

# CONTRACT

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[INSERT CONTRACT NAME]

CONTRACT NO.: Q43/21 COOEE LODGE FIRE PROTECTION -  
SUPPLY AND INSTALL PIPEWORK

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# Contract Information

Item		Details	
1.	<b>Principal's details</b> (Clause 24.1)	Name:	Gilgandra Shire Council
		ABN:	47979060715
		Authorised Person:	Joanne Manion
		Address:	15 Warren Road, Gilgandra NSW 2827
		Telephone:	02 68178800
		Email:	jmanion@gilgandra.nsw.gov.au
2.	<b>Contractor's details</b> (Clause 24.1)	Name:	
		ABN:	
		Contractor's Representative:	
		Address:	
		Telephone:	
		Email:	
3.	<b>Warranty Period</b> (Clauses 4.1(e) and 24.1)	<b>Warranted materials</b>	<b>Warranty Period</b>
		Pipework including but not limited to Fire Brigade booster assembly, pipes, valves, meters and hydrants	36 months
4.	<b>Key Personnel</b> (Clause 5.2)	<b>Name</b>	<b>Role</b>
			Contractor
5.	<b>Time for Meetings</b> (Clause 7)		
6.	<b>Time for access to Site</b> (Clause 9.1)		
7.	<b>The Contractor must effect the following insurances:</b> (Clause 14)	<input checked="" type="checkbox"/> Public liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Works insurance for an amount at least equivalent to the Contract Price at the date of the Contract for any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under this Contract <input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Contractor's Personnel as required by law If not selected, the Contractor is not required to effect the insurance	
8.	<b>Post Completion Period</b> (Clauses 15 and 24.1)	52 weeks after Completion If nothing stated, 12 months after Completion	
9.	<b>Time for Completion</b> (Clauses 16.1 and 24.1)	12 Weeks	
10.	<b>Additional causes of delay for extension of time</b> (Clause 16.2)	If nothing stated, there are no additional causes	
11.	<b>Liquidated damages: rate per day</b> (Clause 16.3)	If nothing stated, \$500 per day	
12.	<b>Payment Claims:</b> (Clause 18)	May be submitted on:	Fortnightly
		Should be emailed to:	ckennedy@gilgandra.nsw.gov.au
13.	<b>Retention</b> (Clause 18.8)	Amount to be deducted:	5% of each payment with a total of 5% of the Contract Price to be held

## Contract Information

Item	Details		
	<table border="1"><tr><td data-bbox="531 212 877 311">Time for release:</td><td data-bbox="877 212 1465 311">50% of amount held to be released 14 days after Completion, balance released 14 days after Post Completion Period.</td></tr></table>	Time for release:	50% of amount held to be released 14 days after Completion, balance released 14 days after Post Completion Period.
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# General Conditions

## Parties:

Gilgandra Shire Council of 15 Warren Road, Gilgandra, in the State of New South Wales  
(Principal)

**[Insert Contractor's Name]** of **[Insert Contractor's address]**.  
(Contractor)

## Background:

- A. The Contractor has offered to carry out and complete the Works and the Principal intends to engage the Contractor to carry out and complete the Works.
- B. The Parties wish to enter into this Contract to record the terms on which the Contractor will carry out and complete the Works.

## The Parties agree:

### 1. CONTRACT

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- 1.1 **(Documents comprising Contract)** The Contract comprises:
  - (a) the Contract Information;
  - (b) these General Conditions;
  - (c) Schedule 1 – Contract Price;
  - (d) Schedule 2 – Scope of Works;
  - (e) Schedule 3 – WHS Management Plan and Safe Work Method Statements;
  - (f) Schedule 4 – Environmental Management Plan; and
  - (g) Schedule 5 - Combined Subcontractor's Statement and Supporting Statement.
- 1.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Contractor and the Principal (whether oral or in writing).
- 1.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the documents will take precedence in the order set out in clause 1.1 with the Contract Information being the highest in the order.

### 2. PERFORMANCE AND PAYMENT

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- 2.1 **(Contractor's primary obligation)** The Contractor must carry out and complete the Works in accordance with the Contract and all directions issued pursuant to it.
- 2.2 **(Principal's primary obligation)** The Principal must pay the Contractor the Contract Price for carrying out and completing the Works in accordance with the Contract and directions issued pursuant to it.
- 2.3 **(Cooperation)** The Parties are to do all they reasonably can to cooperate in all matters relating to the Contract.

# General Conditions

## 3. NATURE OF RELATIONSHIP

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- 3.1 The Contractor is an independent contractor of the Principal. The Contractor must provide such materials, equipment, knowledge and Personnel as the Contractor deems necessary to comply with its obligations and under this Contract.

