

2 Preliminaries



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2 Preliminaries

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1 General

1.1 Application

For the avoidance of doubt, all actions and obligations specified in this document are the responsibility of the Contractor unless stated otherwise. Refer to clause 2.1 of the General Conditions of Contract for the relationship between this document and other Contract Documents.

1.2 Electronic Communications

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

1.3 Use of Qualified Tradespersons

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

1.4 Procurement Policy Framework, Supplier Code of Conduct and Industrial Relations Guidelines

The NSW Government Procurement Policy Framework (Procurement Framework) provides a consolidated view of government procurement objectives and requirements as they apply to each step of the procurement process.

The NSW Government Supplier Code of Conduct (the 'Code') outlines the ethical standards and behaviours expected from the Principal and the Contractor.

The New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) aims to implement the NSW Government's commitment to greater flexibility and productivity within the State's building and construction industry.

Comply with the Procurement Framework, the Code and the NSW Guidelines. Schedule to Preliminaries – **Compliance with Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines** applies to the Contract.

Collusive Arrangements

Section 45 of the *Competition and Consumer Act* prohibits anti-competitive conduct.

The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract.

1.5 Contractor Performance Reporting

The Contractor's performance may be monitored and assessed in accordance with *Performance management* in the construction section on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>. Note, an alternative simplified proforma may be used.

1.6 Exchange of Information between Government Agencies

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

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

2 Documents

2.1 Program

Not less than 5 Business Days before starting the Works, provide a detailed program for carrying out the work under the contract, including all documentation and construction activities.

The program must show the logical relationship between activities and events and the sequence of activities which constitute the current critical path.

Submit an updated program monthly, at regular meetings and within 5 Business Days after a request from the Principal. The updated program must incorporate any changes required to achieve Completion in accordance with the Contract.

2.2 Work as Executed Drawings

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

Submit work as executed drawings for covered services within 10 Business Days of being covered. Submit work as executed drawings showing other work which has been completed within 20 Business Days after completion of that work. Endorse each drawing certifying accuracy and correctness.

Not less than 5 Business Days before Completion is expected to be reached, submit all work as executed drawings in PDF or acceptable CAD electronic format. Ensure that any CAD files submitted will correctly display and print in Microstation. Where required by the Principal, also submit 1 hard copy of all work as executed drawings, on standard sized sheets,

Endorse each drawing to certify its accuracy and completeness. Submit revised work as executed drawings within 5 Business Days after receiving any comments from the Principal.

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

2.3 NATSPEC Subscription

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

3 Contracting

3.1 Goods and Services Tax

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

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

The Principal will issue a tax invoice to the Contractor in the form of a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal. Taxable supply includes construction work which is subject to GST.

The Principal will issue an adjustment note for any adjustment event. The parties may agree in writing from time-to-time which supplies are excluded supplies, i.e. not subject to GST.

Do not issue a tax invoice in respect of any supply the Contractor makes to the Principal, other than for an excluded supply. This requirement applies to payment claims made under clause 13 of the General Conditions of Contract for work carried out under the Contract.

Give to the Principal a tax invoice for an excluded supply at or before the time the Contractor invoices the Principal for that supply.

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

The Principal will not issue a document that will otherwise be an RCTI, on or after the date when the Contractor or the Australian Taxation Office notifies the Principal that the Contractor does not comply with any requirement of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

3.2 Passing of Property and Risk

Property (ownership) for items, including materials, plant, equipment and other goods and things, that are to be incorporated into the Works passes to the Principal when they are so incorporated.

Unless otherwise specified, items, including materials and things, that are not to be incorporated into the Works (e.g. loose furniture), become the property of the Principal when unloaded on the Site as required by the Contract.

Unless otherwise notified by the Contractor, the Principal considers that the property for these items passes to the Principal free of any encumbrance.

Claim, as appropriate, for the items so transferred in a payment claim under clause 13 of the General Conditions of Contract.

The risk for items, including materials, plant, equipment and other goods and things (incorporated or otherwise) remains with the Contractor until the Completion of the Works in accordance with clauses 4.1 and 4.2 of the General Conditions of Contract.

