

Our Ref: GKB.2003237

Managing Contractor Agreement

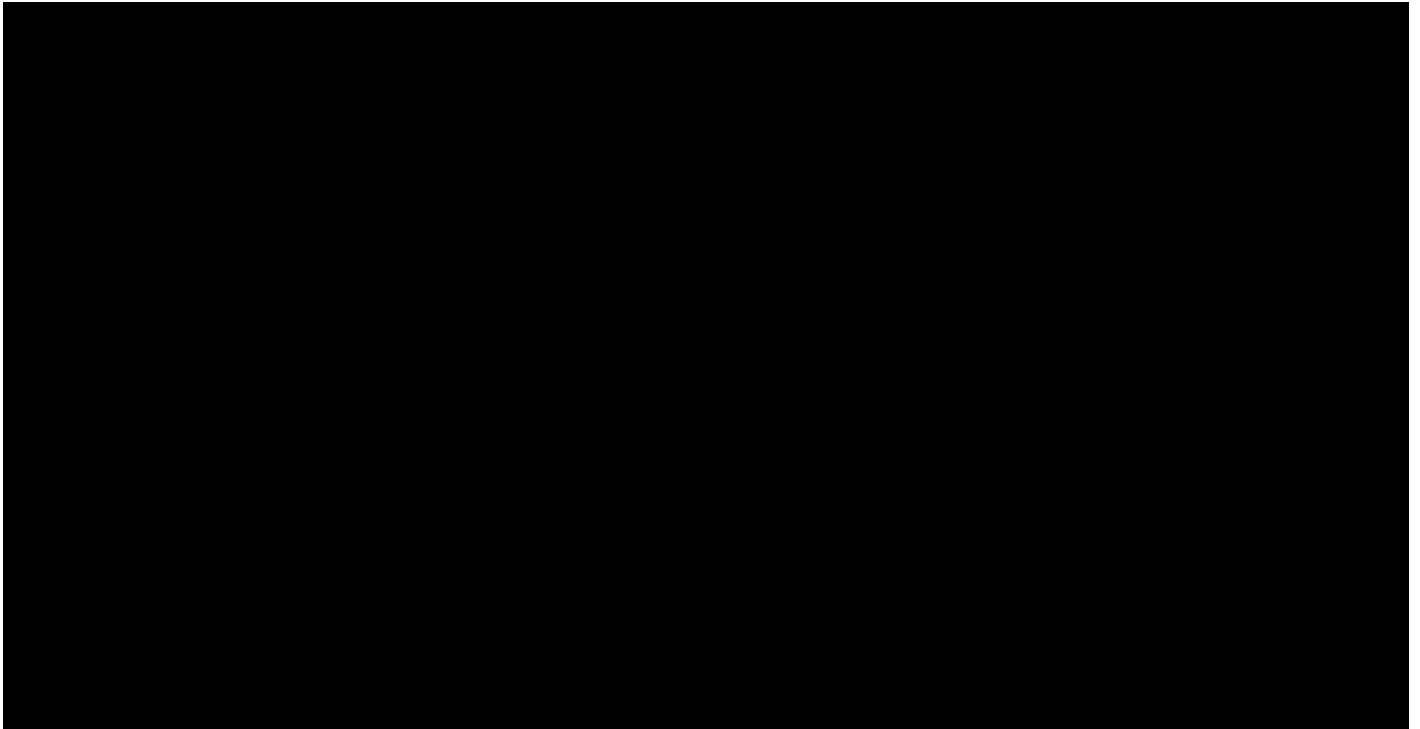
Formal Instrument of Agreement

The Crown in right of the State of New South Wales, represented by the Office of Project Remediate, NSW Department of Customer Service (Client)

Hansen Yuncken Pty Limited (Managing Contractor)

Details

Date



Background

Whereas:

- A. The *Client* intends to undertake the *Remediation Program*.
- B. The *Client* requires the *Managing Contractor* to carry out and complete the *Services* to enable the *Remediation Program* to be carried out and completed.
- C. The *Client* requires the *Managing Contractor* to manage the whole of the *Remediation Program* known as "Project Remediate" and for the *Managing Contractor's Services* to include the arranging, coordinating, managing and assurance of triage/investigation, design, funding, remediation, superintendency and certification, although the *Managing Contractor* will not be physically carrying out any of those tasks itself.
- D. The *Managing Contractor* has offered to carry out and complete the *Services* on the terms and conditions hereinafter contained.

Whereby it is agreed as follows:

Contract Documents

- 1. The *Contract* consists of:
 - (a) this *Formal Instrument of Agreement*;

- (b) Modified AS 4904-2009 Consultants agreement—Design and construct ("**General Conditions**");
 - (c) Annexure Part A to the *General Conditions* (as amended by Annexure Part E);
 - (d) Annexure Part B (The Services) to the *General Conditions*;
 - (e) Annexure Part C (Fee Schedule) to the *General Conditions*;
 - (f) All other Annexures Parts D to U to the *General Conditions*.
2. The *documents* forming the *Contract* are to be read as complementary and what is required or contained in one of them is as binding as if required or contained in all of them.
3. If there is any inconsistency, ambiguity or discrepancy between the documents listed in clause 1 above, the inconsistency, ambiguity or discrepancy is to be resolved using the order of precedence set out in clause 1 (with the documents appearing earlier in clause 1 taking priority over the documents appearing later).

Entire Contract

4. The documents listed in clause 1 constitute the entire agreement between the parties in respect of the Services and the *Contract* supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the *Contract*.
5. The *Contract* may be varied only by written instrument executed by both parties.

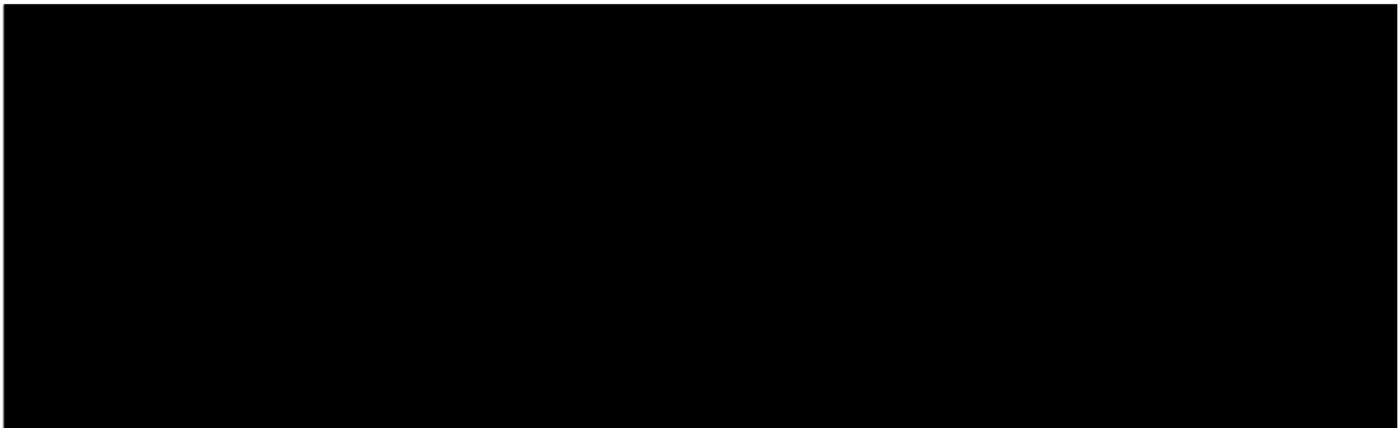
Counterparts

6. The *Contract* may be execute in counterparts. If there are a number of counterparts of this *Contract*, the counterparts taken together constitute one and the same instrument.

Severability

7. If any part of this *Contract* is void or voidable, then that part is severed from this *Contract* without affecting the continued operation of the remainder of this *Contract*.

SIGNING PAGE



EXECUTED by **HANSEN YUNCKEN PTY LTD**)
(**ABN 38 063 384 056**) by its **ATTORNEYS:**)



Australian Standard®

Amended from Consultants agreement

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1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

Item means an *Item* in Annexure Part A;

Authority means any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the *Remediation Program* or any *Project*;

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979* NSW;

Building Compliance Declaration has the meaning given to that term in the *Design and Building Practitioners Act 2020* (NSW);

Building Product Rectification Order has the meaning given to that term in the *Building Products (Safety) Act 2017* (NSW);

Building Requirements means the requirements for each *Project* provided by the *Client* as set out in subclause 3.3;

Building Work has the meaning given to that term in the *Design and Building Practitioners Act 2020* (NSW);

Business Day means any day except Saturday, Sunday, a public holiday or 27, 28, 29, 30 or 31 December;

Cladding Product Safety Panel means the panel of that or similar name, established under the *Fair Trading Act 1987* (NSW), as advised by the *Client* to the *Managing Contractor*;

Claim means any claim whatsoever and howsoever arising including claims:

- (a) under, arising out of, or in connection with the *Contract* including, without limitation, claims for payment of any amount and claims for extensions of time;
- (b) arising out of, or in connection with, *Services*;
- (c) arising out of, or in connection with either *Party's* conduct before the *Contract*;
- (d) at law or in equity;
- (e) by statute;
- (f) in tort for negligence or otherwise, including negligent misrepresentation; or

for restitution, including restitution based on unjust enrichment

Client means the person stated in *Item 1*;

Client's Program Requirements means the *Client's* requirements for the *Services* described in the *documents* stated in *Item 9*;

compensable cause means:

- (a) any act, default or omission of the *Client* (acting in its role as "Client" under this *Contract*) or its consultants, agents or other contractors (not being employed by the *Managing Contractor*); or
- (b) those listed in *Item 22*;

completion means completion of the *Services*;

Confidential Information means the terms of the *Contract* and all information, material and technology disclosed or provided in any form by or on behalf of the *Client* to the *Managing Contractor* (including any of its officers, employees, contractors or agents) in connection with the *Contract*, the *Remediation Program* or any *Project*, or in any way related to the *Contract*, the *Remediation Program* or any *Project*, whether provided prior to or after the date of this *Contract*;

consultant means a consultant engaged by the *Managing Contractor* for the purposes of carrying out the *Services*, and includes a contractor so engaged;

Contract means the agreement between the *Client* and the *Managing Contractor* constituted by the *documents* referred to in clause 1 of the *Formal Instrument of Agreement*;

Contract Material means those *documents* (including *design documents*) and materials created or required to be created under the *Contract* including by *consultants* and *contractors*, and to be provided to the *Client*, an *Owners Corporation* and/or a *Remediation Contractor*;

contractor means a contractor engaged by the *Managing Contractor* for the purposes of carrying out the *Services*, and includes a consultant so engaged;

date for completion means the date in *Item 5* (if any) or that resulting from an *EOT*;

design documents means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including where the context so requires, those to be created by the *Managing Contractor* or its *consultants*) as part of the *Services*;

direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

dispute has the meaning in clause 29;

Dispute Resolution Panel means the panel established in accordance with Annexure Part L;

documents includes any information stored by electronic or other means;

Design Compliance Declaration means a declaration substantially in the form and manner set out in Annexure Part H and compliant with the *Design and Building Practitioners Act* and regulations made under it;

Designer's Warranty Deed Poll means the warranty for design and intellectual property in the form and manner set out in Annexure Part J;

Endorsed Products means the products listed as being endorsed by the *Cladding Product Safety Panel*;

EOT (from 'extension of time') has the meaning in subclause 22.2;

Fee means the fee calculated in accordance with Annexure Part C;

final certificate has the meaning in subclause 24.3;

final payment claim means the final payment claim referred to in subclause 24.3;

Force Majeure Event means any of the following events provided that they are outside the reasonable control of the affected *Party* and could not have been prevented, avoided or overcome by that *Party* taking all reasonable steps and could not reasonably have been provided against before the date of the *Contract*:

- (a) earthquake, fire, landslide, flood, typhoon, cyclone, meteor or other natural disaster;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or military usurped power;
- (c) act of public enemy, terrorism, civil unrest or revolution;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation or embargo by or under the order of any Authority;
- (f) epidemic or pandemic, including COVID-19; or
- (g) any event analogous to those abovementioned;

Formal Instrument of Agreement means the formal instrument of agreement to which these general conditions are annexed;

Global Façade Consultant means a façade engineer design consultant appointed by the *Managing Contractor*, as a *consultant* to the *Managing Contractor*, who will prepare a pattern book of designs addressing common scenarios that may arise in *Projects* and oversee the design work;

Government Agency means a government or government department or other body or a governmental, semi governmental, judicial, municipal, statutory or public entity or authority (including, without limitation, a statutory authority or a State-owned enterprise), a self regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law;

Independent Assurer means the relevant person or entity nominated as the "Independent Assurer" under a form of contract approved by the *Client* and engaged as such by the relevant *Owners Corporation* to provide an *Remediation Assurance Certificate*;

intellectual property right means:

- (a) any patent, registered design, trademark or name, copyright or other protected right;
- (b) any registered and unregistered and current and future rights in respect of know-how, trade secrets, *Confidential Information*,

copyright, trade marks (including service marks), designs, patents, inventions, circuit layouts and all other intellectual property rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields; and

- (c) all and any rights to register, apply for, renew or extend any rights referred to above in this definition and any rights in or arising from the resulting registration, application, renewal or extension;

key personnel means those personnel stated in *Item 6*;

legislative requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the *Services*, or the particular part thereof, are being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the *Services*;
- (c) fees and charges payable in connection with the foregoing;
- (d) standards produced by Standards Australia, and any other applicable standards and codes (whether state, Commonwealth or international); and
- (e) the New South Wales Government Code of Practice for Procurement (January 2005).

Managing Contractor means the party stated in *Item 3*;

Managing Contractor's design management obligations means all those tasks necessary to procure and manage the *consultants* and *contractors* to design and specify any part of any one or more *Projects* the subject of the *Services*;

Milestone Dates means any significant dates to be met in the provision of the *Services* as identified in Annexure Part A, set out in any *Program Schedule* and/or nominated by the *Client* or otherwise agreed between the parties from time to time, and includes the *date for completion* (if any);

modified requirements has the meaning in subclause 36.3;

Owners Corporation means the owners corporation of a *Project*;

Party means the *Client* or the *Managing Contractor*, as applicable (and *Parties* means both of them);

prescribed notice has the meaning in subclause 28.1;

Principal Compliance Declaration means a declaration in the form and manner set out in Annexure Part I;

Program Schedule has the meaning in clause 20;

- Project** means each building in respect of which, pursuant to clause 3.3, the *Client* directs the *Managing Contractor* to carry out *Services*;
- Project Brief** means a brief prepared by the *Managing Contractor* in respect of each *Project*;
- qualifying cause of delay** means:
- (a) a *compensable cause*; or
 - (b) causes stated in *Item 21*,
- other than where caused by a breach or act or omission of the *Managing Contractor*.
- Registered Design Practitioner** has the meaning given to that term in the *Design and Building Practitioners Act 2020* (NSW);
- Regulated Design** has the meaning given to that term in the *Design and Building Practitioners Act 2020* (NSW);
- Remediation Assurance Certificate** means a certificate, in a form similar to an occupation certificate but that is unique to the *Remediation Program* and not required by statute, that *Remediation Work* has been done in accordance with the all *Legislative Requirements*, *Program Requirements* and satisfies the relevant *Remediation Order*;
- Remediation Contract** means a contract to be finalised in the form of Annexure Part R entered into, or to be entered into, by an *Owners Corporation* and a *Remediation Contractor* as referred to in clause 3B(b) and in Annexure Part B;
- Remediation Contractor** means a façade remediation contractor who enters into the *Remediation Contract*;
- Remediation Order** means any order issued by a local council, the NSW government or any other relevant enforcement authority, requiring an owner or *Owners Corporation* to rectify building cladding, and includes a 'Fire Safety Order' and a *Building Product Rectification Order*;
- Remediation Program** the *Client's* initiative to provide input into, and coordination and oversight of, the remediation and/or replacement of cladding in respect of the *Client's* program of buildings (at the date of this *Contract*, currently 213 buildings), including by way of the *Managing Contractor* carrying out the *Services*;
- Remediation Program Objectives** means:
- (a) to ensure there are the necessary controls and measures to monitor delivery performance, achieve program outcomes and deliver value for money;
 - (b) to provide the control framework to provide certainty of delivery to Government and the strata owners that flammable cladding remediation projects will safely and successfully deliver an enduring quality solution, best value for money and a timely response;
 - (c) to add to consumer confidence in strata living; and
 - (d) that the relevant buildings will, after completion of remediation work, be able to obtain insurance;

Remediation Works means works performed pursuant to a *Remediation Contract*;

Security means:

- (a) cash;
- (b) an approved unconditional undertaking or an approved performance undertaking given by an approved Australian-domiciled bank; or
- (c) other form approved by the *Party* having the benefit of the security;

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW);

selected contractor has the meaning in subclause 7.3;

Services means the services in Annexure Part B which the *Managing Contractor* is or may be required to carry out and complete as part of the *Remediation Program* in accordance with the *Contract*, including any *variations*;

Superintendent means the relevant person or entity nominated as the "Superintendent" under a *Remediation Contract* and engaged as such by the relevant *Owners Corporation*;

Term means the term of the *Contract* as set out in clause 3;

Transition Out Activities means those activities specified as "Transition Out Activities" in Annexure Part B;

Transition Out Period means the last 6-months of the *Term* within which the *Managing Contractor* will carry out the *Transition Out Activities*;

variation has the meaning in clause 23;

WHS Act means the Work Health and Safety Act 2011 (NSW);

WHS Legislation means the *WHS Act* and the *WHS Regulation*;

WHS Regulation means the Work Health and Safety Regulation 2017 (NSW), and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporated;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a *Business Day*, be deemed to end on the day next following which is not a *Business Day*;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Client* and the *Managing Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurements of the jurisdiction in *Item 7*;

- (g) unless otherwise provided, prices are in the currency in *Item 8(a)* and payments shall be made in that currency at the place in *Item 8(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 7*;
- (i) the changes in Annexure Part E shall be deemed to be part of these General Conditions;
- (j) a reference to a *Party*, clause or Annexure is a reference to a party, clause or Annexure of or to the *Contract* and a paragraph or sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (k) a reference to any *Party* includes that *Party's* executors, administrators, substitutes, successors and permitted assigns;
- (l) a reference to a person includes an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (m) a reference to this *Contract* includes all Annexures;
- (n) where an expression is defined, any other part of speech or grammatical expression has a corresponding meaning.
- (o) a reference to any legislative requirement includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislative requirement; and
- (p) in the interpretation of this *Contract* no rule of contract interpretation applies to the disadvantage of a *Party* on the basis that it put forward this *Contract* or any part of it.

2 Nature of Contract

2.1 Performance and payment

The *Managing Contractor* shall carry out and complete the *Services* in accordance with the *Contract* and *directions* authorised by the *Contract*.

The *Client* shall pay the *Managing Contractor* the *Fee* as adjusted in accordance with the *Contract*.

2.2 Managing Contractor's warranties

Without limiting the generality of subclause 2.1, the *Managing Contractor* warrants that:

- (a) the *Managing Contractor*.