## 4. WARRANTIES, REPRESENTATIONS AND ACKNOWLEDGEMENTS

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- 4.1 **(Contractor Warranties)** The Contractor warrants and represents that:

- (a) **(conduct of procurement process)** neither the Contractor nor any of its Personnel engaged in any misleading, deceptive, collusive, anticompetitive, unethical or unlawful conduct in connection with the procurement process pursuant to which this Contract was entered;
- (b) **(ability)** the Contractor and, to the extent applicable to them, its Personnel:
  - (i) have the experience, skills, expertise, resources and judgement;
  - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Contractor to comply with its obligations under this Contract and will maintain such competencies, licences, accreditation, qualifications, permits, clearances or other authorisations at all times until the Contractor has completed its obligations under the Contract;

- (c) **(legal capacity)** the Contractor has the full power, authority and capacity to enter into this Contract and that the Contractor's obligations under this Contract are valid and binding on it, and enforceable against it;
- (d) **(compliance)** the Contractor is compliant with all law applicable to the Contractor's business and the performance of its obligations under the Contract, and will remain so compliant until its obligations under this Contract are completed;
- (e) **(standard of goods)** any materials supplied in connection with this Contract shall be new at the time they are supplied (unless specified otherwise) and are and will remain free from defects and fit for the purpose or purposes stated in or to be reasonably inferred from this Contract at the time that they are supplied and for any applicable Warranty Period;
- (f) **(standard of workmanship)** the Contractor will, and to the extent applicable to them, will ensure that its Personnel:
  - (i) use standards of workmanship and work methods which conform with the Contract, relevant Australian Standards and codes of practice and applicable law;
  - (ii) to the extent that the Contractor is required to prepare the whole or part of the design of the Works, carry out and complete such design obligations to the standard of skill care and diligence expected of a skilled and competent professional experienced in similar design work;
  - (iii) carry out and complete the Works so that the Works, when completed, and every part of them:
    - A. shall comply with the requirements of the Contract; and

# General Conditions

- B. to the extent that the Works have been designed by the Contractor, shall be fit for the purposes stated in or to be reasonably inferred from the Contract and comply with applicable standards and law;
  - (g) **(documentation)** all documentation required by the Contract, including reports, plans and records will comply with the requirements of the Contract and otherwise be of a high standard which is consistent with or better than accepted practice in the industry; and
  - (h) **(Contract Price)** except to the extent that the Contract expressly provides for an adjustment, the Contract Price allows for all risks and contingencies which could have an impact on the cost of carrying out the Contractor's obligations under the Contract.
- 4.2 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 4.1 remain unaffected notwithstanding:
- (a) that the scope of the Works was prepared by the Principal or the Principal's Personnel;
  - (b) any Variation;
  - (c) any receipt, review, comment or direction on the Works by the Principal or its Personnel; or
  - (d) the adoption or incorporation into the Contractor Documents by the Contractor of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Principal).
- 4.3 **(Third party warranties)** The Contractor shall obtain and provide to the Principal, the warranties required elsewhere in the Contract. Unless otherwise directed by the Principal, the Contractor shall also obtain a warranty from each subcontractor, retailer or manufacturer on terms commonly provided by those subcontractors, retailers or manufacturers for their parts of the goods, in the name of both the Principal and the Contractor.

## 5. CONTRACTOR'S PERSONNEL

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- 5.1 **(Conduct)** The Contractor must set reasonable standards of conduct and ensure that they are met by any Personnel engaged in carrying out the Works. The Contractor must not, and must ensure that its Personnel do not, engage in any misleading, deceptive, collusive, anticompetitive, unethical or unlawful conduct in connection with the Contract. The Principal may direct the Contractor to remove any person from the Site for failing to meet reasonable standards of conduct, as determined by the Principal.
- 5.2 **(Provision of Key Personnel)** The Contractor must ensure that only Key Personnel perform the roles identified in the Contract Information, unless the Authorised Person approves a change.
- 5.3 **(Contractor's representative)** The Contractor must have present on Site at all times an authorised representative for the purpose of managing the work under the Contract and must notify the Principal in writing of the details of the nominated representative. If the Principal reasonably objects to the nominated representative, the Contractor shall nominate another representative. The Contractor must notify the Principal of a change in representative prior to effecting the change.

## 6. SUBCONTRACTING AND ASSIGNMENT

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- 6.1 **(General)** The Contractor must not subcontract or assign the whole or any part of its obligations under this Contract without the prior written consent of the Principal. Subcontracting of the Contractor's obligations shall not relieve the Contractor from any liability or obligation under the Contract. As between the Principal and the Contractor, the Contractor shall be responsible and

# General Conditions

liable to the Principal for the acts or omissions of the Contractor's Personnel in connection with the Contract as if they were the acts or omissions of the Contractor.

- 6.2 **(Nominated subcontractors)** The Contractor must engage the subcontractors nominated in its tender. If the Contractor wishes to use a subcontractor not nominated in its tender, then it must obtain the prior written approval of the Principal (which will not be unreasonably withheld).

## 7. MEETINGS

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- 7.1 The Contractor must, at the times stated in the Contract Information and when otherwise reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract.

## 8. RECORDS

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- 8.1 The Contractor must keep a full and proper record of the carrying out of the Works, which must include any records or evidence required by the scope of works. The Contractor must promptly provide a copy of such records or make such records available for copying by the Principal, whenever instructed to do so.