Personal Property Securities

The Personal Property Securities Act (Cwlth), (PPSA) allows the Principal to register and protect its interests over affected personal property. Refer to Schedule to Preliminaries - **Personal Property Securities** which applies to the Contract.

4 Administration

4.1 Quality Management

Requirement

Comply with the current NSW Government Quality Management Guidelines for Construction (Quality management guidelines - construction procurement) (QM Guidelines). The QM Guidelines are available in the Quality Management section on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>.

Inspection and Test Plans

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

Not less than 5 Business Days before starting the work to which they apply, submit the following documents:

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

Do not start the applicable construction work before supplying these documents.

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

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

Conformance records

Submit copies of conformance records as specified, including:

Conformance records	Time when records are required
Management reports including WHS and Environmental management reports.	No later than the fifth (5th) Business Day of each month, or as otherwise specified.
Completed ITPs and checklists, all test results and other quality records.	With each payment claim. Progressively submit checklists, test results and other quality records related to ITPs that are

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	completed over a number of payment periods.
Work as Executed drawings	As per Preliminaries clause - Work as Executed Drawings
Operation and maintenance manuals	As per Preliminaries clause - Operation and Maintenance Manuals
Product and service conformance records.	Not less than 5 Business Days before Completion of the Works is reached.

Failure to Comply

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

4.2 Subcontract Requirements

General

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

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

Options as to Form of Security

Each subcontract that:

- requires the subcontractor to provide a cash security to its principal; or
- allows the subcontractor’s principal to deduct retention moneys from any payment,

shall allow the subcontractor the option at any time to provide unconditional undertakings in lieu of cash security or retention moneys.

Trust for Cash Security and Retention Moneys

Each subcontract shall include the following provisions:

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

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

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

Payments

Each subcontract shall include an obligation, which takes precedence over any inconsistent provision of the subcontract, for the subcontractor’s principal to pay, no more than 20 Business Days after receiving a payment claim from the subcontractor, 100% of the value of work, goods or services provided by the subcontractor less only retention moneys paid into trust.

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

Alternative Dispute Resolution

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

Documents to be provided to Subcontractors

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

Register of Subcontracts

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

4.3 Additional Security and Obligations for Trustees

If the Contractor is a trustee:

- before starting the Works, give the Principal an unconditional undertaking as security for any amount previously agreed in writing by the parties. The unconditional undertaking must be in the form detailed in General Conditions of Contract - Schedule 1 - **Unconditional Undertaking** and from a financial institution acceptable to the Principal.
- the security will be retained by the Principal against the due and proper performance of the Contract. Unless the Principal has made or intends to make a demand against the unconditional undertaking, the Principal will return the unconditional undertaking within 10 Business Days after Completion of the whole of the Works is reached or as otherwise agreed by the Principal.
- Do not prevent the Principal from making any demand against the unconditional undertaking, or prevent the provider of an unconditional undertaking from complying with the unconditional undertaking or any demand by the Principal, but the Contractor may seek damages if the Principal makes such a demand in breach of the Contract.
- ensure that for the duration of the Contract, the total value of trust beneficiaries' loans to the trustee is always greater than the total value of trust beneficiaries' loans from the company.

4.4 Contractor Representatives

Ensure that, at all times, there is a person appointed to act as the *Contractor's Representative* who can:

- act, in its dealing with the Principal's Authorised Person, with the Contractor's full authority in all matters relating to the Contract;
- be responsible for ensuring the Contractor's obligations under the Contract are met;
- administer the Contract on a day-to-day basis on behalf of the Contractor; and
- receive correspondence, instructions and notifications from the Principal and issue correspondence and notifications to the Principal on behalf of the Contractor.

Within 5 Business Days after the Date of Contract, provide the name and contact details, including e-mail address and mobile phone number of the *Contractor's Representative*. Promptly notify the Principal of any change in those details.