- (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in carrying out and completing the *Services*; and
- (ii) has examined the *Client's Program Requirements* and that the *Services* shall be suitable, appropriate and adequate for the purposes stated in or reasonably ascertainable from the *Contract* including the *Client's Program Requirements*;
- (b) the *Managing Contractor's design management obligations*, when carried out, shall comply with the *Contract* including the *Client's Program Requirements*;
- (c) all *consultants, contractors* and *key personnel* are suitably qualified and experienced;
- (d) it shall perform the *Services*:
 - (i) to that standard of care and skill to be expected of a contractor who regularly acts in the capacity in which the *Managing Contractor* is engaged and who possesses the knowledge, skill and experience of a contractor qualified to act in that capacity; and
 - (ii) in a manner which is consistent with the *Client's* best interests, and with the *Remediation Program Objectives*, to the extent that these are not inconsistent with the provisions of this *Contract*;
- (e) minor services not expressly mentioned as part of the *Services* but which are necessary for the satisfactory *completion* and performance of the *Services* are hereby deemed to form part of the *Services* for all purposes.
- (f) any documentation prepared as part of the *Services* will be fit for the purpose of the *Owners Corporation* relying upon the documents in entering into a fixed price lump sum *Remediation Contract* with a contractor to construct the relevant *Project*;
- (g) other than as provided for in the *Contract*, no claim shall be made by it for any additional time to complete the *Services*, increase in the *Fee*, additional compensation under the *Contract* or otherwise at law based on any difference between the actual requirements and conditions of the *Remediation Program* or any *Project*;
- (h) the *Client* has made no representation as to the suitability, correctness or completeness of the *Client's Program Requirements*, or any *Building Requirements* or any information provided by it or by any other party, including Fire Rescue NSW (**FRNSW**) or the *Cladding Product Safety Panel* relating to the *Services* or any *Project*; and
- (i) at the date of the *Contract*, it is not aware of any conflict of interest between the *Managing Contractor* and the *Remediation Program* or any *Project*.

2.3 Warranties unaffected

The warranties in subclause 2.2 remain unaffected notwithstanding:

- (a) any receipt, advice, suggestion, review of, or comment or *direction* on, the *design documents* by or on behalf of the *Client*, Fire Rescue NSW or the *Cladding Product Safety Panel*; or
- (b) any *variation*.

2.4 Not used

2.5 Prior Work

Any work or services undertaken on any account by the *Managing Contractor* in connection with the *Remediation Program* prior to the date of this *Contract* is hereby deemed to form part of the *Services*. This *Contract* shall have retrospective operation from and including the date when the first of any such *Services* was performed by the *Managing Contractor*.

3 Term and Client's direction to proceed with Projects

3.1 Term

Unless terminated earlier in accordance with its terms, and subject to clause 3.2, the *Contract* will automatically terminate upon the latter to occur of:

- (a) 3 years from the date of the *Contract*, or
- (b) the date that the "final certificate" is issued under the relevant *Remediation Contract* of the last *Project* to reach that stage that was directed by the *Client* in accordance with subclause 3.3.

3.2 Extension of term

The *Client* may, in its sole discretion, extend the *Term* of this *Contract* by further period of 1 year by, no later than 3 months before the *Contract* is due to expire pursuant to subclause 3.1, giving written notice to the *Managing Contractor* of such extension.

3.3 Client's direction to proceed with Projects

The *Managing Contractor* shall not carry out any *Services* in respect of any *Project* until directed to do so by the *Client* in accordance with this subclause 3.3.

At any time before the date that is 3 years from the date of this *Contract* (or, if the *Client* has exercised its right under subclause 3.2, 4 years from the date of this *Contract*) the *Client* may direct the *Managing Contractor* to carry out the *Services* in respect of a *Project* by issuing to the *Managing Contractor*:

- (a) a written *direction* to commence in respect of one or more *Projects*; and
- (b) the *Building Requirements* for that *Project* or *Projects*,

upon which time the *Managing Contractor* will immediately commence the *Services* in respect of that *Project* or *Projects* (as the case may be).

3A Responsibilities and obligations of the Managing Contractor

3A.1 General obligations

The *Managing Contractor* shall, amongst other requirements:

- (a) carry out the *Services* with due expedition and without delay and in accordance with the approved *Program Schedule* if any, provide all professional skill, advice and diligence required for carrying out the *Services*;
- (b) comply with all *directions* of the *Client*;
- (c) employ staff (where applicable) with appropriate qualifications and experience to carry out the *Services*;
- (d) ensure that the *key personnel* (if any) stated in *Item 6* (or alternates reasonably approved by the *Client*) are used by the *Managing Contractor* to carry out the *Services*. The *Managing Contractor* acknowledges and agrees that a failure to comply with its obligations under this clause 3A shall constitute a substantial breach of this *Contract* by the *Managing Contractor*;
- (e) promptly give written notice to the *Client* if and to the extent the *Managing Contractor* becomes aware that any *document* or other information provided by or on behalf of the *Client*, including any *documents* or other information provided by *contractors*, is ambiguous or inaccurate or is otherwise insufficient to enable the *Managing Contractor* to carry out the *Services*;
- (f) make reasonable enquiries to ascertain the requirements of the *Client* regarding the *Services*;
- (g) regularly consult the *Client* regarding the carrying out of the *Services*;
- (h) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the *Services*, give written notice to the *Client* detailing the matter or circumstance and its anticipated effect on the *Services*;
- (i) comply with all *legislative requirements* in carrying out the *Services*;
- (j) after reasonable prior written notice by the *Client*, permit the *Client* to inspect and discuss the work, relevant records, *documents* and *Contract Material* produced by the *Managing Contractor* in carrying out the *Services*;
- (k) except as required by law, treat as *Confidential Information* any information so designated in writing by the *Client* pursuant to the *Contract*;
- (l) notify the *Client* immediately the existence or likelihood of a conflict of interest becomes apparent to the *Managing Contractor* and cooperate with the *Client* to resolve such conflict of interest;

- (m) take due care of the *Client's documents*, samples, patterns, moulds and other material provided to the *Managing Contractor* in connection with carrying out the *Services*;
- (n) do all things necessary and necessarily incidental for the proper performance of the *Managing Contractor's* obligations under the *Contract*;
- (o) promptly provide to the *Client* such information, documentation and reports that the *Client* may reasonably request regarding the performance of the *Services*;
- (p) copy to the *Client* any written communication between the *Managing Contractor* and its *consultants* and *contractors*, Fire Rescue NSW or the *Cladding Product Safety Panel*;
- (q) not speak to or communicate in any way with any media in relation to the *Remediation Program* or any *Project* other than to, where necessary, refer any inquiries by any media in relation to the *Remediation Program* to the *Client*;
- (r) where required by the *Client*, cause its employees, agents or *contractors* to undertake an induction:
 - (i) on data security and privacy management; and
 - (ii) of a *Project* site,prior to such employee, agent or *contractors* being granted access to the *Project* premises or sites;
- (s) attend all relevant meetings (whether stakeholder, construction, presentation, council or other meetings) as and when reasonably required by the *Client*;
- (t) promptly provide to the *Client* all *Contract Material* in sufficient time so as not to delay the *Remediation Program*; and
- (u) upon *completion* of the *Services* or earlier termination of this *Contract*, deliver up to the *Client* all the *Managing Contractor's documents* (including all *Contract Material*) held by or on behalf of the *Managing Contractor* together with one copy of all electronic files in the possession of the *Managing Contractor* in connection with the *Remediation Program* or any *Project*.

3A.2 Not used

3A.3 Managing Contractor's Acknowledgement

The *Managing Contractor* hereby acknowledges and agrees that the *Client* is relying upon the skill, knowledge, experience and judgment of the *Managing Contractor* in relation to:

- (a) the planning of the *Services*; and
- (b) the preparation of the *Contract Material* and the execution of the *Services*.

3A.4 Client may review Design Documents

All *Contract Material* shall be made available to the *Client* and, if directed by the *Client*, to local council, Fire Rescue NSW and/or the *Cladding Product Safety Panel* for review.

If any such review is required, the *Managing Contractor* must allow a reasonable time for the *Client*, local council, Fire Rescue NSW or *Cladding Product Safety Panel* (as the case may be) to determine whether the *Contract Material* is satisfactory and, if necessary, to comment on them or to approve them.

If the *Client*, local council, Fire Rescue NSW or *Cladding Product Safety Panel* notifies the *Managing Contractor* that the *Contract Material* is not satisfactory, the *Managing Contractor* shall appropriately arrange for those *documents* to be amended, promptly resubmit the amended *documents* to the *Client*, local council, Fire Rescue NSW or *Cladding Product Safety Panel* (as the case may be) for further review.

3A.5 No Obligation to Review

The *Client* does not assume or owe any duty of care to the *Managing Contractor* to review, or in reviewing, the *Contract Material* submitted by the *Managing Contractor* for errors, omissions or compliance with the *Contract*.

No review of, comments made in relation to, approval issued, rejection of, or failure to review or comment upon or reject, any *Managing Contractor's documents* (including any *Contract Material*) shall:

- (a) render the *Client* or an employee, contractor or agent of the *Client* (including Fire Rescue NSW or the *Cladding Product Safety Panel*) responsible on any basis whatsoever for the *Contract Material*, any *Managing Contractor's documents* or any design or matter therein contained;
- (b) relieve the *Managing Contractor* (or any *consultant* or *contractor*) from, or alter or affect, the *Managing Contractor's* liabilities or responsibilities whether under the *Contract* or otherwise according to law;
- (c) prejudice the *Client's* rights against the *Managing Contractor* whether under the *Contract* or otherwise according to law;
- (d) result in the *Client* or an employee, contractor or agent of the *Client* (including Fire Rescue NSW or the *Cladding Product Safety Panel*) assuming any responsibility or liability for the adequacy, quality or fitness for purpose of the *Services*, of any *Regulated Design* or of any other *document* provided by or on behalf of the *Managing Contractor*;
- (e) impose on the *Client* or an employee, contractor or agent of the *Client* (including Fire Rescue NSW or the *Cladding Product Safety Panel*), any duty of care or liability (including liability for negligence) to the *Managing Contractor*; or
- (f) give rise to or be relied upon by the *Managing Contractor* as a defence or set-off to any *Claim* by the *Client* against the *Managing Contractor* arising from any defect in any design or

other *Services* carried out or caused to be carried out by the *Managing Contractor* under the *Contract*.

3A.6 Managing Contractor restrictions

The *Managing Contractor* is not to be a *Remediation Contractor*, *consultant* or a supplier of materials to any *Project*.

3B Responsibilities and obligations of the *Client*

The *Client* shall:

- (a) pay the *Managing Contractor* the *Fee* in accordance with the *Contract*;
- (b) when and as required under the *Contract*, use best endeavours to provide the *Managing Contractor* with relevant *documents* and other information in the possession or control of the *Client* sufficient to enable the *Managing Contractor* to carry out the *Services*; and
- (c) give or cause to be given to the *Managing Contractor* in writing timely *directions*, instructions, decisions and information sufficient to define the *Services* required and facilitate the provision of the *Services* by the *Managing Contractor*.

4 Service of notices

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

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) 3 days after posting.
- (c) in the case of email, to the email address in the *Contract* (if any) or last communicated in writing to the person giving the notice as the address for email service for notices under the *Contract*, on the earliest date of:
 - (i) actual receipt; or
 - (ii) being sent to the recipient provided that the sender does not receive notification of a delayed, "out of office" or non-effected delivery.

The *Client* and the *Managing Contractor* shall each notify the other of any change of address.

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 10* by the *Managing Contractor*.

All delivered *Security*, other than cash or retention moneys, must be transferred in escrow.

5.2 Recourse

The *Client* may, at any time, have recourse to *Security*:

- (a) to pay for any costs, expenses, losses or damages which the *Client* claims that it has incurred or reasonably considers that it might in the future incur as a consequence of any act or omission of the *Managing Contractor* which the *Client* asserts constitutes a breach of *Contract*;
- (b) in any other circumstances contemplated by the terms of this *Contract*;
- (c) to satisfy any amount which the *Client* claims that it is entitled to or will be entitled to from the *Managing Contractor* under or in connection with the *Contract*; or
- (d) in the event of:
 - (i) a termination of the *Contract* by the *Client* except for a termination by the *Client* under subclause 26.12 or 27B.4; or
 - (ii) any of the events listed at subclause 26.11 occur with respect to the *Managing Contractor* and the *Managing Contractor* failing to demonstrate that it can continue to perform its contractual obligations.

5.3 Change of security

A *Party* providing retention moneys or cash *Security* may substitute another form of *Security* only with the *Client's* prior written permission. To the extent that another form of *Security* is provided, the other *Party* shall not deduct, and shall promptly release and return, retention moneys and cash *Security* to be returned.

5.4 Reduction and release

The *Client's* entitlement to *Security*, subject to any other provision of the *Contract* to the contrary or any *Claim* that the *Client* may have under the *Contract*, shall be reduced by the percentage stated in *Item 10(e)* upon satisfaction of the events listed in *Item 10(f)* and the reduction shall be released and returned to the *Managing Contractor* within 10 *Business Days*.

The *Client's* entitlement otherwise to *Security* shall, subject to any *Claim* that the *Client* may have under the *Contract*, cease upon 10 *Business Days* after the end of the *Term* of the *Contract* under clauses 3.1 and 3.2.

Upon a party's entitlement to *Security* ceasing, that party shall release and return forthwith the *Security* to the other party.

In the event that:

- (a) the *Contract* is terminated; or
- (b) the *Client* exercises the right under subclause 26.4 to take out of the *Managing Contractor's* hands the whole or part of the *Services* remaining to be completed and suspend payment until it becomes due and payable,

the *Client* shall be entitled to withhold sufficient of the *Security* then held by the *Client* to cover the amount of any *Claims* that the *Client* then has against the *Managing Contractor*. Upon the final resolution of such *Claims*, the *Client* must promptly release to the *Managing Contractor* the balance of the *Security* then held.

5.5 Trusts and interest

(Except where held by a government department or agency or a municipal, public or statutory authority) any portion of *Security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the *Client*, pending release or distribution pursuant to the terms of this *Contract*.

5.6 Deed of Guarantee

If required by the *Client*, the *Managing Contractor* must, where it is the subsidiary of another company, provide a parent company guarantee to the *Client* in the form reasonably required by the *Client* duly executed by itself and its parent company as a precondition to any entitlement to payment of the *Fee* or any part thereof.

5.7 Other Security Requirements

If:

- (a) the *Client* has recourse to *Security* in accordance with the *Contract*; or
- (b) the aggregate value of *variations* exceeds 10% of the original *Fee*,

the *Managing Contractor* must promptly provide additional or replacement *Security*, so that the amount of *Security* held by the *Client* is not less than the original amount for *Security* plus 5% of the value of approved *variations*.

6 Documents and information

6.1 Discrepancies

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

The *Managing Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *Contract Material* or between the *Contract Material* and the *Client's Program Requirements*, necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Managing Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be deemed to be a *variation* valued in accordance with subclause 23.3.

6.2 Information

The *Client* shall use reasonable endeavours to:

- (a) promptly answer any reasonable enquiries made by the *Managing Contractor* in connection with the *Services*;
- (b) direct others to liaise, co-operate and confer with the *Managing Contractor*, and
- (c) give the *Managing Contractor* all relevant *directions* and information in the control of the *Client*.

The *Managing Contractor* shall use reasonable endeavours to:

- (d) liaise, co-operate and confer with others as directed by the *Client*;
- (e) inform itself of the *Client's* requirements; and
- (f) consult regularly with the *Client*.

6.3 Client supplied documents

The *Client* shall supply to the *Managing Contractor* the *documents* as stated in *Item 11*.

They shall:

- (a) remain the *Client's* property and be returned to the *Client* on written demand, except that the *Managing Contractor* shall be permitted to retain a copy of *documents* with the consent of the *Client*, which consent shall not be unreasonably withheld; and
- (b) not be used, copied nor reproduced for any purpose other than the *Services*.

6.4 Managing Contractor supplied documents

The *Managing Contractor* shall supply to the *Client* the *documents* and number of copies at the times or stages both stated in *Item 12*.

If the *Managing Contractor* submits a *document* to the *Client*, then except where the *Contract* otherwise provides:

- (a) the *Client* shall not be required to check that *document* for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Client's* acknowledgment or approval shall not prejudice the *Managing Contractor's* obligations; and
- (c) if the *Contract* requires the *Managing Contractor* to obtain the *Client's direction* about that *document*, the *Client* shall give, within the time stated in *Item 13*, the appropriate *direction*, including reasons if the *document* is not suitable.

Copies of documents supplied by the *Managing Contractor* shall be the *Client's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the project

6.5 Availability

The *Managing Contractor* shall ensure all *documents* affecting the *Services* are available to the *Client* by digital or electronic means.

6.6 Confidential information

- (a) Subject to subclause 6.6(b), the *Managing Contractor* shall:
 - (i) maintain in confidence all *Confidential Information* and ensure that the *Confidential Information* is kept confidential;
 - (ii) only access *Confidential Information* on secure devices;
 - (iii) not use *Confidential Information* except as necessary for the performance of the *Services*;
 - (iv) destroy *Confidential Information* once it is no longer needed to perform the *Services*;
 - (v) ensure that *Confidential Information* is only disclosed to its officers, employees, and contractors to the extent necessary to perform the *Services*; and
 - (vi) ensure that each of its officers, employees, and *contractors* complies with the terms of sub-paragraphs (i) and (v) above.
- (b) The *Managing Contractor* may only reveal *Confidential Information*:
 - (i) if required by law or by any stock exchange to disclose, in which case the *Managing Contractor* shall immediately notify the *Client* of the requirement and shall take lawful steps and permit the *Client* to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the *Confidential Information*;

- (ii) if the *Confidential Information* is in or enters the public domain for reasons other than a breach of the *Contract*;
 - (iii) if the *Confidential Information* is disclosed to the *Managing Contractor* by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the *Client*; or
 - (iv) to its professional advisers to obtain professional advice.
- (c) The *Managing Contractor* undertakes not to use any *Confidential Information* in any manner which would prejudice the *Client*.
- (d) This subclause 6.6 will survive the expiration, termination or frustration of the *Contract*.
- (e) If required in writing by the *Client*, the *Managing Contractor* shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the termination of the *Contract*.

6.7 Media

The *Managing Contractor* shall not disclose any information concerning or in connection with the *Contract*, the *Remediation Program* or any *Project* for distribution through any communications media without the *Client's* prior written approval (which shall not be unreasonably withheld). The *Managing Contractor* shall refer to the *Client* any enquiries from any media concerning the project.

7 Assignment and contracting

7.1 Assignment

- (a) The *Managing Contractor* shall not assign the *Contract* or any payment or any other right, benefit or interest thereunder without the prior approval of the *Client* (which may be given or withheld, including on terms, in the *Client's* absolute and sole discretion).
- (b) The *Client* may assign the *Contract* or any payment or any other right, benefit or interest thereunder without the *Managing Contractor's* approval but the *Client* shall notify the *Managing Contractor* of any such assignment.

7.2 Contracting Out generally

The *Managing Contractor* is to engage *consultants* to carry out all of the *Global Facade Consultant* services and triage, investigation (including destructive and non-destructive testing) and design services, subject to approval being given by the *Client*, in accordance with this subclause 7.2.

The *Managing Contractor* shall not without the *Client's* prior written approval (which may be given or withheld, including on terms, at the *Client's* absolute and sole discretion):

- (a) contract out or allow a *consultant* to contract out any of the *Services* described in *Item 14*; or

- (b) allow a *consultant* to assign a contract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Managing Contractor* shall give the *Client* written particulars of the *Services* to be contracted out and the name and address of the proposed *consultant*. The *Managing Contractor* shall give the *Client* other information which the *Client* reasonably requests.