## 9. SITE

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- 9.1 **(Access for Contractor)** By the later of the time stated in the Contract Information and the time at which the Contractor has provided all information and documentation which the Contractor is required to provide prior to commencing work on the Site, the Principal shall to give the Contractor access to sufficient of the Site to allow the Contractor to commence work, but is not required to give the Contractor sole or uninterrupted possession of or access to the Site.
- 9.2 **(Access by the Principal and others)** The Contractor must give the Principal and its Personnel or other nominees access to the Site for any reason whenever required to do so by the Principal.
- 9.3 **(Clean up)** The Contractor must keep the Site clean and tidy and regularly remove rubbish and debris created by the carrying out of the Works. As a requirement of Completion, the Contractor must remove all of its plant, equipment and excess materials (not being the property of the Principal) and must leave the Site in a condition at least equal to the condition in which it was found, save for necessary wear and tear and the unavoidable impact of the Works.
- 9.4 **(Services and Site conditions)** The Contractor is responsible for determining the location and type of all existing services and public utilities, both above and below ground. Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor must bear all costs and delays for repairing the services (where it is to be continued) or disconnecting it (where it is to be abandoned). The Contractor is not entitled to any adjustment of the Contract Price in connection with the conditions above or below the ground at the Site differing from those which were anticipated by the Contractor at the time of tendering or entering into the Contract.

## 10. CARE OF PEOPLE, PROPERTY AND THE ENVIRONMENT

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- 10.1 **(Contractor's responsibility)** The Contractor must take all measures necessary to protect people and property (including the Works) in the performance of its obligations under the Contract. From the time access to any part of the Site is given to the Contractor until Completion, and at all other times whilst the Contractor has management and control of the Site, the Contractor is responsible for the care of, and is to make good at the Contractor's expense, any loss or damage which occurs to:

- (a) the Works or the Site;
- (b) construction plant; or



## General Conditions

- (c) things entrusted to the Contractor by the Principal for the purpose of carrying out the Works.
- 10.2 **(Inconvenience to others)** In carrying out the Works, the Contractor is to minimise inconvenience to others.
- 10.3 **(Liability for loss and damage)** Without limiting clause 10.1, the Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.
- 10.4 **(Indemnity)** The Contractor indemnifies the Principal against any:
- (a) legal liability for injury or death;
  - (b) breach of intellectual property rights in relation to material provided by or for the Contractor; and
  - (c) loss of, or damage to, property of the Principal or others, or harm to the environment, arising out of the carrying out of the Works.
- 10.5 **(Preventative action)** If:
- (a) action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when the Principal instructs it; or
  - (b) urgent action is required,
- then the Principal may take the action without relieving the Contractor of its obligations or liabilities, and the cost of the action is payable by the Contractor to the Principal.

## 11. WORK HEALTH AND SAFETY

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- 11.1 **(General obligation)** The Contractor must perform its obligations under this Contract and ensure that its Personnel perform their part of those obligations, safely and in a manner that will eliminate, or where that is not possible, minimise, the risk of injury, death or damage to property.
- 11.2 **(Principal Contractor)** The Contractor is responsible for the work under the Contract at all times until Completion and is engaged as principal contractor for the work, in accordance with section 293 of the *Work Health and Safety Regulation 2017* (NSW), and authorised to exercise such control of the workplace as is necessary to discharge the duties of principal contractor under that *Regulation*.
- 11.3 **(WHS Management Plan)** No later than 3 Business Days before starting work on the Site, the Contractor is to submit to the Principal for approval a Work Health and Safety Management Plan ('WHS Management Plan') for the Works that complies with the current NSW Government *Work Health and Safety Management Guidelines* (as amended or replaced from time to time). The WHS Management Plan is to address all the relevant issues in Schedule 3 – WHS Management Plan and Safe Work Method Statements, together with any other risks and hazards, and is to be implemented on the Site. Work is not to start without a complying WHS Management Plan.
- 11.4 **(Principal's policies)** To the extent that they impose an additional, higher or more onerous obligation on the Contractor than the Contractor's WHS Management Plan, or where a Contractor's WHS Management Plan has not yet been accepted by the Principal, the Contractor and its Personnel must adhere to the provisions of the Principal's safety practices and policies. These provisions are in addition to, but not in substitution of, any other safety requirement of any legislation or condition of tendering.

# General Conditions

- 11.5 **(Reporting)** All safety incidents, including near misses, and all visits by WorkCover, are to be reported immediately to the Authorised Person using the Principal's "INCIDENT, HAZARD AND INJURY REGISTER" form. This notification is in addition to, but not in substitution of, any requirement of legislation. If instructed by the Authorised Person, the Contractor must investigate the incident and submit a written report as soon as practicable after an incident occurs.
- 11.6 **(Suspension)** The Principal may direct the Contractor to suspend the performance of this Contract if the Contractor breaches its obligations under this clause 11, or an obligation under any applicable law relating to safety, including the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW).
- 11.7 **(Induction)** The Principal will provide a full induction to the Site to the Contractor. The Contractor must undertake the induction of all of its other Personnel and invitees.

## 12. PORTABLE LONG SERVICE LEVY

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- 12.1 If the Contract Price is \$25,000 or more (unless all the work under the Contract is routine maintenance, repairs or demolition) then before starting work, the Contractor must pay to the Building and Construction Industry Long Service Corporation or the Corporation's agent the amount of the long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW). Documentary evidence of payment of the levy must be provided to the Principal.