In addition, unless not applicable, within 20 Business Days after the Date of Contract, provide the name and contact details of a *Senior Contractor Representative* who will act with the Contractor's authority in dealings with the Senior Executive under General Conditions of Contract Clause – **Disputes** and as otherwise required.

4.5 Audit and Review

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

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

5 Site**5.1 Work Method**

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

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

5.2 Working Hours and Working Days

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

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

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

5.3 Existing Services and Survey Marks

Preventing Unplanned Contact with Live Services

Take responsibility for locating existing services, including underground essential services, and isolating them where necessary to prevent unplanned contact with live services. In doing so, comply with the NSW Government *Construction Work Code of Practice*.

Preventing unplanned disturbance of Survey Marks

Take responsibility for locating, protecting and replacing Survey Marks. Survey Marks include Permanent Survey Marks and Cadastral (Boundary & Reference) Marks.

Locating Existing Services and Survey Marks

Before starting construction work:

- appoint a site manager to be responsible for locating and preventing unplanned contact with existing services and Survey Marks; and
- verify the precise locations of all underground and other existing services and Survey Marks at the Site, and in areas adjacent to the Site that may be affected by the work under the Contract.

To locate existing services:

- obtain advice from Dial Before You Dig and the owners of the services, (do not rely on WAE or as-built drawings);
- engage a services locator;
- examine the Site and surrounding areas for indications of services; and
- where any service is underground, use pot-holing (or equivalent non-destructive techniques) to locate the service. Ensure all holes are promptly backfilled to reduce safety risks.

To locate existing Survey Marks:

- refer to the information sheet *Protecting Survey Marks* available in *Information sheets* under the Publications tab at: <https://www.spatial.nsw.gov.au>; and
- comply with subsections 1 and 3 of the section *How to protect survey marks – before Works commence* in the above Information sheet.

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

Provide written confirmation to the Principal that these actions have been completed before starting construction work.

Isolation of Existing Services

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

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

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

Include in the notification:

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

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

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

Interference with Existing Services

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

- if the service is to be continued: repair, divert or relocate as required; or
- if the service is to be abandoned: cut and seal or disconnect and make safe as required.
- record all changes made to the services on drawings, with sufficient detail to allow changes to be identified.

Removing or replacing Survey Marks

Where Survey Marks are required to be removed or replaced, engage a Registered Surveyor to manage the process in compliance with Surveyor-General's Directions, Direction No. 11, *Preservation of Survey Infrastructure* available under the Surveying tab at:

<https://www.spatial.nsw.gov.au/>

Cost and delay

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

Where:

- an existing service is damaged by the Contractor for any reason whatsoever; or
 - an existing Survey Mark is removed, disturbed or destroyed, without authorisation,
- take responsibility for all costs and any delays for repairing or disconnecting the service and/ or replacing the Survey Mark.

Notification

Notify the Principal immediately upon discovering:

- any damaged services or services that obstruct the Works and are not shown in the Contract Documents; or
- any unauthorised removal, disturbance or destruction of Survey Marks.

5.4 Work Health and Safety Management

Specification and Statutory Requirements

Comply with all statutory requirements including, but not limited to, the *Work Health and Safety Act 2011* (NSW) (*WHS Act*), the *Work Health and Safety Regulation 2017* (NSW) (*WHS Regulation*) and the NSW Government Work Health Safety management guidelines for construction 6th Edition (*WHS management guidelines*). The *WHS management guidelines* are available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>

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

Engagement as principal contractor

Take responsibility for the work under the Contract at all times until Completion. The Contractor is engaged as principal contractor for the work, in accordance with clause 293 of the *WHS Regulation*, and authorised to exercise such control of the workplace as is necessary to discharge the duties of principal contractor under the *WHS Regulation*.

WHS Management Plan

Develop and implement a WHS Management Plan that covers the work under the Contract and complies with the *WHS management guidelines* and *WHS Regulation 2017*.

No later than 10 Business Days before construction work starts, submit the WHS Management Plan. Do not start construction work before a complying WHS Management Plan has been submitted.

The Contractor must undertake its own identification and detailed analysis of all work, health and safety risks involved with work under the Contract.

