall not be deemed a Contract document unless and until it is approved by the Superintendent.

Notwithstanding anything else in clause 32, any request by the Superintendent to provide a construction program or updated construction program will not constitute a variation and will not entitle the Contractor to any adjustment to the contract sum. In addition, any approval or disapproval by the Superintendent of a construction program or an updated construction program, or failure by the Superintendent to respond to a construction program or updated construction program will not entitle the Contractor to a variation, an EOT, a compensable cause or a qualifying cause of delay.

The Superintendent may direct in what order and at what time the various stages or separable portions of WUC shall be carried out. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Superintendent written notice of the reasons why the Contractor cannot reasonably comply.

If in the Superintendent's opinion compliance with any directions under the second last paragraph of this clause 32, except those pursuant to the Contractor's default, causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

33 Suspension

33.1 Superintendent's suspension

The Superintendent may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:

(a) because of an act, default or omission of:
   (i) the Superintendent, the Principal or its employees, consultants, agents or other contractors (not being employed by the Contractor); or
   (ii) the Contractor, a subcontractor or either's employees or agents;
(b) for the protection or safety of any person or property; or
(c) to comply with a court order.

33.2 Contractor's suspension

If the Contractor wishes to suspend the carrying out of the whole or part of WUC, otherwise than pursuant to subclause 39.9 or clause 43, the Contractor shall obtain the Superintendent's prior written approval. The Superintendent may approve the suspension and may impose conditions of approval.

33.3 Recomencement

As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence suspended WUC as soon as reasonably practicable.

The Contractor may recommence WUC suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the Superintendent.
33.4 Cost

The Contractor shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the Contractor made the protection, safety or court order necessary, the Contractor shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

34 Time and progress

34.1 Progress

The Contractor shall ensure that WUC reaches practical completion by the date for practical completion.

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

34.3 Claim

The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching practical completion) as the Superintendent assesses (‘EOT’), if:

(a) the Contractor is or will be delayed in reaching practical completion by a qualifying cause of delay which delays an activity on the critical path of the construction program; and

(b) the cause of the delay is beyond the control of the Contractor; and

(c) the Contractor has complied with any reasonable instructions of the Superintendent with respect to the delay;

(d) the Contractor has taken all proper and reasonable steps necessary and within its control both to preclude the occurrence of the cause of the delay and to avoid or minimise the consequences of the cause of delay and has demonstrated this to the satisfaction of the Superintendent;

(e) the Contractor demonstrates to the satisfaction of the Superintendent that the Contractor has been actually delayed in achieving practical completion; and

(f) the Contractor gives the Superintendent, within 28 days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent) and the steps the Contractor has taken to mitigate or prevent the delay from continuing.

If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (f) of this subclause, the Contractor shall claim an EOT for such further delay by promptly giving the Superintendent a written claim evidencing the facts of that further delay.

34.4 Assessment

When both non-qualifying and qualifying causes of delay overlap, the Superintendent shall apportion the resulting delay to WUC according to the respective causes’ contribution.

In assessing each EOT the Superintendent shall disregard questions of whether:

(a) WUC can nevertheless reach practical completion without an EOT; or

(b) the Contractor can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the Contractor.
34.5 Extension of time

Within 28 days after receiving the Contractor’s claim for an EOT, the Superintendent shall give to the Contractor and the Principal a written direction evidencing the EOT so assessed. If the Superintendent does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the final payment schedule direct an EOT.

34.6 Practical completion

The Contractor shall give the Superintendent at least 14 days written notice of the date upon which the Contractor anticipates that practical completion will be reached.

When the Contractor is of the opinion that practical completion has been reached, the Contractor shall in writing request the Superintendent to issue a certificate of practical completion. Within 14 days after receiving the request, the Superintendent shall give the Contractor and the Principal either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.

If the Superintendent is of the opinion that practical completion has been reached, the Superintendent may issue a certificate of practical completion even though no request has been made.

34.7 Liquidated damages

If WUC does not reach practical completion by the date for practical completion, the Superintendent shall certify, as due and payable by the Contractor to the Principal, liquidated damages at the rate in Item 24 for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal shall forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.

34.8 Not Used

34.9 Delay damages

For every day the subject of an EOT for a compensable cause and for which the Contractor gives the Superintendent a claim for delay damages pursuant to subclause 41.1, damages certified by the Superintendent under subclause 41.3 shall be due and payable to the Contractor.

The maximum daily delay damages rate subject to the following paragraph, shall be the amount in Item 26 which is exclusive of GST and inclusive of all other taxes, all direct and indirect Contractor costs and expenses and all applicable profit, supervision, overheads (onsite and offsite), preliminaries and attendance.

Nothing in this subclause 34.9 will:

(a) oblige the Principal to pay delay damages for delay or disruption which have already been included in the value of a variation or any other payment under the Contract;
(b) oblige the Principal to pay delay damages with respect to days that would not have been working days; or
(c) oblige the Principal to pay any amount in respect of profit and site costs which are fixed and not dependent upon a particular period for the WUC or the level of activity in respect of the WUC.

The Principal will have no liability to the Contractor whatsoever in damages or to compensate the Contractor in respect of or arising out of or as a result of any delay, disruption, or interference in the progress or completion of the WUC howsoever caused, whether in contract, tort (including negligence), restitution, equity, statute or otherwise, other than as expressly provided in this subclause 34.9.
34.10 Drawings, Manuals and Subcontractor and Supplier Warranties

Prior to practical completion of the Works, the Contractor shall deliver to the Superintendent the following:

(a) all shop drawings and as built drawings with respect to the Works;
(b) the originals of all operation and maintenance manuals for all installed plant and equipment including fixtures, fittings and appliances forming part of the Works; and
(c) all of the warranties (including manufacturer's warranties) in respect of items of work that were undertaken or supplied and installed by the Contractor or the subcontractors (including suppliers).

These warranties:

(i) must be in the terms reasonably acceptable to the Principal and in favour of the Principal (whether or not the warranty is being provided by the Contractor or a subcontractor);
(ii) will not derogate from any rights which the Principal might have against the Contractor in respect of the subject matter of these warranties; and
(iii) will not prevent the Contractor from being able to enforce the warranty against any subcontractor whose work is not in accordance with the requirements of the Contract.

35 Defects liability

The defects liability period stated in Item 27 shall commence on the date of practical completion at 4:00 pm or for works completed after the date of practical completion, the defects liability period stated in Item 27 shall commence at 4:00pm on the date on which the Superintendent provides the Contractor with written notice that the works have been completed (date of completion).

The Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible and otherwise in accordance with the directions of the Principal or Superintendent.

As soon as possible after the date of practical completion or the date of completion (as applicable), the Contractor shall rectify all defects existing at the date of practical completion or the date of completion (as applicable).

During the defects liability period, the Superintendent may give the Contractor a direction to rectify a defect which:

(a) shall identify the defect and the date for completion of its rectification; and
(b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding that in Item 27, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable by the Contractor to the Principal.

36 Variations

36.1 Directing variations

The Contractor shall not vary WUC except as directed in writing.

The Superintendent, before the date of practical completion, may direct the Contractor to vary WUC by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:

(a) increase, decrease or omit any part;
(b) change the character or quality;
(c) change the levels, lines, positions or dimensions;
(d) carry out additional work; and
(e) demolish or remove material or work no longer required by the Principal.

36.2 Proposed variations

The Superintendent may give the Contractor written notice of a proposed variation.

The Contractor shall as soon as practicable after receiving such notice, but no later than 10 days after receiving the notice, notify the Superintendent whether the proposed variation can be effected, together with, if it can be effected, the Contractor’s estimate of the:

(a) effect on the construction program (including the date for practical completion); and
(b) cost (including all time-related costs, if any) of the proposed variation.

The Superintendent may direct the Contractor to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost.

The Contractor’s costs for each compliance with this subclause shall be certified by the Superintendent as moneys due to the Contractor.

36.3 Variations for convenience of contractor

If the Contractor requests the Superintendent to direct a variation for the convenience of the Contractor, the Superintendent may do so. The direction shall be written and may be conditional. Unless the direction provides otherwise, the Contractor shall be entitled to neither extra time nor extra money.

36.4 Pricing

The Superintendent shall, as soon as possible, price each variation using the following order of precedence:

(a) prior agreement;
(b) applicable rates or prices in the Contract;
(c) rates or prices in a priced bill of quantities, schedule of rates or schedule of prices, even though not Contract documents, to the extent that it is reasonable to use them; and
(d) reasonable rates or prices, which shall include an amount for profit and overheads noted in Item 27A(a),

and any deductions shall include an amount for profit but not overheads noted in Item 27A(b).

That price shall be added to or deducted from the contract sum.

37 Payment

37.1 Payment claims

The Contractor shall claim payment progressively in accordance with Item 28 and in any event no later than 3 months after the relevant ‘reference date’ as that term is defined in section 9 of the Security of Payment Act.

An early payment claim shall be deemed to have been made on the date for making that payment claim in accordance with Item 28.

Each payment claim shall be given in writing to the Principal and the Superintendent and shall include details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to the provisions of the Contract. The Superintendent however is not authorised to and does not receive any payment claim under the Security of Payment Act as agent for the Principal. A payment claim including a final payment claim must be served on the Principal and a copy provided to the Superintendent at the same time that the payment claim is served on the Principal.

37.2 Payment schedules
The Superintendent shall, within 10 business days after receiving a payment claim, issue to the Principal and the Contractor a payment schedule noting the payment (if any) due from the Principal to the Contractor with a recipient created tax invoice in the payment amount noted on the payment schedule.

If the Contractor does not make a payment claim in accordance with Item 28, the Superintendent may issue the payment schedule with details of the calculations.

The Principal shall within 21 business days after the Superintendent receives the payment claim, pay to the Contractor the amount on the payment schedule. If the payment schedule notes a payment due from the Contractor to the Principal, the Contractor shall pay that amount to the Principal within 10 business days of receiving the payment schedule.

Neither a payment schedule nor payment of money to the Contractor shall be evidence that the subject WUC has been carried out satisfactorily. Payment other than final payment shall be payment on account only.

In so far as necessary to ensure compliance with the Security of Payment Act, the Superintendent is deemed to issue any payment schedule under subclause 37.2 or final payment schedule under subclause 37.4 as agent on behalf of the Principal and each such payment schedule shall constitute a payment schedule for the purposes of the Security of Payment Act.

37.3 Unfixed plant and materials

The Principal shall not be liable to pay for unfixed plant and materials unless they are listed in Item 29 and the Contractor:

(a) provides the additional security in Item 13(e); and
(b) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the Principal.

Upon payment to the Contractor and the release of any additional security in paragraph (a), the subject plant and materials shall be the unencumbered property of the Principal.

37.4 Final payment claim and schedule

Within 28 days after the expiry of the last defects liability period, the Contractor shall give the Superintendent a written final payment claim endorsed ‘Final Payment Claim’ together with all other claims whatsoever in connection with the subject matter of the Contract.

Within 10 business days after receiving the final payment claim or where the Contractor fails to provide a final payment claim, within 10 business days of expiration of the period specified in subclause 37.4 for provision of the final payment claim by the Contractor, the Superintendent shall issue to both the Contractor and the Principal a final payment schedule evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract.

Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 14 business days after the debtor receives the final payment schedule.

The final payment schedule shall be conclusive evidence of accord and satisfaction, and in discharge of each party’s obligations in connection with the subject matter of the Contract except for:

(a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the final payment schedule;
(b) any defect or omission in the Works or any part thereof which was not apparent at the end of the last defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final payment schedule;
(c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
(d) unresolved issues the subject of any notice of dispute pursuant to clause 42, served before the 7th day after the issue of the final payment schedule.
37.5 Interest

Interest in Item 30 shall be due and payable after the date of default in payment.

37.6 Other moneys due

The Principal may elect that moneys due and owing by the Contractor to the Principal otherwise than in connection with the subject matter of the Contract also be due to the Principal pursuant to the Contract.

38 Payment of workers and subcontractors

38.1 Workers and subcontractors

The Contractor shall give in respect of a payment claim, documentary evidence in the form of the statutory declaration attached to Annexure Part D declared by a representative of the Contractor who is in a position to know the facts declared, of the payment of moneys due and payable to:

(a) workers of the Contractor and of the subcontractors; and

(b) subcontractors,

in respect of WUC the subject of that payment claim and the subject of all previous payment claims.

38.2 Withholding payment

Subject to the next paragraph, the Principal may withhold moneys certified due and payable in respect of the payment claim until the Contractor complies with subclause 38.1.

The Principal shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers and subcontractors.

38.3 Direct payment

Before final payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker or a subcontractor where:

(a) permitted by law;

(b) given a court order in favour of the worker or subcontractor; or

(c) requested in writing by the Contractor.

Such payment and a payment made to a worker or subcontractor in compliance with a legislative requirement shall be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

39 Default or insolvency

39.1 Preservation of other rights

If a party breaches (including repudiates) the Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Contractor's default

If the Contractor commits a substantial breach of the Contract, the Principal may, by hand or by certified post, give the Contractor a written notice to show cause.

Substantial breaches include, but are not limited to:

(a) failing to:

(i) provide security;
(ii) provide evidence of insurance;

(iii) comply with a direction of the Superintendent pursuant to subclause 29.3;

(iv) use the materials or standards of work required by the Contract;

(v) comply with the requirements of subclause 9.2;

(vi) provide a deed of guarantee and indemnity in accordance with subclause 5.6;

(vii) observe and comply with a legislative requirement relevant to the Works; or

(viii) obtain or maintain appropriate licences, approvals or authority to enable the Contractor to lawfully carry out the WUC according to the legislative requirements;

(b) wrongful suspension of work including the Contractor’s failure to comply with its responsibilities as principal contractor pursuant to clause 45;

(c) substantial departure from a construction program without reasonable cause or the Superintendent’s approval;

(d) where there is no construction program, failing to proceed with due expedition and without delay; and

(e) in respect of subclause 38.1, providing documentary evidence containing an untrue statement:

(f) the Contractor’s performance of the WUC involving recurring breaches of:

(i) the OH&S Act or the OH&S Regulations;

(ii) the Contractor’s OH&S obligations pursuant to clause 45 including failure to provide to the Superintendent documentation in relation to an OH&S breach, environmental or EPA breach.

Upon giving a notice under this subclause 39.2, the Principal may suspend payments to the Contractor until the earlier of:

(1) the date upon which the Contractor shows reasonable cause;

(2) the date upon which the Principal takes action under subclause 39.4(a) or (b); or

(3) the date which is 7 days after the last day for showing cause in the Principal’s written notice under subclause 39.2.

39.3 Principal’s notice to show cause

A notice under subclause 39.2 shall state:

(a) that it is a notice under clause 39 of these General Conditions of Contract;

(b) the alleged substantial breach;

(c) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in subclause 39.4;

(d) the date and time by which the Contractor must show cause (which shall not be less than 7 clear days after the notice is received by the Contractor); and

(e) the place at which cause must be shown.

39.4 Principal’s rights

If the Contractor fails to show reasonable cause (to show reasonable cause includes rectification of the substantial breach and written notice from the Contractor to the Principal that the substantial breach has been rectified) by the stated date and time, the Principal may by written notice to the Contractor:

(a) take out of the Contractor’s hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or

(b) terminate the Contract.
39.5 **Take out**

The *Principal* shall complete work taken out of the *Contractor’s* hands and may:

(a) use materials, equipment and other things intended for WUC; and

(b) without payment of compensation to the *Contractor*:

(i) take possession of, and use such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*; and

(ii) contract with such of the *Contractor’s subcontractors* and consultants, as are reasonably required by the *Principal* to facilitate completion of WUC.

If the *Principal* takes possession of *construction plant* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the work, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the work.

39.6 **Adjustment on completion of work taken out**

When work taken out of the *Contractor’s* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the work had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

39.7 **Principal’s default**

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by certified post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

(a) failing to:

(i) rectify inadequate *Contractor’s* possession of the *site* if that failure continues for longer than the time stated in *Item* 31; or

(ii) make a payment due and payable pursuant to the *Contract*; and

(b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

39.8 **Contractor’s notice to show cause**

A notice given under subclause 39.7 shall state:

(a) that it is a notice under clause 39 of these *General Conditions of Contract*;

(b) the alleged substantial breach;

(c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;

(d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and

(e) the place at which cause must be shown.

39.9 **Contractor’s rights**

If the *Principal* fails to show reasonable cause (to show reasonable cause includes rectification of the substantial breach and written notice from the *Principal* to the *Contractor* that the substantial breach has
been rectified) by the stated date and time, the Contractor may, by written notice to the Principal, suspend the whole or any part of WUC.

The Contractor shall remove the suspension if the Principal remedies the breach.

The Contractor may, by written notice to the Principal, terminate the Contract, if within 28 days of the date of suspension under this subclause, the Principal fails:

(a) to remedy the breach; or
(b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.

Damages suffered by the Contractor by reason of the suspension shall be assessed by the Superintendent, who shall certify them as moneys due and payable to the Contractor.

39.10 Termination

If the Contract is terminated pursuant to subclause 39.4(b) or 39.9, the parties’ remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

39.10A Termination by the Principal

In the event this Contract is terminated by the Principal:

(a) the Contractor must vacate the site, ensure its workers and subcontractors vacate the site, remove any temporary buildings and leave on the site all plant, equipment, goods and unfixed materials other than any plant, equipment, goods or unfixed materials that the Superintendent directs the Contractor to remove from the site;

(b) if the Contractor fails to remove any temporary buildings, plant, tools, equipment, goods or unfixed materials from the site within 14 days of being so directed in writing by the Superintendent, the Principal may sell or arrange the removal of these items from the site. Any money received from the sale of these items (less any costs incurred in relation to such sale or the removal, transportation or storage of such items) may be deducted from the costs incurred by the Principal in completing or procuring the completion of the WUC;

(c) the Principal will have the right to take possession of and use or permit others to use all or any part of the Contractor's plant, equipment, goods or unfixed materials left on the site pursuant to subclause 39.10A(a);

(d) the Contractor will, if directed by the Principal, assign to the Principal or to such other contractor or contractors as the Principal may nominate, the benefit (but not the burden) of any subcontract, supply agreement or equipment rental agreement;

(e) the Principal may pay, but will not be obliged to pay, any subcontractor engaged by the Contractor who the Contractor has failed to make payment to, for any work, materials or goods, whether carried out or supplied before or after termination of the Contract. Such payments will be deemed to be made by the Principal as agent for the Contractor and may be deducted from any monies due to the Contractor or alternatively will be deemed to be part of the cost incurred by the Principal of completing the WUC;

(f) subject to the Security of Payment Act the Contractor will not be entitled to receive any further payment until the WUC are completed. If the Principal completes the WUC and/or engages another contractor or contractors to complete the remainder of the WUC or any part thereof, and the cost to complete the WUC plus all costs incurred by the Principal associated with the termination of the Contract is more than the difference between the contract sum and the payments made to the Contractor by the Principal pursuant to the Contract, then the Contractor must pay to the Principal, forthwith on demand, that amount as a debt due and the Principal may immediately have recourse to any security held by the Principal against this debt. Where the Principal completes the WUC or any part thereof, the Principal will be entitled to include in the cost to complete the WUC, profit, supervision, overheads (onsite and offsite), preliminaries and attendance and such other
costs and damages as the Principal may incur by reason of the Contractor's breach of the Contract;

(g) except as otherwise provided for in this subclause 39.10A, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the Contractor repudiated the Contract and the Principal elected to treat the Contract as at an end and recover damages; and

(h) the Principal may complete the WUC or engage other contractors or subcontractors to complete the WUC.