Within 14 days of the *Managing Contractor's* request for approval, the *Client* shall give the *Managing Contractor* written notice of approval or of the reasons why approval is not given.

Except to the extent otherwise approved by the *Client* in writing, the *Managing Contractor* shall ensure each *consultant's* contract is in the form of and contains the terms in the relevant Annexure Parts O, P or Q (as is applicable to the nature of the *consultant* being engaged).

7.3 Selected contractors

If the *Client* has included in the invitation to tender a list of one or more *selected contractors* for a particular part of the *Services*, the *Managing Contractor* shall contract that particular part of the *Services* to a *selected contractor* and thereupon give the *Client* written notice of that *selected contractor's* name.

If no *contractor* on the *Client's* list will contract to carry out that particular part of the *Services*, the *Managing Contractor* shall provide a list for the written approval of the *Client*.

7.4 Not used

7.5 Managing Contractor's responsibility

Approval to contract out shall not relieve the *Managing Contractor* from any liability or obligation under the *Contract*.

The *Managing Contractor* shall only contract, subject to this clause 7, any part of the *Services* to a *Registered Design Practitioner*.

The *Managing Contractor* shall ensure novation of the *consultants'* contracts to the relevant *Owners Corporation*.

The *Managing Contractor* shall ensure the *consultants* warrant the design of the *design documents* and provide the *intellectual property rights* for the benefit of the *Owners Corporation*, by way of execution of the *Designer's Warranty Deed Poll*.

8 Intellectual property rights

8.1 Warranties and indemnities

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

The *Managing Contractor* shall indemnify the *Client* against any cost, expense, loss, damage or other liability suffered or incurred by the *Client* arising out of or as a consequence of any breach of this subclause 8.1 by the *Managing Contractor*.

8.2 Intellectual property rights granted

All *intellectual property rights* that are created or arise out of the performance of the *Services* by the *Managing Contractor*, or any of its *consultants* including in respect of all *Contract Materials* shall immediately upon creation vest in the *Client*.

The *Client* grants to the *Managing Contractor*, its *consultants*, and where an *Owners Corporation* enters into a *Remediation Contract*, will grant to the *Remediation Contractor* and to the *Owners Corporation*, a licence to use (and to sublicense others to use) the *Contract Materials* and associated *intellectual property rights* for any purpose to the extent necessary for the carrying out of the *Services*, the *Remediation Program*, any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations, but not otherwise.

The *Managing Contractor* shall ensure that the *Contract Material* are copied, supplied and used only for the purpose of the *Services*.

9 Legislative requirements

9.1 Compliance

The *Managing Contractor* shall satisfy all *legislative requirements* applicable to, and necessary to carry out, the *Services* except those in *Item 17* or directed by the *Client* to be satisfied by or on behalf of the *Client*.

The *Managing Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Client's Program Requirements*, shall promptly give the *Client* written notice thereof.

9.2 Changes

If a new *legislative requirement* or a change in a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Client's Program Requirements*;
 - (ii) to that part of the *Remediation Program* or any *Project* the subject of the *Services*;
 - (iii) being the provision of services by a municipal, public or other statutory authority in connection with the *Services*; or
 - (iv) in a *Fee* or charge or payment of a new *Fee* or charge;
- (b) comes into effect after the date of the *Contract*
- (c) could not, at or before that date, reasonably have been anticipated by a competent contractor or consultant; and

- (d) causes the *Managing Contractor* to incur more or less cost than otherwise would have been incurred

, then the extent to which the *Services* are changed by that *legislative requirement* shall be deemed to be a *variation* valued in accordance with subclause 23.3.

This subclause 9.2 does not apply to the commencement of the *Design and Building Practitioners Act 2020* (NSW),

10 Damage to persons and property

10.1 Indemnity by Managing Contractor

- (a) The *Managing Contractor* indemnifies the *Client* against any cost, expense, loss, damage or other liability suffered or incurred by the *Client* resulting from:

- (i) loss of or damage to the *Client's* property arising out of or as a consequence of the carrying out of or failure to carry out *the Services*;
- (ii) personal injury, death, disease or illness (including mental illness) or loss of, or damage to, any other property or the environment arising out of or as a consequence of the carrying out of or failure to carry out *the Services*;
- (iii) a breach of the *Contract* by the *Managing Contractor*; or
- (iv) any wilful or negligent act or wilful or negligent omission of the *Managing Contractor*, a *consultant* or *contractor* the employees or agents of any of them,

but the indemnity shall be reduced proportionally to the extent that any breach of the *Contract* by the *Client* or any negligent act or negligent omission of the *Client* or its other consultants or agents contributed to the cost, expense, loss, damage or liability.

- (b) This subclause shall not apply to:
- (i) the extent that the *Managing Contractor's* liability is limited by another provision of the *Contract*; and
 - (ii) exclude any other right of the *Client* to be indemnified by the *Managing Contractor*.

11 Professional indemnity insurance

The *Managing Contractor* shall ensure that every *consultant*, if within a category stated in *Item 18(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 18(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 18(d)*.

The *Managing Contractor* shall ensure the professional indemnity insurance policy of every *consultant* does not contain any exclusion in relation to cladding or any element related to the performance of the *Remediation Program*.

12 Public liability insurance

Before the *Managing Contractor* commences *the Services*, the *Managing Contractor* shall effect in relation to *the Services* a public liability policy with levels of cover not less than the amounts stated in *Item 19*, which includes the *Managing Contractor* and the *Client* as an insured, on terms and with an insurer reasonably satisfactory to the *Client*. The *Managing Contractor* shall maintain such insurance until the *final certificate* is issued.

13 Insurance of employees

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

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Client's* statutory and common law liability to the *Managing Contractor's* employees.

The *Managing Contractor* shall ensure that all *contractors* have similarly insured their employees.

14 Inspection and provisions of insurance policies

14.1 Proof of insurance

Before the *Managing Contractor* commences the *Services* and whenever requested in writing by the *Client*, the *Managing Contractor* shall provide satisfactory evidence of the insurance the *Managing Contractor* is required to effect and maintain and of the insurance to be effected and maintained by *contractors*.

Broker-to-broker reviews as well as provision of certificates of currency will be deemed to be the method for providing satisfactory evidence of the insurance. The *Managing Contractor* will not be required to provide its policy terms to the *Client*.

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

14.2 Failure to produce proof of insurance

If after being so requested, the *Managing Contractor* fails promptly to provide satisfactory evidence of compliance with clauses 11, 12 and/or 13 then without prejudice to other rights or remedies, the *Client* may insure and the cost thereof shall be moneys due and payable from the *Managing Contractor* to the *Client*. The *Client* may refuse payment until such evidence is produced by the *Managing Contractor*.

14.3 Notices from or to insurer

The *Managing Contractor* shall ensure that the policy contains provisions acceptable to the *Client* which provide that a notice of claim given to the insurer by either party, or a *contractor* shall be accepted by the insurer as a notice of claim given by both parties, and the *contractor*.

The *Managing Contractor* will promptly to give written notice thereof to the *Client*, whenever:

- (a) the insurer gives the *Managing Contractor* or a *contractor* a notice in connection with the policy; or
- (b) the *Managing Contractor* fails to maintain the policy and prior to cancellation of the policy.

14.4 Notices of potential claims

The *Managing Contractor* shall, as soon as practicable, inform the *Client* in writing of any occurrence that may give rise to a claim under the policy required by clause 12 or clause 13 and shall keep the *Client* informed of subsequent developments concerning the claim.

The *Managing Contractor* shall ensure that *contractors* in respect of their operations similarly inform the parties.

14.5 Cross liability

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

15 Client

15.1 Client's directions

Except where the *Contract* otherwise provides, the *Client* may give a *direction* orally but as soon as practicable confirm it in writing.

15.2 Client's representative

The *Client* may from time to time appoint a representative to exercise delegated *Client's* functions for the purposes of the *Contract*, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Client's* representative;
- (b) delegation shall not prevent the *Client* exercising any function;
- (c) the *Client* forthwith gives the *Managing Contractor* written notice of respectively:
 - (i) the appointment, including the *Client's* representative's name and delegated functions; and
 - (ii) the termination of each appointment.

16 Managing Contractor's representative and key personnel

16.1 Managing Contractor's representative

The *Managing Contractor* shall manage the *Services* personally or by a competent representative. Matters within a *Managing Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Managing Contractor's* knowledge.

The *Managing Contractor* shall forthwith give the *Client* written notice of the representative's name and any subsequent changes.

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

16.2 Key personnel

In carrying out the *Services*, the *Managing Contractor* shall employ the *key personnel* in the roles specified in *Item 6*.

The *Managing Contractor* shall not release any of the *key personnel* from carrying out the role specified in *Item 6* or alter their functions unless the *Client* approves a substitute (which approval may be given or withheld, including on terms, at the *Client's* absolute and sole discretion).

If the *Managing Contractor* is in breach of this clause 16, the *Client* may withhold payment until the breach is remedied.

17 Managing Contractor's employees and contractors

The *Client* may direct the *Managing Contractor* to have removed, within a stated time, from any activity of the *Services*, any person employed

on the *Services* who, in the *Client's* opinion, is incompetent, negligent or guilty of misconduct.

18 Provision of office space

The *Client* may provide the *Managing Contractor* with office space (space, desks and chairs, but not other equipment such as computers and other back of house systems) to accommodate its team for the purposes of carrying out the *Services*.

If the *Client* provides such office space, the *Managing Contractor* must locate its team in the office space provide by the *Managing Contractor*.

The *Client* does not promise to provide any such office space for the *Term* of the *Contract*.

19 Quality assurance and compliance

The *Managing Contractor* shall:

- (a) plan, establish and maintain a conforming quality and compliance system;
- (b) ensure that each *consultant* plans, establishes and maintains a similar quality and compliance system; and
- (c) ensure that the *Client* has reasonable access to the quality and compliance system of the *Managing Contractor* and *consultants* so as to enable monitoring and quality auditing.

The *Managing Contractor* shall use its best endeavours to ensure that compliance of the *Remediation Works* is to the level that would be required if an occupation certificate were required under the *Environmental Planning and Assessment Act 1979* (NSW) and granted by a certifier operating under the *Building and Development Certifiers Act 2018* (NSW).

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

20 Program Schedule

- (a) The *Client* may direct in what order and at what time the various stages or portions of the *Remediation Program* shall be carried out. If the *Managing Contractor* can reasonably comply with the *direction*, the *Managing Contractor* shall do so. If the *Managing*

Contractor cannot reasonably comply, the *Managing Contractor* shall give the *Client* written notice of the reasons.

- (b) Where stated in *Item 12* and within the time and in the form stated in *Item 12*, the *Managing Contractor* must submit to the *Client* a *Program Schedule* for carrying out the *Services*.
- (c) A *Program Schedule* is a written statement showing the dates by which, or the times within which, the various stages or portions of the *Remediation Program* are to be carried out or completed. It shall be deemed a *Contract document*. The initial *Program Schedule* is included in Annexure Part D.
- (d) The *Client* may update the *Program Schedule* from time to time, including, without consent from the *Managing Contractor*, delay any date for any *Project* included in the *Program Schedule*.
- (e) The *Managing Contractor* may propose to update the *Program Schedule* from time to time, by submitting a written proposal to the *Client*. If the *Client* accepts the *Managing Contractor's* proposal the *Client* must issue a *direction*.
- (f) The *Managing Contractor* must submit a report each month to the *Client* or at any other time requested by the *Client* setting out the status of each *Project* identified in the *Program Schedule*.
- (g) If compliance with any *direction* under clause 20(a),20(d), or 20(g) causes the *Managing Contractor* to incur more or less cost than otherwise would have been incurred, the difference will be valued as if it were a *variation*, except where compliance with a *Program Schedule* updated by the *Client* was necessary because of a failure by the *Managing Contractor* to comply with its obligations under this *Contract*, in which case the *Managing Contractor* will not be entitled to make, and the *Client* will not be liable upon, any *Claim*.

21 Suspension

21.1 Client's suspension

The *Client* may direct the *Managing Contractor* to suspend the carrying out of the whole or part of the *Services* for such time as the *Client* thinks fit, if the *Client*, acting reasonably, is of the opinion that it is necessary:

- (a) because of an act, default or omission, in breach of the *Contract*, of:
 - (i) the *Client* or its employees, consultants, agents or other contractors (not being employed by the *Managing Contractor*); or
 - (ii) the *Managing Contractor*, a *contractor* or either's employees or agents;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order;

(d) because suspension of *work* under a contract upon which the *Services* depend, prevents the carrying out of the *Services*; or
for any reason, in the *Client's* absolute discretion, for a maximum period of 6 months.

21.2 Managing Contractor's suspension

If the *Managing Contractor* wishes to suspend the carrying out of the whole or part of the *Services*, otherwise than pursuant to subclause 26.9, the *Managing Contractor* shall obtain the *Client's* prior written approval. The *Client* may approve the suspension and may impose conditions of approval.

21.3 Recommencement

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

The *Managing Contractor* may recommence *the Services* suspended pursuant to subclause 21.2 or 26.9 at any time after reasonable notice to the *Client*.

21.4 Cost

The *Managing Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 21.1 and subclause 21.2. If the *Managing Contractor* made the protection, safety, court order or suspension of *work* necessary, the *Managing Contractor* shall bear the cost of suspension pursuant to paragraph (b), (c) or (d) of subclause 21.1. If the *Managing Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be deemed to be a *variation* valued in accordance with subclause 23.3.

22 Time, progress and additional remuneration

22.1 Completion

The *Managing Contractor* must:

- (a) proceed with the *Services* with due expedition and without delay and shall complete the *Services* in accordance with the approved *Program Schedule* so as to achieve the *Milestone Dates*; and
- (b) perform the *Services* in a manner that does not delay the *Remediation Program* or any *Project* and must not interfere with, delay or hinder the performance of activities by other consultants or *contractors* in respect of the *Remediation Program* or any *Project*.

22.2 Notice of delay

The *Managing Contractor* must notify the *Client* in writing of any event which the *Managing Contractor* believes will or is likely to delay the

performance of the *Services* within 5 *Business Days* after the *Managing Contractor* first becomes aware of the event.

22.3 Extension of time

- (a) If the *Managing Contractor* is or will be delayed in performing the *Services* by a *Milestone Date* by a *qualifying cause of delay*, the *Managing Contractor* may claim an *EOT* by giving the *Client* a written notice within 5 *Business Days* after the *Managing Contractor* became aware of the delay or should have become aware of the delay (and every 10 *Business Days* thereafter to the extent that the delay persists for more than 10 *Business Days*). The notice must set out the following details:
- (i) the *qualifying cause of delay* that is the cause of the delay;
 - (ii) the consequences of the delay on the *Milestone Dates* and *Remediation Program*; and
 - (iii) the steps the *Managing Contractor* has taken (and will take) to mitigate the delay,
 - (iv) and must attach such documentation and information as is reasonably necessary to support its claim for an *EOT*.
- (b) Following receipt of an *EOT* claim, the *Client* will review the claim and, if in the *Client's* opinion (acting reasonably) the *Managing Contractor* has satisfied all of the requirements in subclauses 22.2, 22.3(a) and 22.3(c), the *Client* will grant a reasonable *EOT* to the *Managing Contractor* and adjust the relevant *Milestone Dates* accordingly.
- (c) The *Managing Contractor* is not entitled to any *EOT* in relation to a claimed delay unless:
- (i) the delay has been caused by a *qualifying cause of delay*;
 - (ii) the delay will prevent the *Managing Contractor* from meeting the *Milestone Date*;
 - (iii) the delay is not caused or contributed to by the *Managing Contractor*;
 - (iv) the *Managing Contractor* has taken proper and reasonable steps both to preclude the occurrence of the cause of the delay and/or minimise the consequences thereof;
 - (v) the delay is not concurrent with a delay for which the *Managing Contractor* is not entitled to any *EOT*; and
 - (vi) the *Managing Contractor* has complied with subclauses 22.2 and 22.3(a).
- (d) The *Managing Contractor* must take all possible steps, including incurring additional expense, to avoid, or if it cannot be avoided, minimise any delay in the performance and *completion* of the *Services* by the *Milestone Date*.
- (e) An *EOT* given under this subclause 22.3 and delay costs pursuant to subclause 22.5 (if any) is the *Managing Contractor's* sole remedy for delay or disruption.

- (f) The *Client* will not be liable for any claim for an *EOT* which has not been made strictly in accordance with subclauses 22.2, 22.3(a) and 22.3(c) and any such claim will be barred.
- (g) The *Client* shall as soon as practical provide its written response to the claim and shall stipulate the number of days' extension for the carrying out of the *Services* that is granted (if any).

22.4 Client may extend time

Notwithstanding that the *Managing Contractor* is not entitled to an *EOT*, the *Client* may, by written notice at any time and for any reason in its absolute discretion, without prejudice to its rights or the *Managing Contractor's* obligations under this *Contract*, extend the time for the performance of the *Services* and the *Milestone Dates*. This power is conferred upon the *Client* exclusively for the benefit of the *Client* and the *Client* is under no obligation to exercise the power at any time or for any reason.

22.5 Costs for delay

For every day the subject of an *EOT* for a *compensable cause* and for which the *Managing Contractor* gives the *Client* a claim for additional remuneration pursuant to subclause 28.1, the *Client* shall pay to the *Managing Contractor* the reasonable additional costs incurred by the *Managing Contractor* as a result of the delay, capped at the maximum daily rate set out in *Item 21A*.

Nothing in this subclause 22 shall oblige the *Client* to pay extra costs for delay or disruption which have already been included in the value of a *variation* or any other payment under the *Contract*.

23 Variations

23.1 Directing variations

- (a) The *Managing Contractor* shall not vary the *Services* except as *directed* in writing by the *Client*, by a *direction* that expressly notes that the *direction* is a *variation* under this clause 23.1, and the *Managing Contractor* shall be bound to comply with that *direction*.
- (b) The *Client* may direct the *Managing Contractor* to vary the *Services* by such *variation* of a character and extent capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2). The *Managing Contractor* must comply with a *direction* made by the *Client* under this subclause 23.1.
- (c) Subject to subclause 23.1(e), the *Client* adding or deleting buildings to the list of buildings requiring façade remediation will be deemed to be a *direction* within the general scope of the *Services*.

- (d) Any *variation* in the *Fee* payable to the *Managing Contractor* as a consequence of a *direction* issued by the *Client* under this subclause 23.1 shall be agreed between the *Client* and the *Managing Contractor*, otherwise subclause 23.3 shall apply.
- (e) Despite anything to the contrary in this *Contract* or otherwise, a change in the number of buildings in the *Remediation Program* that results in less than a 5% increase or less than a 15% decrease in the overall number of buildings in the *Remediation Program* will not be a *variation* and will not result in an adjustment to the *Fee*.

23.2 Proposed variations

- (a) The *Client* may give the *Managing Contractor* written notice of a proposed *variation*.
- (b) The *Managing Contractor* shall within 5 *Business Days* of receipt of such notice, propose to the *Client* the *Managing Contractor's* estimate of:
 - (i) the proposed *variation's* effect on the *Remediation Program* (including the *date for completion*, if any); and
 - (ii) the cost (including all warranties and time-related costs, if any) of the proposed *variation*.
- (c) The *Client* may direct the *Managing Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost and the *Managing Contractor* shall do so within 5 *Business Days* of any such *direction*.
- (d) If the *Client* accepts the *Managing Contractor's* proposal, the *Client* may direct the *Managing Contractor* to effect the *variation* in accordance with that proposal.
- (e) The *Managing Contractor's* costs for each compliance with this subclause shall be a *variation* valued in accordance to subclause 23.3.