Site Safety Rules

Develop site safety rules that are equal to or better than the following minimum set of site safety rules. Include them in the WHS Management Plan and ensure implementation. Notwithstanding the development of site safety rules, the rules listed below form part of the Contract. Refer to and incorporate applicable WHS codes of practice from: <https://www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice>

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

- **Construction WHS Induction** - all persons must display evidence of completing WHS Induction training before being inducted to start work on the Site.
- **Site Induction** - all persons working on the Site must attend a site induction before entering it. Visitors may enter a worksite if, either, they first attend a site induction, or if they are accompanied by a person who has attended a site induction. Each day, all persons must sign in and out on the site register.
- **Safe Work Method Statements** - Safe Work Method Statements must be prepared and used for all high risk construction work activities.
- **Toolbox Talks** – weekly or more regular discussions must be held with workers to consult on site safety matters.
- **Safety Helmets, Safety Footwear and Safety Vests** - safety helmets and steel-capped safety footwear must be worn by all supervisors, employees, and visitors in the construction areas at all times. The footwear must comply with AS 2210. Safety vests must be worn when moving plant is present or work is undertaken near traffic.
- **Personal Protective Equipment (PPE)** - PPE, such as safety eye protection, hearing protection, safety gloves and masks and the like, must be worn when welding, drilling and with all other tasks with similar risks.
- **Accidents and Incidents** - accidents, incidents and injuries must be reported immediately to the Contractor's and applicable subcontractor's site representative.
- **Alcohol and Drugs** - the consumption of, or being under the influence of, alcohol and illegal drugs on the Site is prohibited.
- **Amenities** - access to clean toilets, meal facilities and cool, clean drinking water must be provided for all persons.
- **Electrical** - all electrical work and electrical plant must comply with AS/NZS 3012:2010 *Electrical Installations – Construction and demolition sites*.
- **Emergency and Evacuation Plan** - arrangements must be included in the Site Induction and clearly identified. Consult with any occupier of the Site to coordinate the principal contractor's emergency and evacuation plan with the emergency and evacuation plan of the occupier of the Site.
- **Excavations** - barricading and signage for all excavations must be provided, with excavations 1.5 metres or more deep also to be benched, battered or shored unless a geotechnical report has been provided which determines this support is not required.
- **Fire Prevention** - fire prevention must be used by all persons on the Site. An appropriate fire extinguisher must be on hand for all welding sets and oxy acetylene work.
- **First Aid** - all persons requiring first aid treatment must contact the first aid officer who will administer the treatment and record the injury in a Register of Injuries, including the person's name and the nature of the injury.
- **Hazardous Substances** - chemicals and hazardous substances must be used and stored in compliance with their current Safety Data Sheets (SDS) with details recorded in the Register of Hazardous Substances.

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- **Housekeeping** - work areas must be kept clean and tidy, with rubbish and other safety hazards cleaned up promptly. All protruding nails must be promptly removed from stored or discarded timber.
- **Leads and Power Tools** - all leads, power tools and electrical equipment must be inspected and tagged by a qualified person prior to their use and then at three monthly intervals or as otherwise required under AS/NZS 3012:2019.
- **Mobile Plant** - ensure plant is registered with SafeWork NSW when required and operators are appropriately qualified. Plant must be fitted with working hazard lights/ reversing lights and beepers. Refer to relevant SafeWork NSW Codes of Practice.
- **Overhead Power Lines** – comply with the relevant SafeWork NSW Codes of Practice for work near overhead power lines..
- **Site Security and Public Access** - security measures, including perimeter fencing, must be used to prevent unauthorised access to construction areas and ensure safe access and passage for all those on and adjacent to the Site.
- **Underground Services** - refer to Preliminaries clause - **Existing Services and Survey Marks**.
- **Working at Heights** - working at heights must be in accordance with SafeWork NSW requirements and guidance, including certification of scaffolding.

Relevant Codes and Guides can be accessed from the SafeWork NSW website.