39.11 Insolvency

If:

(a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;

(b) execution is levied against a party by a creditor;

(c) a party is an individual person or a partnership including an individual person, and if that person:
   (i) commits an act of bankruptcy;
   (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
   (iii) is made bankrupt;
   (iv) makes a proposal for a scheme of arrangement or a composition; or
   (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the Contract; or

(d) in relation to a party being a corporation:
   (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
   (ii) it enters a deed of company arrangement with creditors;
   (iii) a controller or administrator is appointed;
   (iv) an application is made to a court for its winding up and not stayed within 14 days;
   (v) a winding up order is made in respect of it;
   (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member’s voluntary winding up); or
   (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

(A) the Principal, the Principal may, without giving a notice to show cause, exercise the right under subclause 39.4(a) or subclause 39.4(b); or

(B) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of Contract.

40 Termination by frustration

If the Contract is frustrated:

(a) the Superintendent shall issue a payment schedule for WUC carried out to the date of frustration, evidencing the amount which would have been payable had the Contract not
been frustrated and had the Contractor been entitled to and made a payment claim on the date of frustration;

(b) the Principal shall pay the Contractor:

(i) the amount due to the Contractor evidenced by all unpaid payment schedules;

(ii) the cost of materials and equipment reasonably ordered by the Contractor for WUC and which the Contractor is liable to accept, but only if they will become the Principal’s property upon payment; and

(iii) the costs reasonably incurred:

(C) removing temporary works and construction plant;

(D) returning to their place of engagement the Contractor, subcontractors and their respective employees engaged in WUC at the date of frustration; and

(E) by the Contractor in expectation of completing WUC and not included in any other payment; and

(c) each party shall promptly release and return all security provided by the other.

41 Notification of claims

41.1 Communication of claims

The prescribed notice is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the Contract, that party shall give to the other party and to the Superintendent the prescribed notice or a notice of dispute under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the final payment claim), the communication of which is required by another provision of the Contract.

Notwithstanding any other provision of this Contract, if the Contractor fails to provide the Principal with the prescribed notice in respect of its claim, demand, action, suit or proceeding (whether based in contract (including breach), tort (including negligence), pursuant to legislation or in equity or restitution):

(a) where the Contract expressly provides a specific time limit for bringing a claim in relation to a particular event, within that time limit; or

(b) in all other cases, within 20 days of the event which is the subject of the claim, demand, action, suit or proceeding commencing,

then, subject to the law, the parties agree that the Contractor shall be barred absolutely from any entitlement in relation to that event.

41.2 Not used

41.3 Superintendent’s decision

If within 28 days of giving the prescribed notice the party giving it does not notify the other party and the Superintendent of particulars of the claim, the prescribed notice shall be deemed to be the claim.

Within 56 days of receipt of the prescribed notice the Superintendent shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of dispute under subclause 42.1 which includes such decision, the Superintendent shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution

42.1 Notice of dispute
If a difference or dispute (together called a ‘dispute’) between the parties arises in connection with the subject matter of the Contract, including a dispute concerning:

(a) a Superintendent’s direction; or
(b) a claim:
   (i) in tort;
   (ii) under statute;
   (iii) for restitution based on unjust enrichment or other quantum meruit; or
   (iv) for rectification or frustration,

or like claim available under the law governing the Contract,

then either party shall, by hand or by certified mail, give the other and the Superintendent a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the Contract.

42.2 Conference

Within 14 business days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute. At every such conference each party shall be represented by a person having authority to agree to such resolution. All aspects of every such conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 28 business days of service of the notice of dispute, that dispute shall be referred to mediation.

42.3 Mediation

If the dispute is referred to mediation under subclause 42.2:

(a) the mediator shall be agreed between the parties within 5 business days of the date of referral of the dispute to mediation, or failing agreement, either party may request that the President for the time being of the Commercial Bar Association of Victorian appoint a mediator; and

(b) the mediation will be conducted by the mediator at a time and place agreed between the parties or otherwise nominated by the mediator, within 20 business days of the referral of the dispute to mediation subject only to the availability of the mediator.

42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

42.5 Litigation

If the dispute has not been resolved in accordance with clause 42, either party may take any action necessary to have the dispute determined by litigation.

43 Notices and suspension of WUC under the Security of Payment Act

43.1 Copies of Communications

The Contractor shall ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time.

43.2 Suspension under the Security of Payment Act

(a) Notice of Intention to Suspend
The Contractor shall first give the Superintendent, as the Principal's nominee for this purpose, at least 3 business days notice of its intention to suspend the WUC under the Security of Payment Act.

(b) Suspension of work under the Contract by a subcontractor under the Security of Payment Act

If the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor shall promptly and without delay give to the Superintendent a copy of any written communication of whatever nature that the Contractor receives from the subcontractor pursuant to the Security of Payment Act.

If a subcontractor under its subcontract for work under the Contract suspends the whole or part of its subcontract work pursuant to the Security of Payment Act:

(i) the suspension shall not of itself affect the date for practical completion of this Contract;

(ii) the Principal shall not be liable for any costs, expenses, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of a suspension pursuant to this subclause; and

(iii) the circumstances of such suspension is a substantial breach of this Contract to which subclause 39.2(b) applies.

(c) Contractor's Further Indemnity

Except for a payment default by the Principal, the Contractor indemnifies and shall keep indemnified the Principal against all damage, expense (including legal costs and the Principal's administrative costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Principal arising out of:

(i) a wrongful suspension by the Contractor, or a suspension pursuant to the Security of Payment Act by a subcontractor of work under the Contract; or

(ii) a failure by the Contractor to comply with this clause 43.

Such sum shall be a debt due by the Contractor to the Principal to which subclause 37.2 or 37.4 applies.

44 GST

To the extent that anything to be done under the Contract by the Contractor constitutes a Taxable Supply:

(a) if any corresponding payment under the Contract is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("GST Amount") (which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST);

(b) the Contractor must provide to the Principal a valid Tax Invoice at or prior to the time of and as a condition of, payment of any GST Amount; and

(c) if any Adjustment occurs in relation to the Taxable Supply, the Contractor must issue an Adjustment Note to the Principal within 7 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

45 Occupational Health and Safety

45.1 General Obligations

In connection with the execution of the WUC, the Contractor shall, as far as practicable, ensure the health and safety of all persons, including, without limitation, members of the public, the Contractor's employees, subcontractors and agents, the Principal's employees and contractors (if applicable) and the Superintendent.
The Contractor must comply with and must ensure that its employees, subcontractors and agents comply with any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the WUC including the Dangerous Goods Act 1985 (Vic) and the Occupational Health and Safety Criteria for Contractors attached to Annexure Part J.

The Contractor acknowledges that acts or omissions of the Contractor may affect the ability of the Principal to comply with duties and obligations arising under the OH&S Act. The Contractor shall ensure, so far as is practicable, that it does not by its acts or omissions cause or contribute to any breach by the Principal of any provision of the OH&S Act and shall take all steps as are practicable to assist the Principal in complying with the provisions of the OH&S Act.

45.2 Indemnity

The Contractor shall indemnify the Principal, to the extent permitted by law, in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of the OH&S Act or the OH&S Regulations by the Principal to which the Contractor has contributed by a breach of clause 45. The indemnity given under this subclause does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under this Contract. The Contractor must immediately give to the Superintendent copies of any notices and orders given or received by the Contractor under the OH&S Act or the OH&S Regulations.

45.3 Principal Contractor

The Principal appoints the Contractor as the principal contractor with respect to the performance of the Works in accordance with regulation 5.1.14 of the OH&S Regulations and the Principal authorises the Contractor to manage or control the workplace comprising the site to the extent necessary to discharge the duties imposed on the Contractor as the principal contractor under Subdivision 2 of Division 2 of Part 5.1 of the OH&S Regulations from the date the Contractor takes possession of the site until the date of practical completion and with respect to any works including defect rectification works that the Contractor undertakes on the site, from the date of practical completion until the issue of the final payment schedule.

45.4 Specific Obligations

The Contractor shall:

(a) conduct a general hazard identification, risk assessment and control process in relation to the Contractor's activities;
(b) conduct a job specific hazard identification, risk assessment and control process in relation to the Contractor's activities;
(c) train, induct and instruct all relevant site personnel on safe work practices and the environmental and workplace health and safety obligations before commencing any work; and
(d) ensure that all site personnel comply with the relevant legislative requirements, industrial agreements and accepted industry practice related to OH&S; and
(e) comply with all duties of a principal contractor under Subdivision 2 of Division 2 of Part 5.1 of the OH&S Regulations.

The Contractor must establish and implement an OH&S management plan which complies with the Contract and ensures compliance with all duties of an employer and principal contractor under the OH&S Act and OH&S Regulations. The Contractor must, if directed by the Superintendent, demonstrate how its OH&S management plan is implemented and ensures compliance with its obligations under clause 45.

45.5 OH&S Consultant

If, in the reasonable opinion of the Superintendent, the Contractor has committed a substantive breach of any of the Contractor's obligations under clause 45, the Superintendent may direct the Contractor to engage an OH&S consultant at the Contractor's cost, as nominated by the Superintendent.

If the Contractor is directed to engage an OH&S consultant by the Superintendent under subclause 45.5, the Contractor must:
(a) engage the OH&S consultant within two (2) days of the direction by the Superintendent and retain the services of the OH&S consultant until at least the date of practical completion; and
(b) comply with the OH&S consultant’s recommendations with respect to all OH&S matters, except to the extent that they are inconsistent with this Contract.

If the Contractor is unable to engage the OH&S consultant nominated by the Superintendent on terms acceptable to the Contractor, the Contractor may request the Superintendent to nominate an alternative OH&S consultant. It is, however, acknowledged and agreed that any suspension of the whole or part of the WUC by the Superintendent in response to the breach of clause 45 may be continued until an OH&S consultant is engaged by the Contractor and the recommendations of the OH&S consultant are implemented by the Contractor. Such suspension is deemed to be made because of an act, default or omission on the part of the Contractor for the purposes of clause 33 and the Contractor shall not be entitled to any EOT, costs or delay damages as a consequence of the suspension.

46 Principal’s Right of Set Off

Without limiting any other provisions of this Contract, the Principal may deduct, withhold or set off from moneys otherwise due to the Contractor whether by way of contract sum, reimbursements, payments or otherwise, any moneys due from the Contractor to the Principal or damages or losses payable by the Contractor to the Principal. For the avoidance of doubt, the Principal's right in this clause 46 includes the right to have recourse to the security for the purpose of deducting, withholding or setting off any moneys due from the Contractor to the Principal or damages or losses payable by the Contractor to the Principal.

The Contractor acknowledges and agrees that in the event the Principal exercises a right under subclause 39.4 or 39.11(d)(A) and the Principal has exercised a similar right pursuant to another contract or contracts with the Contractor, the Principal may exercise its rights pursuant to this clause 46 with respect to any monies due from the Contractor to the Principal or damages or losses payable by the Contractor to the Principal in the other contract or contracts.

47 Project Finance

The Contractor acknowledges that:

(a) the Principal intends to procure project finance for construction of the Works;
(b) the Principal has approached or will be approaching financial institutions to provide the project finance;
(c) as part of the project financing requirements the Principal and the Contractor may be required to enter into a builder's side deed or a tripartite deed and other associated documentation; and
(d) the Contract is conditional on the Principal obtaining project finance to the Principal's satisfaction.

The Contractor must provide any documents or information the Principal reasonably requires for the purpose of obtaining and maintaining the project finance including information relating to the status of WUC.

The parties must negotiate in good faith with each other and the Principal's financier:

(a) the terms and conditions of the builder's side deed or tripartite deed and other associated documentation; and
(b) any amendments required to the Contract,
as a consequence of the project finance.

The Contractor must, on conclusion of these negotiations, promptly execute any agreed documents within the time specified by the Principal and use all reasonable endeavours to do all other things necessary to enable the Principal to obtain project finance.

If the Principal has not obtained project finance or waived in writing the requirement to obtain project finance by the date that is 3 months after the date of this Contract, then the parties will be under no further
obligation pursuant to the Contract and the Contract will be discharged and of no further effect, except that each party will remain responsible for any prior breach of the Contract on its part.

48 Industrial Relations

The Contractor will do all acts, matters and things necessary on its part to be done to:
(a) ensure that a good industrial climate is maintained on the site; and
(b) ensure that all subcontractors co-operate in maintaining a good industrial climate on the site.

Without limiting the generality of the Contractor's obligations in this clause 48, the Contractor will ensure that:
(i) all relevant awards and formal industrial agreements are adhered to;
(ii) appropriate health and safety practices and procedures in accordance with relevant legislation, awards and industry agreements are maintained and complied with (including any applicable Environmental Management Plan); and
(iii) industrial relations on the site are professionally managed.

Without limiting the generality of this clause 48, industrial relations affecting the site or the WUC are totally and solely the responsibility of the Contractor.

The Contractor must notify the Superintendent immediately upon becoming aware of any actual, perceived or anticipated industrial action or industrial relation matters with respect to the site or the WUC.

The Contractor indemnifies the Principal against and in respect of any liability or loss, expense or damage incurred by the Principal arising out of or in connection with any failure by the Contractor to comply with the terms of this clause 48.

49 Wrongs Act

To the maximum extent permitted by law, the operation of Part IVAA of the Wrongs Act 1958 (Vic) is excluded in relation to the obligations and liabilities of the Contractor, (including its subcontractors) under this Contract whether such, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

If, despite the above, the liability of the Contractor is reduced by operation of Part IVAA of the Wrongs Act 1958 (Vic), the Contractor indemnifies the Principal for all loss and damage which the Principal suffers or occurs as a result, including without limitation by reason of any inability to recover its loss and damage from any person other than the Contractor.

50 Personal Property Securities Act

In this clause 50, capitalised expressions that are not in italics have the meaning given to them in the Personal Property Securities Act 2009 (Cth).

The Contractor acknowledges and agrees that, by entering into this Contract, the Contractor grants to the Principal a security interest in any item of unfixed plant and materials for which the Contractor seeks any payment by the Principal prior to their incorporation into the Works, including without limitation, any such item of unfixed plant and/or materials acquired by, or which comes into the possession or control of, the Contractor after the date of the Contract.

The Contractor consents to the Principal registering any one or more Financing Statements or Financing Change Statements in respect of any security interest created by or contemplated under this Contract, and undertakes to do all things reasonably required by the Principal to enable the Principal to do so.

The Contractor must promptly do anything required by the Principal to ensure that any security interest granted to the Principal is a perfected security interest and has priority over all other security interests in any item of unfixed plant and equipment.

The Contractor agrees not to cause (directly or indirectly) the registration of a Financing Change Statement, or the discharge of any registration, in respect of any item of unfixed plant and equipment or make any Amendment Demand without the Principal's prior written consent.
51 Emissions and Energy Data

(a) This clause 51 applies if required by Item 33.

(b) In this clause 51, “consumption”, “emission”, “energy”, “facility”, “greenhouse gas”, “group”, “member”, “operational control”, “production” and “registered corporation” have the meaning given in the National Greenhouse and Energy Reporting Act 2007 (Cth).

(c) Without limiting any other obligation of the Contractor, the Contractor shall

(i) keep, and shall ensure that all subcontractors keep all such information and documentation concerning greenhouse gas emissions, energy production and energy consumption in relation to all aspects of the Works as a registered corporation would be required to keep and report upon under the National Greenhouse and Energy Reporting Act 2007 (Cth); and

(ii) provide access to and copies of any such information and documentation to the Superintendent upon request.

52 Dilapidation Report

(a) This clause 52 applies if required by Item 34.

(b) Where requested by the Superintendent, prior to commencing the Works, the Contractor shall prepare a full dilapidation report in consultation with and in the form required by the Superintendent which shall record the existing state and condition of all the properties and structures whose boundaries or structural elements adjoin the site, including all streets adjacent to the site. The report shall:

(i) be in duplicate, with each copy signed by the Contractor and Superintendent;

(ii) include professional quality photographs as necessary; and

(iii) be updated by the Contractor in the event of any allegation or complaint of any damage or potential damage occurring to any property, structure or street adjacent to the site.

(c) Where requested by the Superintendent, the Contractor shall take a monthly photographic record of the site in the form acceptable to the Superintendent. The photographs shall be in colour, dated and of professional quality. The Contractor shall provide two copies of each set of photographs with the payment claim for the following month.

53 Principal’s Drug and Alcohol Policy

The Contractor must comply with and must ensure that its employees, agents and subcontractors comply with, the Principal’s Drug and Alcohol Policy, a copy of which is available on the Principal’s website at www.gippswater.com.au.

54 Section 133 of the Water Act 1989 (Vic)

The parties acknowledge the appointment and authorisation of employees and authorized representatives of the Contractor pursuant to section 133 of the Water Act 1989 (Vic) as described in the Instrument of Appointment and Authorisation attached to Annexure Part H.

55 Privacy Obligations

The Contractor acknowledges it is bound by and must comply with the Privacy Principles including the information sheets as described under “Resources” under “Privacy” on the Commissioner for Privacy and Data Collection Website at www.cpdp.vic.gov.au and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor in connection with this Contract in the same way and to the same extent as the Principal would have been bound in respect of that act or practice had it been directly done or engaged in by the Principal.
56 Data Protection

The Contractor acknowledges that it is bound by and must adhere to the Victorian Protective Data Security Standards as described under the “Victorian Protective Data Security Standards” under “Data Security” on the Commissioner for Privacy and Data collection website at www.cpdp.vic.gov.au and that it will not do any act or engage in any practice that contravenes a Victorian Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the Contractor, on behalf of the Principal, under or in connection with this Contract.

57 Greenhouse Gas Reporting

The National Greenhouse and Energy Reporting (NGER) scheme is a single national framework for corporations to report on greenhouse gas emissions, energy use and energy production associated with their activities. The Commonwealth Government requires that corporations report data each year, when direct and indirect greenhouse gas emissions from their activities are above a specified threshold. Data is reported for the previous financial year. The scheme is regulated under the National Greenhouse and Energy Reporting Act 2007 (Cth), and associated regulations.

The Principal is required to collect and report data to the NGER scheme. This includes data associated with the activities of contractors and service providers who provide goods and/or services to the Principal.

A Microsoft Excel template copy attached to Annexure Part I, has been prepared to assist the Contractor with greenhouse gas emissions reporting. A word version can be obtained upon request from the Principal. This template provides for the reporting of the most likely sources of greenhouse gas emissions due to consultant or contractor activity. In most instances, this will primarily be fuel consumed in the operation of fixed and mobile plant. Where electricity is consumed, it is only necessary to report consumption that is paid for directly by the consultant or contractor, as the Principal will be reporting the power consumption through meters that it is accountable for.