23.3 Valuation of variations

Unless otherwise agreed, the value of a *variation* shall be determined by the *Client* using the basis on which the *Fee* is determined pursuant to clause 24 except that if the *Fee* to be determined pursuant to clause 24 is a lump sum, then reasonable rates and prices shall apply, including by using the information contained in Annexure Part C.

24 Payment

24.1 Claims for payment

At the times set out in *Item 22A*, the *Managing Contractor* shall submit written claims for payment of the *Fee* accompanied by:

- (a) a statement in the form set out in Annexure Part F and a duly executed statutory declaration in the form set out in Annexure Part G; and
- (b) such other information and documentation as is reasonably required by the *Client* to verify the claim.

24.2 Time and place for payment

On receipt of a claim for payment, the *Client* shall assess the claim and provide the *Managing Contractor* with a payment schedule within 10 *Business Days* of the date of receipt of the claim for payment made in accordance with subclause 24.1:

- (a) confirming whether or not the claim for payment is approved;
- (b) indicating the amount of payment proposed to be made; and
- (c) if the amount proposed to be paid is less than the claimed amount, indicating the reason for any difference between the amount claimed and the amount to be paid.

Upon receipt from the *Managing Contractor* of a tax invoice in the amount which the *Client* proposes to pay in respect of a claim for payment, the *Client* shall pay the *Managing Contractor* the amount due and payable within the times and at the place stated in *Item 22B*.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that the *Services* have been executed satisfactorily but shall be a payment on account only.

24.3 Final payment claim and certificate

Within 21 days after *completion*, the *Managing Contractor* shall give the *Client* a written *final payment claim*, endorsed 'Final Payment Claim' being a progress claim together with all other *Claims* whatsoever in connection with the subject matter of the *Contract*.

Within 49 days after *completion* the *Client* shall issue to the *Managing Contractor* a *final certificate* evidencing the moneys finally due and payable between the *Client* and the *Managing Contractor* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Client* or the *Managing Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligation in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to the carrying out of *the Services* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any defect or omission in *the Services* or any part thereof which was not apparent at *completion* or which would not have been disclosed upon reasonable inspection of *the Services* at the time of issue of the *final certificate*;

- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or any arithmetical error in any computation; or
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 29 served before the 7th day after the issue of the *final certificate*.

24.4 Interest

If any moneys due and payable to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon at the rate stated in *Item 23* from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid.

24.5 Other moneys due

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

25 Payment of workers, contractors and consultants

This clause shall not apply unless stated in *Item 24*.

25.1 Workers, contractors and consultants

The *Managing Contractor* shall give in respect of a progress claim, a duly executed statutory declaration set out in Annexure Part G accompanied by documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Managing Contractor* and of the *contractors* and *consultants*; and
- (b) *contractors* and *consultants*,

in respect of *the Services* the subject of that claim.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Client's* satisfaction.

25.2 Withholding payment

Subject to the next paragraph, the *Client* may withhold moneys due and payable in respect of the progress claim until the *Managing Contractor* complies with subclause 25.1.

The *Client* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 25.1 as due and payable to workers and *contractors* and *consultants*.

26 Default or insolvency

26.1 Preservation of other rights

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

26.2 Managing Contractor's default

The *Managing Contractor* commits a substantial breach of the *Contract* upon:

- (a) breach of a warranty in subclause 2.2;
- (b) breach of subclauses 6.6 or 6.7;
- (c) failing to:
 - (i) provide evidence of insurance;
 - (ii) properly perform the *Managing Contractor's Design Management Obligations*; or
 - (iii) comply with any *legislative requirement*;
- (d) wrongful suspension of the *Services*;
- (e) substantial departure from the *Program Schedule* without reasonable cause or the *Client's* approval;
- (f) providing a false or misleading statutory declaration in a material particular in the particular circumstances;
- (g) releasing any *key personnel* from carrying out the role specified in *Item 6* in breach of subclause 16.2;
- (h) a materially detrimental change in the financial position of the *Managing Contractor* from the financial position of the *Managing Contractor* at the date of the *Contract*;
- (i) any breach is not remedied within 10 *Business Days* after written notice is given by *Client* under clause 26; or
- (j) repeated breaches of the *Contract*, even if remedied, being 3 breaches in any 3 month period, or 5 breaches in aggregate over any period.

26.3 Client's Notice to show cause

If the *Managing Contractor* commits a substantial breach of the *Contract*, the *Client* may, by hand or by registered, pre-paid post, give the *Managing Contractor* a written notice to show cause.

A notice under this subclause 26.3 shall:

- (a) state it is a notice given under clause 26 of the *Contract*;
- (b) specify the alleged substantial breach with reasonable details;
- (c) state the *Managing Contractor* is required to show cause why the *Client* should not exercise a right referred to in subclause 26.4;

- (d) the date and time by which the *Managing Contractor* must show cause (which shall not be less than 5 *Business Days* after the notice is received by the *Managing Contractor*); and
- (e) the place at which cause must be shown.

26.4 Client's right

If the *Managing Contractor* fails to show reasonable cause by the stated date and time in the notice referred to in subclause 26.3, the *Client* may by notice to the *Managing Contractor*:

- (a) take out of the *Managing Contractor's* hands the whole or part of the *Services* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 26.6; or
- (b) terminate the *Contract*.

26.5 Take out

- (a) The *Client* may complete the *Services* taken out of the *Managing Contractor's* hands under subclause 26.4(a), either itself or by engaging a person to do so.
- (b) If the *Client*:
 - (i) takes the whole or part of the *Services* out of the *Managing Contractor's* hands under subclause 26.4(a); or
 - (ii) terminates the *Contract* under subclause 26.4(b),
the *Client* may:
 - (iii) use the *Contract Material* and other things intended for the *Services*; and
 - (iv) without payment of compensation to the *Managing Contractor*:
 - (A) take possession of, and use, the *Contract Material*, systems used in connection with the *Services*, and such other *Documents* and other things as were used by the *Managing Contractor*;
 - (B) contract with such of the *Managing Contractor's* contractors;
 - (C) use such of the *Managing Contractor's* method of working and systems for performing the *Services*,
as are reasonably required by the *Client* to facilitate *completion* or the use, operation or maintenance of any part of the *Project*.
- (c) If the *Client* takes possession of *Contract Material*, other *documents* or other things in accordance with its rights under subclause 26.5, the *Managing Contractor* shall reasonably maintain them and, subject to subclause 26.6, on *completion*, shall return such of them as are surplus.
- (d) The *Client* shall keep records of the cost of completing the *Services*.

- (e) This subclause 26.5 will survive the expiration, termination or frustration of the *Contract*.

26.6 Adjustment on completion of the Services taken out

- (a) When the whole or part of the Services taken out of the *Managing Contractor's* hands under subclause 26.4(a) have been completed, the *Client* shall assess the cost thereby incurred and shall assess the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Managing Contractor* if the Services had been completed by the *Managing Contractor*. If the amount assessed constitutes more than would have been paid to the *Managing Contractor*, that amount shall be due and payable from the *Managing Contractor* to the *Client*.
- (b) Without limiting subclauses 26.6(a) and 26.6(c), the *Managing Contractor* indemnifies the *Client* against any cost, expense, loss, damage or other liability that the *Client* suffers or incurs, or that the *Client* reasonably anticipates that it will suffer or incur, as a result of the *Client* taking work out of the *Managing Contractor's* hands under subclause 26.4(a) or terminating the *Contract* under subclause 26.4(b).
- (c) If the *Managing Contractor* is indebted to the *Client* arising out of or as a consequence of the *Client*:
 - (i) taking the whole or part of the *Services* out of the *Managing Contractor's* hands under subclause 26.4(a); or
 - (ii) terminating the *Contract* under subclause 26.4(b),the *Client* may retain the *Managing Contractor's Documents* and other things taken under subclause 26.5(b) until the debt is satisfied. If after reasonable notice, the *Managing Contractor* fails to pay the debt, the *Client* may sell the *Documents* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Managing Contractor*.
- (d) This subclause 26.6 will survive the expiration, termination or frustration of the *Contract*.

26.7 Client's default

If the *Client* commits a substantial breach of the *Contract*, the *Managing Contractor* can give the *Client* a notice to show cause:

The *Client* commits a substantial breach of a contract if the *Client* fails to make a payment as required by the *Contract* and continues to fail to make such payment for a period of 20 *Business Days* after notice from the *Managing Contractor* of the outstanding amount.

26.8 Managing Contractor's notice to show cause

A notice to show cause under subclause 26.7 shall:

- (a) state it is a notice given under clause 26 of the *Contract*,
- (b) specify the alleged substantial breach with reasonable details;

- (c) state the *Client* is required to show cause why the *Managing Contractor* should not exercise a right referred to in subclause 26.9;
- (d) state the date and time by which the *Client* must show cause (which shall not be less than 5 *Business Days* after the notice is received by the *Client*); and
- (e) the place at which cause must be shown.

26.9 Managing Contractor's rights

If the *Client* fails to show reasonable cause by the stated date and time, the *Managing Contractor* may, by notice to the *Client*, suspend the whole or any part of *the Services*.

The *Managing Contractor* shall remove the suspension if the *Client* remedies the breach.

The *Managing Contractor* may, by notice to the *Client*, terminate the *Contract*, if within 20 *Business Days* of the date of suspension under this subclause the *Client* fails:

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

Costs and expenses incurred by the *Managing Contractor* by reason of the suspension shall be assessed by the *Client* and added to the *Fee*.

26.10 Termination

- (a) If the *Contract* is terminated pursuant to subclause 26.4(b) or subclause 26.9, the *Parties'* remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* if the party receiving the notice of termination had repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages;
- (b) If the *Contract* is terminated there shall be only one reference date for the purposes of the *Security of Payment Act* after the date of termination, which shall be the date specified in *Item 25*;
- (c) If the *Client* has terminated the *Contract*:
 - (i) the *Client* may also, without payment of compensation, take possession of the *Contract Material*;
 - (ii) the *Client* will have the right to act as the *Managing Contractor's* agent for the purpose of novating the *Managing Contractor* out of contracts it has entered into pursuant to this *Contract*; and
 - (iii) to the extent that the *Managing Contractor* has not provided the *Client* with all of the *Contract Material*, the *Managing Contractor* shall promptly provide the *Client* with all remaining *Contract Material* (in any form requested by the *Client* including PDF and CAD) that are in existence at the date of termination.

- (d) This subclause 26.10 will survive the expiration, termination or frustration of the *Contract*.

26.11 Insolvency

If:

- (a) a *Party* informs the other *Party* in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a *Party* is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the *Contract*; or
- (d) in relation to a *Party* being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,
 - (viii) if a party notifies the other party that it is insolvent or that any of the above events are imminent in respect of that party,

then, the other *Party* may terminate the *Contract* without giving prior notice.

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

26.12 Termination for convenience

- (a) Notwithstanding any other provision of the *Contract*, the *Client* may:
 - (i) at any time, in the *Client's* absolute and sole discretion, terminate the *Contract* by giving 5 *Business Days'* notice to the *Managing Contractor*, and
 - (ii) subsequently either itself or by any third party complete the uncompleted part of *the Services*.
- (b) If the *Contract* is terminated pursuant to subclause 26.12(a)(i):
 - (i) the *Parties'* remedies, rights and liabilities shall be the same as under clause 27 (as if the *Contract* was frustrated);
 - (ii) the *Managing Contractor* shall have no other right or entitlement to claim from the *Client* or any other person any other costs, expenses, losses, damages or other liabilities suffered or incurred by the *Managing Contractor* arising out of, or in any way connected with such termination;
 - (iii) the *Client* may, or may employ and pay any third party to, perform the uncompleted part of the *Services* and the *Client* or those persons may do anything necessary to perform the uncompleted part of the *Services*; and
 - (iv) the *Managing Contractor* agrees that its entitlement to be paid (if any) under this subclause 26.12 will be the *Managing Contractor's* full compensation for all work and services performed under or in connection with the *Contract* and the *Managing Contractor* will have no *Claim* arising out of or in connection with the *Contract* or its termination pursuant to subclause 26.12(a)(i).

26.13 Documents

- (a) Notwithstanding any other provision of the *Contract*, if:
 - (i) the *Client* terminates the *Contract* for whatever reason (including for its convenience); or
 - (ii) engages others to carry out or itself carries out any part or whole of the remainder of *the Services*,the *Client* may, without payment of compensation to the *Managing Contractor* (unless expressly provided to the contrary in the *Contract*):
 - (iii) take possession of all *documents* (including *Contract Materials* and data systems), information and the like, which are:
 - (A) in the *Managing Contractor's* control or possession;
 - (B) connected with the *Contract* or the *Services*; and
 - (C) reasonably required by the *Client* to facilitate completion of the *Services* and/or the execution and completion of all other services or work connected with the *Project*.

27 Termination by frustration

If the *Contract* is frustrated, the *Client* shall pay the *Managing Contractor*:

- (a) any amount then due to the *Managing Contractor* but unpaid;
- (b) for *the Services* carried out to the date of frustration which are not included in a previous payment claim;
- (c) the cost of materials and equipment reasonably ordered by the *Managing Contractor* for *the Services* and which the *Managing Contractor* is liable to accept, but only if they will become the *Client's* property upon payment; and
- (d) the costs reasonably incurred:
 - (i) returning to their place of engagement the *Managing Contractor*, contractors and their respective employees engaged in *the Services* at the date of frustration; and
 - (ii) by the *Managing Contractor* in expectation of completing *the Services* and not included in any other payment.

Upon such payment, the *Managing Contractor* shall, subject to any lien or other rights of the *Managing Contractor* under the *Contract*, deliver to the *Client* all *Contract Material* produced by the *Managing Contractor* up to the date of frustration regardless of its stage of completion but without any liability in respect of the *Contract Material* which is incomplete by reason only of the frustration of the *Contract*.

27A Return of the Client's documents, etc.

On *completion* of the *Services* or on termination or frustration of the *Contract*, the *Managing Contractor* shall:

- (a) promptly return to the *Client* the *Client's* physical *documents*, samples, patterns, moulds and other information provided to the *Managing Contractor*; and
- (b) destroy or delete the *Client's documents* that are in an electronic format

27B Force Majeure

27B.1 Suspension of obligations

An obligation of a *Party* under the *Contract* (other than an obligation to make any payment) is suspended for the time and to the extent that that party is prevented from or delayed in complying with that obligation by a *Force Majeure Event*.

27B.2 No relief

The occurrence of a *Force Majeure Event* does not relieve the affected *Party* from performing its obligations:

- (a) if the delay or failure by the affected *Party* in the performance or the occurrence of a *Force Majeure Event* could have been prevented by reasonable precautions taken by the affected *Party*; or
- (b) if the *Force Majeure Event* results from any intentional act or omission on the part of the affected *Party*, except to the extent such fault was itself caused by a *Force Majeure Event*.

27B.3 Responsibilities

On the occurrence of a *Force Majeure Event*, the affected *Party* must promptly:

- (a) notify the other *Party* and describe in reasonable detail the nature of the *Force Majeure Event* and its likely effect on the ability of the affected *Party* to perform its obligations under the *Contract*;
- (b) use all reasonable endeavours to avoid or remove the cause of the *Force Majeure Event* and perform its obligations under the *Contract* as soon as possible; and
- (c) take all reasonable steps to mitigate any losses caused to the other *Party*.

27B.4 Termination

Either *Party* may by 20 *Business Days'* notice to the other *Party*, terminate the *Contract* if a *Force Majeure Event* continues for at least twelve months.

27B.5 Payment

If the *Contract* is terminated pursuant to subclause 27B.4, clause 27 will apply as if the *Contract* had been frustrated.

28 Notification of claims

28.1 Communication of claims

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

As soon as practicable but in any case not longer than 28 days, after the *Managing Contractor* becomes aware of any *Claim* in connection with the subject matter of the *Contract*, the *Managing Contractor* shall give to the *Client* the *prescribed notice* or a notice of *dispute* under subclause 29.1.

This subclause shall not apply to any *Claim*, including a claim for payment (except for *Claims* which would, other than for this subclause,

have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

28.2 Liability for failure to communicate

The failure of the *Managing Contractor* to comply with the provisions of subclause 28.1 or to communicate a *Claim* in accordance with the relevant provision of the *Contract* shall disentitle the *Managing Contractor* from making the relevant *Claim*.

28.3 Resolution

If within 28 days of giving the *prescribed notice*, the claim has not been resolved, the *prescribed notice* shall be deemed to be a notice of *dispute* under subclause 29.1.

29 Dispute resolution

29.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning a *Claim*:

- (a) in contract;
- (b) in tort;
- (c) under statute;
- (d) for restitution based on unjust enrichment or other quantum meruit; or
- (e) for rectification or frustration,

or like *Claim* available under the law governing the *Contract*, then either party shall, by hand or by registered post, give the other a written notice of *dispute* adequately identifying and providing particulars of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 26 and 27 and subclause 29.4, continue to perform the *Contract*.

29.2 Further steps required before formal dispute resolution

Within 14 days after receiving a notice of *dispute*, senior members of the *Parties* shall confer at least once to attempt to resolve the *dispute*, and failing resolution of the *dispute*, to explore and if possible agree on methods of resolving the *dispute* by other means. At any such conference each party shall be represented by senior member(s) having authority to agree to a resolution of the *dispute*. All aspects of any such conference except the fact of occurrence shall be privileged.

In the event that the *dispute* cannot be so resolved within 14 days after any such conference or if at any time either *Party* considers that the other *Party* is not making reasonable efforts to resolve the *dispute*,

either *Party* may by notice in writing delivered by hand or sent by certified mail to the other *Party*, refer such *dispute* to be determined by the *Dispute Resolution Panel* in accordance with subclause 29.3.

29.3 Dispute Resolution Panel

- (a) In the event that a *dispute* is not resolved in accordance with subclause 29.2, it must:
 - (i) be dealt with in accordance with this subclause 29.3 and Annexure Part L; and
 - (ii) be determined by the *Dispute Resolution Panel* in accordance with Annexure Part L.
- (b) The *Client* and the *Managing Contractor* must comply with Annexure Part L.
- (c) Any determination made by the *Dispute Resolution Panel* under this clause 29.3 is:
 - (i) for values/amounts in *dispute* up to and including \$250,000, final and binding on the *Client* and the *Managing Contractor*; or
 - (ii) for values/amounts in *dispute* over \$250,000, final and binding on the *Client* and the *Managing Contractor* except where either party commences litigation in respect of that *dispute* within 20 *Business Days* of the *Dispute Resolution Panel* giving its decision.
- (d) If one *Party* has overpaid the other, whether pursuant to the *Client's* payment schedule or not and whether under a mistake of law or fact, the *Dispute Resolution Panel* may order repayment together with interest.

29.4 Summary relief

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

30 Not used

31 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the *Parties*.