WHS Management Monthly Report

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

Contract Details

- Contract name
- Contractor
- Contractor's representative
- signature and date
- period covered

Implementation of *Risk management*

Summary of WHS inspections and tests carried out for:

- plant and equipment
- incoming products
- compliance with and completeness of Risk Assessments, Safe Work Method Statements and Site Safety Rules
- work site conditions including access & exits
- personal protective equipment (PPE)

Implementation of *WHS training*

- updated copy of Induction Register and details of WHS training carried out for:

Implementation of *Incident management and corrective action procedures*

Details of:

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

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

Implementation of Safe Work Method Statements

- updated copy of the register of Safe Work Method Statements
- confirmation that the principal contractor has ensured that all Safe Work Method Statements comply with the WHS Regulation and that their implementation is being monitored.

Incident Reports

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

Notify the Principal of any notifiable incident and any incident requiring medical treatment or involving lost time as soon as reasonably practicable after the incident..

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

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

Prohibition, Improvement Non-disturbance and Penalty Notices

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

Electrical Work

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

At the completion of electrical work, provide a *Certificate of Compliance – Electrical Work* (CCEW) signed by a licensed electrician, setting out details of the installation work that has been carried out and confirming that the work complies with AS/NZS 3000 and is suitable for its intended use. The provision of the CCEW is a condition of achieving Completion of the relevant Milestone or the Works, as applicable.

Formwork

Comply with the relevant statutory requirements, standards, codes and guidelines in respect of the design, construction and use of formwork, including but not limited to:

- AS 3610-1995 *Formwork for Concrete*; and
- SafeWork NSW *Formwork Code of Practice*.

Ensure that, for both vertical and horizontal formwork, before a concrete pour where:

- the formwork surface is 3 metres or more above the lowest surrounding ground; or
- the area of the formwork surface is 16 square metres or greater,

an independent structural engineer inspects and certifies that the formwork complies with AS 3610–1995 *Formwork for Concrete*. The scope of any certification work must be documented to show what has been inspected and certified.

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

The engineer must not have a conflict of interest as defined in section 29 of the Building and Development Certifiers Act 2018 for registered certifiers.

Include the inspection and certification as actions in Safe Work Method Statements for the erection and use of formwork and as hold points in the Contractor’s and subcontractors’ Inspection and Test Plans.

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

5.5 Hazardous Substances discovered unexpectedly on Site**Definition**

‘Hazardous substances’ are substances, whether solid, liquid or gas, that may cause harm to a person’s health. They include chemicals listed in the Hazardous Chemical Information System

(HCIS) documentation published by Safe Work Australia, restricted substances referenced in the NSW Work, Health and Safety Regulation (2017) and substances designated by their manufacturer or other authorities as hazardous.

Asbestos, material containing asbestos, polychlorinated biphenyl (PCB) and lead based paints are hazardous substances. For the purposes of this clause, these substances are referred to as 'Nominated Hazardous Substances'.

Other substances in certain situations are also considered hazardous and therefore require controlled handling in accordance with statutory requirements. Examples are glues, solvents, cleaning agents, paints, water treatment chemicals and materials containing silica.

Response to unexpected discovery

The requirements of this clause apply when a Nominated Hazardous Substance whose presence is not identified in the Contract Documents is discovered unexpectedly on the Site. General Conditions of Contract clause – **Site Conditions** does not apply.

If any Nominated Hazardous Substance is discovered unexpectedly on the Site, suspend all work that may result in exposure to the substance and notify the Principal immediately of the type of substance and its location. The suspension shall be deemed to be a suspension by the Principal under General Conditions of Contract Clause – **Suspension** to the extent that it was required to prevent such exposure. The Contractor may make a claim for entitlements due under clause 10.3 of General Conditions of Contract Clause – **Suspension**.

With the initial notification, or otherwise within 1 Business Day of discovery, submit details including:

- the additional work and resources the Contractor estimates will be necessary to deal with the Nominated Hazardous Substance so that work and subsequent use of the Works may proceed safely and without risk to health;
- the Contractor's estimate of the cost of the measures necessary to deal with the Nominated Hazardous Substance;
- the Contractor's estimate of any anticipated delay to Completion; and
- other details reasonably required by the Principal.