## 13. ENVIRONMENTAL MANAGEMENT

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- 13.1 **(Environmental Management Plan)** No later than 3 Business Days before starting work on the Site, the Contractor is to submit to the Principal for approval an environmental management plan for the Works that complies with the NSW Government *Environmental Management Guidelines* ('Environmental Management Plan'). The Environmental Management Plan is to be of a standard satisfactory to the Principal (acting reasonably), must address all the relevant issues stated in Schedule 4 – Environmental Management Plan (if any), together with any other known risks and hazards, and is to be implemented on the Site. Work is not to start until a complying Environmental Management Plan has been submitted.
- 13.2 **(Reporting)** The Contractor is to complete and submit to the Principal the waste recycling and purchasing report contained in Schedule 4 at Completion. All environmental incidents, including near misses, and visits by environmental regulators, are to be reported immediately to the Authorised Person.

## 14. INSURANCE

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- 14.1 **(Insurances to be effected and maintained)** Before the Contractor commences the performance of its obligations under the Contract, the Contractor must hold or effect the insurance policies stated in the Contract Information and any other insurance which the Contractor considers is necessary to protect its interests. The Contractor shall maintain such policies until Completion, and when otherwise performing its obligations under this Contract, and in respect of the professional indemnity insurance policy, for a period of 6 years after the end of the Post Completion Period.
- 14.2 **(Vault Contractor)** The Contractor must be registered on 'Vault Contractor' – a self-service portal for contractors to add or edit their work health and safety, quality assurance, environmental and insurance details. The Contractor must provide the registration and insurance documents to the Vault Contractor portal before commencing any work under the Contract. If requested, the Contractor must provide evidence to the Principal that it has complied with the requirements of this clause 14.2. The requirements of this clause 14.2 does not limit the Contractor's other obligations under the Contract.
- 14.3 **(Personnel)** The Contractor must ensure that every subcontractor and consultant holds

# General Conditions

equivalent insurance, where applicable. If the Contractor is a sole trader or pays less than \$7,500 in annual wages and therefore cannot obtain workers compensation insurance, then the person(s) carrying out the work must have personal accident insurance.

- 14.4 **(Public liability insurance and insurance of the works)** If the Contract Information states that the Contractor is to effect public liability insurance and insurance of the Works then the policies of insurance must:
- (a) cover the Contractor, Principal and subcontractors as insured entities;
  - (b) include cross liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and agrees to waive all rights of subrogation or action against any of the entities covered; and
  - (c) otherwise be on terms and with an insurer reasonably acceptable to the Principal.
- 14.5 **(Making and management of claims)** The Contractor is responsible for making and managing any insurance claims and meeting the cost of any deductibles, even if the Principal arranged the insurance.
- 14.6 **(No implied limitation)** Nothing in this clause, nor the Contractor's compliance or non-compliance with it, shall be taken to limit or reduce the Contractor's liability under the Contract or at law.

## 15. DEFECTS AND OTHER NON-COMPLIANCE

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- 15.1 **(Inspections and tests)** The Authorised Person may, or a third party engaged by the Authorised Person may, but shall not be obliged to, inspect and test any aspect of the Works or Contractor Documents to ensure that the Works or Contractor Documents and every aspect of them complies with the Contract. Inspection or tests carried out by or on behalf of the Principal shall not relieve the Contractor of any obligation or liability under the Contract nor limit or waive any right of the Principal.
- 15.2 **(Defects)** The Principal may, at any time up to 14 days after the end of the Post Completion Period, direct the Contractor to make good any Defect (whether by repairing, correcting, removing, replacing or any other means). The Principal may also direct the manner and/or timing of the rectification. All work required to make good a Defect shall be undertaken in a manner causing as little inconvenience to the Principal as possible.
- 15.3 **(Acceptance of a Defect)** The Principal may, in its absolute discretion, propose to accept the Works with any specified Defect not made good, on specified terms. If the Contractor does not accept the Principal's terms within 7 days, the Contractor is to make good the Defect.
- 15.4 **(Non-compliance)** If the Contractor fails to comply with a direction or obligation under clauses 15.2 or 15.3 or fails to comply with any other obligation under the Contract, then the Principal may after giving reasonable notice to the Contractor (except in the case of emergency, in which case no notice is required) carry out the rectification itself or engage others to do so on its behalf, and the costs incurred in doing so shall be a debt due and owing by the Contractor to the Principal.
- 15.5 **(Extension of Post Completion Period)** Unless otherwise directed by the Principal, any rectification work undertaken by the Contractor pursuant to clause 15.2 shall have a separate Post Completion Period of a duration equal to the Post Completion Period in the Contract Information but which commences on the date on which the rectification work is completed.