32 Work Health and Safety

32.1 General

Without limiting any other provision of this *Contract*, the *Managing Contractor* must (and must ensure that its employees, agents and *contractors*) comply with the requirements of the *WHS Legislation* when performing the *Services*, having regard to the *Projects* being live sites where people live and people visit, including:

- (a) complying with (and ensure that its employees, agents and *contractors* comply with) all *directions*, policies and procedures of any 'principal contractor' (as that term is defined in the *WHS Regulations*) in relation to work health and safety or security matters when on any site;
- (b) consulting, cooperating and coordinating its activities with all other persons who have a work health and safety duty in relation to the same matter;
- (c) where the *Services* relate to the design of plant, substances or structures referred to in section 22 of the *WHS Act*, the obligations set out in that section;
- (d) where the *Services* involve the design of a structure or any part of a structure, the requirements of Part 6.2 of the *WHS Regulation*; and
- (e) promptly notify the *Client* of any work health, safety and rehabilitation matters arising out of, or in any way in connection with, the *Service*.

32.2 WHS Management Plan

The *Managing Contractor* shall provide the *Client*, within such time as required by the *Client*, a WHS management plan setting out the *Managing Contractor's* measures and policies ensuring the compliance with the requirements of the *WHS Legislation* when performing the *Services*.

33 Environmental Management

The *Managing Contractor* must:

- (a) not perform or use materials that are harmful to the environment for so long as any *Services* are carried out;
- (b) supervise *contractors'* activities and ensure they are not carrying out their design or using materials which are harmful to the environment;
- (c) use and be able to demonstrate the use of, ecologically sustainable development materials in the performance of the *Services*; and

- (d) develop and report on environmental performance the *Services* and *Remediation Program*.

34 Industrial Relations

- (a) The *Managing Contractor* must in carrying out the *Services* keep the *Client* fully and promptly informed by submitting a report on industrial relations problems or issues that affect or are likely to affect the carrying out of the *Services* and other contractors' activities.
- (b) The *Managing Contractor* must not make industrial relations arrangements or enter agreements or make *directions* that would bind any of the *consultants* or *Remediation Contractors* performing work directly for the *Owners Corporations*.

35 Set off by Client

The *Client* may deduct from moneys due or claimed to be due to the *Managing Contractor* any money due or claimed to be due from the *Managing Contractor* to the *Client* in connection with the *Contract* or otherwise.

36 Relevant legislation

36.1 Design Compliance Obligations

The *Managing Contractor* must:

- (a) without limiting anything else in the *Contract*, comply with, and ensure that its *consultants* and *contractors* comply with, the:
 - (i) *Design and Building Practitioners Act 2020* (NSW);
 - (ii) *Building and Development Certifiers Act 2018* (NSW); and
 - (iii) *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW);
- (b) appoint *Registered Design Practitioners* to design the *Regulated Design* in accordance with the *Contract*;
- (c) ensure the *Registered Design Practitioners* promptly provide to the *Managing Contractor* for each design or varied design a *Design Compliance Declaration* and a further *Design Compliance Declaration* in those circumstances set out in, and to comply with, section 9 of the *Design and Building Practitioners Act 2020* (NSW);

- (d) provide to the *Client* a copy of any *Design Compliance Declaration* received from a *Registered Design Practitioner*;
- (e) provide all *Contract Material* (including *design documents*) produced by the *Managing Contractor* and its *contractors* to the *Owners Corporation* for the purposes of the *Remediation Contractor* carrying out the *Project* under the *Remediation Contract*; and
- (f) without limiting this subclause 36.1, ensure its *contractors* comply with any request by the *Client*, and any provision (if any) under a *legislative requirement* which requires *design documents* (including in respect of *Regulated Design*) and *Design Compliance Declarations* to be lodged electronically through an internet site or an application established by or on behalf of the *Client*.

36.2 Compliance Declarations

The *Managing Contractor* shall:

- (a) ensure it provides to the *Client* within 5 *Business Days* of receiving a *Design Compliance Declaration*, a *Principal Compliance Declaration* substantially in the form and manner set out in Annexure Part I and compliant with the requirements of the *Design and Building Practitioners Act* and its regulations; and
- (b) certify the *Managing Contractor* is authorised under the *Contract* to provide a declaration as to the matters to which the declaration relates, and

without limiting this subclause 36.2, the *Managing Contractor* will comply with any request by the *Client*, and any provision (if any) under a *legislative requirement* which requires the *Principal Compliance Declaration* to be lodged electronically through an internet site or an application established by or on behalf of a Department.

36.3 Building Code of Australia

The *Managing Contractor* will ensure compliance with, including compliance by its *contractors*, with the requirements of the *Building Code of Australia* in respect of a *Regulated Design Document* or *Building Work*.

The *Managing Contractor* must submit a report to the *Client* on compliance under this subclause 36.3 prior to the 'date of practical completion' of a *Project*.

Despite this subclause 36.3, a *Regulated Design Document* or *Building Work* is taken to comply with the requirements of the *Building Code of Australia* if the application of the requirements of the *Building Code of Australia* is modified or displaced by another law (**modified requirements**) in respect of a *Regulated Design Document* or *Building Work* and the *Regulated Design Document* or *Building Work* complies with the *modified requirements*.

37 Record keeping and reporting

The *Managing Contractor* must collect and report such data to the *Client* and must update and maintain public and non-public dashboards at least weekly, or as otherwise required by the *Client*. Such data is to include, but is not limited to, data that would be required to update and maintain the a dashboard similar to that contained in Annexure Part K.

Without limiting the above paragraph, the *Managing Contractor* must, if so required by the *Client*, provide two (2) copies of a weekly status report to the *Client* in such format as the *Client* may reasonably require. The report may be required to show the following:

- (a) time ahead of or behind the *Program Schedule*;
- (b) the performance and progress by:
 - (i) the *Managing Contractor* of the *Services*; and
 - (ii) *contractors* of the *Managing Contractor*; and
- (c) the extent complete and time ahead of or behind the *date for practical completion*;
- (d) the effective implementation of a global solution for waste collection, recycling and reuse, across all *Projects* in the *Remediation Program*.

With every claim for payment delivered by the *Managing Contractor* under subclause 24.1, the *Managing Contractor* must give the *Client* a program report under this clause 37 not earlier than 3 days prior to the date of the report and setting out the following:

- (a) the status of the *Services*;
- (b) details of each *contractor* of the *Managing Contractor*;
- (c) circumstances adversely affecting performance of the *Services*;
- (d) particulars of remedial action taken or that may be taken in respect of these "circumstances";
- (e) all *variations* claimed and approved; and
- (f) all payments claimed and made.

Without limiting the *Client's* rights under clause 24, provision of the *Remediation Program* report by the *Managing Contractor* in accordance with this clause 37 is a condition precedent to the *Managing Contractor's* entitlement to payment under the *Contract*.

The *Managing Contractor* shall, upon commencement of the *Services*, prepare and maintain on a daily basis an accurate record of the *Services* executed. This record shall show the actual critical path of the *Services*, and a copy of the then current *Program Schedule* shall be submitted by the *Managing Contractor* in support of every claim for delay.

38 Approvals and certification

The *Managing Contractor* will be responsible for obtaining or procuring the obtaining of approvals in connection with each *Project* and *Remediation Contract* as to the following:

- (a) development approval (if required);
- (b) fire safety inspections and certificates;
- (c) occupation certificates (if required)
- (d) any certificates required to conform with *legislative requirements* and regulations having control over or in any way of the work performed under the *Contract* and *Remediation Contract*; and
- (e) any approvals relating to the carrying out of the works on adjoining land or on public land or on roads; and
- (f) the *Remediation Assurance Certificate*,

and all such approvals and certificates shall promptly be provided by the *Managing Contractor* to the *Client*.

Part A

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to these Conditions and shall be read as part of the *Contract*.

Item

- | | | |
|---|--|---|
| 1 | <i>Client</i>
(clause 1) | The Crown in right of the State of New South Wales, represented by the Office of Project Remediate, NSW Department of Customer Service.....

ABN 81 913 830 179 |
| 2 | <i>Client's address</i> | 2/24 Rawson Pl, Haymarket NSW 2000
.....
Phone Fax..... |
| 3 | <i>Managing Contractor</i>
(clause 1) | Hansen Yuncken Pty Limited
.....
ACN 063 384 056 ABN 38 063 384 056 |
| 4 | <i>Managing Contractor</i>
address | Building 1, Level 3
75-85 O'Riordan Street
Alexandria NSW 2015

Phone Fax..... |
| 5 | <i>Date for completion</i>
(clause 1) | As set out in the <i>Program Schedule</i> |

-
- 7 Governing law (clause 1(f) and h)) New South Wales
 If nothing stated, that of the jurisdiction where the project is located
- 8 (a) Currency (page 3, clause 1(g)) AUD
 If nothing stated, that of the jurisdiction where the project is located
- (b) Place for payments (page 3, clause 1(g)) Client's address, or by EFT
 If nothing stated, the *Client's* address
- 9 The *Client's Program Requirements* are described in the following documents (clauses 1 and 2)
- 1 Annexure Part B
 2 Apartment Owners Guide To Project Remediate
 (<https://www.nsw.gov.au/sites/default/files/2021-06/apartment-owners-guide-to-project-remediate.pdf>)
 3
 4
 5
- 10 *Security* (clause 5)
- (a) Form of *Managing Contractor's Security* (cl 5) Three unconditional bank guarantees without expiry date in favour of the *Client* each from an Australian-domiciled bank approved by the *Client* in its sole discretion and in a form approved by the *Client*.
- (b) *Managing Contractor's Security* amount or maximum percentage of *Fee* (cl 5) \$6 Million
- (c) If retention moneys, percentage of each progress certificate (cl 5 and 37.2) Not applicable.
- (d) Time for provision (except for retention moneys) (cl 5) Within 10 *Business Days* of the execution of the *Contract* and as a condition precedent to the entitlement to make any payment claim under the *Contract*

- (f) Events for satisfaction before reduction of *Security*
1. when 80% of all *Projects* have either signed up to the *Remediation Program* or expressly declined to sign up to the *Remediation Program*;
 2. when all *Remediation Works* have reached "practical completion" under the relevant *Remediation Contracts*.
 3. 10 *Business Days* after the end of the *Term* of the *Contract*.

11 *Client*-supplied documents (subclause 6.3)

Document

- 1 *Client's Program Requirements*
- 2 The material in the Project Remediate Data Room as at the date of this *Contract*
- 3 Any material relevant to the building supplied to the *Client* by the *Owners Corporations*
- 4 Cladding Product Safety Panel – terms of reference
- 5 Any material relevant to the building supplied to the *Client* by the relevant consent *Authority* or other entity

12 Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Managing Contractor* (subclause 6.4)

Document	No. of copies	Time/stage
1. <i>Program Schedule</i>	(electronic)	At the date of the <i>Contract</i> (the initial <i>Program Schedule</i> is included in the <i>Contract</i> as Annexure Part D.
2
3
4
5

13 Time for *Client's direction* about documents (subclause 6.4(c)) 14. days
If nothing stated, 14 days

14 Contracting (subclause 7.2) Portion of *the Services* requiring approval:
All or any part of the *Services*.....
.....
.....
.....

15 Not used

16 Not used

17 *Legislative requirements*, those excepted (subclause 9)
.....
.....

18 *Professional indemnity insurance* clause 11)

- (a) Not used
- (b) Not used

(c) Categories of <i>consultants</i> and levels of cover of <i>consultants</i> professional indemnity insurance	Category	Levels of cover
	All <i>consultants</i>	\$5,000,000.....
	\$.....
	\$.....
	\$.....
		If nothing stated, \$10,000,000

(d) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate* 7 years
If nothing stated, 6 years

19 Public liability insurance (clause 12)

Part B

Annexure to AS 4904—2009

- Amount per occurrence and in the aggregate shall be not less than \$50,000,000.00
- 20 Not used
- 21 *Qualifying causes of delay*, additional causes of delay for which *EOT's* will be granted (page 2, paragraph (b)(ii) of clause 1 and subclause 22.2) None
- 21A Maximum daily rate for delay costs (clause 22.5) [redacted] per day (excl GST).....
- 22 *Other compensable causes* None
- 22A Time for payment claims Monthly, on the last day of each month
- 22B Time and place for payment (subclause 24.2) Payment must be made within 15 business days after the relevant payment claim is made.
Payment to be made at the *Client's* address or by EFT
- 23 Interest rate on overdue payments (subclause 24.3)8.....% per annum
If nothing stated, the 90 Day Bill rate + 2% per annum
- 24 Payment of workers and *contractors*. Is clause 25 to apply? (clause 25) Yes
If neither deleted, the clause shall not apply

-
- 25 Reference date for the purposes of the *Security of Payment Act* after the date of termination (clause 26.10(b)) The date shall be the date upon which the *Managing Contractor* would have been entitled to make the next progress claim under subclause 24.1 if the *Contract* had not been terminated.

The Services

(clause 1—definition of *Services*)

Overview of the Services

1. The *Services* required under the *Contract* require the *Managing Contractor* to arrange, manage and coordinate (including prioritising buildings by complexity, size, location and other factors) the whole of the *Remediation Program* called “*Project Remediate*”, but not to carry out any triage/investigation, design or remediation works itself.
2. The *Managing Contractor* will arrange for a panel of triage contractors, *Remediation Contractors*, *Superintendents* and *Independent Assurers* from which the *Managing Contractor* will obtain proposals to present and recommend to the *Owners Corporations* for each *Project*.
3. All physical investigation, triage and design work will be carried out by *contractors* and *consultants* engaged by the *Managing Contractor* in the first instance and novated to the *Owners Corporations* (the novation agreement of which will be facilitated by the *Managing Contractor*) if the *Projects* proceed.
4. All remediation construction work will be carried out by a construct-only *Remediation Contractor* engaged directly by the relevant *Owners Corporation*, recommended and facilitated by the *Managing Contractor*.
5. The *Owners Corporations* will also engage directly (under a contract in the form reasonably required by the *Client*) an *Independent Assurer* and the *Superintendent*, recommended and facilitated by the *Managing Contractor* for the purposes of the *Remediation Contract*.
6. It is intended that the *Remediation Works* will be restricted to the buildings' facades which includes any building façade elements inside a fixed envelope [for example 500mm], measured from the external face of the building and determined on a case by case basis but excludes any structural defects. Any serious structural defects are to be referred to the relevant consent authority and/or NSW Fair Trading.
7. The *Managing Contractor* is to carry out the following tasks and functions:

Program Planning and Global Façade Consultant

8. The *Managing Contractor* has been provided with details of all currently known buildings that are to be remediated and will devise a plan as to the best and most effective manner to complete the *Remediation Program*. This includes considerations of the complexity, size and location of buildings, the stage of readiness of the *Owners Corporations* for the remediation work to join the *Remediation Program*, whether there is a *Remediation Order* issued by the local council or other relevant enforcement *Authority*, and other relevant information.
9. The *Managing Contractor* must:

-
- (a) establish an efficient and effective *Managing Contractor* project team with the appropriate mix of personnel with the expertise, qualifications, and experience to deliver the scope of *Services*;
 - (b) appoint a *Global Façade Consultant*, which shall be a façade engineer pursuant to the form of agreement provided in Annexure Part A;
 - (c) procure panels of the following providers in a cost-effective manner who will have regard to all relevant compliance issues, will be cost-effective, and will have skill, qualification and expertise:
 - (i) triage or investigation contractors who will:
 - (A) collect all available information and records about the building and review them;
 - (B) examine and assess the current cladding;
 - (C) identify the builder or developer involved in the installation of the current cladding;
 - (D) perform inspections (lift ups) of the current cladding and any necessary testing including, with the permission of the *Owners Corporation*, destructive testing;
 - (E) arrange for destructive and non-destructive inspections and testing (if required) by triage contractors to investigate and inform on the existing cladding of a *Project* prior to its *contractors* carrying out the design;
 - (F) everything else necessary for an effective triage of the *Project* so that there are as few unknowns as possible when the design of the remediation solution is being undertaken;
 - (ii) design teams (architects or building designers, engineers and estimators) who will undertake design and estimating functions including:
 - (A) reviewing of *Project* information and records, site inspection and invasive/destructive test results;
 - (B) developing design solutions taking into consideration the pattern book;
 - (C) providing a *Building Compliance Declaration* in relation to the completed *Remediation Works*;
 - (iii) *Remediation Contractors* to perform the *Remediation Works* in accordance with the declared designs on the basis of a construct only *Remediation Contract*, who (using the form of contracts provided in Annexure Part R of this *Contract*, which is to be finalised in accordance with paragraph 59) will be called on to carry out the *Remediation Works* and associated works and services in respect of each *Project*;
 - (iv) appropriate *consultants* to perform the roles of *Superintendents* under the *Remediation Contracts*;
 - (v) *Independent Assurers* to provide *Remediation Assurance Certificates*;

- (d) arrange for and establish a panel of testing laboratories to undertake testing of materials and systems referred by the *Cladding Product Safety Panel* and/or the *Global Façade Consultant*, to confirm their suitability for use in the *Remediation Works*;
- (e) establish an arrangement that is *Program* wide for the recycling of the removed cladding that is sustainable and cost effective; and
- (f) perform the tasks set out in the *Managing Contractor's* 90 day plan submitted with its tender.

The Global Façade Consultant

10. The *Global Façade Consultant* will be engaged by the *Managing Contractor* under the form of agreement set out in Annexure Part O (which is to be finalised in accordance with paragraph 59).
11. The *Global Façade Consultant* will provide an overarching role for the *Remediation Program* and will guide and advise on the design and procurement of the façade remediation working together with the *Managing Contractor*. The *Global Façade Consultant* will not provide any design services to any one *Project* directly.
12. The *Global Façade Consultant* will prepare a pattern book for the use of, and guidance to, the design teams and *Remediation Contractors* for each individual building. In preparing the pattern book, the *Global Façade Consultant* will have regard to the recommendations of the *Cladding Product Safety Panel* and the progressive triage reports as they are prepared for the buildings under the program. Design teams will be selected from the panels and will ensure the designs that they prepare have regard to the pattern book prepared by the *Global Façade Consultant*.
13. It is anticipated that *Global Façade Consultant* will provide the following work outputs:
 - (a) develop a pattern book of common scenarios and solutions that can be used by *Project*-specific design teams so that common scenarios do not have to be designed from start, and developing standard/indicative details and/or design principles;
 - (b) receive information from the *Managing Contractor* and any of its *contractors* of each *Project* and take that information into account when evolving the pattern book and keeping it up to date. It may also be necessary for the *Global Façade Consultant* to review designs from *project*-specific designers but the *Global Façade Consultant* will not be approving these designs;
 - (c) provide advice throughout the life of the program to the *Managing Contractor* and the panels of contractors engaged through the *Remediation Program*;
 - (d) develop guidelines for façade remediation design incorporating the advice of the *Cladding Product Safety Panel*;
14. The engagement will be for a term of 2 years plus up to 12 further months and may be appointed by the *Client* as principal and subsequently novated to the *Managing Contractor*.
15. The *Global Façade Consultant* should have:
 - (a) the qualifications of a façade engineer;
 - (b) a demonstrated ability and sound knowledge of façade design, and demonstrated capability in dealing with issues which may arise in structural, sustainability,

acoustic, fire, wind, access and mechanical engineering to ensure the façade design outcomes have minimal impact on other key engineering aspects of the building;

- (c) extensive experience in a range of façade systems with the ability to diagnose scenarios of any given *Project* and understand the principles for which that cladding material is being used;
- (d) The organisation should have at least two nominated individuals dedicated to the *Global Façade Consultant* role. They should hold a Master's Degree in a relevant engineering discipline with 10+ years of façade specific experience. They are or will be capable of being chartered with Engineers Australia, the National Engineer's Register (NER) for structural or mechanical engineering and/or the NSW Register of Building Practitioners in a relevant class of registration;
- (e) capability to perform detailed engineering calculations and the analysis required for various cladding materials and façade designs, together with an understanding of the key loading requirements for façade such as wind, maintenance, self-weight, earthquake etc.