In some instances, it may be necessary to apportion data to the Principal when services are provided to other customers. It is acceptable to estimate this portion, and record the detail of how it was apportioned in the Comments field.

Some consultants and contractors already report data under the NGER scheme, as their activities for the Principal constitute a component of their total activities that trigger the reporting threshold.

In addition to reporting to the NGER scheme, the Principal must also report greenhouse gas emission data to the Essential Services Commission. This data must be collated by late July each year. The Contractor must provide its greenhouse gas emission data by 14 July following the end of the previous reporting year. Please contact the Principal ahead of this deadline if any delays with data reporting are expected.

For projects completed within the financial year, data is to be reported at the end of the quarter in which completion occurred. For longer term projects, quarterly progress reports are requested to allow the Principal to monitor data trends and provide the opportunity to discuss any issues encountered with obtaining and recording data. Quarterly reporting must be submitted by the Contractor electronically no later than the 7th working day after the end of each quarter.

Data must be forwarded to EnvironmentReports@gippswater.com.au to allow consolidation of consultant and contractor data in a single location.

Further details on greenhouse gas emission reporting for consultants and contractors can be obtained from Australian Contractors Association:

58 Project Management Plan

The Contractor must provide to the Superintendent within 7 days of the date of this Contract a Project Management Plan (Quality, Health, Safety and Environment) for the Superintendent’s approval.
59  **Electronic Data Interchange**

The parties acknowledge and agree that the Electronic Data Interchange terms in Annexure Part L apply to this *Contract*.

60  **Risk Assessment**

The parties acknowledge and agree that the Risk Assessment terms in Annexure Part M apply to this *Contract*.
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Annexures
This Annexure shall be read as part of the Contract.

Item

1 Principal (clause 1) Managing Director Central Gippsland Region Water Corporation (trading as Gippsland Water) ABN 75 830 750 413 ACN 876 543 210

2 Principal's address Gippsland Water (PO Box 348) 55 Hazelwood Road, Traralgon Victoria 3844

2A Principal’s email

3 Contractor (clause 1) ................................ ................................ ................................ ................................ ................................ ................................

ACN ......................................................

4 Contractor's address ................................ ................................ ................................ ................................ ................................ ................................

4A Contractor’s email ................................ ................................ ................................ ................................ ................................ ................................

5 Superintendent (clause 1) Manager Asset Delivery or their nominated representative

6 Superintendent's address Gippsland Water (PO Box 348) 55 Hazelwood Road, Traralgon Victoria 3844

6A Superintendent’s email

7 a) Date for practical completion (clause 1) Insert Date

OR

b) Period of time for practical completion (clause 1) ................................ ................................ ........................................

8 Governing law (page 5, clause 1(i)) Victorian

If nothing stated, that of the jurisdiction where the site is located

9 a) Currency (page 5, clause 1(g)) ................................ ................................ ........................................

If nothing stated, that of the jurisdiction where the site is located

b) Place for payments (page 5, clause 1(g)) ................................ ................................ ........................

If nothing stated, the Principal's address

c) Place of business of bank (page 3, clause 1(d)) ................................ ................................ ..................

If nothing stated, the place nearest to where the site is located
10  Bills of quantities  
(subclause 2.2)  
   a)  Alternative applying  
      (subclause 2.2)  
      Not to apply  
      If nothing stated, Alternative 1 applies  
   b)  If Alternative 2 applies,  
      is the bill of quantities  
      to be priced?  
      (subclause 2.2)  
      Not to apply  
      If neither deleted, the bill of quantities shall not be priced  
   c)  Lodgement time  
      (subclause 2.3(b))  
      Not to apply  
      If nothing stated, 28 days after date of the Contract  

11  Quantities in schedule of rates,  
    limits of accuracy  
    (subclause 2.5(b))  
    Upper Limit  Not to apply  
    Lower Limit  Not to apply  

12  Provisional sum  
    percentage for profit and attendance  
    (clause 3)  
    10%  

13  Contractor's security  
    Bank Guarantees  
    a)  Form  
        (clause 5)  
        Two Bank Guarantees each 5% of the contract sum  
    b)  Amount or maximum  
        percentage of contract sum  
        (clause 5)  
        If nothing stated, 10% of the contract sum  
    c)  If retention moneys, percentage  
        of each payment schedule  
        (clause 5 and subclause 37.2)  
        Not to apply  
        If nothing stated, 10%, until the limit in Item 13(b)  
    d)  Time for provision (except for  
        retention moneys)  
        (clause 5)  
        Date of the Contract  
        If nothing stated, within 28 days after date of the Contract  
    e)  Additional security for unfixed  
        plant and materials  
        (subclauses 5.4 and 37.3)  
        Bank Guarantee in the value of the unfixed plant and material  
    f)  Contractor's security upon  
        certificate of practical completion is  
        reduced by (subclause 5.4)  
        50% of amount held  
        If nothing stated, 50% of amount held  

14  Not Used  

15  Principal-supplied documents  
    (subclause 8.2)  
    Document  |  No. of copies  
    Specifications  |  1  
    Drawings  |  1  
    Principal’s Project Requirements  |  1  
    If nothing stated, 5 copies of the drawings, specification, bill of  
    quantities or schedule of rates (if any)  

16  Time for Superintendent’s  
    direction about documents  
    (subclause 8.3)  
    21 days  
    If nothing stated, 14 days  

17  Subcontract work requiring  
    approval  
    (subclause 9.2)  
    Not to apply  

18  Novation  
    (subclause 9.4)  
    Subcontractor  |  Particular part of WUC  
    Not to apply  |  Not to apply  
    Selected subcontractor  |  Particular part of WUC  
    ..................................................................................................................  
    ..................................................................................................................  
    ..................................................................................................................
Part A
Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

19  Legislative requirements
a) Those excepted
   (subclause 11.1)  None
b) Identified WUC
   (subclause 11.2(a)(ii))  All WUC

20  Insurance of the Works
(clause 16)
a) Provision for demolition and removal of debris  10% of the contract sum
b) Provision for consultants' fees  10% of the contract sum
c) Value of materials or things to be supplied by the Principal
   $ .................................................................
d) Additional amount or percentage  10% of the total of paragraphs (i) to (iv) in clause 16

21  Public liability insurance
(clause 17)
Amount per occurrence shall be not less than $20,000,000

If nothing stated, then not less than the contract sum

22  Time for giving possession
(subclause 24.1)
On the later of
(a) the date of the Contract
(b) the date upon which the Contractor has provided to the Principal copies of all the insurances the Contractor is required to effect and any Bank Guarantees referred to in Item 13; or
(c) the date upon which the Superintendent approves the quality system, safety system and environmental plan provided by the Contractor.

If nothing stated, 14 days

22A Working hours and working days (clause 31)
7.30 am to 5.00 pm Monday to Friday excluding public holidays in Victoria without the prior written approval of the Superintendent which approval may include conditions including that the Contractor is responsible for:
(a) all costs associated with working outside the hours described above; and
(b) any supervision costs incurred by the Principal.
The Contractor may carry out routine maintenance of it’s plant and equipment on Saturdays and on public holidays in Victoria, between 8.00 am to 4.00 pm without the prior written approval of the Superintendent.

23  Other causes of delay which are not a qualifying cause of delay and for which EOTs will not be granted (page 5, paragraph (iii) of clause 1)
Any other cause of delay that is not referred to in paragraphs (a) to (f) of the definition of qualifying cause of delay.

24  Liquidated damages, rate
(subclause 34.7)  $ XXXXX - insert amount

25  Not Used

26  Delay damages,(page 1, clause 1 and subclause 34.9)  (exclusive of GST) per working day
**Part A**
Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>27</td>
<td>Defects liability period (clause 35)</td>
<td>12 months If nothing stated, 12 months</td>
</tr>
<tr>
<td>27A</td>
<td>Percentage for overheads (subclause 36.4(d))</td>
<td>(a) 10% (b) 5%</td>
</tr>
<tr>
<td>28</td>
<td>Payment Claims (subclause 37.1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Times for payment claims</td>
<td>15th day of each calendar month</td>
</tr>
<tr>
<td>29</td>
<td>Unfixed plant and materials for which payment claims may be made (subclause 37.3)</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Interest rate on overdue payments (subclause 37.5)</td>
<td>10% per annum If nothing stated, 18% per annum</td>
</tr>
<tr>
<td>31</td>
<td>Time for Principal to rectify inadequate possession (subclause 39.7)</td>
<td>28 days If nothing stated, 14 days</td>
</tr>
<tr>
<td>32</td>
<td>Not Used</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Emissions and energy data (clause 51)</td>
<td>Required/Not Required (Delete whichever is not applicable)</td>
</tr>
<tr>
<td>34</td>
<td>Dilapidation report (clause 52)</td>
<td>Required/Not Required (Delete whichever is not applicable)</td>
</tr>
</tbody>
</table>
## Part A

### Separable Portions

This section should only be completed if the Contract provides for separable portions.

Complete a separate page for each separable portion which should be numbered appropriately. Any balance of the Works should also be a separable portion.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td><strong>1.</strong></td>
<td><strong>Separable portion</strong>&lt;br&gt;(clause 1)</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td><strong>Description of separable portion</strong>&lt;br&gt;(clause 1)</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td><strong>Item</strong>&lt;br&gt;<strong>7</strong>&lt;br&gt;a) <strong>Date for practical completion</strong>&lt;br&gt;(clause 1) &lt;br&gt;OR&lt;br&gt;b) <strong>Period of time for practical completion</strong>&lt;br&gt;(clause 1)</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td><strong>13</strong>&lt;br&gt;<strong>Contractor's security</strong>&lt;br&gt;a) <strong>Form</strong>&lt;br&gt;(clause 5) &lt;br&gt;b) <strong>Amount or maximum percentage value of this separable portion</strong>&lt;br&gt;(clause 5) &lt;br&gt;If nothing stated, 10% of value of this separable portion</td>
</tr>
<tr>
<td><strong>5.</strong></td>
<td><strong>c) If retention moneys, percentage of each payment schedule applicable to this separable portion</strong>&lt;br&gt;(clause 5 and subclause 37.2) &lt;br&gt;If nothing stated, 10%, until the limit in Item 13(b)</td>
</tr>
<tr>
<td><strong>6.</strong></td>
<td><strong>d) Time for provision (except for retention moneys)</strong>&lt;br&gt;(clause 5) &lt;br&gt;If nothing stated, within 28 days after date of the Contract</td>
</tr>
<tr>
<td><strong>7.</strong></td>
<td><strong>e) Additional security for unfixed plant and materials</strong>&lt;br&gt;(subclauses 5.4 and 37.3) &lt;br&gt;$ .......................................................... .............................</td>
</tr>
<tr>
<td><strong>8.</strong></td>
<td><strong>f) Contractor's security upon certificate of practical completion is reduced by</strong>&lt;br&gt;(subclause 5.4) &lt;br&gt;If nothing stated, 50% of amount held</td>
</tr>
</tbody>
</table>

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Part A

This section should only be completed if the Contract provides for separable portions.

Separable Portions

Complete a separate page for each separable portion which should be numbered appropriately. Any balance of the Works should also be a separable portion.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>14</td>
<td>Not Used</td>
</tr>
<tr>
<td>24</td>
<td>Liquidated damages, rate (subclause 34.7) $.......................................per day</td>
</tr>
<tr>
<td>25</td>
<td>Not Used</td>
</tr>
<tr>
<td>26</td>
<td>Delay damages, (page 1, clause 1 and subclause 34.9) $  (exclusive of GST) per working day</td>
</tr>
</tbody>
</table>
Part B
Annexure to the
Australian Standard General Conditions of Contract
AS 4000-1997

Not Used
Approved form of unconditional undertaking  
(clause 1 – security)  
At the request of ............................................................... (‘the Contractor’) and in consideration of ............................................................... (‘the Principal’) accepting this undertaking in respect of the Contract for...............................................................  
..........................................................................................................................  
.......................................................................................................................... (‘the financial institution’) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of ...............................................................  
..........................................................................................................................($ ............................................................... )  
The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the financial institution or until payment to the Principal by the financial institution of the whole of the sum or such part as the Principal may require.  
Should the financial institution be notified in writing, purporting to be signed by ............................................................... for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the financial institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.  
Provided always that the financial institution may at any time without being required so to do pay to the Principal the sum of ...............................................................  
..........................................................................................................................($ ............................................................... )  
less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the financial institution hereunder shall immediately cease.  

Dated at...............................................................this...............................................................day of...............................................................20 ...............................................................
Statutory Declaration

(subclause 38.1)

PAYMENT CLAIM No: [(INSERT PAYMENT CLAIM NUMBER)]
DATE OF PAYMENT CLAIM: [INSERT DATE OF PAYMENT CLAIM]
CONTRACTOR: [INSERT CONTRACTOR]
PROJECT: [INSERT DESCRIPTION OF PROJECT]
PRINCIPAL: [INSERT PRINCIPAL]
CONTRACT: [INSERT CONTRACT DESCRIPTION]

STATUTORY DECLARATION

I, [INSERT NAME OF PERSON PROVIDING THE STATUTORY DECLARATION] of [INSERT CONTRACTOR], do solemnly and sincerely declare as follows:

I am a director of the Contractor or employee of the Contractor authorized by the Contractor to make the Payment Claim described above and this Statutory Declaration on behalf of the Contractor. That to the best of my knowledge and belief having made all reasonable enquiries as at the date of this Statutory Declaration:

All workers who are or at any time have been employed by the Contractor or a Subcontractor with respect to work under the Contract have been paid in full all monies due and payable to them in respect of their employment on the work under the Contract the subject of the Payment Claim described above and in respect of their employment on the work under the Contract the subject of all previous payment claims, including wages and allowances of every kind required to be paid under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgement or order of any competent court, board, commission or industrial tribunal or by any relevant industrial agreement that is enforced in Victoria.

All Subcontractors or suppliers of materials who are or at any time have been engaged in respect of work under the Contract the subject of the Payment Claim described above and in respect of work under the Contract the subject of all previous payment claims, have been paid by the Contractor in full all moneys due and payable to them in accordance with the terms of their respective subcontracts or in accordance with the terms of their respective agreements for supply of materials.

No material disputes exist between the Contractor and any Subcontractor or supplier that is or has been engaged by the Contractor with respect to work under the Contract.

All insurances that the Contractor is required to effect under the Contract have been effected, are current and all premiums have been paid by the Contractor on or before the due date for payment.

I ACKNOWLEDGE that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signature of person making the declaration

DECLARED at

In the State of Victoria this day of 20

Before me:

-------------------------------- signature
-------------------------------- qualification
-------------------------------- name of witness
-------------------------------- address of witness
Deed of Guarantee and Indemnity
(subclause 5.6)

Deed of Guarantee and Indemnity

BETWEEN

[INSERT GUARANTOR]

AND

CENTRAL GIPPSLAND REGION WATER CORPORATION

MILLS OAKLEY LAWYERS
Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: +61 3 9670 9111
Facsimile: +61 3 9605 0933
DX 558, MELBOURNE
www.millsoakley.com.au
Ref: PFGM/ PRECEDENT
# Table of Contents

1. Definitions and interpretation ................................................................. 2  
2. Guarantee .................................................................................................. 3  
3. Independent Advice .................................................................................. 4  
4. Nature of Guarantee .................................................................................. 4  
5. Interest ...................................................................................................... 4  
6. Indemnities ............................................................................................... 4  
7. Survival of indemnities ............................................................................. 5  
8. Continuing obligations ............................................................................. 5  
9. Obligations of guarantor absolute ............................................................ 5  
10. Insolvency of contractor ......................................................................... 6  
11. Settlement, discharge or release ............................................................... 6  
12. Representations and warranties ............................................................... 6  
12.1 Representatives and warranties ............................................................... 6  
12.2 Continuing representation and warranties ........................................... 7  
13. Reinstatement and Release ..................................................................... 7  
13.1 Reinstatement of Beneficiary’s rights ..................................................... 7  
13.2 Release of Deed .................................................................................... 7  
14. Competing claims .................................................................................... 7  
14.1 Prohibited claims .................................................................................. 7  
14.2 Competing claims ................................................................................ 7  
14.3 Waiver of rights .................................................................................... 8  
15. General provisions ................................................................................... 8  
15.1 Costs and expenses ............................................................................... 8  
15.2 Assignment ............................................................................................ 8  
15.3 Notices .................................................................................................. 8  
15.4 Invalidity ................................................................................................ 9  
15.5 Amendment ........................................................................................... 9  
15.6 Successors & Assigns .......................................................................... 9  
15.7 Governing law and jurisdiction .............................................................. 9  
15.8 Further Assurance ............................................................................... 9  

Executed as a Deed Poll ............................................................................. 10
THIS DEED is made on 20

Parties

[INSERT GUARANTOR] ACN [INSERT ACN] of [INSERT ADDRESS] ("Guarantor")
Central Gippsland Region Water Corporation trading as Gippsland Water ABN 75 830 750 413 of 55 Hazelwood Road, Traralgon VIC 844 ("Beneficiary")

Recitals

A. The Beneficiary and the Contractor are parties to the Guaranteed Contract.
B. The Guarantor has agreed to guarantee the performance by the Contractor of its obligations under the Guaranteed Contract.

The parties agree that:

1 Definitions and interpretation

1.1 In this Deed, unless the context requires another meaning:
   (a) "Contractor" means [Insert Contractor].
   (b) "Guaranteed Contract" means [Insert description of Guaranteed Contract]
   (c) "Guaranteed Obligations" means all of the Contractor’s obligations and liabilities under the Guaranteed Contract.

1.2 In this Deed, unless the context requires another meaning:
   (a) A reference to:
       (i) the singular includes the plural and vice versa;
       (ii) a gender includes all genders;
       (iii) a document (including the Guaranteed Contract) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
       (iv) a person (including a party) includes the person’s successors, permitted assigns, substitutes, executors and administrators; and
       (v) to “includes” or “including” means includes or including without limitation.
   (b) A law:
       (i) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange;
       (ii) is a reference to that law as amended, consolidated, supplemented or replaced;
       (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation; and
       (iv) a judgment includes an order, injunction, decree, determination or award of any court or tribunal.
   (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
   (d) Headings are for convenience only and do not affect the interpretation of this Deed.
2 Guarantee

2.1 The Guarantor unconditionally and irrevocably guarantees to the Beneficiary the performance by the Contractor of the Guaranteed Obligations in accordance with the terms of the Guaranteed Contract.

2.2 In consideration of the Beneficiary agreeing, at the request of the Guarantor, to enter into the Guaranteed Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary, if the Contractor defaults in the performance of the Guaranteed Obligations in accordance with the Guaranteed Contract:

(a) the due and punctual payment to the Beneficiary on demand of any money owed by the Contractor to the Beneficiary, even if demand for payment of the money has not been made on the Contractor; and
(b) to perform on demand all obligations of the Contractor under the Guaranteed Contract which the Contractor does not perform, including but not limited to within the time prescribed under the Guaranteed Contract, even if demand for performance has not been made on the Contractor.