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## 16. TIMING

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- 16.1 **(Timing)** The Contractor must commence the Works promptly after being given access to the Site and must carry out and complete the Works:
- (a) with due expedition and without delay;
  - (b) in accordance with any requirements of the Contract and any reasonable directions of the Principal as to the order and timing of the Works (including any program included in the Contract or agreed between the Parties); and
  - (c) so that the Works reach Completion by the Time for Completion.
- 16.2 **(Delay and extension of time)** The Contractor must promptly notify the Principal if the Contractor is or may be delayed in carrying out and completing the Works. Subject to clause 23 where the Contractor is delayed in reaching Completion by the Time for Completion because of an act or omission of the Principal or the Principal's Personnel or because of any other cause of delay identified in the Contract Information, the Time for Completion shall be extended by a reasonable time determined by the Principal.
- 16.3 **(Liquidated damages)** Where the Contractor does not reach Completion by the Time for Completion (as extended pursuant to clause 16.2, if at all), liquidated damages at the rate stated in the Contract Information shall be due and payable by the Contractor to the Principal, and may be deducted from payments to the Contractor.
- 16.4 **(Prevention and Mitigation)** The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 16.5 **(No monetary compensation)** The Contractor shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Contractor's obligations under this Contract however caused.

## 17. VARIATIONS

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- 17.1 **(Direction for Variation)** The Principal may at any time and for any reason direct a Variation by giving written notice to the Contractor but cannot direct a Variation which is outside the general scope of Schedule 2. The Contractor cannot carry out a Variation without a written direction to do so from the Principal.
- 17.2 **(Variation proposal)** The Principal may request the Contractor to provide a proposal for a Variation and the Contractor is to submit a proposal within 7 days after receiving the request. The Contractor's proposal is to include a margin of up to 10% on net direct costs to cover supervision, overheads, disruption, profit and attendance. Within 28 days after receiving the Contractor's proposal for a Variation, the Principal is to notify the Contractor in writing whether or not the proposal is accepted.
- 17.3 **(Direction for a variation)** If the Principal does not accept the Contractor's Variation proposal, or if the Principal has not requested a proposal, then the Principal may nevertheless direct the Contractor to carry out the Variation in which case the Principal will assess the price of the Variation based on reasonable direct costs for which the Contractor provides documentary evidence to the Principal, plus 10% to cover supervision, overheads, disruption, profit and attendance and that will be the price payable to the Contractor for the Variation. The Principal shall not be obliged to assess or pay for a Variation unless and until the Contractor provides sufficient evidence of the cost of the Variation, the Principal may assess a reasonable value.
- 17.4 **(Adjustment of Contract Price)** The Contract Price shall be adjusted for each Variation directed by the Principal in accordance with clause 17.1 by the amount agreed by the Parties or failing agreement by a reasonable amount determined by the Principal, which may be based on the actual direct cost to the Contractor of the variation, plus a margin of 10% to cover

# General Conditions

supervision, overheads, disruption, profit and attendance. The Contractor shall not otherwise be entitled to any payment in connection with a Variation.

- 17.5 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Works, then the Principal may subsequently provide the omitted or reduced Works itself or engage others to do so on its behalf. The Contractor shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

## 18. PAYMENT CLAIMS

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- 18.1 **(Payment claims)** The Contractor may submit payment claims for completed work at the times and to the email address stated in the Contract Information and for amounts calculated as follows:

- (a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the quantities of work carried out;
- (b) for work for which the Principal accepted a lump sum, an instalment of that lump sum which reflects the value of the work carried out; and
- (c) for any other entitlements claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under clause 22, the proportion of the amount which reflects the value of the entitlement at the date of the payment claim,

less amounts previously paid, amounts payable by the Contractor to the Principal, and any amounts the Principal is entitled to deduct.

- 18.2 **(Quantities)** Quantities of work set out in any the Contract are estimates only. The Contractor is responsible for providing evidence of the quantities actually carried out.

- 18.3 **(Supporting documents)** With each payment claim, the Contractor is to give to the Principal:
- (a) the conformance records and other information required under the Contract;
  - (b) a valid tax invoice; and
  - (c) a completed and true Combined Subcontractor's Statement and Supporting Statement in the form in Schedule 5, executed on the date of the payment claim.

- 18.4 **(Amount due)** The Principal may deduct any amount due and owing by the Contractor to the Principal and any amount which the Principal reasonably claims is or will become due and owing by the Contractor to the Principal (whether under this Contract or otherwise) from any amount claimed by the Contractor under or in connection with this Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by the Principal to the Contractor or by the Contractor to the Principal as the case may be.

- 18.5 **(Payment schedule)** Within 10 Business Days after receipt of the Contractor's payment claim, the Principal is to provide to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, that the Principal will be making. If the payment is to be less than the amount claimed by the Contractor, the payment schedule is to indicate why it is less.

- 18.6 **(Payment)** Subject to this Contract, the Principal shall pay the amount due to the Contractor (if any) including any applicable GST by electronic transfer to the Contractor's nominated bank account within 15 Business Days of receipt by the Principal of the claim. If an amount is due from the Contractor to the Principal, the Contractor must pay that amount including any applicable GST within 15 Business Days of receiving written notification to this effect from the

# General Conditions

Principal. Interest shall be payable on late payments at a rate of 5% per annum from and including the day after the payment is due until and including the day on which payment is made.