16. The design areas to be covered by *Global Façade Consultant* including:

- (a) Weathertightness;
- (b) Structural behaviour;
- (c) Interaction with the primary structure;
- (d) Thermal gains and losses through the façade;
- (e) Energy efficiency codes;
- (f) Condensation;
- (g) Ventilation;
- (h) Material durability;
- (i) Fire behaviour of the building envelope;
- (j) Acoustic performance;
- (k) Safety and serviceability during construction and following completion ;
- (l) Security;
- (m) Maintenance, buildability and installation;
- (n) Façade inspection and remediation;
- (o) Access;
- (p) Testing.

Engagement with the Owners Corporation

17. The *Managing Contractor* will undertake engagement (including attending meetings as required or providing information using a social media platform) with the *Owners Corporations* in relation to the *Remediation Program* so that the *Owners Corporations*

- understand the *Remediation Program* including that it is limited to the building façade and will not include other defects remediation, to provide assurance that the works will be carried out by properly qualified providers who will provide a high level of certainty as to the contract price that the *Owners Corporation* will have to borrow funds to pay.
18. To the extent that there is any requirement to attend the *Project* the *Managing Contractor* must ensure that the *Owners Corporation* is informed and that the persons on site meet high standards of behaviour, over and above working safely. For the purposes of the initial triage and investigation, the *Managing Contractor* must ensure that the *Owners Corporation's* approval is obtained to any destructive testing.
 19. The *Managing Contractor* will ensure that issues raised by *Owners Corporations* or adjoining property occupiers and owners are resolved, that the work is carried out in a safe manner, that all persons on site comply with work health and safety laws and also behave in a safe and appropriate manner.
 20. The *Managing Contractor* will also liaise with the strata manager for any *Owners Corporations* and local councils in relation to all necessary aspects of the completion of the *Remediation Program*.

Planning and Triage Phase for each Project

21. The *Managing Contractor* warrants that it has undertaken a comprehensive inspection of the indicative information on the list of buildings that the *Managing Contractor* inspected in the tender data room. If there are additional buildings, the *Managing Contractor* will undertake a comprehensive review of the additional buildings.
22. For each *Project* the *Managing Contractor* will:
 - (a) prioritise remediation of *Projects*, with largest and most risky being first as far as possible;
 - (b) collect all available information and records about each *Project*;
 - (c) engage a triage contractor to undertake triage and investigation of all aspects of each *Project*;
 - (d) the triage contractors are to be engaged by the *Managing Contractor* under the form of agreement set out in Annexure Part Q (which is to be finalised in accordance with paragraph 59);
 - (e) based on the *Building Requirements* and information published by the *Cladding Product Safety Panel*, manage relevant contractors(s) to develop a best practice *Project Brief* for each *Project*. We expect the triage contractor will be engaged to prepare the *Project Brief* in accordance with the pattern book prepared by the *Global Façade Consultant* for the purpose;
 - (f) if requested, have that *Project Brief* reviewed and approved by *Client*, the *Cladding Products Safety Panel* and/or FRNSW, as required by *Client*;
 - (g) liaise with the appropriate *Authority* (e.g. council or the NSW government) to obtain the relevant *Remediation Orders* or approval;
 - (h) identify suitable insurances and insurance policy minimum set of terms that the *Remediation Contractors* will be required to put into place;
 - (i) advise on risk assurance and audit requirements;

Audit and financial management

- (j) The *Managing Contractor* will consult with the *Client* to establish an audit program to validate the payment of monies and services provided by the *Managing Contractor* and the *consultants* and *contractors* that will be involved in the *Remediation Program* for the purposes of avoiding improper or illegal dealings.

Approach to Owners' Corporations

- 23. Manage each *Project* in respect of each *Owners Corporation* in accordance with the following general order of events:
 - (a) engagement about participating in the *Remediation Program*;
 - (b) inform the *Owners Corporation* about access to the building for triage and investigation, collect information and records, if any, held by the *Owners Corporation* and procure consent for any destructive testing;
 - (c) *Managing Contractor* will engage a triage contractor for the *Project*;
 - (d) triage commences as set out in the Planning and Triage Stage above. Each *Owners Corporation* will be asked to provide relevant information about the building and the strata scheme;
 - (e) the *Managing Contractor* is to ensure that each *Owners Corporation* signs the deeds in the forms in Annexure Parts U and V (which are to be finalised in accordance with paragraph 59 or otherwise approved by the *Client*) which provides, amongst other things, that the *Owners Corporation's* licence to use any intellectual property arising out of or in connection to the *Remediation Program* that relates to the relevant *Owners Corporation's* building will be subject to:
 - (i) the *Owners Corporation* indemnifying the *Client* in respect of any and all liability arising out of or in connection with the *Remediation Program*;
 - (ii) the *Owners Corporation* complying with the terms any *Remediation Contract* it enters into; and
 - (iii) arrange for *Owners Corporations* to enter into all the required documentation and agreements for the Program.
 - (f) the *Managing Contractor* will procure a design team in relation to the *Project*;
 - (g) the design *consultants* are to be engaged by the *Managing Contractor* under the form of agreement set out in Annexure Part P (which is to be finalised in accordance with paragraph 59);
 - (h) the *Managing Contractor* will procure two concept designs (30% complete designs) from the *Project's* design team for the *Remediation Works* in respect of each *Project*;
 - (i) the quantity surveyor forming part of each design team will price the cost of proceeding with the *Remediation Works* pursuant to each concept design (30% completed);
 - (j) the *Managing Contractor* will present the concept designs and the quantity surveyors' prices for proceeding with the *Remediation Works* according to each design with the *Owners Corporation*. The *Owners Corporation* will pick its preferred design or otherwise will cease its involvement with the *Remediation Program*;

- (k) the design team will develop the design to a 'for construction' version that complies with all *legislative requirements*;
- (l) tenders will be sought from *Remediation Contractors* based on the 'for construction' designs on the basis of the construct-only contract in the form contained in Annexure Part R (which is to be finalised in accordance with paragraph 59);
- (m) A lump sum *Remediation Contract* will be presented to the *Owners Corporation* and the *Owners Corporation* at this point will be asked to decide whether to proceed with the loan and the *Remediation Works*;
- (n) If an *Owners Corporation* proceeds, the Managing Contractor will ensure:
 - (i) the *Owners Corporation* signs a loan agreement and any associated instruments;
 - (ii) the *Owners Corporation* enters into a *Remediation Contract* in the form of Annexure Part R (or otherwise approved by the *Client*) for *Remediation Works* to be completed in accordance with the 'for construction' version of the design chosen by the *Owners Corporation*;
 - (iii) the intellectual property in the design chosen by the *Owners Corporation* is novated from the *Client* to the *Owners Corporation*;
 - (iv) the *Owners Corporation* enters into a superintendent services agreement in the form provided by the *Client*;
 - (v) the *Owners Corporation* enters into an agreement with an *Independent Assurer* in the form provided by the *Client*;
 - (vi) that the *Remediation Works* progress as set out in this *Contract* amongst other *documents*.

Design Phase

- 24. Engage with the *Global Façade Consultant* to ensure best practice for the design and the works and ensure compliance with the *Project Brief*;
- 25. manage the delivery of the design for the works by contracting with the design *contractors*;
- 26. ensure that the pattern book of common designs maintained by the *Global Façade Consultant* is utilised in the design so as to avoid reinvention of design across *Projects*. *Client* envisages several standard configurations will be developed, which are available to *Project* designers to document the *Project* designs);
- 27. ensure all design accords with recommendations of the *Cladding Product Safety Panel*;
- 28. liaise closely with the respective *Owners Corporations*, including providing design options, to arrive at suitable design solutions, agreeable to the relevant *Owners Corporation*;
- 29. if necessary, liaise with any relevant industry or participants' organisations, such as Façade Contractors Australasia, *Owners Corporation* Network, Strata Communities Australia, AMCA (noting that the *Client* does not endorse or recommend any particular organisation);
- 30. develop and deliver the *design documents* to the level of 'approved for construction';

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31. ensure compliance by the *contractors* with all of the requirements of the *Design and Building Practitioners Act 2020 NSW*;
 32. ensure making and uploading of each *Design Compliance Declaration* and *Principal Compliance Declaration*;
 33. ensure all of the *design documents* are uploaded to the mandatory NSW Planning Portal or any similar approved platform or digital location advised by the *Client*.

Pre-construction Phase

34. ensure the relevant *Owners Corporations* appoint an *Independent Assurer* for each *Project*. It is anticipated that the *Remediation Order* will dispense with the requirements to obtain development consents and construction certificates in most, but not all cases;
35. where an *Owners Corporation* elects to proceed with engaging a *Remediation Contractor*, arrange and effect the novation of the design *contractors* to the relevant *Owners Corporation* by way of execution of the novation deeds, which will include the assigning of warranties and *intellectual property rights* for the benefit of the *Owners Corporation*;
36. secure the *contractors* to warrant the design and *intellectual property rights* for the benefit of the *Owners Corporation*, by way of execution of a novation deed;
37. prepare a RFT document and go out to tender for the remediation works for each *Project*;
38. obtain tenders from a select panel of remediation contractors for lump sum prices to carry out the façade rectification building works on the basis of the construct only template amended AS4000 building contract contained in Annexure Part R (which is to be finalised in accordance with paragraph 59);
39. manage the transition of designs, intellectual property and design warranties to the *Owners Corporations*;
40. procure *Superintendent* services for the delivery of the *Remediation Works* on each *Project* based on the form of contract set out at Annexure Part S (which is to be finalised in accordance with paragraph 59);
41. manage the preparation and delivery of any training courses stipulated by the *Client* for *Owners Corporations* and strata managers, designers, *Remediation Contractors*, triage, *Superintendents*, *Independent Assurers*;
42. ensure when procuring all *contractors* required for the performance of the *Services* and *Remediation Contractors* that those persons understand the scope of works required of them and warrant that they have sufficient experience in relation to the works and the pricing;
43. develop and ensure compliance with an occupancy plan for the building works on a live (occupied) site;
44. ensure payment arrangements directing payments directly from *Owners Corporations* to contractors one level down from the *Remediation Contractor* for contracts above \$50,000 are adhered to;
45. manage the *Remediation Program* so that any one *Remediation Contractor*, *Superintendent*, *Assurer*, *consultant* or *contractor* is not excessively involved in the *Remediation Program*, being no more than 20% of the book allocated to the *Remediation Program* at any one time (unless otherwise permitted in writing by the *Client*).

Construction Phase

46. The *Managing Contractor* is to act as the indemnified agent of each *Owners Corporation* in respect of the following:
- (a) termination of contracts, including those with the *Remediation Contractor* and the *Superintendents*;
 - (b) engaging in dispute resolution processes on behalf of *Owners Corporations* ;
 - (c) ensuring that the *Owners Corporations* do not:
 - (i) terminate or vary any *Remediation Contract* and/or any contract with a *Superintendent*; or
 - (ii) vary or amend any design or *Contract Materials* in respect of any *Remediation Contract*,
- and procure that each *Owners Corporation* executes a deed to this effect.
47. ensure that its *contractors* will be available at the request of the *Owners Corporation* to advise on the design provided under the *Remediation Program* when a risk under a *Project* is uncovered;
48. keep a record of what insurances each *Remediation Contractor* has in place (that can be shared with *Owners Corporations* in due course);
49. ensure appropriate approval of the relevant consent authority is in place for the *Remediation Works* (e.g. a Fire Safety Order) and obtain confirmation that the *Project* when completed complies with the *Remediation Order* and any relevant approval conditions;
50. the overall arrangement will require the following, which the *Managing Contractor* will be responsible for ensuring, both under the *Contract* (with the *Client*) and under each *Remediation Contract*.
- (a) critical stage inspections, including by *consultants* and the *Independent Assurer*;
 - (b) fire safety inspections and certificates by assurers;
 - (c) the work to be performed under each *Remediation Contract* has the benefit of the statutory warranties;
 - (d) certificate of practical completion;
 - (e) provision of the notices required under Part 2 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*;
 - (f) occupation certificate if appropriate;
 - (g) defect rectification;
 - (h) final certificate;
 - (i) *Building Compliance Declaration* as required by the *Design and Building Practitioners Act* and maintenance manuals to be provided to the *Owners Corporation* at the 'date of practical completion' of the relevant *Project* and uploaded to the NSW Planning Portal;

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- (j) administer the handover process at the conclusion of each *Project*;
 - (k) compliance with the recommendations of the *Cladding Product Safety Panel*;
 - (l) making and uploading of each *Design Compliance Declaration* and *Principal Compliance Declaration*;
51. manage the performance of the façade remediation contractors, design team (architects, building designers, engineers, estimators), *Independent Assurers* and *Superintendents*;
52. throughout the whole of the *Project* cycle ensure:
- (a) compliance by the *contractors* and the *Remediation Contractors* with all of the requirements of the *Design and Building Practitioners Act 2020 NSW*;
 - (b) *Remediation Contractors* construct in accordance with the approved and declared designs and do not modify the designs or "innovate" without first obtaining design approval and a fresh declaration of any variation that is required;
 - (c) compliance by the *Remediation Contractor* with the *Registered Design*;
 - (d) proper certification that the works are compliant; and
 - (e) provide dashboard reporting to the *Client* as required including but not limited to:
 - (i) quality assurance;
 - (ii) compliance of *Remediation Works* with *Registered Design*; and
 - (iii) forecast and actual costs;
 - (iv) reports to *Owners Corporations* of work scope and budgets;
 - (v) consents received to proceed with work;
 - (vi) establishment and usage of panel of suitable qualified designers;
 - (vii) establishment and usage of panel of suitable building practitioners ;
 - (viii) establishment and usage of panel of suitable contractors to perform superintendent role;
 - (ix) establishment and usage of waste product reuse, recycle and disposal arrangements;
 - (x) approved designs loaded to the NSW Planning Portal;
 - (xi) ensure compliance with advice of the *Cladding Product Safety Panel* on preferred products and installations;
 - (xii) volume purchasing pricing and expenditure;
 - (xiii) amount (m2) and cost of cladding materials removed;
 - (xiv) amount (m2) and cost of cladding replacement materials procured and installed;
 - (xv) tender data (open, closed, awarded-including contractor profiles);

- (xvi) possessions of site and completions and management of issues;
 - (xvii) Fire & Rescue NSW compliant certificates of compliance;
 - (xviii) insurer acknowledgments of compliant remediation;
 - (xix) budgeting vs. actual cost information;
 - (xx) WHS incidents;
 - (xxi) workforce profile;
 - (xxii) % completion of each site.
 - (xxiii) In respect of every building product used on every *Project* in connection with the *Remediation Program*, reporting data to the Client's building assurance platform provider about all safety and installation information and the details of each installer of each product;
- (f) ensure proper and customer-focussed site possession by the *Remediation Contractors*. Employ a system to regularly review and update site possessions;
 - (g) ensure that payments under the *Remediation Contracts* of monies owing by the *Remediation Contractor* to contractors are made directly by the *owners corporations* to the contractors (such payments to be in satisfaction of the *owners corporation's* obligation to pay the *Remediation Contractor*);
 - (h) set up, staff, monitor and provide reports on, a 24/7 customer service support platform e.g. using, for example, a suitable social media platform for receiving and responding to notifications, queries and complaints from residents and owners;
 - (i) monitor defects liability periods in each *Remediation Contract*;
 - (j) develop and ensure implementation of a global, sustainable and cost effective solution for waste collection, recycling and reuse, across all *Projects* in the *Remediation Program* and provide reporting in relation to same;
 - (k) obtain data about each *Project* and provide that data to the *Client's* or its nominee for the purposes of a Building Assurance Solution. The data to be collected and provided will include data in respect of products installed, the installation method and safety.

Completion Phase

- 53. Obtain from the *Independent Assurer* confirmation that the *Project* when completed complies with the *Remediation Order*, approval conditions (if any), *Program Requirements* and *Legislative Requirements*;
- 54. Obtain from the council or relevant consent authority \ confirmation that the *Project* when completed complies with the *Remediation Order* or approval conditions (if any);
- 55. notify FRNSW when the *Remediation Works* have been completed in respect of each *Project*;
- 56. ensure a fire safety certificate (required for the council to provide compliance with the *Remediation Orders*) is obtained and lodged with the council and FRNSW (if this is required);

Engagement with loan provider

57. The *Managing Contractor* will liaise with the loan originator and servicer (**LOS**) and keep the LOS up to date with the status and contract value for each *Project*, including by providing quarterly reports.

Transition Out Activities

58. During the final 6 months of the *Term* of the *Contract* (the *Transition Out Period*), the *Managing Contractor* will:
- (a) manage any remaining defect liability periods under each *Remediation Contract* in respect of each *Project*;
 - (b) demobilise the *Managing Contractor's Program* team and office; and
 - (c) arrange for the orderly handover of all relevant documentation in respect of the *Program* to the *Client*.

Standard Forms of Agreement

59. The standard forms of agreement for the *Global Façade Consultant*, designers, triage contractor, *Superintendent*, assurer and remediation contractor, as well as the multi-partite agreement with the *Owners Corporations*, contained in Annexure Parts O to U are the initial forms of contract and these are to be developed jointly by the parties, and with the final versions to be agreed by the *Client* prior to execution.

Customer Service Surveys

60. Customer satisfaction surveys (questions and wording to be developed and agreed between the *Parties*) will be issued by the *Managing Contractor* to each *Owners Corporation* via 'surveymonkey' (or equivalent, as agreed between the *Parties*). The survey will be issued to the authorised representative of the *Owners Corporation* or delegate. The customer satisfaction surveys will, as a minimum, ask the *Owners Corporations* to rate their satisfaction with the Program by providing a score out of 10.
61. The *Managing Contractor* will issue the customer satisfaction surveys to the *Owners Corporations* following practical completion of the relevant Project or at intervals nominated by the Client, but not more than 3 times during the design and construction phase for the Project.
62. The *Managing Contractor* will ensure that the results of the customer satisfaction surveys are returned directly to the *Client*.
63. The customer satisfaction surveys will be used (non-exclusively) for the purposes of KPI1 in the KPI regime set out in Annexure Part C. If more than one customer satisfaction surveys is issued to any *Owners Corporation*, an average of the results will be taken for the purposes of the KPI regime.

Learning

64. The *Managing Contractor* must ensure that a representative who is the (or a) responsible person with operational control over the relevant services or works, from all *consultants* and *Remediation Contractors* is required to complete the following 4 learning modules offered through the Construct NSW Learning Management System: "Possession of site", "Australian Standards", "Design & Building Practitioner Act", and "Project Remediate: Understanding the Program".

Part C

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Fee Schedule

1.1 Payment

The *Client* will pay the *Managing Contractor* as follows:

(a) Fee

The *Fee* payable by the *Client* to the *Managing Contractor* in accordance with clause 24 and this Annexure Part C is the fixed lump sum amount of **\$53,628,344** (excluding GST).

The above *Fee*:

1. is based on the 213 buildings nominated by the *Client* as set out in the Project Remediate Data Room as at the date of this *Contract*; and
2. contains a fixed costs component of **\$27,179,954** (excluding GST) which is not subject to change for a reduction in the number of buildings,

with the balance of the *Fee* being subject to:

3. clause 23 for increases and reductions in the number of buildings in the *Remediation Program*; and
4. the KPI Regime set out below.