2.3 If the Guaranteed Obligations are not fully enforceable against or not fully recoverable from:

(a) the Contractor as debtor; or
(b) from the Guarantor as surety for any reason, including:

(i) any legal limitation, disability, or lack of capacity, power or authority affecting the Contractor or the Guarantor or an improper exercise of power or authority by any person; or
(ii) any provision of the Guaranteed Contract, or any transaction relating to the Guaranteed Obligations, being or becoming void, voidable, unenforceable or time-barred,

the Guaranteed Obligations:

(iii) are enforceable against or recoverable from, the Guarantor as though the Guarantor was solely and principally responsible for the performance of the Guaranteed Obligations; and
(iv) must be performed by the Guarantor or paid by the Guarantor as principal debtor on demand by the Beneficiary.

3 Independent Advice

The Guarantor warrants that, prior to executing this Deed, the Guarantor has obtained or has had the opportunity to obtain at least the following independent advice:

(a) legal advice on the effect of the Guaranteed Contract and this Deed upon the Guarantor; and
(b) financial advice on the capacity of the Contractor to fulfil the Contractor’s obligations under the Guaranteed Contract and the effect of the non-fulfilment of the Contractor’s obligations under the Guaranteed Contract upon the Guarantor,

and the Guarantor acknowledges and agrees with the Beneficiary that the Beneficiary has entered into this Deed in reliance of this warranty.

4 Nature of Guarantee

The guarantee in clause 2:

(a) is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;
(b) may be enforced against the Guarantor without the Beneficiary first being required to exhaust any remedy it may have against the Contractor or to enforce any security it may hold with respect to the Guaranteed Contract; and

(c) is a continuing guarantee and will be irrevocable and will remain in full force and effect until discharged in accordance with this Deed.

5 Interest

The Guarantor shall on demand pay interest on any money from time to time owed to the Beneficiary under this Deed but unpaid from any date specified in or determinable under the Guaranteed Contract upon which the money become payable or when the money otherwise become payable at the rate of 2% per annum above the rate prescribed pursuant to section 2 of the _Penalty Interest Rates Act 1983_ both before and as a separate, independent obligation after any judgment.

6 Indemnities

The Guarantor unconditionally and irrevocably indemnifies the Beneficiary against all actions, suits, claims, demands, proceedings, liabilities, losses, damages, costs and expenses suffered or incurred or payable by the Beneficiary arising directly or indirectly as a result of:

(a) the failure of the Guarantor to comply with any of its obligations under this Deed or the failure of the Contractor to comply with any of the Guaranteed Obligations;

(b) any representation or warranty made by the Contractor under or in connection with the Guaranteed Contract being or becoming false, untrue or misleading; or

(c) the exercise or attempted exercise by the Beneficiary of a right or power under this Deed. The Guarantor as a separate and additional liability under this Deed, indemnifies the Beneficiary in respect of clause 2.3.

The indemnities in clauses 6(a) and 6(b) and 15.1(c) remain in effect even if the guarantee under clause 6(a) is not or ceases to be valid or enforceable against the Guarantor for any reason whatsoever.

The Guarantor must immediately on demand by the Beneficiary pay to the Beneficiary any amount certified by the Beneficiary as payable under clauses 6(a) and 6(b) and 15.1(c).

7 Survival of indemnities

The Guarantor's indemnities in clauses 6(a) and 6(b) and 15.1(c) are continuing obligations and survive the termination of this Deed or the Guaranteed Contract. It is not necessary for the Beneficiary to incur expense or make payment before enforcing a right of indemnity under this Deed.

8 Continuing obligations

This Deed continues in full force and effect until all of the Guaranteed Obligations and all of the Guarantor's obligations under this Deed have been performed in full.

9 Obligations of guarantor absolute

The Guarantor's obligations under this Deed are absolute and will not be released or discharged or affected by any act or omission, matter or thing which but for this clause might operate to release, discharge or exonerate the Guarantor from the Guarantor's obligations pursuant to this Deed in whole or part including:

(a) the insolvency, bankruptcy, winding up, receivership, reconstruction, reorganization or amalgamation of, or the appointment of an administrator or controller to, the Contractor or the Guarantor;

(b) the granting by the Beneficiary of any time, waiver or other indulgence or concession to the Contractor;
(c) a release, forbearance to sue, discharge, relinquishment, compounding or compromising of the obligations of the Contractor, the Guarantor or any other person under the Guaranteed Contract or in respect of the Guaranteed Obligations;

(d) an amendment of, variation of, supplement to or replacement of the obligations of the Contractor or any other person under the Guaranteed Contract or in respect of the Guaranteed Obligations including any amendment, variation, supplement or replacement under which the Contractor's obligations are increased, the Contractor incurs additional obligations or the time and method of payment by the Contractor is varied;

(e) an obligation of the Contractor or any other person under the Guaranteed Contract being or becoming illegal, void, voidable or unenforceable;

(f) any part of the Guaranteed Obligations being or becoming irrecoverable or never having been recoverable;

(g) the Beneficiary exercising or refraining from exercising any other security or guarantee (including security or a guarantee provided by the Contractor pursuant to the Guaranteed Contract), or any of the rights, powers or remedies conferred on it by law or by the Guaranteed Contract, or taking or failing to take any other security or guarantee;

(h) the failure by the Beneficiary to give notice to the Guarantor of any default by the Contractor under the Guaranteed Contract; or

(i) any legal limitation, disability, incapacity or other circumstances related to the Contractor.

10 Insolvency of contractor

If the Contractor becomes insolvent, the Guarantor authorises the Beneficiary to prove for all the moneys which the Guarantor is required to pay under this Deed and to retain and to carry into a suspense account and to appropriate at the discretion of the Beneficiary any dividends received in the liquidation, bankruptcy or other insolvency of the Contractor and all other moneys received in respect of the moneys which the Guarantor is required to pay under this Deed until the Beneficiary has been paid all the moneys which the Guarantor is required to pay under this Deed in full.

11 Settlement, discharge or release

Any settlement, discharge or release between the Guarantor and the Beneficiary will be conditional upon no security or payment to the Beneficiary by the Contractor or any other person being avoided or reduced by virtue of any provisions or enactments relating to insolvency for the time being in force, and the Beneficiary may recover the value or amount of any such security or payment from the Guarantor subsequently as if that settlement, discharge or release had not occurred.

12 Representations and warranties

12.1 Representatives and warranties

The Guarantor represents and warrants to the Beneficiary that:

(a) it is a corporation with limited liability and is properly incorporated (or taken to be incorporated), registered and validly existing under the Corporations Act 2001 (Cth);

(b) it has full legal capacity and power to enter into this Deed and perform its obligations under this Deed;

(c) it has taken all corporate and other action necessary to authorise the execution and performance of this Deed;

(d) this Deed constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms;

(e) the execution of this Deed and the performance by it of its obligations or

(f) the exercise of its rights under this Deed do not:
(i) contravene its constitution or any of the provisions of the Corporations Act 2001 (Cth) that apply to it as replaceable rules or mandatory rules;

(ii) contravene any law, agreement or obligation binding on it or applicable to it; or

(iii) exceed any limits on its powers or the powers of its directors;

(g) it benefits by entering into, exercising its rights and performing its obligations under this Deed; and

(h) there is no fact or circumstance relating to the Contractor known to it which it has not disclosed in writing to the Beneficiary, which is material to the Beneficiary’s assessment of the Contractor’s ability to perform the Guaranteed Obligations or the Contractor’s creditworthiness, prospects or financial condition.

12.2 Continuing representation and warranties

The representations and warranties in clause 12.1 apply while any of the Guaranteed Obligations or any of the Guarantor’s obligations under this Deed remain outstanding.

13 Reinstatement and Release

13.1 Reinstatement of Beneficiary’s rights

(a) If:

(i) any claim is made that any transaction made in or towards satisfaction of the Guaranteed Obligations or any of the Guarantor’s obligations under this Deed is void or voidable under any law (including any law relating to preferences, bankruptcy, insolvency, administration or the winding up of companies); and

(ii) the claim is upheld, compromised or admitted,

the Beneficiary is entitled to the same rights and remedies against the Guarantor as it would have had if the transaction had never taken place.

(b) Clause 13.1 survives the termination of this Deed unless the Beneficiary expressly agrees otherwise in writing.

13.2 Release of Deed

If all of the Guaranteed Obligations and all of the Guarantor’s obligations under this Deed have been irrevocably performed in full, the Beneficiary must release the Guarantor from its obligations under this Deed, at the cost of the Guarantor.

14 Competing claims

14.1 Prohibited claims

The Guarantor must not, without the Beneficiary’s approval:

(a) make any claim against the Contractor for any amount paid by the Guarantor under this Deed or enforce any right against the Contractor or its property;

(b) raise a defence available to the Guarantor, the Contractor or any other person against the Beneficiary, or exercise any right of set-off or make a counterclaim (whether arising in favour of itself or of the Contractor) against the Beneficiary, in reduction of its liability under this Deed;

(c) claim the benefit of any security or guarantee held now or in the future by the Beneficiary; or

(d) have or exercise any rights as surety in competition with the Beneficiary, until all of the Guaranteed Obligations and all of the Guarantor’s obligations under this Deed have been finally and fully satisfied.
14.2 Competing claims

If the Contractor is wound up, deregistered or becomes insolvent, or if a controller, administrator, liquidator or similar official is appointed to it or to any of its property or if the Contractor makes or enters into any moratorium, arrangement or compromise with any of its creditors:

(a) the Guarantor may not prove or make a claim against the Contractor or the Contractor’s assets in competition with the Beneficiary until all of the Guaranteed Obligations and all of the Guarantor’s obligations under this Deed have been finally and fully satisfied; and

(b) the Beneficiary’s receipt of any payment or other dividend out of the Contractor’s assets will not affect the Beneficiary’s right to enforce in full all of the Guaranteed Obligations and all of the Guarantor’s obligations under this Deed including to recover from the Guarantor any payment due.

14.3 Waiver of rights

The Guarantor waives in favour of the Beneficiary all rights (whether arising at law or in any other way) against the Beneficiary or the Contractor so far as is necessary to give effect to this Deed.

15 General provisions

15.1 Costs and expenses

(a) The Guarantor must reimburse the Beneficiary for all costs and expenses (including legal fees and expenses on a full indemnity basis) incurred by the Beneficiary in connection with the enforcement of, or the preservation of any rights, powers or remedies under this Deed.

(b) The Guarantor must pay:

(i) all taxes, levies, charges, impost, deductions, withholdings or duties of any nature (including stamp and transaction duty and goods and services tax); and

(ii) any related interest, expense, fine, penalty or other charge on those amounts, at any time imposed or levied in relation to the execution, delivery, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of this Deed.

(c) The Guarantor indemnifies the Beneficiary in respect of any amount payable by it under clauses 15.1(a) and 15.1(b).

15.2 Assignment

(a) The Guarantor must not assign or otherwise transfer, create any charge, trust or other interest in or otherwise deal with this Deed or a right, remedy, power, duty or obligation under this Deed without the prior written consent of the Beneficiary.

(b) The Beneficiary may assign or otherwise transfer the benefit of, create an interest in or otherwise deal with this Deed or a right, remedy, power, duty or obligation under this Deed without the consent of the Guarantor.

15.3 Notices

All notices, demands and other communications to the Guarantor (including with respect to legal proceedings) under this Deed must be in writing and may be sent to or served on the Guarantor by hand or post addressed to the Guarantor at the address noted in this Deed or any other address that the Guarantor may notify to the Beneficiary in writing and if posted will be deemed to have been received on the third business day following the day on which it was posted.

15.4 Invalidity

If any provision of this Deed is deemed invalid, unenforceable or illegal it is to be read down or severed to the extent of the invalidity, unenforceability or illegality and that fact does not affect the validity or enforceability of the remaining provisions of this Deed.
15.5 Amendment
This Deed may not be amended, varied, modified or supplemented except by written instrument executed the Beneficiary and the Guarantor.

15.6 Successors & Assigns
This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

15.7 Governing law and jurisdiction
This Deed is governed by the laws of Victoria. The Guarantor irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of that State.

15.8 Further Assurance
The Guarantor shall exercise all powers as are available to it, do all acts, matters and things and sign, execute and deliver all documents and instruments as may be necessary, or as the Beneficiary may reasonably require from time to time, to give full force and effect to the provisions of this Deed.
Executed as a Deed Poll

EXECUTED by [INSERT GUARANTOR] ACN [INSERT ACN] by its authorised officers in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Signature of Director

Name of Director (Please print)

Usual address

Signature of Director / Secretary (delete as applicable)

Name of Director / Secretary (Please print)

Usual address
Deed of Novation
(subclause 9.4)

CENTRAL GIPPSLAND REGION WATER CORPORATION

AND

## [INSERT SUBCONTRACTOR]

AND

## [INSERT CONTRACTOR]

DEED OF NOVATION – CONTRACT

MILLS OAKLEY LAWYERS
Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: +61 3 9670 9111
Facsimile: +61 3 9605 0933
DX 558, MELBOURNE
www.millsoakley.com.au
Ref: PFGM
PARTIES
CENTRAL GIPPSLAND REGION WATER CORPORATION trading as GIPPSLAND WATER
ABN 75 830 750 413
of 55 Hazelwood Road, Traralgon Victoria 3844
(Principal)

And

## [INSERT SUBCONTRACTOR]  
## [INSERT ACN]  
of ## [INSERT ADDRESS]  
(Subcontractor)

And

## [INSERT CONTRACTOR]  
## [INSERT ACN]  
of ## [INSERT ADDRESS]  
(Contractor)

BACKGROUND
A. The Subcontractor and the Principal are parties to the Contract.
B. The parties have agreed to novate the Contract by substituting the Contractor for the Principal in accordance with the terms contained in this Deed.

THE PARTIES AGREE THAT:

OPERATIVE PROVISIONS
1 DEFINITIONS AND INTERPRETATIONS

In this Deed, unless the context requires another interpretation:

1.2 Definitions

Business Day means any day that is not a Saturday, Sunday or public holiday in Victoria;

Claim means but not limited to, any cause of action, debts due, liabilities, damages, costs, claims, demands and judgements whatsoever, present or future, both at law or in equity and whether in contract, tort or otherwise, or arising under the provisions of any statute, award or determination, whether known or unknown or incapable of being known
at the date of this Deed however so arising, which are in respect of matters arising out of or in connection with or pertaining to the Contract;

**Contract** means the Contract between the Principal and the Subcontractor a copy of which is attached to the Schedule of this Deed.

**Novation Date** means the date the Principal executes this Deed; and

any word, expression, reference or term used which is not specifically defined in this Deed, will have the same meaning as in the Contract.

1.3 **Interpretation:**

(a) A reference:

(i) to the singular includes the plural and vice versa;

(ii) to a gender includes all genders;

(iii) to a document (including this Deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated supplemented, novated or replaced;

(iv) to a person (including a party) includes:

(A) an individual, company, other corporate body, association, partnership, firm, joint venture, trust or government agency; and

(B) the person’s successor, permitted assigns, substitutes, executors and administrators;

(v) the word “including” or “includes” means “including but not limited to” or “includes, without limitation”;

(vi) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(vii) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

(viii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

(ix) a right includes a benefit, remedy, discretion or power;

(x) references to clauses are referenced to clauses of this Deed unless otherwise stipulated; and

(xi) headings are for convenience only and do not affect interpretation or form part of this Deed.

2 **DISCHARGE OF CONTRACT**

The parties to this Deed agree that in accordance with the terms of this Deed a new contract is to be substituted for the Contract and that subject to the terms of this Deed, the obligations of the parties under the Contract are to be discharged from the Novation Date.
3 NOVATION

3.1 Novation

On and from the Novation Date, the parties novate the Contract so that:
(a) the Contractor replaces the Principal under the Contract as if it had originally been a party to the Contract instead of the Principal; and
(b) each reference in the Contract to the Principal must be read as a reference to the Contractor.

3.2 Assumptions of Rights and Obligations

On and from the Novation Date, the Contractor:
(a) must comply with the Contract; and
(b) obtains the rights and benefits and assumes the obligations of the Principal under the Contract including any obligations that have not been performed by the Principal.

3.3 Release by Subcontractor

(a) The Subcontractor, on and from the Novation Date, releases the Principal from:
   (i) any obligations and liability under or in respect of the Contract; and
   (ii) any action, Claim and demand it has, or but for this clause 3.3 would have had, against the Principal under or in respect of the Contract.
(b) The Subcontractor gives this release regardless of:
   (i) when the obligation, liability, action, Claim or demand arises; and
   (ii) whether or not it is now in the future aware of the facts and circumstances relevant to any obligation, liability, action, Claim or demand.

3.4 Release by Principal

(a) The Principal, on and from the Novation Date, releases the Subcontractor from:
   (i) any obligation and liability under or in respect of the Contract; and
   (ii) any action, Claim and demand it has, or but for this clause 3.4 would have had, against the Subcontractor under or in respect of the Contract.
(b) The Principal gives this release regardless of:
   (i) when the obligation, liability, action, Claim or demand arises; and
   (ii) whether or not it is now or in the future aware of the facts and circumstances relevant to any obligation, liability, action, Claim or demand.

3.5 Contractor Indemnity

The Contractor indemnifies the Principal from and against any liability incurred by the Principal as a result of any action, Claim, demand or proceeding against the Principal by the Subcontractor under or in respect of the Contract relating to any act or omission of the Contractor on or after the Novation Date.

4 SUBCONTRACTOR WARRANTIES

The Subcontractor warrants to the Contractor that as at the Novation Date:
(a) it is not in breach of the Contract;
(b) no claims, demands, litigation, arbitration or other proceedings are current, pending or threatened under or pursuant to the Contract; and
(c) to the extent there has been any non-conformance of the Services with respect to the Contract, the Subcontractor has notified the Principal of such non-conformance.

5 PAYMENT

5.1 Payment by the Principal

As at the Novation Date, the Subcontractor acknowledges that it has received payment from the Principal in accordance with the Contract comprising fees and any other amounts specified in the Contract totalling $## [INSERT] (exclusive of GST).

5.2 Payment by the Contractor

(a) From the Novation Date, the Contractor must pay the Subcontractor in accordance with the terms of the Contract.
(b) The Subcontractor and the Contractor acknowledge and agree that, as at the Novation Date the balance of the Subcontractor’s fees remaining for payment by the Contractor in accordance with the Contract is $##[INSERT] (exclusive of GST), subject to any adjustments allowed in accordance with the Contract.

6 PRINCIPAL’S APPROVAL AND REPORTING

6.1 No reduction, amendment or deviation without the Principal’s approval. On and from the Novation Date, each of the Subcontractor and the Contractor shall not, without the written approval of the Principal (which may be given or withheld on such terms as the Principal sees fit):

(a) reduce change or amend the terms of the Contract including the scope of the works to be performed by the Subcontractor under the Contract; or
(b) reduce or amend the insurance requirements under the Contract.

6.2 On and from the Novation Date, where the Subcontractor reasonably believes that any direction given to it by the Contractor has the effect or may have the effect of inducing or causing a breach by the Subcontractor of clause 6.1 of this Deed, the Subcontractor must promptly notify the Principal by notice in writing (with a copy to the Contractor) and the Subcontractor will not be obliged to comply with the Contractor’s direction unless and until the Principal notifies the Subcontractor and the Contractor in writing of its approval of any such direction and any terms of such approval.