- 18.7 **(Combined Subcontractor's Statement and Supporting Statement)** In accordance with the relevant legislation identified in the Combined Subcontractor's Statement and Supporting Statement, the Principal may withhold any payment to the Contractor until this Combined Subcontractor's Statement and Supporting Statement is provided.
- 18.8 **(Retention)** If the Contract Information states that an amount is to be retained from payments to the Contractor by way of security, then these payments shall be deducted, and held by the Principal until the time for release stated in the Contract Information. The Principal may have recourse to such security where the Principal asserts that the Contractor has failed to pay an amount due under the Contract within the time required by the Contract and 5 Business Days has elapsed after the Principal has given the Contractor written notice of its intention to have recourse.
- 18.9 **(Final payment claim)** Within 20 Business Days after Completion (where there is no Post Completion Period), or within 20 Business Days after the end of any Post Completion Period, the Contractor may issue a final payment claim. If the Contractor does not do so, then the Principal is released from any further claims which are not the subject of an unresolved notice of dispute under clause 22. Within 10 Business Days of receiving the final payment claim, the Principal is to issue a final payment schedule accounting for the amount due less any amounts payable by the Contractor to the Principal and, subject to the Principal's rights to have recourse to a retention amount, the release of the balance of any retention amount then held.
- 18.10 **(Final payment)** Within the later of 15 Business Days after receiving the final payment claim, or 5 Business Days after receiving the original of a Combined Subcontractor's Statement and Supporting Statement completed no earlier than the date of the final payment claim and, if requested by the Principal, a valid tax invoice in the amount stated in the payment schedule, the Principal is to pay the Contractor the amount due in accordance with the final payment schedule.
- 18.11 **(No admission)** Payments made by the Principal to the Contractor are made on account only and are not evidence of the value or quality of the work.
- 18.12 **(Sole entitlement)** Payment of the Contract Price, as adjusted under the Contract, shall be the Contractor's only entitlement to monetary compensation for the Contractor's compliance with the Contractor's obligations under this Contract.

## 19. GOODS AND SERVICES TAX

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- 19.1 If GST is imposed on any supply made pursuant to this Contract, the amount payable for the supply is to be increased by the amount of that GST. The Party seeking payment must provide a tax invoice in the form required by the GST Law.

## 20. SUSPENSION

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- 20.1 **(Right to suspend)** The Principal may direct the Contractor to suspend the performance of the whole or part of the Contractor's obligations under the Contract at any time and for any reason and may direct the Contractor to recommence performing those obligations by giving notice in writing to the Contractor. The Contractor cannot suspend the performance of its obligations under the Contract without the prior written consent of the Principal.
- 20.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Contractor or its Personnel (including a breach of the Contract by the Contractor) then the Contractor shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Contractor demonstrates it has reasonably, necessarily and not

# General Conditions

prematurely incurred by reason of the suspension and which the Contractor demonstrates it cannot reasonably mitigate.

## 21. TERMINATION

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- 21.1 **(Termination for convenience)** The Principal may terminate the Contract for its convenience and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice. If the Contract is terminated for the Principal's convenience, then, as full compensation for termination under this clause, the Contractor's total entitlement in respect of the Contract is the sum of the following and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise:
- (a) the value of all work carried out up to the date stated in the notice; plus
  - (b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under clause 21.1(a).
- 21.2 **(Termination for breach)** Where a Party ('defaulting Party') has committed a Substantial Breach, the other Party may immediately terminate this Contract by giving written notice to this effect to the defaulting Party, in which case the respective rights and liabilities of the Parties shall be the same as they would be at common law if the defaulting Party had wrongfully repudiated the Contract. Where the defaulting Party is the Contractor, the Principal may, instead of terminating, elect to take action under clause 21.3.
- 21.3 **(Take out)** Where the Contractor has committed a Substantial Breach or is subject to an Insolvency Event, the Principal may by giving written notice to the Contractor:
- (a) take out of the Contractor's hands the whole or part of the Contractor's obligations remaining to be completed under the Contract;
  - (b) itself perform, or engage others to perform the obligations taken out of the hands of the Contractor; and
  - (c) suspend payment to the Contractor unless and until it becomes due and payable under clause 21.4.
- 21.4 **(Payment on take out)** On completion of the obligations of the Contractor which have been taken out of the hands of the Contractor, the Principal shall determine the cost incurred in completing those obligations and if that cost is greater than the amount which would have been paid to the Contractor had the Contractor completed those obligations (including any payment suspended under clause 21.3(c)) then the difference shall be a debt due and payable by the Contractor to the Principal.

## 22. DISPUTE RESOLUTION

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- 22.1 **(Notice of Dispute)** If a Party is dissatisfied with an act or omission of the other Party in connection with the Contract then, within 14 days after the act or omission, the dissatisfied Party is to notify the other Party in writing of a dispute. The notification is to include the legal and factual basis of the dispute.
- 22.2 **(Executive negotiation)** The Parties are to involve senior executives to try to resolve the dispute.
- 22.3 **(Expert determination)** If the dispute is not resolved within 21 days then the Parties are to attempt to agree upon an independent expert to resolve the dispute and the terms for the expert's engagement. If the Parties cannot agree on an expert within a further 14 days then either Party may request the Chief Executive Officer, Australian Disputes Centre (tel. 02 9239 0700) to nominate an expert.