In planning and carrying out any work dealing with the Nominated Hazardous Substance, take all reasonable steps to:

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

Control and decontamination

When the Contractor notifies that a Nominated Hazardous Substance has been discovered unexpectedly on the Site, the Principal may:

- continue the suspension of the whole or any part of the work, in accordance with General Conditions of Contract Clause – **Suspension**, until the substance is isolated or removed; or
- instruct the Contractor to take responsibility for the control of the Nominated Hazardous Substance and decontamination of the Site and treat any necessary additional work as a Variation. General Conditions of Contract Clause – **Variations** shall apply. The Contractor's entitlements under General Conditions of Contract Clause – **Suspension** ceases 1 Business Day after the Principal instructs the Contractor to carry out the Variation.

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

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

5.6 Asbestos removal

Requirement

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

- SafeWork NSW requirements
- SafeWork NSW Code of Practice *How to manage and control asbestos in the workplace*
- SafeWork NSW Code of Practice *How to safely remove asbestos*

- SafeWork NSW Guide *Managing Asbestos in or on Soil*
- *NSW Work, Health and Safety Regulation (2017)*

Comply with the requirements of any Asbestos Management Plan that applies to the Site or the building where removal is taking place.

Notification and Permit

Not less than 5 Business Days prior to starting any asbestos removal work, notify the Principal of the intention to carry out that work. Provide a copy of the asbestos removal contractor's licence and a copy of any permit required for the work.

Monitoring

For all friable asbestos removal and for non-friable asbestos removal in occupied areas, provide air monitoring by an independent, licensed asbestos assessor:

- on each day during asbestos removal, immediately before asbestos removal work starts; and
- on completion of each area where removal has been undertaken.

Clearance Certificate

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

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6 Environmental Protection

6.1 Environmental Management

Requirement

Comply with the current NSW Government *current NSW Government Environmental Management Guidelines (Construction procurement) (Edition 4) (EM Guidelines)*, available on buy.nsw web site at <https://buy.nsw.gov.au/categories/construction>

Environmental Management Plan

Develop and implement an Environmental Management Plan (EMP) that complies with the *EM guidelines*.

Submit the EMP no later than 5 Business Days before construction work starts. Do not start construction work before a complying EMP has been submitted.

The Contractor must undertake its own identification and detailed analysis of all environmental risks involved with work under the Contract.

Incident Reports

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

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

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

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

6.2 Ecologically Sustainable Development

Requirement

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

Restricted timbers

Do not use the following timbers or their products for work under the Contract:

- rainforest timbers, unless certification is provided that they are plantation grown; or
- timber from Australian high conservation forests.

6.3 Waste Management

Requirement

Implement waste minimisation and management measures, including:

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

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

Monitoring

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

Submit a progress report no later than the fifth (5th) Business Day of every second month and a summary report before *Completion* of the Works, addressing the checklist factors/ questions in tables 1 to 5 in Section 3 *Management of waste on construction and demolition projects* of the EPA 'Construction and demolition waste' toolkit available at:

<https://www.epa.nsw.gov.au/your-environment/waste/industrial-waste/construction-demolition>

Note that the provision of the waste management summary report is a condition of achieving *Completion*.

6.4 Pest Control

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

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

Pest preventive methods must comply with AS 3660.1-2014 Termite management – New building work (except for references to chemical soil barriers), as well as supplementary standards for existing buildings.

7 Materials and Workmanship

7.1 Cleaning up

Ensure:

- all visible external and internal surfaces, including fittings, fixtures and equipment, are free of marks, dirt, dust, vermin;
- unwanted materials, temporary works and debris are removed; and
- unless otherwise agreed, the Contractor's plant, equipment and other temporary construction facilities are removed,

prior to *Completion*.

Match any approved samples throughout the Works. Do not commence work that requires approval of samples until the samples have been approved. Keep approved samples in good condition on the Site until *Completion*.