7 INDEMNITIES

7.1 The Contractor indemnifies the Principal against all direct, indirect and consequential loss which the Principal suffers as a consequence of any breach of this Deed by the Contractor.

7.2 The Subcontractor indemnifies the Principal against all direct, indirect and consequential loss which the Principal suffers as a consequence of any breach of this Deed by the Subcontractor.
8 NEW SUBSTITUTED CONTRACT

As and from the Novation Date subject to the terms of this Deed, in all respects the provisions of the Contract are ratified and confirmed and continue in full force and effect as the new substituted contract referred to in clause 2.

9 GENERAL

9.1 Notices

A notice shall be deemed to have been given and received, if addressed or delivered to the relevant address of a party to this Deed as set out in this clause 9.1 and:

(a) if delivered by hand, on the day of actual delivery;
(b) if sent by post, 3 Business Days after the day on which the notice or document was posted; and
(c) if given by facsimile, at the time when the facsimile is received. If the facsimile is received after 4.00pm on any day, it must be taken to have been received on the next Business Day.

The address for service of notices under this Deed are as follows, or as otherwise notified in writing by a party to the other parties:

| Principal: | Central Gippsland Region Water Corporation |
| Address:   | 55 Hazelwood Road, Traralgon Victoria 3844 |
| Attention: | [INSERT] |
| Facsimile: | [INSERT] |
| Email:     | [INSERT] |

| Subcontractor: | [INSERT] |
| Address:       | [INSERT] |
| Attention:     | [INSERT] |
| Facsimile:     | [INSERT] |
| Email:         | [INSERT] |

| Contractor:    | [INSERT] |
| Address:       | [INSERT] |
| Attention:     | [INSERT] |
| Facsimile:     | [INSERT] |
| Email:         | [INSERT] |

9.2 Governing Law

This Deed is governed by and will be construed in accordance with the laws of the state of Victoria.

9.3 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the state of Victoria.

9.4 Amendment

This Deed may not be amended or varied unless such amendment or variation is reduced to writing and signed by the parties.
9.5 Assignment
The parties may not assign any of their respective rights in this Deed without the prior written approval of the other parties.

9.6 Severability
If any provision of the Deed is illegal, void invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.

9.7 Waiver
A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

9.8 Counterparts
This Deed may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

9.9 Further Assurances
Each party must promptly execute all documents and do everything necessary to give full effect to this Deed.

9.10 Representation and Warranty
Each party represents and warrants to each of the other parties that:
(a) it has full power and authority to enter into and perform its obligations under this Deed;
(b) it has taken all necessary action to authorise the signing, delivery and performance of this Deed in accordance with its terms; and
(c) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9.11 Relationship of parties
Unless this Deed expressly provides otherwise, nothing in this Deed may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
EXECUTED as a deed.

Signed by a duly authorised officer for and on behalf of CENTRAL GIPPSLAND REGION WATER CORPORATION in the presence of:

Witness

Name of Witness (Please print)

EXECUTED for and behalf of # [INSERT SUBCONTRACTOR] (ACN # [INSERT ACN]) by its duly authorised officers in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Signature of Director ----------------- Signature of Director / Secretary (delete as applicable)

Name of Director ----------------- Name of Director / Secretary (Please print)

(Please print)

Usual Address ----------------- Usual Address

EXECUTED for and behalf of # [INSERT CONTRACTOR] (ACN # [INSERT ACN]) by its duly authorised officers in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Signature of Director ----------------- Signature of Director / Secretary (delete as applicable)

Name of Director ----------------- Name of Director / Secretary (Please print)

(Please print)

Usual Address ----------------- Usual Address
SCHEDULE
CONTRACT
Part G
Annexure to the
Australian Standard General Conditions of Contract
AS 4000-1997

Deed of Confidentiality
(subclause 8.5)

DEED OF CONFIDENTIALITY

THIS DEED is made on the day of 20 [insert year]

between

CENTRAL GIPPSLAND REGION WATER CORPORATION trading as Gippsland Water ("Gippsland Water")

and

[insert Contractor]
[insert ACN]
of [insert address]
("Contractor")

RECITALS

A. The Contractor has agreed to provide the Services as described in the Contract.

B. Gippsland Water may provide Confidential Information to the Contractor for the purpose of the performance of the Services or the Contract.

C. Gippsland Water will provide to and allow the Contractor to access and use the Confidential Information in consideration of the Contractor entering into this Deed.

AGREEMENT

1. INTERPRETATION

In this Deed it is agreed that, unless the context otherwise requires or the contrary intention appears:-

(a) the singular includes the plural and vice versa and words importing a gender include other genders;

(b) terms importing natural persons include partnerships and bodies corporate;

(c) other grammatical forms of defined words or phrases have corresponding meanings;

(d) (where a party comprises two or more persons provisions of this Deed that bind that party shall bind those persons jointly and severally;

(e) a document includes any computer program, circuit, circuit layout, drawing, specification, material, record and any other means by which Confidential Information may be stored or reproduced;

(f) any thing (including any right) includes a part of that thing:
(g) a reference to “including”, “includes” or “include” must be read as if it is followed by “without limitation”;

(h) consent means prior written consent;

(i) an obligation of a party not to do a thing includes an obligation not to permit that thing to be done;

(j) a reference to a person includes a reference to a body corporate or other legal entity, partnership or other unincorporated association; and

(k) a reference to a party to this Deed includes its successors and permitted assigns.

2. **DEFINITIONS**

In this Deed:

(a) “Confidential Information” means:

(i) all information, documents data stored by any means and any information made available to the Contractor by Gippsland Water for the purpose of the performance of carrying out the Services or the Contract;

(ii) Information communicated in any way including by written material, visual presentation, computer disk, oral communication or by access to Gippsland Waters website or computer systems;

(iii) the fact that Confidential Information has been provided to the Contractor or its Representatives; and

(iv) the terms of this Deed,

but excludes information which:

(i) is in or becomes part of the public domain other than through a breach of any obligation of confidence owed by the Contractor to Gippsland Water;

(ii) the Contractor can prove, by contemporaneous written documentation, was already known to the Contractor at the time of disclosure by Gippsland Water, except as a result of a prior confidential disclosure by Gippsland Water or a breach of any obligation of confidence owed to Gippsland Water or

(iii) is required by law or any court or other authority of competent jurisdiction to be disclosed, provided that to the extent it is legally permitted to do so prior to making any such disclosure, the Contractor notifies Gippsland Water of the requirement to disclose the Confidential Information;
(b) “Contract” means [insert description and date of the Contract] between Gippsland Water and the Contractor;

c) “Services” mean all the Services that the Contractor provides or must provide in accordance with the Contract between Gippsland Water and the Contractor; and

d) “Representative” means any director, officer, employee, financier, contractor, Contractor or adviser of the Contractor.

3. OBLIGATION OF CONFIDENCE

3.1 The Contractor must and must procure that its Representatives:

(a) take all action necessary to maintain the confidential nature of the Confidential Information;

(b) do not disclose, without the consent of Gippsland Water, any of the Confidential Information to any person other than those Representatives who need the information to perform the Services;

(c) do not use, copy or reproduce, without the consent of Gippsland Water, any of the Confidential Information for any purpose other than the performance of the Services or the Contract;

(d) establish and maintain effective security measures to safeguard all Confidential Information from unauthorised access, use, copying, disclosure, damage or destruction; and

(e) take reasonable steps to enforce the confidentiality obligations under this Deed.

3.2 The Contractor may disclose the Confidential Information to its Representatives who, prior to the disclosure of any Confidential Information:

(a) have a specific need to access the Confidential Information for the purpose of performing the Services; and

(b) have been informed by the Contractors that they owe a duty of confidence to Gippsland Water.

3.3 The Contractor must ensure that none of the persons to whom Confidential Information is disclosed in accordance with clause 3.2 of this Deed do or omit to do anything which, if done or omitted to be done by the Contractor, would constitute a breach of the Contractor’s obligations under this Deed.

3.4 If for any reason the Contractor no longer proceeds with the carrying out of the Services, the Contractor will continue to remain bound by the terms of this Deed.

4. RETURN AND OWNERSHIP OF CONFIDENTIAL INFORMATION

4.1 Upon the earlier of;

(a) demand by Gippsland Water; and
(b) the termination or ending of the Contract,

the Contractor agrees to;

(i) deliver to Gippsland Water all documents and other material in any medium in its possession, power or control or its Representatives possession, power or control which contain or refer to any Confidential Information; and

(ii) remove from electronic storage all Confidential Information, including such information combined with any other information.

4.2 Return or removal from electronic storage of the documents and other materials referred to in clause 4.1 does not release the Contractor or any of its Representatives from the obligations under this Deed or any other duty of confidence owed to Gippsland Water.

4.3 All Confidential Information remains the property of Gippsland Water. Gippsland Water reserves all rights in the Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of the Confidential Information are granted to the Contractor and no obligations are imposed on Gippsland Water other than those expressly stated in this Deed.

4.4 Gippsland Water does not make any express or implied warranty or representation concerning the Confidential Information, or the accuracy or completeness of the Confidential Information.

5. RELIEF

The Contractor acknowledges that Gippsland Water shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this Deed and without the need on the part of Gippsland Water to prove any special damage.

6. GOVERNING LAW

This Deed is governed by the laws of Victoria.

7. PRIOR DISCLOSURE

This Deed applies to all Confidential Information whether provided to the Contractor before, on or after the date of the Deed.

8. AMENDMENT

This Deed may only be amended in writing by the mutual written agreement of the parties.
Executed as a Dead Poll

EXECUTED by [Insert Contractor] (ACN )
[Insert ACN]) by its duly authorised officers in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Signature of Director

Signature of Director / Secretary
(delete as applicable)

Name of Director
(Please print)

Name of Director / Secretary
(Please print)

Usual Address

Usual Address
Instrument of Appointment and Authorization

(Clause 54)

CENTRAL GIPPSLAND REGION WATER CORPORATION

INSTRUMENT OF APPOINTMENT AND AUTHORISATION

Section 133 Water Act 1989

1. I am the of Central Gippsland Region Water Corporation ("Corporation").

2. I am authorised by the Corporation to make the appointments and authorisations set out in this Instrument of Appointment and Authorisation ("instrument") by the terms of an Instrument of Delegation made by the Corporation pursuant to me as

3. By this instrument:

3.1 I appoint and authorise the employees and authorised representatives of the entities in named in column 1;

3.2 Pursuant to the provision set out in column 2;

3.3 to the position set out in column 3,

3.4 to undertake all steps necessary to carry out the functions, powers or duties of the positions identified in the Table of Appointment and Authorisation.

4. In this instrument, a reference to an Act includes reference to any subordinate instrument made under the Act.

5. This Instrument takes effect on the date it is made and shall continue to have effect according to its terms until otherwise amended, or revoked, by any subsequent instrument in writing made pursuant to the authority of the Corporation.

| Column 1 |
| Column 2 |
| Column 3 |
| Authorised Person | Authorising Provision | Position / function, power or duty |
| Section 133 Water Act 1989 | The position and the functions, powers and duties of an authorised person to enter any land in accordance with the requirements of section 133 of the Water Act 1989 |

Dated 20

TITLE

Central Gippsland Region Water Corporation
### Contractor Form - Use of consumables that contribute to greenhouse gas emissions

PLEASE USE ACTUAL INVOICED AMOUNTS WHERE POSSIBLE, IF NOT PLEASE DESCRIBE THE METHOD TO ESTIMATE OR APPORTION ENERGY USE

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<th>ESTIMATE**</th>
<th>UNITS</th>
<th>METHODOLOGY/ASSUMPTIONS***</th>
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<td>kWh</td>
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<td>Unleaded petrol (transport)^</td>
<td>kL</td>
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<tr>
<td>Petrol-ethanol blend (stationary)^</td>
<td>kL</td>
<td>Proportion of ethanol: E_</td>
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<tr>
<td>Petrol-ethanol blend (transport)^</td>
<td>kL</td>
<td>Proportion of ethanol: E_</td>
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<tr>
<td>LPG</td>
<td>kg or kL (please state)</td>
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<tr>
<td>Natural Gas</td>
<td>m^3 or MJ (please state)</td>
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<tr>
<td>Oil (engine)</td>
<td>kL</td>
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<tr>
<td>Non-combusted oil (Hydraulic or gear oil)</td>
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<tr>
<td><strong>Grease</strong></td>
<td>kg or L (please state)</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

*If amounts from invoice data please attach copies.

**If amounts estimated please describe the method used - methods used must be consistent with the NGER (Measurement) Determination 2008.

***If more space is required please attach additional documentation outlining methodology/assumptions.

^road registered vehicles are considered transport, everything else (including non-road registered vehicles) is considered stationary.

**Units:** kWh (kilowatt hours), l (litres), kL (kilolitres), kg (kilograms), m^3 (cubic metres), MJ (megajoules)

Contractor Signature/Date:

By signing, the representative authorises the information is accurate and comprehensive.
The occupational health and safety criteria for Contractors –

Part 1 – An explanation of the criteria

Criterion 1: OHS Policy

The Contractor must have and provide a copy of an organisational-specific OHS Policy that, at the least, states:

- a clear commitment to providing for the health and safety of all employees and other workers and others who may be affected by their activities, and achieving legal compliance, through effective risk management;
- the means by which that commitment will be met (e.g. risk assessment, safe systems of work, training);
- the respective responsibilities and roles of stakeholders at all levels within and external to the organisation in ensuring safety, and
- a commitment to continuous improvement and policy review, including a date or time within which the policy will be reviewed.

The Policy is significant as both a statement of values against which the organisation can be held accountable and an indication of the key criteria and roles in OHS. It can be a demonstration of the understanding of the organisation of the importance and criteria of OHS management.

The Policy should preferably be signed by the most senior person within the organisation (e.g. Chairman, Managing Director, CEO, General Manager) to demonstrate commitment at the top of the organisation.

Criterion 2: Officers’ governance of OHS

Sections 144 and 145 of the OHS Act provide for an officer of a company, partnership or association (“the organisation”) to be guilty of the same offence as that committed by the organisation if that offence was attributable to the failure of the officer to exercise reasonable care.
The involvement of officers is considered to be a key to the proper and effective management of OHS in an organisation, by ensuring that the organisation has and applies appropriate resources and policies and procedures for OHS.

The definition of an officer in s9 of the Corporations Act is adopted in the OHS Act and includes:

- directors and secretary of a company;
- partners in a partnership;
- officers in an unincorporated association;
- persons involved in making decisions that affect the whole or a substantial part of the organisation (commonly known as the Executive or Management);
- those who have the capacity to affect significantly the financial standing of the organisation;
- those on whose instructions or wishes the directors are accustomed to act; and
- a liquidator, trustee, administrator, receiver and manager.

These are the people who have the role of governing the organisation and are able to determine or affect the ability of the organisation to properly and effectively manage OHS.

Ways in which the Contractor may demonstrate compliance with this criterion, and reasonable care for the purposes of the OHS Act include:

- evidence of advice provided to the Contractor identifying who the officers are;
  
  Note: if the Contractor is a company whose directors are the only managers of the business, then the directors may be the only officers and this step may not be needed).

- details of a governance (management) structure and process that provide for:
  
  i. the gathering and analysis of relevant information;
  
  ii. reports on relevant matters to be provided to the officers, in a timely fashion (e.g. regular reporting on some matters and timely reporting of incidents);
  
  iii. advice to be provided to the officers (from sources within and external to the business); and
  
  iv. monitoring, auditing and review of performance.

- confirmation that information provided to officers allows them to have the required knowledge and understanding of each of the elements of the due diligence definition (e.g. as to hazards and risks, required resources and policies).

An officer may comply with this criteria where they receive and respond to information through direct involvement by them in work activities. This is typically the case for sole proprietors, small partnerships and for “hands on” directors and managers in small businesses. Officers who are not involved directly in work activities, typically in medium to large size companies or partnerships, will need to demonstrate other means by which they receive and respond to relevant information.
Criterion 3: OHS Advisors

Section 22(2)(b) of the OHS Act requires an contractor to either (directly) employ or engage the services (externally) of a suitably qualified person [or persons] to provide advice to the contractor concerning the health and safety of employees.

The objective is to ensure that the contractor has available to it up to date knowledge of legal obligations and good industry practice. This is in part necessary to ensure that the Contractor meets the standard of ‘reasonably practicable’ required of them, and in part to enable the officers to meet their obligations for reasonable care and due diligence.

The contractor will need to demonstrate that:
- the contractor has expertise and knowledge available to it covering all key aspects of OHS relevant to the business and activities of the contractor; and
- that the advisor(s) are suitably qualified taking into consideration the nature of the activities of the contractor and on the numbers and types of advisors employed or engaged by the contractor. Tertiary or post-graduate qualifications are not necessary, but may make it easier for the assessor / evaluator to be satisfied that this criterion has been met.

This criterion may be satisfied by membership of an industry association or other organisation that provides the contractor with OHS advice and assistance. If the Contractor wishes to rely on membership of an association then the Contractor must clearly demonstrate understanding of how to access that association’s OHS assistance.

Criterion 4: Consultation and issue resolution

Introduction to Criterion 4

Effective OHS risk management requires decisions to be made and implemented based on a proper flow of information between the Contractor and workers.

OHS issues must be resolved as soon as is reasonably practicable, which requires effective mechanisms for the exchange of information and consideration of various viewpoints.

The OHS Act and regulations recognise this by providing for management and employee representation in consultation and issue resolution and processes for undertaking those activities. Employees for this purpose include sub-contractors and their employees. The OHS Act will provide for representation and consultation for ‘workers’.

It is important that the management representative be sufficiently senior and competent to deal effectively with OHS issues. Otherwise, the process may be slowed down by a lack of knowledge, poor communication or perceptions of bad faith. This is recognised for example in sec 73(2)(b) of the OHS Act which requires seniority and competence of the Contractor’s representative.

Criterion 4a: Management representation for consultation, issue identification and response

For this criterion the Contractor must produce evidence that an appropriate management representative has been nominated for consultation and issue
resolution, and that the person has sufficient and current knowledge or timely access to appropriate sources of knowledge to effectively undertake that role.

There are no set standards or qualifications specified for the management representative, however tertiary or post-graduate qualifications may make it easier for the assessor / evaluator to be satisfied that this criterion has been met.

The management representative should be familiar with the OHS legal obligations of the Contractor and the key principles for effective OHS risk management.

The management representative should be able to demonstrate a good knowledge of consultation and issue resolution obligations and procedures, or at least knowledge of the Contractor’s obligations relating to consultation and issue resolution and access to an appropriate internal or external advisor. The availability to the management representative of advisors referred to in Criterion 3 above, may be relevant to the qualifications necessary for the management representative.

Currency of knowledge is important given regular changes to OH&S laws and practice.

Criterion 4b: Elected Health and Safety Representative (HSR)

This criterion recognises that the election and training of a Health and Safety Representative (HSR) may assist in consultation and issue resolution (and is common in the construction industry). Representation is ordinarily limited to employees, but the OHS Act provides for representation of the broader class of ‘workers’ by agreement, which commonly occurs in the construction industry.