## General Conditions

- 22.4 **(Costs of expert determination)** The Parties are to share equally the expert's fees and out-of-pocket expenses, including any security required for the expert's fees. Each Party is to otherwise bear its own costs and share equally any other costs of the process.
- 22.5 **(Rules of expert determination)** Within 7 days after the appointment of the expert, the notifying Party is to make its submission on the dispute to the expert. Within 14 days after receiving a copy of that submission, the other Party is to make its submission in response, if any. The expert may request further information from either Party. The Party must respond within 14 days after receiving the request. The Parties are to treat each determination of the expert as final and binding and give effect to it.
- 22.6 **(Urgent relief)** This clause 22 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

### 23. NOTIFICATION OF CLAIMS

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- 23.1 The Principal shall not be liable upon any Claim in connection with this Contract (other than for the Contract Price) unless the Contractor has given the Principal written notice of its intention to make the Claim within 25 Business Days after the direction or other event on which the Claim is based was given or occurred.

### 24. DEFINITIONS

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- 24.1 In this Contract, unless inconsistent with the context or subject matter:
- (a) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
  - (b) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
  - (c) **Authorised Person** means the person stated in the Contract Information, who is appointed by the Principal to act with its full authority in all matters relating to the Contract;
  - (d) **Business Day** means any day other than a Saturday, Sunday, public holiday in New South Wales or 27, 28, 29, 30 or 31 December;
  - (e) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Contract Price);
  - (f) **Combined Subcontractor's Statement and Supporting Statement** means the statement required under section 175B of *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW), section 127 of the *Industrial Relations Act 1996* (NSW) and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payments Act 1999* (NSW) which must be in the form available from time to time from the New South Wales Government website and which may be found at <https://www.revenue.nsw.gov.au/help-centre/resources-library/opt011.pdf>;
  - (g) **Completion** means the stage at which:



# General Conditions

- (i) the Works have been carried out and completed in accordance with the Contract, are free from known Defects and are capable of being used for the purposes stated in or to be reasonably inferred from the Contract; and
  - (ii) all tests have been passed, the Site and surroundings made good, all documentation and information required by the Contract has been provided to the Principal and all requirements of Completion stated in the Contract have been satisfied;
- (h) **Contract** means documents listed in clause 1.1;
- (i) **Contract Information** means the schedule of that name included in this Contract;
- (j) **Contract Price means:**
  - (i) where the Principal accepted only a lump sum, the lump sum; or
  - (ii) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item, plus any lump sums,as set out in Schedule 1 and adjusted in accordance with the Contract;
- (k) **Contractor** means the person or entity identified in the Contract Information;
- (l) **Contractor Documents** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor (and all information advice, designs, calculations and recommendations in those documents);
- (m) **Defect** means any aspect of the Works which does not conform with the Contract and includes an omission;
- (n) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (o) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (p) **Insolvency Event** in respect of a Party, means the Party:
  - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (q) **Key Personnel** means the Personnel nominated in the Contract Information;
- (r) **Party or Parties** means one or both of the Principal and the Contractor as the context requires;
- (s) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, contractors and subcontractors of a Party and any other person or

# General Conditions

entity for whom that Party is vicariously liable and in respect of the Contractor includes the Key Personnel but in respect of the Principal, does not include the Contractor;

- (t) **Post Completion Period** means the period stated in Item 8 of the Contract Information;
- (u) **Principal** means the person or entity identified in the Contract Information;
- (v) **Site** means the site or sites made available by the Principal to the Contractor for the purpose of the Contractor carrying out its obligations under the Contract;
- (w) **Substantial Breach** includes:
  - (i) a failure to remedy a breach of a warranty given or representation made, or any other obligation under this Contract within 10 Business Days after being given a written notice to do so;
  - (ii) a breach that is incapable of remedy of an obligation under this Contract, or a warranty given or representation made; or
  - (iii) if the defaulting Party is the Contractor, the consistent or repeated breach of the Contract by the Contractor, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (x) **Time for Completion** means the time (if any) stated in the Contract Information by which the Contractor is required to achieve Completion as extended (if at all) pursuant to the Contract;
- (y) **Variation** means any material increase, decrease or change to the Works or the Contractor's obligations under the Contract;
- (z) **Warranty Period** means the longer of:
  - (i) the period stated in Item 3 of the Contract Information (which may be after the Contract has come to an end); and
  - (ii) such further period required under or implied by any applicable law; and
- (aa) **Works** means the whole of the work and services to be carried out and materials to be provided by the Contractor under the Contract.

## 25. GENERAL PROVISIONS

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- 25.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally;
- 25.2 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 25.3 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;
- 25.4 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.

## General Conditions

- 25.5 **(Time)** References to time are to local time in New South Wales. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in this Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month;
- 25.6 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of New South Wales, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
  - (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,
- which are applicable to the Contractor or the Contract or which are otherwise in force at any place where an obligation under this Contract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments
- 25.7 **(Governing law)** This Contract is governed by the law of New South Wales and the law of the Commonwealth of Australia in force in New South Wales. The Parties submit to the jurisdiction of the Courts of New South Wales, relevant Federal Courts and Courts competent to hear appeals from them.
- 25.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 25.9 **(Severance)** If a provision of this Contract is void or unenforceable it must be severed from this Contract and the provisions that are not void or unenforceable are unaffected by the severance.
- 25.10 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
  - (b) a clause is to a clause in this Contract unless expressly stated otherwise;
  - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
  - (d) a monetary amount is a reference to an Australian currency amount.
- 25.11 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 25.12 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Contract.
- 25.13 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Contract Information or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or

## General Conditions

- (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.