If the *Client* exercises its one year option right in clause 3.2 of the *Contract*, the pre-agreed addition to the *Fee* is \$1.

(b) Reimbursable costs

On a reimbursable cost basis for reasonably incurred direct costs, being (only) the reasonably incurred direct third party costs of its *consultants* in carrying out the *Remediation Program* (including the triage *consultant*, the global façade *consultant* and the other design *consultants*) provided written approval is sought from the *Client* in accordance with clause 8.

1.2 Timing and Additional Documentation

Payment by the *Client* will be made monthly and the *Managing Contractor* will, prior to any payment made by the *Client*, be required to provide to the *Client*:

- (a) the *Program Report* as described in clause 37;

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- (b) supporting materials as set out in the Contract and otherwise satisfactory to the Client; and
 - (c) a valid tax invoice.

1.3 Contents of Claim

The claim for payment must:

- (a) in respect of the *Services*:
 - (i) identify the *Services* to which the payment claim relates;
 - (ii) separately identify each *variation*;
 - (iii) set out the amount of the sum claimed, and how that amount was determined; and
 - (iv) be accompanied by a written statement and a statutory declaration in the forms set out in Annexures Part F and Part G; and
- (b) in respect of reasonably incurred direct costs:
 - (i) identify each disbursement claimed;
 - (ii) state the amount of the disbursement claimed; and
 - (iii) be accompanied by valid tax invoices and receipts for payment; and
- (c) to be valid, tax invoices must show:
 - (i) the amounts claimed as exclusive of GST;
 - (ii) the GST claimed as a separate component;
 - (iii) the *Client's* name and address; and
 - (iv) quote a valid Australian Business Number of the *Managing Contractor*. Where a tax invoice does not contain a valid Australia Business Number, the *Managing Contractor* acknowledges and agrees that the *Client* may withhold an amount required by law of the amount claimed in the tax invoice on account of withholding tax.

1.4 KPI Regime

The *Fee* and relevant payments made to the Managing Contractor by the Client will be adjusted in accordance with the following KPI regime:

- Each *Project* is assessed for customer satisfaction, as set out in Annexure Part B, paragraphs 60-63, and a score is given out of 10.
- The target minimum level of service is an 8/10 satisfaction rating.

Part C

Annexure to AS 4904—2009

- Those *Projects* that fail to attain a minimum 8/10 satisfaction rating get a KPI rating score of 1 unit. Those that attain a rating of 8/10 or better get a KPI rating score of 0.
- At the completion of the *Term*, the sum of the rating scores is divided by the number of *Projects* that proceeded to *Practical Completion*. That percentage is then applied to the KPI1 At-Risk Amount, ARA_1 , and the product is deducted from the *Fee*.

Example (only):

Customer service is assessed as set out above and in Annexure Part B, and each *Project* receives a customer service score out of 10.

Assume a total of 180 *Projects* assessed.

Assume the total number of *Projects* that do not achieve minimum 8/10 score is 40 *Projects* (i.e. 40 *Projects* get a KPI rating score of 1 (and 140 *Projects*

- *Projects* which do not get a *Remediation Assurance Certificate* get a rating score of 1. Those that do get a rating score of 0.
- The sum of the rating scores for all *Projects* that proceeded to construction is divided by the number of *Projects* that proceeded to construction. That percentage is then applied to the KPI2 At-Risk Amount, ARA_2 , and the product is deducted from the *Fee*.

Example (only):

Assume a total of 180 *Projects*.

Assume the total number of *Projects* that do not get a *Remediation Assurance Certificate* is 5 *Projects* (i.e. 5 *Projects* get a KPI rating score of 1 (and 175 *Projects* get 0).

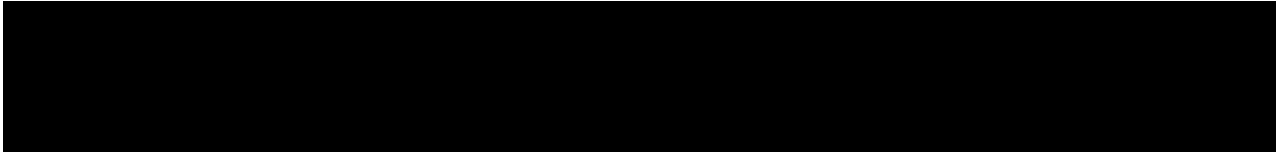
- A representative who is the (or a) responsible person with operational control over the relevant services or works, from all *consultants* and *Remediation Contactors* is required to complete the following 4 learning modules offered through Construct NSW, Learning Management System: *Possession of site*, *Australian Standards*, *Design & Building Practitioner Act*, and *Project Remediate*.

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- For each company that fails to achieve the above requirement, a score of 1 will be given. For each of those companies that do complete the 4 modules, a score of 0 will be given.
 - The sum of the rating scores for all companies which were engaged by either the *Managing Contractor* or the *Owners Corporation* is divided by the total of all companies engaged by either the *Managing Contractor* or the *Owners Corporation*. That percentage is then applied to the KPI At-Risk Amount, ARA₃, and the product is deducted from the *Fee*.

Example (only):

Assume a total of 250 companies engaged by either the *Managing Contractor* or the *Owners Corporation*.

Assume the total number of those companies that do not have at least one required representative complete the 4 module is 20 companies (i.e. 20 companies get a KPI rating score of 1 (and 160 companies get 0).

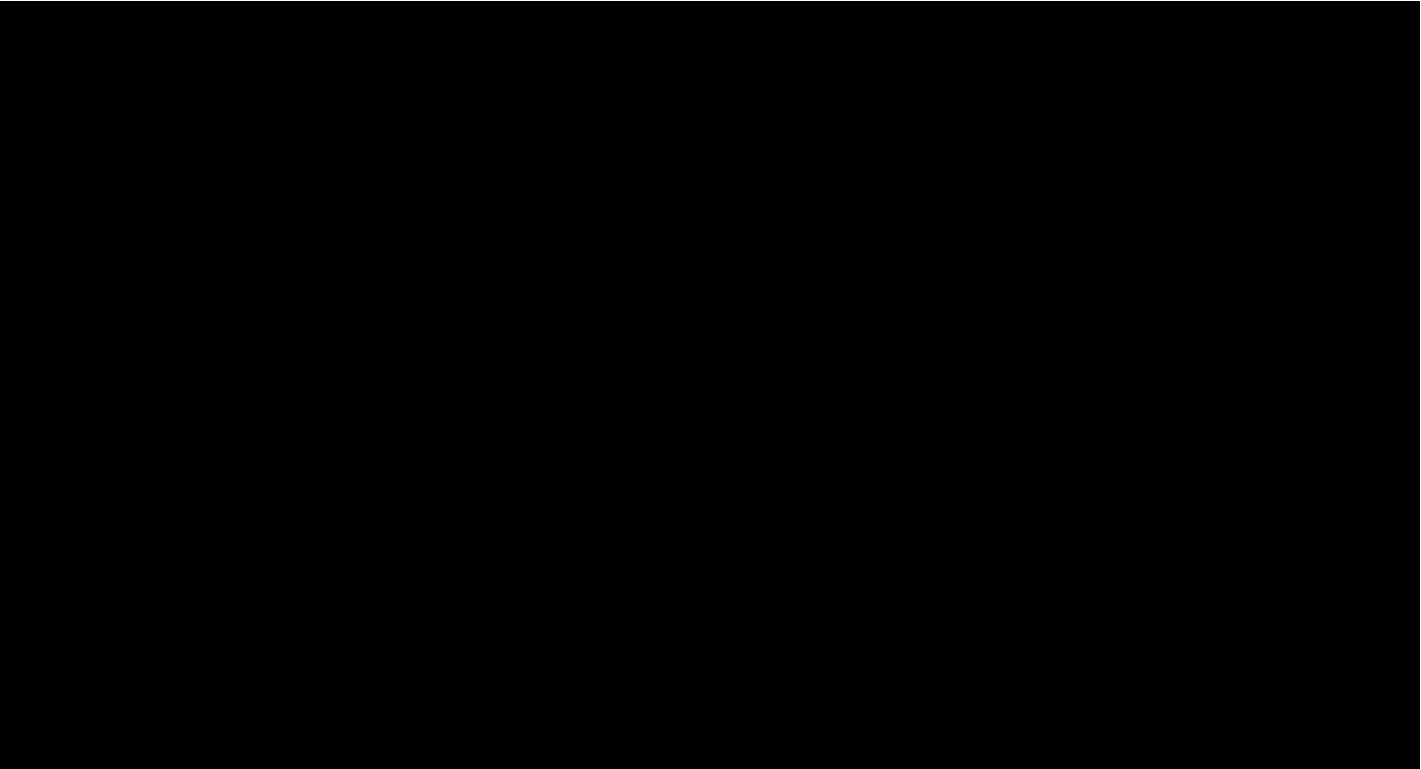


The parties agree that this KPI Regime is not a penalty. The KPI At-Risk Amounts are not otherwise payable under this *Contract* except as set out above to the extent the KPIs are achieved. The *Managing Contractor* agrees that it will not have any *Claim* relating to the enforceability of the KPI Regime or the characterisation of any of these KPI provisions as a penalty.

If the total KPI deduction from the *Fee* is greater than the amount of the *Fee* left to be paid by the *Client* to the *Managing Contractor*, the difference will be an amount immediately due and payable by the *Managing Contractor* to the *Client*.

1.5 Additional information

For the purposes of payments and assessment of *variations*, the following information is included:



Part C

Annexure to AS 4904—2009



category			
storeys	m2	Size	Complexity
	1954	Medium	Highest
	59	Medium	Least
	5445	Largest	Highest
	489	Medium	Medium
0	37	Largest	Medium
	1445	Medium	Medium
1	2618	Largest	Highest
	944	Medium	Medium
	1980	Medium	Highest
	534	Medium	Medium
	2043	Largest	Highest
	1488	Medium	Medium
	311	Medium	Medium
	931	Largest	Highest
	1684	Smallest	Medium
	320	Medium	Medium
	391	Largest	Highest
	178	Medium	Medium
	2076	Medium	Highest
	429	Medium	Medium
	1159	Medium	Medium
	1825	Smallest	Medium
	7052	Medium	Highest
0	2524	Largest	Highest
	210	Medium	Medium
	2412	Medium	Highest
	716	Medium	Medium
	461	Medium	Medium
	26	Medium	Least
	1711	Medium	Highest
	801	Medium	Medium
	807	Medium	Medium
	1945	Largest	Highest

	1080	Medium	Medium
	7169	Medium	Highest
	1285	Largest	Highest
	2008	Medium	Highest
	792	Medium	Medium
	673	Medium	Medium
	5555	Medium	Highest
	413	Medium	Medium
	1553	Medium	Highest
	1413	Medium	Medium
	1414	Medium	Medium
	1142	Largest	Highest
	739	Largest	Highest
	1141	Largest	Highest
	2314	Largest	Highest
	2791	Largest	Highest
	not available	Medium	Medium
	2518	Largest	Highest
	4703	Medium	Highest
	not available	Medium	Medium
	752	Medium	Medium
	1003	Medium	Medium
	2437	Largest	Highest
	5193	Medium	Highest
	845	Largest	Highest
	2390	Medium	Highest
	340	Medium	Medium
	2710	Medium	Highest
	635	Largest	Highest
	395	Medium	Medium
	5980	Medium	Highest

	2209	Largest	Highest
	2572	Largest	Highest
	1655	Medium	Highest
	8826	Largest	Highest
	1423	Largest	Highest
	622	Medium	Medium
	1418	Medium	Medium
	805	Smallest	Medium
	339	Medium	Medium
	2938	Largest	Highest
	683	Largest	Highest
	Not Available	Medium	Medium
	207	Medium	Medium
	Not Available	Largest	Highest
	210	Medium	Medium
	1945	Largest	Highest
	1929	Largest	Highest
	220	Medium	Medium
	48	Medium	Least
	76	Medium	Least
	1996	Largest	Highest
	11	Largest	Medium
	1163	Medium	Medium
	4754	Largest	Highest
	2351	Medium	Highest
	7181	Largest	Highest
	7329	Largest	Highest
	4260	Smallest	Medium
	1163	Medium	Medium

63	4754	Largest	Highest
20	5864	Largest	Highest
7	128	Medium	Medium
63	4754	Largest	Highest
5	947	Medium	Medium
7	705	Medium	Medium
8	384	Medium	Medium
3	3170	Smallest	Medium
3	166	Smallest	Least
5	2036	Medium	Highest
5	165	Medium	Medium
5	52	Medium	Least
5	1193	Medium	Medium
8	79	Medium	Least
8	754	Medium	Medium
8	710	Medium	Medium
8	372	Medium	Medium
5	1196	Medium	Medium
6	57	Medium	Least
5	423	Medium	Medium
5	303	Medium	Medium
6	458	Medium	Medium
6	4	Medium	Least
8	783	Medium	Medium
15	1388	Largest	Highest
8	751	Medium	Medium
9	161	Largest	Medium
9	272	Largest	Highest
6	3718	Medium	Highest
8	467	Medium	Medium
6	365	Medium	Medium
4	1098	Medium	Medium
6	223	Medium	Medium
15	2265	Largest	Highest
8	792	Medium	Medium

5	326	Medium	Medium
12	1728	Largest	Highest
8	3714	Medium	Highest
13	800	Largest	Highest
5	1008	Medium	Medium
9	87	Largest	Medium
18	7024	Largest	Highest
15	977	Largest	Highest
4	346	Medium	Medium
5	1656	Medium	Highest
19	181	Largest	Medium
18	3609	Largest	Highest
12	2168	Largest	Highest
4	292	Medium	Medium
6	999	Medium	Medium
4	575	Medium	Medium
8	1366	Medium	Medium
9	1939	Largest	Highest
6	883	Medium	Medium
18	4125	Largest	Highest
40	4858	Largest	Highest
26	703	Largest	Highest
20	738	Largest	Highest
16	8276	Largest	Highest
7	1672	Medium	Highest
13	3680	Largest	Highest
11	1615	Largest	Highest

3	143	Smallest	Least
5	2379	Medium	Highest
15	7913	Largest	Highest
8	2279	Medium	Highest
19	254	Largest	Medium
5	15	Medium	Least
16	8276	Largest	Highest
29	4304	Largest	Highest
27	59819	Largest	Highest
4	140	Medium	Medium
17	53	Largest	Medium
5	432	Medium	Medium
14	4887	Largest	Highest
14	3772	Largest	Highest
8	1945	Medium	Highest
8	8534	Medium	Highest
5	604	Medium	Medium
9	299	Largest	Highest
6	3121	Medium	Highest
5	695	Medium	Medium
4	339	Medium	Medium
9	10939	Largest	Highest
6	153	Medium	Medium
8	2066	Medium	Highest
14	19667	Largest	Highest
9	803	Largest	Highest
4	170	Medium	Medium
7	1967	Medium	Highest

5	199	Medium	Medium
8	431	Medium	Medium
5	79	Medium	Least
4	137	Medium	Medium
5	153	Medium	Medium
4	820	Medium	Medium
5	4473	Medium	Highest
9	1121	Largest	Highest
4	350	Medium	Medium
9	1753	Largest	Highest
5	333	Medium	Medium
6	151	Medium	Medium
8	74	Medium	Least
10	134	Largest	Medium
20	3536	Largest	Highest
10	261	Largest	Medium
10	1823	Largest	Highest
15	709	Largest	Highest
18	20169	Largest	Highest
22	1084	Largest	Highest
6	687	Medium	Medium
4	372	Medium	Medium
6	542	Medium	Medium
6	830	Medium	Medium
12	364	Largest	Highest
4	234	Medium	Medium
7	289	Medium	Medium
10	Not available	Largest	Highest
4	504	Medium	Medium
4	1694	Medium	Highest

TABLE C - ESTABLISHMENT, RESOURCING AND OPERATIONAL COSTS	
REF	RESOURCE AND OVERHEAD DESCRIPTION
1	Staff costs
2	Non staff costs
	total

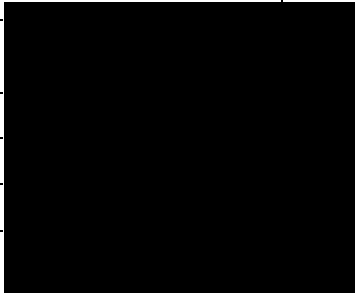


TABLE D - FORECAST CASH FLOW (incl GST)

Month
Jul-21
Aug-21
Sep-21
Oct-21
Nov-21
Dec-21
Jan-22
Feb-22
Mar-22
Apr-22
May-22
Jun-22
Jul-22
Aug-22
Sep-22
Oct-22
Nov-22
Dec-22
Jan-23
Feb-23
Mar-23
Apr-23
May-23
Jun-23
Jul-23
Aug-23
Sep-23
Oct-23
Nov-23
Dec-23
Jan-24
Feb-24
Mar-24
Apr-24
May-24
Jun-24



Part C

Annexure to AS 4904—2009

Jul-24	
Aug-24	
Sep-24	
Oct-24	
Nov-24	
Dec-24	
Jan-25	
Feb-25	
Mar-25	
Apr-25	
May-25	
Jun-25	
Jul-25	

ROLE

compliance & ass manager
contracts adminis
contracts manage
design manager
design manager -
Panel Procuremen
Programmer
Project director
Project engineer
Project manager
Project manager -
Senior contract a
Senior Programm
Senior Project eng
Triage communi manager
Triage Project m
Total extra oncos (% of out-turn pro
One off cost per b datarecording (physical hardwar installation)

Part D

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Program Schedule

Part F

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

MANAGING CONTRACTOR'S STATEMENT REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:

.....

(Business name)

of

.....

(Address of subcontractor)

has entered into a contract with ABN:

.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier

.....

(Note 3)

This Statement applies for work between: .../.../... and .../.../... inclusive,

(Note 4)

subject of the payment claim dated: .../.../.....

(Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f)** and **(g)** below. You must tick one box.
(Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated .../.../.....

(Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.

(Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

Signature

Full name

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*.

Version 2

Notes

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

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

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

-
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
 8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
 9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
 10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au

Part G

Annexure to the Australian Standard Managing Contractor agreement—Design and construct AS 4904—2009

Statutory Declaration

, (FULL NAME)

of (ADDRESS)

hereby solemnly declare and affirm that:

1. I am the representative of [NAME OF CONTRACTOR AND ACN] ("the Contractor") in the Office Bearer capacity of [POSITION] the Contractor having a contract for the management of [Project] with [NAME OF PRINCIPAL AND CAN] ("the contract") and I make the declaration to the best of my knowledge, information and belief after having made inquiries of the Contractor, its servants and agents.
2. All workers who have at any time been engaged by the Contractor or any subcontractor or supplier to the contract, have been paid all moneys due and payable to them in respect of their employment on the work under the contract.
3. All subcontractors, suppliers and consultants to the Contractor have been paid all moneys due and payable to them in respect of materials supplied and work performed for the purpose of the contract. *[with the exception of the subcontractors, suppliers consultants and amounts listed below:]

(INSERT FULL DETAILS OF SUBCONTRACTORS, SUPPLIERS AND CONSULTANTS, THE AMOUNTS OUTSTANDING AND WHETHER IN RESPECT OF MATERIALS SUPPLIED, WORK PERFORMED ETC)
- *4. From the moneys due to the Contractor, the Contractor requests [NAME OF PRINCIPAL AND ACN] to pay the following amounts to the following persons to whom they are owed:] [INSERT RELEVANT DETAILS].
5. All payroll tax and workers compensation payments have been paid by the Contractor and any subcontractor, in respect of all workers under the contract.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

Declared at [INSERT] on [INSERT]

.....
Signature

in the presence of an authorised witness, who states:

I, _____, a _____ certify the following matters concerning the making of this statutory declaration by the person who made it:

*please cross out any text that does not apply

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was

Signature of authorised witness

date

Part H

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Design Compliance Declaration

To [Managing Contractor]

WHEREAS:

- A by agreement dated [**insert date**] the *Managing Contractor* will provide to the *Client* the *Services* and the *Regulated Design* therein referred to in connection with the *Remediation Program* therein identified (“**Contract**”);
- B the [**insert consultant**] has completed the following design of the work forming part of the *Services*:
- [**insert description of design**];
- C the [**insert consultant**] has provided to the *Managing Contractor* the *design documents* listed hereunder:
- [**insert list of documents**] (“the Documents”);
- D the [**insert consultant**] is a *Registered Design Practitioner* under the *Design and Building Practitioners Act 2020*;
- E terms used in this certificate have the meaning ascribed to them in the *Contract*.