The purpose of this criterion is:

- to identify whether the workers are represented by a HSR elected under Part 7 of the OHS Act; and
- whether the HSR has received training (which is usually a five day initial course with subsequent refresher and other training).

The law does not require the election of a HSR, or the training of the HSR, although the HSR is entitled to training if they require it.

Where there has been no request from workers for designated work groups or the election of a HSR, the Contractor may certify this to be the case. The absence of a HSR will place more significance on Criterion 4c and may require a higher level of detail of consultation arrangements to be provided to satisfy that criterion.

Criterion 4c: Consultation and issue resolution procedures

This criterion is concerned with ensuring that the contractor has in place a process for effectively undertaking communications relating to consultation and issue resolution.

For this criterion the contractor should be able to provide either consultation and issue resolution procedures that are agreed with workers (directly or through the HSR or other representative) or demonstrate that the contractor is familiar with the requirements of the OHS Act and regulations, including the default process provided in the regulations, whether or not they have needed to use them.
Criterion 4d: Health and Safety Committee

It is recognised that an effective Health and Safety Committee can be a good means to develop OHS strategy and processes and to ensure that appropriate consultation occurs with employees.

It is not compulsory for a contractor to have a committee, although it must have if requested. The absence of an effective committee may however place greater significance on Criterion 4c.

The provision of committee charter or constitution or similar will assist in determining the effectiveness of it and the degree to which it assists in satisfying Criterion 4d.

Criterion 4e: Consulting and working with other parties

The OHS Act does not include a specific duty on a Contractor to consult, cooperate and coordinate activities with others who have a duty over the same matter.

These processes are however necessary in most situations for compliance with the duties under the OHS Act.

The Contractor has duties in relation to its employees under Section 21 of the OHS Act. These duties may require the Contractor to identify risks to its employees from attendance at workplaces that are managed or controlled by others, or at which the activities of others may expose the employees of the Contractor to OHS risks. The Contractor in carrying out its activities, including attendance at workplaces, also has a duty to persons who are not employees under Section 28 or 24 of the OHS Act.

Others involved in work in which the Contractor is involved may also owe duties to the Contractor and its employees.

To comply with these duties, the Contractor should ensure that it has the information necessary to enable it to understand and manage the risks arising from their involvement and that of other parties in the work and ensure that the Contractor works together with other parties for the effective management of OHS risks.

This means that a Contractor should in some circumstances consult, cooperate and coordinate activities in relation to OHS with the client, sub-contractors, labour on-hirers, the person with management or control of the workplace and suppliers of plant and substances.

The aim of this criterion is to ensure that OHS is properly and effectively catered for through each party:

- having sufficient knowledge of the activities of others that may affect OHS
- understanding what others have in place to provide for OHS risk management
- determining what they must do to provide for OHS risk management; and
- coordinating their activities with those of others to ensure there are no gaps in risk management.

These activities represent good practice and may be necessary to meet the standard of ‘reasonably practicable’ and comply with duties of care under the OHS Act, particularly in relation to contractor safety management.

Compliance with this Criterion may be achieved by demonstrating the means by which the Contractor identifies other parties with whom they must consult.
cooperate and coordinate activities, and the requirements to meet each of the
elements noted above.
Documents showing examples of consultation with other parties and the outcomes
may be sufficient to demonstrate this criterion is being met.

Criterion 5: Currency of awareness of OHS

This criterion is clearly linked to Criteria 3 and 4 above and reference is made to the
comments in relation to those criteria.
The Checklist notes some of the means by which the contractor may keep informed
of changes in OHS regulations, guidelines and practice. These are not exclusive. This is
a specific element of the due diligence requirement for officers.
The assessor / evaluator must be satisfied however that the contractor has a
consistent process by which it is regularly informed of changes relevant to its
operations.

Criterion 6: Induction and training

The provision of information, instruction and training to employees and to other
workers is clearly provided for in sec 21(2)(c) of the OHS Act and in the regulations.
Compliance with these obligations requires the provision of site specific induction
and training that is relevant to the individual employee and as is necessary to enable
them to safely perform their work tasks.
The assessor / evaluator must be satisfied through documented systems and training
records that the Contractor has in place systems for ensuring induction and training
occurs.

Criterion 7: Hazard identification and risk control

The OHS Act requires a contractor to provide and maintain for its employees and
other workers, so far as is reasonably practicable, systems of work that are safe and
without risks to health.

Different construction projects will require the identification of specific systems of
work. The systems of work must be appropriate to meet the risks associated with the
particular work being undertaken. To meet this requirement the contractor will often
need to have and use systems to identify, assess and control hazards and risks.
The OHS Act also imposes requirements on contractors that may have the
management or control of the workplace or the design of the workplace; design or
manufacture or supply plant; install, erect or commission plant.

There are well known risks in the construction industry (e.g. fall from heights) for
which systems of work and supporting training should be provided. Other identified
construction industry risks may have accepted industry standard risk controls.
However the contractor must still identify hazards and provide systems and other
control measures for the elimination or reduction of associated risks.

For some activities involving high risks the contractor may be required to provide
additional evidence of analysis of risks and availability of skills before the work can
commence.

For Criterion 7 the Contractor needs to demonstrate and provide documentary
evidence:
of the availability to the Contractor of safe systems of work and procedures;
• of the Contractor’s awareness of the need for such systems and progress toward the provision of same;
• of a process for the identification of hazards and the identification and application of risk controls;
• of the Contractor’s awareness of each of the obligations imposed on them by the OHS Act and regulations by virtue of the Contractor’s role and activities and has in place processes for meeting those obligations; and
• showing how the Contractor assesses risks and identifies risk control measures.

Documents that show a system for doing this (e.g. formats for job safety analysis, or processes for developing safe work method statements) will assist in demonstrating the contractor’s compliance with this criterion.

The contractor must also provide an example of how these system documents have been used.

Third party certification of the contractor’s OHS management systems will be a strong indicator of satisfaction of this criterion, however, evidence may be required of such a certified system and in particular how specific legal requirements are met.

Regulations made under the OHS Act require the process of hazard identification and risk control, with specific measures relevant to the activities of the contractor.

From 1 July 2008 this has included the requirement for coordination plans for higher value projects and the preparation of safe work method statements for high risk work.

Coordination Plans are required to be developed and maintained by Contractors where they are appointed to the role of Principal Contractor.

(Regulations 5.1.16, 5.1.17 and 5.1.18 of the Occupational Health and Safety Regulations 2007 – Part 5.1 – Construction).

Criterion 8: Contractor and sub-contractor safety management

For this criterion the Contractor must provide information as to how the Contractor complies with its obligations for the safety of all workers and others, including:
• independent Contractors engaged by the Contractor;
• employees of those independent Contractors;
• sub-contractors;
• employees of Victorian Government Departments that use the Construction Supplier Register; and
• the public and others.

The Contractor must also provide documentary evidence of the systems, contractual and process documents supporting the systems and evidence of their implementation (e.g. completed checklist and inspection records).

For matters over which the Contractor has control or would, but for an agreement to the contrary, has had control, the Contractor has duties and requirements under the OHSA to “employees” which includes:
• independent contractors engaged by the Contractor;
• employees of those independent Contractors; and
• sub-contractors.

The hazardous nature of construction related activities, the extensive duties and obligations imposed by the OHS Act and regulations and the complexity of activities on a construction site or project, mean that Contractor safety management can only be achieved through the implementation of effective and enforced systems.

The requirements of Criterion 4e relating to consultation, cooperation and coordination of activities with other duty holders are clearly relevant to this Criterion 8 and evidence provided by the Contractor relating to Criterion 4e may also satisfy this Criterion.

Criterion 9: Emergency response

Emergency response is a critical aspect of safety management in the construction industry, given the hazardous nature of the activities and the difficulties associated with site access etc.

Effective emergency response is a part of the Contractor’s obligations under the OHS Act to provide and maintain safe systems of work, adequate welfare facilities and information, instruction and training for employees and other workers.

An important aspect of the Contractor’s emergency response is the regular review and testing of systems and training (e.g. through emergency evacuation trials).

Adequate welfare facilities must include first aid facilities and training as is appropriate to the nature of the activities, numbers of workers and location.

The Contractor must provide documents to:
• verify the existence of emergency procedures;
• confirm first aid facilities and training; and
• verify the dissemination of information to employees and other workers by notices, training and testing.

Criterion 10: Incident notification, investigation and response

The management of serious incidents is a critical aspect of safety management in the construction industry, given the hazardous nature of many construction activities, (e.g. failure of registered plant, collapse of a trench, explosion or fire, fall of an object from height).

The obligations of the Consultant for the safety of its workers and others necessarily require the proper investigation of incidents, identification of causes and remediation of deficiencies. Information available as a result of an incident is part of the knowledge on which an assessment will be made on what may be reasonably practicable for a Contractor to do.

The OHS Act imposes obligations on the Contractor including:
• a requirement to notify Worksafe Victoria of serious incidents;
• a requirement to preserve an incident site following a notifiable incident until an inspector attends or otherwise directs (except where disturbance of the site is necessary for rescue or health and safety protection); and
• entitling HSRs to inspect a workplace after an incident and be involved in various processes and activities following an incident.
Under this criterion the Contractor will need to provide documented systems or records such as:

- a procedure or instruction requiring information to be provided to a person nominated to fulfil these obligations for the Contractor, familiarity with the requirements and the notification form;
- evidence of the Contractor’s satisfactory notification and investigation of an incident; and
- evidence of the Contractor’s satisfactory response to the notifiable incident, for example to prevent its recurrence.

The requirements for due diligence by an officer include ensuring processes are in place to meet the obligations to notify incidents to Worksafe Victoria.

Criterion 11: Enforcement activity

The level, nature and seriousness of enforcement activity and the response of the Contractor to it may be a significant indicator of the Contractor’s OHS capability and performance.

Enforcement activity may reflect non-compliance and poor safety performance by a Contractor. A timely and effective response by the Contractor to enforcement activity may demonstrate the quality of their safety systems and processes.

Demonstrated compliance with a notice, or effective response or remediation following enforcement activity may render that enforcement activity no longer relevant and may even show improvements in the Contractor’s systems and processes.

Worksafe Victoria and other agencies relevant to OHS (e.g. Energy Safe) and HSRs may seek to enforce OHS related legislation and regulations through:

- directions;
- improvement notices;
- prohibition notices;
- prosecutions; and
- enforceable undertakings.

HSRs are entitled to issue provisional improvement notices which have the same effect as an improvement notice issued by an inspector (unless a review is sought by the Contractor).

For this criterion the Contractor will need to provide information (if any) in relation to enforcement activity and the Contractor’s response. Documents which the Contractor should provide include:

- associated Entry Reports, to provide a clear picture of the alleged non-compliance or risk; and
- evidence that the Contractor has responded appropriately to the breach or the risk which was the subject of the enforcement activity.

Certification by the Contractor of an absence of regulator activity of the kind indicated will be satisfactory evidence of compliance with this criterion.
Criterion 12: Workers Compensation Insurance

Workers compensation premium rates for a Contractor reflect the claims performance of the Contractor and are related to industry average performance. High levels of workers compensation claims may indicate poor safety performance.

The Contractor will need to provide details of the Contractor’s workers compensation insurance premium level compared to the industry rate.

Note: A premium rate of more than 150% of the industry rate will usually reflect an unacceptably high level of claims. Where the Contractor has a premium rate of more than 150% of the industry rate the Contractor will need to provide a satisfactory explanation for the high premium rate.
The occupational health and safety criteria for Contractors –

Part 2 - Guide to acceptable evidence

<table>
<thead>
<tr>
<th>Criterion 1: OHS Policy</th>
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<tbody>
<tr>
<td><strong>OHS criteria</strong></td>
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<tr>
<td><strong>Guide to acceptable evidence</strong></td>
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<tr>
<th>Criterion 2: Officers' governance of OHS</th>
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<tbody>
<tr>
<td><strong>OHS criteria</strong></td>
</tr>
<tr>
<td><strong>Note:</strong> This does not apply to a Contractor who is a sole trader, but does apply to a company, partnership, alliance or association.</td>
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<tr>
<td><strong>For information only</strong></td>
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</table>
reasonable care.

Also, the involvement of officers is considered a key to the proper and effective management of OHS in an organisation.

Officers are generally the most senior people, such as the Chief Executive, a director, partner or other senior staff who are in a position to prevent breaches of the Act.

Company officers should be aware of their organisation’s health and safety obligations and how they are managed.

Officers should take reasonable care to ensure that safety responsibilities are communicated to all staff, that appropriate safety procedures are in place, and that sufficient resources are allocated to health and safety. Any officers who are proactive and take reasonable care are not likely to be affected.

Guide to acceptable evidence

Provide an organisation chart or other information identifying who are officers by being:

- directors and/or company secretary (for a company);
- partners (of a partnership);
- office holders (of an association);
- otherwise involved in making decisions that affect the whole or a substantial part of the business or affect the financial standing of the Contractor.

- Provide details of:
  - information provided to the officers in relation to OHS hazards, risks and compliance;
  - the means by which that information is provided (e.g. reporting process, committees, responsibilities for reporting on OHS);
  - steps taken by officers to determine requirements for and allocation of resources for OHS;
  - steps taken by the officers to verify and respond to OHS information; and
  - steps taken by the officers to verify implementation of policies and procedures for OHS compliance.

Notes:

- Reference should be made to how the officers receive and respond to information.
- An officer may comply with this criteria where they receive and respond to information through direct involvement by them in work activities. Officers who are not involved directly
in work activities will need to demonstrate other means by which they receive and respond to relevant information.

**Criterion 3: OHS Advisors**

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Curriculum Vitae of person(s) with relevant OHS qualifications engaged or employed to advise the Contractor on OHS matters.</th>
</tr>
</thead>
</table>
| Guide to acceptable evidence          | Provide copies of Curriculum Vitae or other details of your internal adviser or external adviser or organisation.  

*Note:* Contractors relying on their membership of an industry association that provides OHS advice/assistance should provide evidence of membership and evidence that the Contractor understands how to access the Industry association’s OHS assistance.

**Criterion 4: Consultation and issue resolution**

**4a. Management representation for consultation, issue identification and response**

| OHS criteria                          | The identity of the firm’s management OHS representative/officer and any other resources assisting the identification of OHS concerns, their consideration and response.  
|---------------------------------------|-------------------------------------------------------------------------------------------------|
| Guide to acceptable evidence          | Details of satisfactory training/qualifications or source of assistance.  

Provide evidence confirming the nomination of a manager or details of the process for identifying the relevant manager for a particular issue, and:

- Copies of training certificate(s) or other relevant qualification information within the last 2 years (this is the preferred evidence); or
- Evidence of acceptable refresher training or access to assistance to maintain currency of knowledge.

*Note:* In the absence of training/qualifications for the manager provide details of other resources (e.g. industry association) and means for timely communication with them.

**4b. Elected Health & Safety Representative (HSR)**

| OHS criteria                          | The identity of any employee(s) of the consultant, or an employee of another employer where a multi-employer work-group has been agreed under Division 2 of Part 7 of the OHS Act, elected as a Health |
and Safety Representative under OH&S Act 2004 and details of training undertaken by them.

or

Certification by the Contractor that there has been no request for designated work groups and the election of HSRs.

<table>
<thead>
<tr>
<th>Guide to acceptable evidence</th>
<th>Provide details and date of HSR election; and</th>
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<tbody>
<tr>
<td></td>
<td>Copies of training certificate(s) or other relevant information.</td>
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<td></td>
<td><em>Note:</em> an explanation for an absence of HSR training or details of planned training may be acceptable.</td>
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<td></td>
<td>Provide details of any process by which the Contractor manages the establishment of workgroups on specific projects or for specific workplaces, including any negotiations for multi-employer or multi-workplace workgroups</td>
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<tr>
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<td>or</td>
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<tr>
<td></td>
<td>Provide a signed statement to confirm that there has been no request for designated work groups and the election of HSRs.</td>
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</tbody>
</table>

**4c. Consultation and issue resolution procedures**

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>How consultation and issue resolution are undertaken with employees and HSRs (if any) as required by the OH&amp;S Act 2004 and regulations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guide to acceptable evidence</td>
<td>• Provide copies of consultation and issue resolution procedures that have been agreed with employees and/or workers, directly or through the HSR or other representative. This may include arrangements for consultation through a person who workers agree will represent them, and management accepts them doing so, were HSR's have not been elected; or</td>
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<tr>
<td></td>
<td>• Provide evidence that the Contractor is familiar with the requirements of the OHSA and regulations, including the default process provided in the regulations, whether or not the Contractor has needed to use them.</td>
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<tr>
<td></td>
<td>• Provide evidence of how consultation is undertaken (e.g. minutes of toolbox meetings or other meetings with employees and/or HSRs).</td>
</tr>
</tbody>
</table>
### 4d. Health & Safety Committee

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Details of any Health and Safety Committee (where appropriate) and the charter or constitution or rules that show how the Committee operates (meeting the requirements of Part 7 of the OH&amp;S Act 2004) or Certification by the Contractor that there has been no request for the establishment of a Health &amp; Safety Committee.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guide to acceptable evidence</td>
<td>Provide a copy of the committee charter or constitution or similar rules. or Provide a signed statement to confirm that there has been no request for the establishment of a Health &amp; Safety Committee.</td>
</tr>
</tbody>
</table>

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### 4e. Consulting and working with other parties

| OHS criteria | The Contractor has duties in relation to its employees under Section 21 of the OHS Act. These duties may require the Contractor to identify risks to its employees from attendance at workplaces that are managed or controlled by others, or at which the activities of others may expose the employees of the Contractor to OHS risks. The Contractor in carrying out its activities including attendance at workplaces, also has a duty to persons who are not employees under Section 23 or 24 of the OHS Act. Others involved in work in which the Contractor is involved may also owe duties to the Contractor and its employees. The Contractor must accordingly demonstrate:  
- how it consults with other parties to ensure each has necessary OHS information; and  
- how it determines what is needed to work together with other parties for effective OHS risk management. Other relevant parties may include the client, sub-contractors, other suppliers of labour, those with management or control of the workplace and suppliers of plant or substances. |
| Guide to acceptable parties | Provide details of policies and procedures for identifying relevant parties, engaging in consultation about OHS directly affecting the Contractor and its employees, and determining how to work together |
### Criterion 5: Currency of awareness of OHS

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Method(s) used to keep updated on changes to OHS legislation, regulations and guidelines and other information to maintain ongoing awareness of OHS requirements.</th>
</tr>
</thead>
</table>
| Guide to acceptable evidence | Provide:  
- details of relevant memberships/subscriptions or processes for seeking information from other bodies (e.g. through Worksafe Victoria; Master Builders Association of Victoria; Housing Industry Association of Victoria; other safety alerts/bulletins); and  
- examples of information received. |

### Criterion 6: Induction and training

#### 6a. Processes

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Details of processes by which the Contractor ensures that no person enters or works upon a construction site without induction or otherwise in compliance with requirements of regulations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guide to acceptable evidence</td>
<td>Provide copies of procedures for enforcing induction and supervision requirements and evidence of their implementation and enforcement.</td>
</tr>
</tbody>
</table>

#### 6b. Records

| OHS criteria | Confirmation that OHS induction and necessary training of Contractor's employees and sub-Contractors are ensured. Induction of people other than employees of the Contractor to workplaces under the management or control of the Contractor should also be provided for.  
The purpose of the induction is to ensure that the employees and others have an awareness of the workplace specific hazards and risks and measures in place to manage the risks (including emergency and |
The purpose of training is to enable the Contractor’s employees and sub-Contractors to perform their work in a way that is safe and without risks to their health.

| Guide to acceptable evidence | Provide copies of records verifying the nature and content of induction of employees and others and demonstrating that the Contractor has in place systems for ensuring induction and training occurs. |

---

### Criterion 7: Hazard identification and risk control

#### 7a. Hazards and risk control

| OHS criteria | The means by which hazards and risks associated with the activities of the Contractor are identified, assessed and controlled. |
|Guide to acceptable evidence | Provide evidence of OHS management systems, manuals or policies/procedures (e.g. for Job Safety Analysis or risk assessment) and a completed risk assessment. Certification of systems (e.g. Safety Map, Federal Safety Commissioner or AS4801 will assist) |

#### 7b. Compliance with legal requirements

| OHS criteria | The means for compliance with specific legal requirements. |
| Note: Coordination Plans are required to be developed and maintained by Contractors where they are appointed to the role of Principal Contractor. (Regulations 5.1.16, 5.1.17 and 5.1.18 of the Occupational Health and Safety Regulations 2007 – Part 5.1 – Construction) |
|Guide to acceptable evidence | Provide evidence or examples of the means for compliance with specific requirements, such as by completed Job Safety Analysis, safe work method statements and the means of coordinating safety activities on site. These are examples only and the specific compliance requirements will depend on the activities carried out by the contractor. |
| Note: See also the requirements under Criterion 4e, to provide for |
consultation and coordination with other parties.