7.2 Testing

Independent Testing Authority

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

7.3 Proprietary Items

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

An alternative may be offered to any proprietary item. Apply in writing for approval to use the alternative. Provide details including sufficient technical information to describe how, if at all, the

alternative differs from the proprietary item and how its use would affect other parts of the Works, including performance and operation.

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

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

7.4 Guarantees

Generally

Obtain, and ensure that Goolawah Cooperative Ltd will have the benefit of, all warranties or guarantees specified in the Contract or offered by suppliers, including warranties or guarantees that are offered to, or obtained by, subcontractors of the Contractor.

8 Schedules to Preliminaries

Schedule 1 Compliance with NSW Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines

Schedule 2 Personal Property Securities

Schedule 3 Environmental Management Plan

Schedule 4 SS10 Asset Data Capture Register (Sample)

Schedule 1 – Compliance with NSW Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines

Refer to Preliminaries Clause – **Procurement Policy Framework, Supplier Code and Industrial Relations Guidelines**

Terminology

1. In addition to terms defined in this document, terms used in this Schedule have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated September, 2017). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
In particular, as stated in clause 3.1 of the NSW Guidelines; any relevant document or procedure referencing the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction - means a reference to these reissued Guidelines. Relevant documents may include but not be limited to: a Practice Direction, a workplace relations management plan or a model contract clause.
2. Note the NSW Government Supplier Code of Conduct (the 'Code') replaced the NSW Government Code of Practice for Procurement in February, 2020. The Code is available at www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct.
3. The NSW Government Procurement Policy Framework (Procurement Framework) applies to the procurement of goods and services of any kind including construction. The framework identifies the requirements that apply to tendering, managing contracts and supplier relationships. The Procurement Framework is available at www.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework.
4. For clarity, if there is an inconsistency between the requirements of the above documents and the Contract, the Contract shall take precedence to the extent of any inconsistency. Where the Contractor becomes aware of such an inconsistency, it should notify the Principal accordingly.

Primary Obligation

5. The parties must comply with and meet any obligations imposed by the Code and the NSW Guidelines.
6. The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
7. Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause, including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the Code and the NSW Guidelines.
8. The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Code or NSW Guidelines.

Access and information

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

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

Sanctions

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

Compliance

15. The Contractor bears the cost of ensuring its compliance with the Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
16. Compliance with the Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any *Defect* in the *Works* or from any other legal liability, whether or not arising from its compliance with the Code and NSW Guidelines.
17. Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
1. the circumstances of the proposed change;
 2. the extent to which compliance with the Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 3. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety (WHS) Management Plan); and
- the Principal will endeavour to direct the Contractor as to the course it must adopt within 10 *Business Days* of receiving the notice.

Schedule 2 – Personal Property SecuritiesRefer to Preliminaries Clause – **Passing of Property and Risk**

The Personal Property Securities Act (Cth), (PPSA) regulates personal property security interests. Personal property is all property other than land, fixtures (materials plant, equipment and other goods incorporated into the Works) and rights (e.g. water rights). The PPSA allows the Principal to register and protect its interests over affected personal property. It has application to unfixed materials that have an encumbrance (mortgage, charge, lien, title retention, trust, power or other security interest) and in termination.

1. In theses clauses:

PPS Act means The *Personal Property Securities Act 2009* (Cth).

PPS Law The PPS law comprises:

- .1 the Personal Property Securities Act 2009 (Cth) (PPS Act);
- .2 any regulations made at any time under the PPS Act; and
- .3 any relevant amendment made to other legislation as a consequence of the PPS Act and regulations made under the PPS Act.

Security Interest means a security interest for the purposes of the PPS Law.

2. The Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a Security Interest, the Contractor must do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the *PPS Law* for the purposes of:
 1. ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;
 2. enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 3. enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
3. The Contractor acknowledges that the Principal may register one or more financing statement(s) on the Personal Property Securities Register established under s147 the PPS Act.
4. The Contractor:
 1. waives its rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPS Act;
 2. agrees that the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPS Act is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPS Act; and
 3. waives its right to receive notice of a verification statement under section 157 of the PPS Act.