The Parties consent for notices and communications to be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

- 25.14 **(Waiver)** No waiver by a Party of a provision of this Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 25.15 **(Consent)** Any consent of the Principal under this Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 25.16 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in this Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of this Contract will not relieve the Contractor of any other obligation under this Contract, at law or in equity.
- 25.17 **(Counterparts)** This Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email.
- 25.18 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Contractor must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or Contract Prices in the Contract shall be deemed to have allowed for compliance with that version.
- 25.19 **(Clauses to survive termination)** In addition to any other clauses, which of their nature, survive termination of the Contract, clauses 10.3, 10.4, 11, 14, 15.2, 15.4, 16.3, 18, 21, 22 and 23 survive the expiration or earlier termination of this Contract.

# Execution

## Executed as an Agreement:

### EXECUTED BY THE PRINCIPAL

**SIGNED** for and on behalf of the **Principal** )  
in accordance with the Council's policies )  
and in the presence of: )

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_  
Date )

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

### EXECUTED BY THE CONTRACTOR

**SIGNED** for and on behalf of the )  
**Contractor** by its authorised )  
representatives and in the presence of: )

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_  
Date )

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

## Schedule 1 – Contract Price

## Schedule 2 – Scope of Works

## Schedule 3 – WHS Management Plan and Safe Work Method Statements

In accordance with General Conditions of Contract, the Contractor is to document and implement a WHS Management Plan that addresses all health and safety hazards and risks associated with carrying out the Works.

### The Contractor's WHS Management Plan must:

- ❑ be signed and dated by a senior manager under the Contractor's letterhead authorising the WHS Management Plan for use;
- ❑ identify the Contract, work activities, work sites and person who prepared the WHS Management Plan;

### and must cover:

- ❑ **Statement of responsibilities** – names and positions of people who will be responsible for WHS management on the Site, including the work activities and a description of those responsibilities;
- ❑ **Risk management** – identification of the hazards associated with each work activity and assessment of the associated risks, with documented actions proposed to eliminate or minimise the risks and methods for monitoring these risk controls (include any WHS risks identified by the Principal);
- ❑ **WHS training** – arrangements for WHS training, including industry and site induction training and toolbox meetings;
- ❑ **Incident and emergency management** – arrangements for managing accidents, incidents and near misses, with the name(s) of responsible persons and their contact details, including after-hours contact(s);
- ❑ **Site Safety Rules** – a copy of the rules must be displayed on site, covering as a minimum:
  - ❑ industry/site induction, toolbox meetings and other safety training;
  - ❑ personal protective equipment and first aid arrangements;
  - ❑ site access and security;
  - ❑ accident/incident and emergency procedures;
  - ❑ protection of all workers and the public;
  - ❑ working at heights;
  - ❑ electrical work and equipment, including leads, power tools and overhead wiring;
  - ❑ locating and preventing unplanned contact with underground, hidden and overhead services;
  - ❑ demolition, excavation, mobile plant, formwork and other temporary structural frames;
  - ❑ hazardous materials and dangerous goods; and
  - ❑ safe working, including SWMS, fire prevention, drug prohibition and general housekeeping;
- ❑ **Safe Work Method Statements** for high risk construction work, which must:
  - ❑ be on the letterhead of the organisation carrying out the work, showing the name and registered office address of the organisation; and
  - ❑ be signed and dated as authorised for use by a senior manager of the organisation, and describe:
    - ❑ the high risk construction work activities to be undertaken;
    - ❑ potential health and safety hazards and risks associated with the high risk construction work;
    - ❑ risk management controls that will be in place to eliminate the risk or, if not reasonably practicable to eliminate the risk, minimise the hazards and significant risks;
    - ❑ all work health and safety instructions to be given to persons involved with the work;
    - ❑ names and qualifications of those who will supervise the work and inspect and approve for use work areas, work methods, protective measures, plant and equipment (including power tools);
    - ❑ what training is required, and will be or has been given to each of the people involved in the work;
    - ❑ names of all those involved in the work, and those who will be or have been trained in the work activities described in the SWMS, and the names and qualifications of those responsible for training them;



## Schedule 3 – WHS Management Plan and Safe Work Method Statements

- plant and equipment that will most likely be used on the work site (e.g. ladders, scaffolds, grinders, electrical leads, welding machines, fire extinguishers and the like);
- any WorkCover permits required to complete the work; and
- inspection and maintenance checks that will be or have been carried out prior to use of the plant and equipment listed.

## Schedule 4 – Environmental Management Plan



# Schedule 5 – Combined Subcontractor’s Statement and Supporting Statement

(h) Position/Title

Date

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

Attachment

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

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

## Notes

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

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

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

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

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the

# Schedule 5 – Combined Subcontractor’s Statement and Supporting Statement

*building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’*

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

## Statement Retention

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

## Offences in respect of a false Statement

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

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

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

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

## Further Information

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