### Criterion 8: Contractor and sub-contractor safety management

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Procedures for managing the obligations of the Contractor under the OHS Act 2004 for the safety of independent Contractors (sub-Contractors) engaged by the Contractor and of the employees of sub-Contractors and others.</th>
</tr>
</thead>
</table>
| Guide to acceptable evidence | Provide documentary evidence of safety systems, sub-Contractor management systems, contract clauses or other documents supporting the systems and evidence of their effective implementation and enforcement (e.g. completed checklists and inspection records).  
Note: See also the requirements under Criterion 4e, to meet the specific duty to consult, cooperate and co-provide for consultation and coordination with other parties, which applies to contractor and sub-contractor management. |

### Criterion 9: Emergency response

#### 9a. Procedures and first aid

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>Effective emergency response procedures including review and testing requirements, the availability of suitable first aid facilities, and employee first aid training.</th>
</tr>
</thead>
</table>
| Guide to acceptable evidence | Provide:  
- a copy of emergency response procedure including their review and testing requirements;  
- evidence of means by which the Contractor assesses first aid needs and ensures adequate first aid facilities; and  
- copies of first aid training records. |

#### 9b. Information and testing

| OHS criteria | The effective dissemination of emergency response information and of testing of emergency response procedures in the past 12 months. |
### Criterion 10: Incident notification, investigation and response

#### 10a. Internal incident notification

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>System for the notification of all incidents internally and (where relevant) to the employer with management and control of the workplace.</th>
</tr>
</thead>
</table>

| Guide to acceptable evidence | Provide copies of processes, procedures, form(s) and instructions to staff that cover internal and external incident notification. Where available provide completed examples. |

#### 10b. Notification of incidents to Worksafe Victoria

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>System for the notification of incidents to Worksafe Victoria as required by Part 5 of the OHS Act 2004 (immediate oral notification of death, serious injury or an incident involving immediate risk to people from specified events).</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Guide to acceptable evidence</th>
<th>Evidence of compliance with this criterion could include:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• documented systems to ensure compliance with the Contractor’s obligations under the OHS Act relating to incident notification;</td>
</tr>
<tr>
<td></td>
<td>• a procedure or instruction nominating the person with responsibility for fulfilling the incident notification obligations for the Contractor and how and when information should be provided to that person;</td>
</tr>
<tr>
<td></td>
<td>• evidence of the Contractor’s familiarity with the requirements and the notification form; and</td>
</tr>
<tr>
<td></td>
<td>• evidence of satisfactory notification (if notifiable incidents have occurred).</td>
</tr>
</tbody>
</table>

#### 10c. Investigation and action taken

<table>
<thead>
<tr>
<th>OHS criteria</th>
<th>System for investigating incidents to determine causes, identify and implement appropriate action to prevent a recurrence.</th>
</tr>
</thead>
</table>
Evidence of compliance could include:
- documented systems for incident investigation and reporting; and/or
- examples of investigations and action taken in response.

Criteria Nos. 11 and 12 relate to the Contractor’s OHS Performance as indicated by:
- the level of OHS related enforcement activity;
- the Contractor’s response to such activity; and
- the Contractor’s insurance premium rate, compared with the industry.

The way a Contractor responds to enforcement activity and notices, including the Contractor’s implementation of remedial action, can be an indicator of effective and continually improving OHS systems and processes.

Workers compensation premium rates are related to industry average performance. A premium rate of more than 150% of the industry rate may reflect an unacceptably high level of claims.

**Criterion 11: Enforcement activity**

This performance criterion seeks evidence of the consultant’s response to enforcement activity.

| OHS performance criteria | Where there has been no enforcement activity refer to *Guide to acceptable evidence* below. | Where there has been enforcement activity within the past 24 months or issues raised by any Worksafe Victoria, EPA, EnergySafe or other relevant inspectorate and/or HSR including:
- prohibition notices;
- improvement notices;
- written directions;
- provisional improvement notices issued by a HSR;
- activities relating to an incident notified to Worksafe Victoria under Part 5 of the OH&S Act 2004; and any prosecution commenced by Worksafe |
<table>
<thead>
<tr>
<th>Guide to acceptable evidence</th>
<th>Victoria or completed, within the period.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where there has been no relevant inspectorate or regulatory activity, notices, or prosecutions of the kind outlined in Criterion 11 the Contractor should provide a signed statement to that effect.</td>
<td>Provide copies of relevant documents relating to the enforcement activity or issues raised including:</td>
</tr>
<tr>
<td></td>
<td>• Worksafe Victoria or Worksafe Victoria Entry Reports and notices;</td>
</tr>
<tr>
<td></td>
<td>• notices from other relevant bodies;</td>
</tr>
<tr>
<td></td>
<td>• HSR provisional improvement notices;</td>
</tr>
<tr>
<td></td>
<td>• summonses and particulars of charges or other documents detailing alleged offences;</td>
</tr>
<tr>
<td></td>
<td>• documents relating to outcome of prosecution; and</td>
</tr>
<tr>
<td></td>
<td>• provide documents showing the action taken by the Contractor to correct deficiencies identified in the notices or proceedings.</td>
</tr>
</tbody>
</table>

**Criterion 12: Workers Compensation Insurance**

<table>
<thead>
<tr>
<th>OH&amp;S performance criteria</th>
<th>Comparison of the Contractor’s insurance premium rate with that of the industry as a reflection of the Contractor’s claims history.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Contractor’s current insurance premium rate not exceeding 150% of industry rate for the past 3 years.</td>
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<tr>
<td></td>
<td>Not required for self-employed person not having employees or deemed employees.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Guide to acceptable evidence</th>
<th>Provide documentary evidence from Insurer / VWA of currency of insurance, premium rate and industry classification (e.g. premium notice).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Where the premium rate exceeds 150% of the industry rate the Contractor will need to provide a satisfactory explanation for the high premium rate.</td>
</tr>
</tbody>
</table>
Part K

Annexure to the
Australian Standard General Conditions of Contract
AS 4000-1997

(subclause 2.6)
Electronic Data Interchange
(clause 59)

Terms of Agreement

In the absence of any agreed EDI terms between the Parties, the following terms shall apply:-

1.1 DEFINITION:

Document  A document is a form, such as an invoice or purchase order, which the Parties have agreed to exchange and which the EDI software handles within its compliance checking logic.

EDI       Electronic Data Interchange. The transfer of structured data, electronically, by agreed Message Standards, from one computer system to another.

Mailbox   A repository for messages in an electronic mail system or EDI Server into which only authorised messages are allowed by authorisation of each message before the message is deposited in the addressee’s mailbox.

Message Standard   An ordered series of characters intended to convey information or a set of segments in the order specified in a message directory starting with the message header and ending with the message trailer.

Transaction Sets   In EDI standards, the name given to complete trading documents sent electronically, for example, an invoice.

1.2 PRINCIPLES:

Authentication of an EDI document:

1. An EDI document shall identify the sender and the receiver of the message to a minimum standard as defined by the relevant Industry Transaction Set.
2. The method used to verify the sender and receiver shall be computer process-able by each Party so as to establish the prima facie identity of the Party.
3. Higher levels of authentication may be mutually agreed between the Parties.

Offer and Acceptance of an EDI document:

1. An offer is made by the sender once it has been deposited in the addressee’s mailbox.
2. An acceptance occurs when a receiver takes active steps to fulfil the offer or formally communicates acceptance (whichever is the earlier).
3. If an EDI offer is not accepted by the receiver, the sender of the document must be advised in a time that is reasonable in the industry or the offer will lapse.
4. The parties must mutually agree on the way that documents are to be acknowledged.

**EDI Document as Evidence and its Retention:**

1. The parties agree that a computer generated EDI document may be used as admissible evidence in a court of law subject to the acceptance of that evidence by the court.
2. The computer generated EDI document must be free from any human mishandling or tampering.
3. The retention of computer generated EDI documents may be subject to legislative requirements. If no requirements are specified for an EDI document then retention time is assumed to be the same as the equivalent paper document.
4. The parties agree to maintain adequate audit trails for a reasonable time, which can show the movement of EDI documents within their system.

**Disputes**

Where there is any breach of these terms of Agreement the parties shall first try to come to an amicable solution between them. Failing this, an appropriate mediator approved by the Electronic Data Interchange Council of Australia (EDICA) must be sought.

**Maintenance of Security and Confidentiality:**

1. All reasonable diligence, care and all appropriate steps shall be used and performed by a party to ensure that adequate security and data integrity is met.
2. The parties shall always treat EDI documents as confidential.
3. An EDI Document shall only be available to authorised persons within the party's organisation or to agreed third parties or agents so as to progress normal business.

**Access to EDI Mail Box**

Each party shall access their EDI Mail Box at a frequency considered reasonable to allow each party's normal day-to-day business to proceed. In the absence of agreement, once each working day is to be regarded as reasonable.

**Contingency Plans:**

1. When a party becomes aware that it is unable to send or receive EDI messages in the normal way, it shall notify all relevant parties in a timely manner but at least within 24 hours of becoming aware of the situation arising.
2. Each party shall consider the various fall back options available to them and mutually agree on the option most appropriate to maintain their day-to-day business operations.
3. The originator of the fall back notice shall advise all relevant parties in a timely manner when EDI trading recommences.

**Terminations and Amendments**

1. Reasonable notice in writing shall be given before an EDI trading relationship is to be terminated.
2. Where any amendments to the terms of the current EDI trading relationship are to be made, due notice in writing shall be given to all relevant parties.
Implementing New EDI Documents and Message Standards

1. Each party acknowledges that the implementation of new EDI documents and the migration of EDI Message Standards are involved in the use of EDI.
2. The implementation of new EDI documents and/or EDI Message Standards shall be carried out in a manner, which does not disadvantage or impede the conduct of normal business between parties.
3. A party initiating a new EDI document or EDI Message Standard or both, shall allow a reasonable time frame for implementation.

NOTE: These terms of Agreement have been adapted from the EDICA Code of Practice for Electronic Data Interchange.
Risk Assessment
(clause 60)

1.1 HAZARD AND OPERABILITY (HAZOP) ASSESSMENT

This requirement applies for Contracts that have a design responsibility for the permanent works. This process is designed to provide compliance with the Occupational Health and Safety (OHS) Act 2004 (Vic). This review is to focus on the elimination of potential hazards that may be encountered by Gippsland Water employees engaged in operation and maintenance of these works after the Contract has achieved Practical Completion and the new works are in service. Areas of focus include operating or routine maintenance requirements that require a change in status of the operating conditions, or access to review effective performance of the works, alarms and associated works and procedures to minimise risk when operating and maintaining the plant.

1. Detailed Design Phase. (Contractor’s Responsibility)
   • Contractor to arrange and perform a final HAZOP Review in accordance with Gippsland Water Procedure of the final detailed design of the proposed works.
   • The detailed design HAZOP Review may include relevant contractor, supplier, subcontractor and designer risk assessments and design verification.
   • The contractor shall prepare a HAZOP Review Report for inclusion as part of the final design documents.
   • The contractor shall update the final design documentation to implement the outcomes of the HAZOP Review Report

2. Commissioning Phase. (Contractor’s Responsibility)
   • Contractor to undertake HAZOP Audit in conjunction with Gippsland Water Project officer and Operation staff. This includes compliance of works with the recommendations of the final HAZOP Review Report and inspects the works for any additional HAZOP issues associated with the works.
   • Contractor to implement works to resolve any outstanding HAZOP issues.
   • Contractor to include final HAZOP Audit documentation in Operations & Maintenance Manuals associated with the works.
   • Gippsland Water Project Officer to sign-off, successful completion of HAZOP Audit, as part of Practical Completion.

Procedure for Performing a HAZOP Review:

A HAZOP Review is required to assess the proposed design for new works or modifications to existing works to ensure that the works do not implement any additional unacceptable hazards to the operation of the works. This review does not include hazards associated with construction of the works. These are assessed by the Construction Risk Assessment Process.

Preliminaries: To undertake a HAZOP Review, the following documentation is required.

- Documentation (functional or tender) defining proposed scope of works.
- P&ID (schematic) Drawing indicating all equipment/components to be considered.
- Functional/detailed design drawings indicating the scope of the proposed works.
- Functional/detailed design calculations, relating to the proposed works.
- Existing site/system drawings applicable to the proposed works.
- Standard HAZOP review sheet, (for completion during the review)

Procedure:

1. Establish a HAZOP review team including the Designer (normally consultant or contractor), Project Engineer, Operations Rep.

2. Arrange a date, time and suitable location for the HAZOP review, appropriate with the scope of works and level of design detail completed.

3. Review proposed scope of works and P&ID and decide on appropriate break-up into major components based on the detailed design.

4. For each major component, complete a HAZOP Review Sheet, by assessing the major component against each of the HAZOP criteria and documenting the appropriate results (hazard, risk, likelihood, consequence, risk score and proposed actions).

The likelihood, consequence and risk score are determined using the definitions outlined in Risk rating definitions. The minimum actions to be taken are based on the outcome of the final risk score:

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very High</td>
<td>Critical issue must be resolved</td>
</tr>
<tr>
<td>High</td>
<td>Important Issue request change</td>
</tr>
<tr>
<td>Medium</td>
<td>Potential change (address during next design phase)</td>
</tr>
<tr>
<td>Low</td>
<td>Note to originator, no change necessary</td>
</tr>
</tbody>
</table>

The proposed actions to eliminate or minimise a HAZOP issue shall be in accordance with the following hierarchy of controls (Note: There shall be no move to the next control measure until eliminating or documenting the reason why each above measure is in appropriate in this circumstance):

- Elimination of Hazard (eg. design change)
- Substitution (eg. change equipment or substance)
- Isolation (eg. provide distance or enclosure)
- Engineering Controls (eg. guarding)
- Administrative Controls (eg. supervision, training, signage)
- Personal Protective Equipment.

5. Prepare a HAZOP Review Report, containing the project details, major components reviewed including summary of proposed actions.

6. The Project Engineer will manage the outputs of the HAZOP Review Process to ensure proposed actions are actioned and included into the final scope of works.

7. The HAZOP needs to be maintained and reviewed by the HAZOP review team to ensure proposed actions and actions taken are documented and closed out.

1.2 HAZOP REVIEW LIST

The HAZOP (hazards and operability) study is implemented to review the design for each step of the process, to minimise hazards and optimise the operability of the plant. Each component should be reviewed against the design review HAZOP TRIM COR/10/2480.
### 1.3 RISK RATING DEFINITIONS

#### Risk Likelihood Rating

<table>
<thead>
<tr>
<th>Rating Description</th>
<th>Likelihood of Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost Certain</td>
<td>The risk is expected to occur in most circumstances, say many times a month or already is happening (for example 81%-100% chance of occurring):</td>
</tr>
<tr>
<td></td>
<td>- There is a high level of recorded incidents and strong supporting evidence.</td>
</tr>
<tr>
<td></td>
<td>- There is a strong likelihood the event would reoccur.</td>
</tr>
<tr>
<td></td>
<td>- There is great opportunity, reason or means for the event to occur.</td>
</tr>
<tr>
<td>Likely</td>
<td>The risk will probably occur in most circumstances say once a year (for example 51%-80% chance of occurring):</td>
</tr>
<tr>
<td></td>
<td>- There is a regular level of recorded incidents and strong supporting evidence.</td>
</tr>
<tr>
<td></td>
<td>- There is considerable opportunity, reason or means for the event to occur.</td>
</tr>
<tr>
<td>Possible</td>
<td>The risk should occur at some time, say once in 3 years (for example 31%-50% chance of occurring):</td>
</tr>
<tr>
<td></td>
<td>- In the past three (3) years there are few, infrequent or random recorded incidents and sound supporting evidence.</td>
</tr>
<tr>
<td></td>
<td>- There is some opportunity, reason, or means for the event to occur.</td>
</tr>
<tr>
<td>Unlikely</td>
<td>The risk may occur at some time, say once in 10 years (for example 11%-30% chance of occurring):</td>
</tr>
<tr>
<td></td>
<td>- In the past ten (10) years there are no recorded incidents and little supporting evidence.</td>
</tr>
<tr>
<td></td>
<td>- There is little opportunity, reason or means for the event to occur.</td>
</tr>
<tr>
<td>Rare</td>
<td>Risk may occur only in exceptional circumstances (for example less than 10% chance of occurring):</td>
</tr>
<tr>
<td></td>
<td>- There have been no known previous recorded incidents.</td>
</tr>
</tbody>
</table>
### 1.4 CONSEQUENCE RATINGS

<table>
<thead>
<tr>
<th>Rating Description</th>
<th>Catastrophic</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
<th>Insignificant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial and Economic (incl possible regulatory fines &amp; cleanup expenses when calculating this figure)</td>
<td>Threatens Gippsland Water Viability or above $25m cash impact</td>
<td>Above $5m-25m cash impact.</td>
<td>Above $500,000 to $5m cash impact</td>
<td>Above $50,000 to $500,000 cash impact</td>
<td>Up to $50,000 cash impact</td>
</tr>
<tr>
<td>Safety/People</td>
<td>Single or Multiple Deaths</td>
<td>Permanent Disability</td>
<td>Ongoing Medical Treatment Required or Lost Time Injury in case of employee.</td>
<td>Medical Treatment Required</td>
<td>First Aid</td>
</tr>
<tr>
<td>Business Continuity</td>
<td>Inability to provide a activity Gippsland Water wide for more than 8 weeks</td>
<td>Inability to provide a Gippsland Water wide service for up to 8 weeks</td>
<td>Inability to provide a Gippsland Water wide service for up to 4 weeks</td>
<td>Inability to provide a localised service for up to 4 weeks with no business impact</td>
<td>Brief loss of a localised service for up to 2 weeks with no business impact</td>
</tr>
<tr>
<td>Supply of Water and Waste Services</td>
<td>Damage exceeds manpower &amp; equipment of GW resources. Major customer(s) unable to produce No water to major population centre &gt;20k customers.</td>
<td>MUST have assistance from outside GW to reinstate (not just parts). Severe impact to major customer(s) (eg power stations) Delays up to 3 days. &gt;5k customers affected.</td>
<td>Handled by GW Crisis Management Plan Delays up to 24 hours. &gt;1k customers Impacts on priority customers (eg dialysis patients, hospitals, food manufacturers)</td>
<td>Handled on site with GW assistance from off-site. Delays up to 8 hours. &lt;1k customers.</td>
<td>Handled on site. Minor delays under 1 hour.</td>
</tr>
<tr>
<td>Environment</td>
<td>Widespread irreversible detrimental environmental impacts. Significant resource allocation over multiple years to manage and minimise impact</td>
<td>Extensive detrimental environmental impact Significant resource commitment over multiple months required to mitigate impact</td>
<td>Detrimental environmental impact. Limited post clean up monitoring required. Discrete response period, with resolution in days or weeks. Low environmental impact. Contained on site or short term external release requiring limited post clean up monitoring Resolution between 1 day and a week. Low environmental impact, likely to require minimal modification to normal operation. Resolution within 1 – 2 days.</td>
<td>Low environmental impact, likely to require minimal modification to normal operation. Resolution within 1 – 2 days.</td>
<td>Issue resolved promptly by day-to-day management process</td>
</tr>
<tr>
<td>Reputations &amp; Relationships (including stakeholders, community and customers)</td>
<td>Board and/or MD removed by Government. Major national media item</td>
<td>Elevation of issue to government. Embarrassment for Gippsland Water, including adverse media coverage, eg State</td>
<td>Elevation of issue to the Board. Prolonged and significant media coverage</td>
<td>Issue continuously raised. Moderate coverage by local media</td>
<td></td>
</tr>
<tr>
<td>Legal</td>
<td>Major breaches of legislation resulting in prosecution of directors, executive director and or executive.</td>
<td>Major breach of legislation resulting in significant fines. Major litigation and/or class actions</td>
<td>Breach of legislation resulting moderate penalty. Litigation resulting from failure of obligation</td>
<td>Breach of legislation resulting in prohibition notice Minor fines</td>
<td>Minor legal issue, non-compliance and breaches of Legislation resulting in improvement notice minor fines</td>
</tr>
</tbody>
</table>
# Gippsland Water

## HAZOP - OPERATIONAL HAZARD ANALYSIS

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Gippsland Water</th>
</tr>
</thead>
<tbody>
<tr>
<td>GW Contract No.</td>
<td></td>
</tr>
<tr>
<td>Design Package</td>
<td></td>
</tr>
<tr>
<td>Review Date</td>
<td></td>
</tr>
<tr>
<td>Review Team</td>
<td></td>
</tr>
</tbody>
</table>

### Comment Legend
- **High**: Critical issue must be resolved
- **High**: Important interdepartment change
- **High**: Potential change passes during non-design phase
- **High**: Revises to participate on change leadership

### Likelihood
- **High**: Medium
- **High**: High
- **High**: Very High
- **High**: Extremely High

### Severity
- **High**: Low
- **High**: Medium
- **High**: High
- **High**: Very High

### Guide Words

<table>
<thead>
<tr>
<th>Guide Words</th>
<th>Hazard (Legend)</th>
<th>Risk (Legend)</th>
<th>Unlikely</th>
<th>Overcome</th>
<th>Mitigate</th>
<th>Action Proposed</th>
<th>Unlikely</th>
<th>Overcome</th>
<th>Mitigate</th>
<th>Action Taken</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Flow</td>
<td>High</td>
<td>High</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>No Action</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
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<tr>
<td>Tank</td>
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<tr>
<td>Tank/Tank Levels</td>
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<tr>
<td>Temperature</td>
<td>High</td>
<td>Low</td>
<td></td>
<td>Low</td>
<td>Medium</td>
<td>No Action</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
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<tr>
<td>Weather Precipitation</td>
<td></td>
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<tr>
<td>Power/Power Loss</td>
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<tr>
<td>Process/Process Time</td>
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### Action Taken
- **Low**: Tackle
- **Low**: Mitigate
- **Low**: Eliminate
- **Low**: Review
- **High**: Enhance

### Completed Date
- **Due Date**: 2023-03-15
- **Completed Date**: 2023-03-20

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**Sales & Leasing**

- Access to products
- Sales practices
- Sales strategies
- Sales compensation
- Sales training

**Finance**

- Finance management
- Corporate finance
- Financial planning
- Investment analysis

**Risk Management**

- Risk assessment
- Risk reduction
- Risk monitoring
- Risk communication

**Project Management**

- Project planning
- Project execution
- Project control
- Project closure

**Quality Management**

- Quality assurance
- Quality control
- Quality improvement
- Quality documentation

**Human Resources**

- Employee recruitment
- Employee training
- Employee development
- Employee performance

**Customer Service**

- Customer communication
- Customer satisfaction
- Customer retention
- Customer support

**Environmental Compliance**

- Environmental impact
- Environmental permits
- Environmental monitoring
- Environmental reporting

**Health & Safety**

- Workplace safety
- Personal safety
- Safety training
- Safety equipment

**Emergency Procedures**

- Emergency planning
- Emergency drills
- Emergency equipment
- Emergency communication

**Business Process**

- Business process improvement
- Business process optimization
- Business process automation
- Business process documentation

**Information Technology**

- Information technology strategy
- Information technology architecture
- Information technology operations
- Information technology security

**Human Resources**

- Human resource management
- Human resource planning
- Human resource development
- Human resource performance

**Health & Safety**

- Health & safety management
- Health & safety planning
- Health & safety training
- Health & safety equipment

**Emergency Procedures**

- Emergency planning
- Emergency drills
- Emergency equipment
- Emergency communication

**Business Process**

- Business process improvement
- Business process optimization
- Business process automation
- Business process documentation

**Information Technology**

- Information technology strategy
- Information technology architecture
- Information technology operations
- Information technology security
1.5 **OH&S AND ENVIRONMENTAL CONSTRUCTION HAZARD ASSESSMENT PROCESS (HAZCON)**

1.5.1 **General**

The Contractor shall submit a risk assessment analysis for each major task or activity required for performing the work under the Contract, to the Superintendent for approval within 14 days of the Date of Acceptance of the Tender.

The risk assessment analysis provided by the Contractor shall incorporate without limitation, at least the following aspects:

1.5.2 **Specific Task/Activity**

The Contractor shall document each major task associated with the work under the Contract. This shall consider the sequential aspects of the construction of the Works. The Contractor shall identify the Potential Hazards, and particular hazards associated with each activity or task to be carried out.

This process is designed to provide compliance with the:

- OH&S Act 2004
- Environmental Protection Act
- EPA Publication 480 “Best Practice Environmental Management – Environmental Guidelines for Major Construction Sites
- EPA Publication 1254 - Noise Control Guidelines
- Environmental Protection and Biodiversity Conservation Act
- Flora and Fauna Guarantee Act
- Planning and Environment Act
- Catchment and Land Protection Act
- Safe Drinking Water Act
- EPA Bunding Guidelines Publication
- Aboriginal Heritage Act S24
- Heritage Act 1995
- State Environmental Protection Policy

1.5.3 **Construction Phase** (Contractors and GW Responsibility)

- Contractor and GW Project Officer to undertake an OH&S and Environmental Construction Hazard Assessment (may require additional specialist/independent persons as required)
- Contractor to prepare Safe Works Method Statements (SWMS) and/or Job Safety and Environment Analysis (JSEA) documents to manage safety and environmental hazards associated with construction of the works.
- Contractor to prepare an OH&S Construction Hazard Report, and an Environmental Aspects and Impacts Register containing, reference documents, Hazard Assessment review documents, works procedures and specific SWMS and JSEA documents. This report shall be prepared and submitted to the GW Project Officer to assess the suitability, prior to any works commencing on-site.
- GW Project Officer to review the OH&S Construction Hazard Report and Environmental Aspects and Impacts Register and assess the suitability of the documentation prior to works commencing on-site.
- Contractor to undertake construction works in line with the SWMS procedures and JSEA outcomes. If the work methodology or conditions change during the construction, current work shall cease on the effected part of the works and a revised SWMS procedure or JSEA shall be revised in consultation with the workforce prior to works recommencing.
3. GW Project Officer shall audit from time to time the performance of the Contractor in adhering to the SWMS procedures and JSEA outcomes defined in the OH&S Construction Hazard Report and Environmental Aspects and Impacts Register. If the GW Project Officer detects a non-conformance, current work shall cease on the effected part of the works. The contractor shall provide written evidence as to why the non-conformance exists and revised SWMS procedures or JSEA documents to confirm safe work practises for the remainder of the works. Work shall not recommence until the GW Project Officer is satisfied with the outcome.

1.5.4 Procedure for Performing a Construction Hazard Review (HAZCON):

Background: A Construction Hazard Review is required to assess the activities to be undertaken during the construction of the works to ensure that there is not an introduced unacceptable level of risk to the construction workforce. This review does not include hazards in operating (HAZOP) of the finished works.

Preliminaries: To undertake a Construction Hazard Review, the following documentation is required, where applicable.

1. Documentation (Functional or Tender) defining proposed scope of works.
2. Construction Program (prepared by the Contractor), detailing the key activities to be undertaken during construction of the works.
3. P&ID (schematic) Drawing indicating all equipment/components to be considered.
4. Functional/Detailed Design Drawings indicating the scope of the proposed works.
5. Functional/Detailed Design Calculations, relating to the proposed works.
6. Existing site/system drawings applicable to the proposed works.
7. Standard OH&S Construction Hazard Review Sheet, and standard Environmental Aspects and Impacts Register Review Sheet (for completion during the review).

Procedure:

1. Establish a Construction Hazard Review Team (minimum requirements are, Contractor, Project Engineer, Major Subcontractors Experienced construction personnel and an Operations Representatives to be invited as appropriate).
2. Arrange a Date, Time and Suitable Location for the Construction Hazard Review, (appropriate with the scope of works and level of design detail completed).
3. Review proposed scope of works and the Construction Program and decide on appropriate break-up into major activities.
4. For each major activity, complete the construction hazard review sheet, and the environmental aspects and impacts register by assessing the major activity against each of the criteria and documenting the appropriate results (hazard, risk, likelihood, consequence, risk score and proposed actions)
5. The likelihood, consequence and risk score are determined using the definitions outlined in Section 0 'Risk Rating Definitions’. The minimum actions to be taken are based on the outcome of the final risk score

| Very High | Work practices to be changed to manage hazard |
| High      | Safe Work Method Statement to be prepared   |
| Medium    | Safe work procedure to be developed         |
| Low       | Hazard to be documented and employees notified |

6. The contractor should identify and document proposed actions to eliminate or minimise the construction hazard issue in accordance with the following hierarchy of controls (Note: There shall
be no move to the next control measure until eliminating or documenting the reason why each above measure is in appropriate in this circumstance):

- Elimination of Hazard (eg. design change)
- Substitution (eg. change equipment or substance)
- Isolation (eg. provide distance or enclosure)
- Engineering Controls (eg. guarding)
- Administrative Controls (eg. supervision, training, signage)
- Personal Protective Equipment.

Note: Provision of PPE should always be the last option to be considered. The Contractor shall not move to the next control measure until eliminating and documenting the reason why each measure is inappropriate in this circumstance.


8. The Contractor will manage the outputs of the Construction Hazard Review Process to ensure recommendations are actioned and included into the Construction Hazard Report and final works and construction methods. The Contractor shall provide to the Superintendent a report of the way in which the all the potential hazard issues have been dealt with.

The OH&S Construction Hazard Review is to be implemented to review the Major Construction Activities the Contractor shall undertake for each step of the process, to minimise hazards and optimise the safety of the Construction of the Works. Each component should be reviewed against the standard OH&S Construction Hazard Review Sheet (refer GW document TRIM COR/10/2480).
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1.6 ENVIRONMENTAL ASPECTS AND IMPACTS REGISTER

In accordance with Gippsland Water’s accredited Environmental Management System (EMS) an Aspects (Hazards) and Impacts (Risk) register is required to be maintained for the duration of construction to ensure the works do not cause any detrimental impacts on the environment. This review includes only hazards associated with the construction work(s) and commissioning process. This environmental risk assessment be the basis of the contractor’s Environmental Management Plan (EMP). (refer GW document TRIM COR/12/31998).
### Project Description
Gippsland Water – Environmental Aspects and Impacts Register

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<th>ACTIVITY</th>
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<th>JOB SPECIFIC LEGISLATIVE AND REGULATORY REQUIREMENTS</th>
<th>INHERENT RISK</th>
<th>ENVIRONMENTAL CONTROLS</th>
<th>RESIDUAL RISK</th>
<th>REFERENCES (RECORDS TO BE KEPT AND RELEVANT INFORMATION)</th>
<th>RESPONSIBLE OFFICER</th>
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### Consequences

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<td>Medium</td>
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<td>Medium</td>
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### References
- Environmental Protection Act S39, 46, 47, 48 & 48B
- EPA Publication 1254 - Noise Control Guidelines
- Environmental Protection and Biodiversity Conservation Act
- Flora and Fauna Guarantee Act
- Planning and Environment Act (Planning Provisions 552.17)
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<th>Legislation</th>
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<td>Vehicle movements on and off site</td>
<td>Mud on roads and top soil disturbance</td>
<td>3. Catchment and Land Protection Act S21, 22, 37, 41 &amp; 95</td>
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<td>Pollution of waterway(s)</td>
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<td>Horizontal Directional Drilling (HDD)</td>
<td>Generation of spoil waste</td>
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<td>Disposal of waste</td>
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<td>Use of material for construction</td>
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<td>Operating plant and equipment</td>
<td>Depletion of natural resources</td>
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<td>Storage of fuel and chemicals</td>
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<td>Disinfection of pipeline</td>
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<td>Chemical Storage and Usage</td>
<td>Contamination of land and/or waterway(s)</td>
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<td>Removal of vegetation</td>
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<td>Damaging/destroying a cultural heritage or heritage site</td>
<td>1. Aboriginal Heritage Act S24, 25, 27-30 &amp; 36-43</td>
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<td>Vehicle Movements on and off site</td>
<td>Spread of weeds</td>
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<td>Weed Management</td>
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<td>Removal of soil offsite (drill mud)</td>
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<td>Rehabilitation of site</td>
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<tr>
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<td>Emitting pollutants to the atmosphere</td>
<td>1. Environmental Protection Act S16, 40 and 43A</td>
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<td>Vehicle Movements on and off site</td>
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<tr>
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<td>Generation of contaminated waste</td>
<td>1. Environmental Protection Act, S4, 39, 27A(1)(c), 59E</td>
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<td>Clearing and stripping</td>
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<tr>
<td>Disposal of waste</td>
<td>Contamination of land or waterway(s)</td>
<td>2. State Environmental Protection Policy (Prevention and Management of Contaminated Land), cl 18</td>
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<td>Removal of soil off-site (drill mud)</td>
<td>Generation of contaminated waste</td>
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<td>Contaminated Materials (CASS, PASS, Landfill)</td>
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<td>Horizontal Directional Drilling (HDD)</td>
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1.7 OH&S AND ENVIRONMENTAL COMMISSIONING HAZARD ASSESSMENT PROCESS (HAZCOM)

1.7.1 General

The Contractor shall submit a risk assessment analysis for each major task or activity required for performing the work under the Contract, to the Superintendent for approval within 14 days of the Date of Acceptance of the Tender.

The risk assessment analysis provided by the Contractor shall incorporate without limitation, at least the following aspects:

1.7.2 Specific Task/Activity

The Contractor shall document each major task associated with the work under the Contract. This shall consider the sequential aspects of the commissioning of the Works. The Contractor shall identify the Potential Hazards, and particular hazards associated with each activity or task to be carried out.

This process is designed to provide compliance with the:

- OH&S Act 2004
- Environmental Protection Act
- EPA Publication 480 “Best Practice Environmental Management – Environmental Guidelines for Major Construction Sites
- EPA Publication 1254 - Noise Control Guidelines
- Environmental Protection and Biodiversity Conservation Act
- Flora and Fauna Guarantee Act
- Planning and Environment Act
- Catchment and Land Protection Act
- Safe Drinking Water Act
- EPA Bunding Guidelines Publication
- Aboriginal Heritage Act S24
- Heritage Act 1995
- State Environmental Protection Policy

1.7.3 Commissioning Phase. (Contractor’s Responsibility)

- Contractor to undertake a risk assessment Audit in conjunction with Gippsland Water Project officer and this can include Operation staff. This review is to focus on Pre-Commissioning and Commissioning risks associated with the Contractors Commissioning Plan, and the way in which he intends to put aspects of the plant progressively into service. This includes compliance of works with the recommendations of the final HAZCON Review Report and inspects the works for any additional risk issues associated with the Commissioning and first Operation of the works.
- Contractor to implement works to resolve any outstanding issues, or refer them to Gippsland Water if they relate back to a design aspect not the responsibility of this Contractor. Works are to be safe to commission, prior to proceeding.
- Contractor to include final risk assessment Audit documentation in Operations & Maintenance Manuals associated with the works.
- Gippsland Water Project Officer to sign-off, successful completion of the risk assessment Audit, as part of Practical Completion.

1.7.4 Procedure for Performing a Commissioning Hazard Review (HAZCOM):
The HAZCON is to be performed in the same style as the HAZCON, but using the HAZCOM template (see next page).

The Commissioning Risk review is to be completed in conjunction with the Commissioning Plan Preparation and no later than 4 weeks before Commissioning of the Constructed works start. It is usually better that this risk review occurs when the plant is nearing completion and those who will be physically involved in the commissioning have been nominated and are familiar with the site and plant.
# Gippsland Water

## HAZCOM - COMMISSIONING HAZARD ANALYSIS

**Project Description:** Gippsland Water

**Reference Documentation:**

**Table:**

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**Legend:**

- **Likelihood:**
  - Almost Certain
  - High
  - Medium
  - Low

- **Consequence:**
  - Minor
  - Moderate
  - Major
  - Catastrophic

**Review Team:**

- Site Manager
- Site Engineer
- Site Job Supervisor
- Health & Safety Representative
- Project Manager
- Delivery Office

**Contact:**

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- 3455-9252-6341
### AMENDMENT CONTROL SHEET

**AS 4000—1997**

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**Amendment No. 1 (1999)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to Clause 18.

Published on 5 August 1999.

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**Amendment No. 2 (2000)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to the Preface.

Published on 11 October 2000.

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**Amendment No. 3 (2005)**

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**REVISED TEXT**

*SUMMARY:* This Amendment applies to Clause 32 (a) and (c) of Annexure Part A.

Published on 30 March 2005
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www.standards.com.au