[INSERT SUBCONTRACTOR] HEREBY CERTIFIES THAT:

1. To the best of its information, knowledge and belief resulting from reasonable and careful observations, the design has been completed in accordance with the *Contract*.
2. The Documents have been prepared in the manner, and to the standard, required by the *Contract*.
3. The design contained in the Documents:
 - (a) is suitable, appropriate and adequate for the purpose stated in or reasonably ascertainable from the *Contract*;
 - (b) complies with the *Contract* and all applicable *Authority* and *legislative requirements*; and
 - (c) has been prepared having regard to the requirements set out in the *Building Requirements*.

Registered Design Practitioner’s Signature

Date

[Insert Registered Design Practitioner]

Part I

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Principal Compliance Declaration

To *Client*

WHEREAS:

- A by agreement dated [**insert date**] the *Managing Contractor* will provide to the *Client* the *Services* and the *design documents* therein referred to in connection with the *Remediation Program* therein identified (“Contract”);
- B the [**insert consultant**] has completed the following design of the work forming part of the *Services*:
- [**insert description of design**];
- C the [**insert consultant**] has provided to the *Managing Contractor* the *Regulated Design* listed hereunder:
- [**insert list of documents**] (“the Documents”);
- D terms used in this certificate have the meaning ascribed to them in the Contract.

THE *MANAGING CONTRACTOR* HEREBY CERTIFIES THAT:

1. In respect of the Documents, a *Design Compliance Declaration* has been provided by [**insert consultant**] on [**insert date**].
2. The *Design Compliance Declaration* is provided by a *Design Practitioner* for the purposes of the *Design and Building Practitioners Act 2020 NSW*.

Signature

Date

Part J

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Designer's Warranty and Intellectual Property Deed Poll

Designer's Warranty and Intellectual Property Deed Poll made at [insert place] on [insert date].

Parties [insert *consultants* – architect/building designer, engineer, quantity surveyor] ACN [insert] of [insert address] ("**Designer**")

[insert owners corporation] ACN [insert] of [insert address]
 ("**Beneficiaries**")

[insert the Client name] ABN [insert] of [insert address] ("**Client**") [**CBP**
Comment- query the utility of including the Client as a beneficiary of this Deed Poll - parties can decide this after execution of the Managing Contractor Agreement.]

Background

- A. The *Client* has entered into a contract [insert contract date, number or other identifier] (**Contract**) with the Managing Contractor [insert Managing Contractor name] ABN [insert ABN] of [insert address] (**Managing Contractor**) for carrying out the services, including design, described in that Contract.
- B. Pursuant to a subcontract (**Subcontract**), the *Managing Contractor* in turn subcontracted part of the Services to the *Designer* (**Subcontract Services**).
- C. The Designer has prepared design for the *Project* (**Design Documents**).
- D. In return for the *Client* allowing the *Subcontract Services* to be performed, the Designer agrees to give the warranties, indemnities and other promises in this Deed for the benefit of the *Client* and the *Beneficiaries*.
- E. Any term used in this Deed Poll which is defined in the *Contract* has the meaning given to that term in that *Contract*.

1. Warranties

1.1. Warranties

The Designer warrants to the *Client* and the *Beneficiaries* that the *Subcontract Services* (including any *design documents*):

- (a) have been prepared by appropriately qualified and experienced staff;
- (b) have been prepared to the standard of skill, care and diligence that would be expected of a skilled and competent professional designer preparing similar *design documents* for projects of a comparable nature to the *Project*;
- (c) are free of errors and have been coordinated with designs prepared by other designers engaged in respect of the *Project*;
- (d) comply with the *legislative requirements*;
- (e) are fit for the purposes for which the *Project* is required; and
- (f) are suitable for use, without amendment, for the construction of the *Project*.

1.2. Warranties separate

Each of the warranties in this deed:

- (a) is separate and unaffected by the invalidity or unenforceability of any other warranty;

- (b) is given as a separate warranty governed only by the terms of this Deed Poll and unaffected by the terms of the Agreement; and
- (c) is in addition to and will not derogate from any warranty or warranties implied by law.

2. Intellectual property

- (a) The Designer warrants that any design (including the *Design Documents*), materials, documents and methods of working, each provided by the Designer shall not infringe any *intellectual property right*.
- (b) The Designer shall indemnify the *Client* and the *Beneficiaries* against any cost, expense, loss, damage or other liability suffered or incurred by the *Client* or the *Beneficiaries* arising out of or as a consequence of any breach of clause 2(a) by the Designer.
- (c) The Designer grants to the *Client* and the *Beneficiaries* a perpetual, irrevocable licence to use (and to sublicense others to use) the *Design Documents* and the associated *intellectual property rights* for any purpose for which the *Subcontract Services* are provided, including the carrying out and completing of the work under the *Remediation Contract* and any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations.

3. Assignment

The *Client* and each of the *Beneficiaries* may, without notice to the Designer, assign its benefits and rights under this deed.

4. Governing law

This Deed is governed by the law of New South Wales.

Signed sealed and delivered as a deed poll

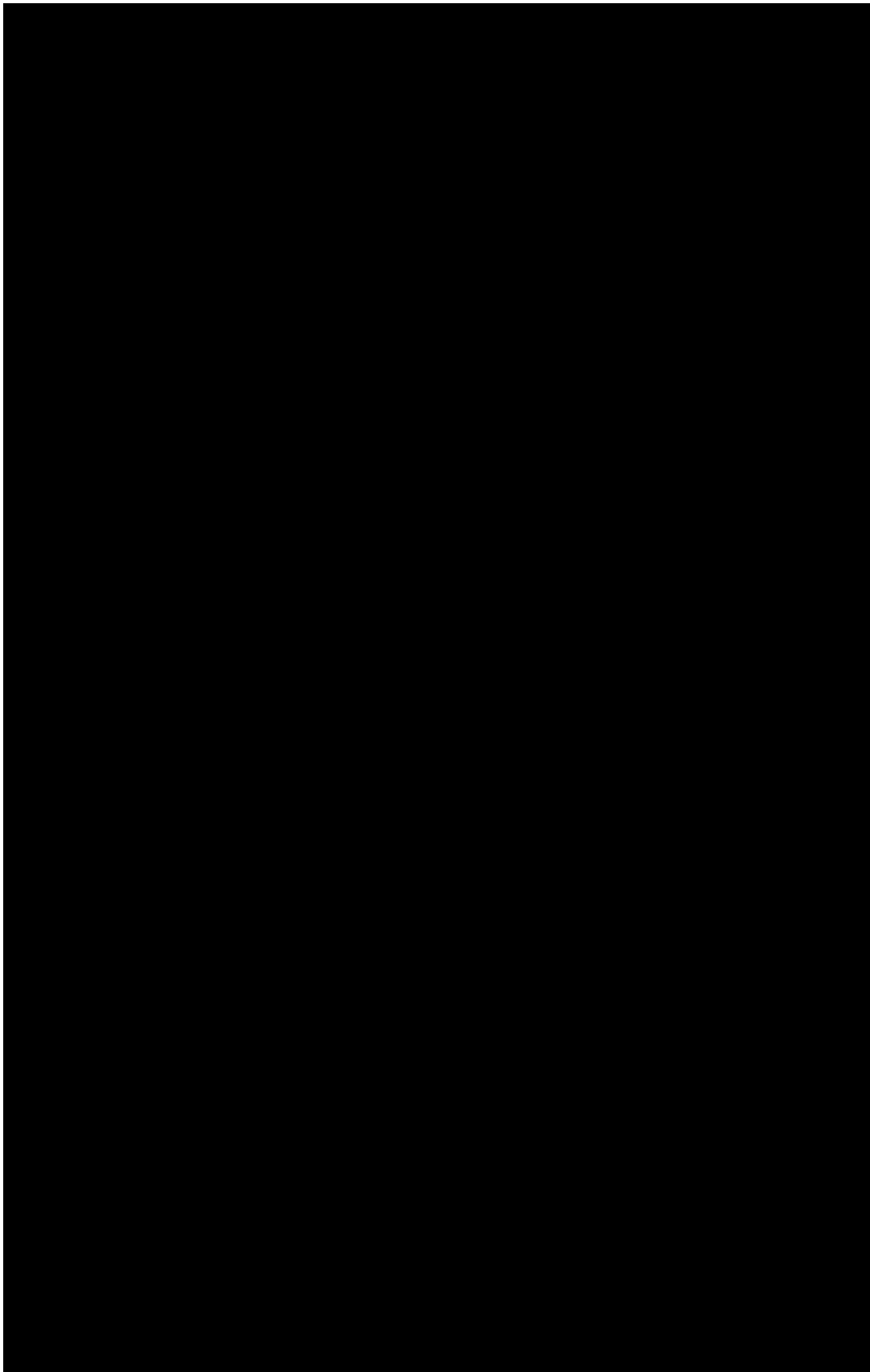
For and on behalf of the
[insert] in accordance
with section 127 of the
Corporations Act 2001
(Cth) in the presence of:

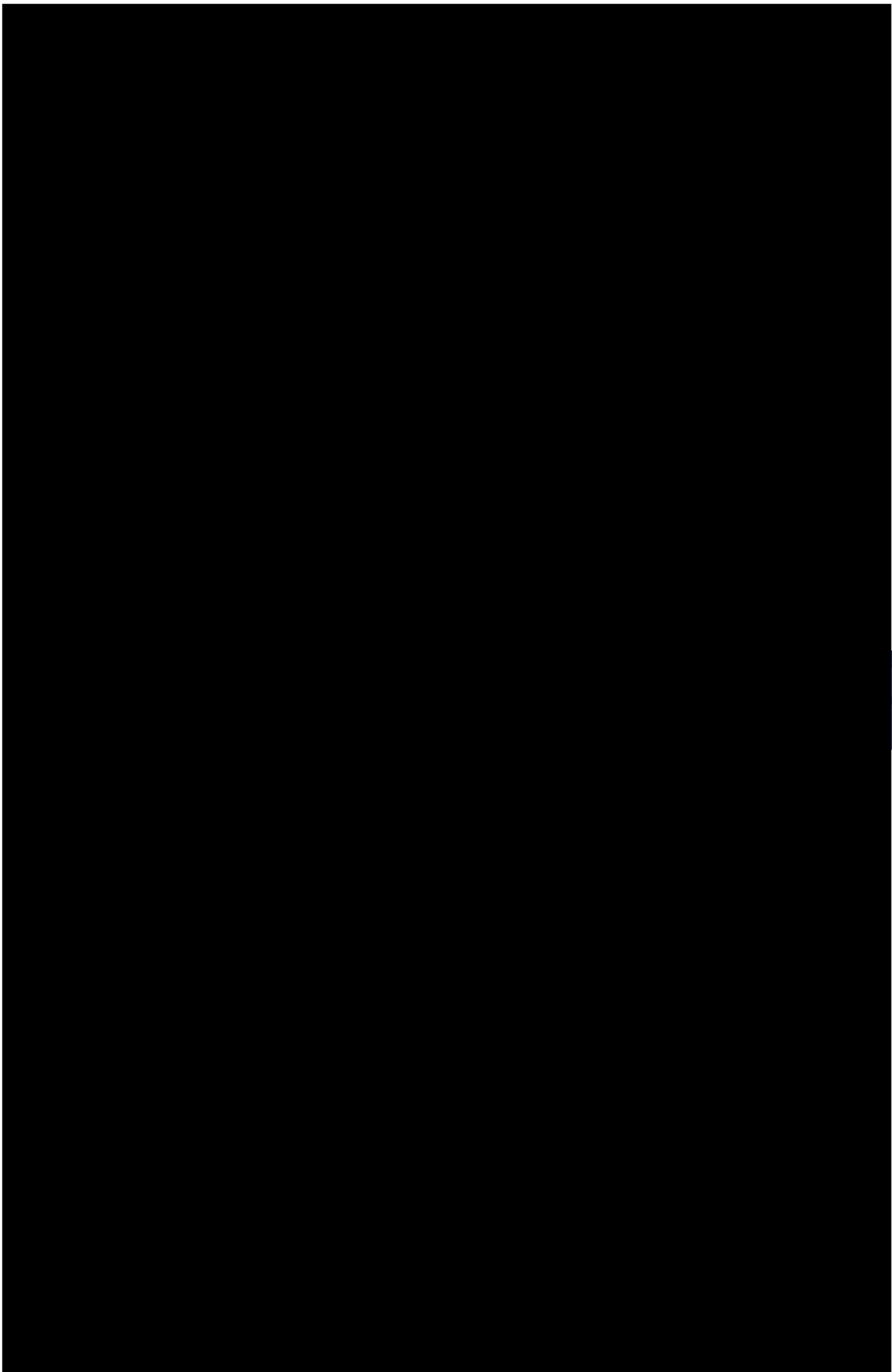
sign

sign

office (director or secretary)

office (director or secretary)





Dispute Resolution Panel

1. Dispute Resolution Panel Establishment

1.1 General

- (a) The *Client* and the *Managing Contractor* will establish the *Dispute Resolution Panel* as a forum for resolving any *disputes* arising between the *Parties* in an informed and good faith manner.
- (b) The *Dispute Resolution Panel* will consist of one member nominated by the *Client* and approved by the *Managing Contractor*, one member nominated by the *Managing Contractor* and approved by the *Client*, and a third independent member nominated by the first two members and approved by both the *Client* and the *Managing Contractor* or otherwise appointed in accordance with section 1.4 of this Annexure Part. The third member shall serve as Chairman of the *Dispute Resolution Panel* unless the *Parties* agree otherwise.

1.2 Criteria

- (a) Experience
 - (i) It is desirable that all *Dispute Resolution Panel* members be experienced in projects and services similar to the *Remediation Program* and the *Services*, interpretation of contract documents and resolution of *disputes*.
 - (ii) The third member is to complement the experience of the other two members and to provide leadership of the *Dispute Resolution Panel's* activities.
- (b) Neutrality
 - (i) It is imperative that the *Dispute Resolution Panel* members be neutral, act impartially and be free of any conflict of interest.
 - (ii) For the purposes of this clause, the term "member" also includes the member's current primary or full time employer, and "involved" means having a contractual or other relationship or arrangements with either *Party* to this *Contract*, or any other entity associated with it.
- (c) Without limiting the matters relevant to paragraph (b) above, the following matters may be taken into account in determining whether an individual can be appointed as a member of the *Dispute Resolution Panel*:

- (i) whether the individual has any ownership interest in any entity involved in the *Remediation Program* and the *Services* or a financial interest in the *Remediation Program* or *Services*, except for payment for services on the *Dispute Resolution Panel*;
 - (ii) whether the individual is in current employment or was previously employed by, or has financial ties to, any entity involved in the *Remediation Program* and *Services* within a period of two years prior to the date of the *Contract*, except for fee-based consulting services on other projects;
 - (iii) whether the individual is in current employment or was previously employed by the *Client* or any Government Agency within a period of two years prior to the date of the *Contract*;
 - (iv) whether the individual has any close professional or personal relationships with any key member of any entity involved in the *Remediation Program* or *Services* which, in the judgment of either *Party*, might reasonably suggest partiality or bias;
 - (v) whether the individual has any close professional or personal relationship with the *Client* or any Government agency which, in the judgment of either *Party*, might reasonably suggest partiality or bias;
 - (vi) whether the individual has had any prior involvement in the *Remediation Program* or *Services* of a nature which might reasonably compromise that member's ability to participate impartially and without bias in the *Dispute Resolution Panel's* activities; or
 - (vii) whether the individual has had any prior involvement with the *Client* or any Government agency (including any involvement in the development of the request for tender process that resulted in this *Contract*) which might reasonably compromise that member's ability to participate impartially and without bias in the *Dispute Resolution Panel's* activities.
- (d) Without limiting the matters relevant to paragraph (b), the following matters may be construed as a conflict of interest in respect of a member:
- (i) the member being employed within the past two years, including for fee-based consulting services, by the *Client* or any Government agency or any entity involved in the *Remediation Program* or *Services* except with the express approval of both *Parties*; or
 - (ii) the member entering into discussions concerning, or making an agreement with, the *Client* or any Government agency or an entity

involved in the *Remediation Program* or *Services* regarding employment after the *Remediation Program* and *Services* is completed.

1.3 Disclosure Statement

- (a) As a part of the selection process, the first two prospective members will be required to submit complete disclosure statements for the approval of both the *Client* and the *Managing Contractor*.
- (b) Each disclosure statement shall include:
 - (i) a resume of relevant experience;
 - (ii) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective members' primary or full-time employer, to the *Remediation Program* or *Services* and with all entities involved in the *Remediation Program* or *Services*, including the *Client* or any Government Agency that is or is likely to be involved in the *Remediation Program* or *Services*;
 - (iii) disclosure of close professional or personal relationships with any key members of any entity involved in the *Remediation Program* or *Services*, the *Client* or any Government Agency that is or is likely to be involved in the *Remediation Program* or *Services*.
- (c) The third independent *Dispute Resolution Panel* member will be required to submit a disclosure statement to the first two *Dispute Resolution Panel* members and to the *Client* and the *Managing Contractor* as a part of the selection process.

1.4 Selection Process

- (a) The *Client* and the *Managing Contractor* shall each nominate a proposed *Dispute Resolution Panel* member and convey the nominee's name and disclosure statement to the other *Party* within 15 *Business Days* after the date of this *Contract*.
- (b) If a *Party* (acting reasonably) rejects the other *Party's* nominee, the nominating party shall submit another nomination within 10 *Business Days* of receipt of the notice of rejection. The process under this section 1.4 will be repeated until two mutually acceptable members are named.
- (c) Upon approval (or deemed approval) of both of the first two members, the *Client* and the *Managing Contractor* will instruct them to begin the selection process for the third member. The first two members will endeavour to nominate a third member who meets all the criteria listed in section 1.2 above.
- (d) The third member shall be nominated within 10 *Business Days* after the

first two members are instructed to proceed with this selection. The nominee's name and disclosure statement will be provided to the *Client* and the *Managing Contractor*, who will (acting reasonably) either accept or reject the nominee within 5 *Business Days*. In the event of rejection, the first two members will be requested to submit another nomination within 5 *Business Days* of receipt of the notice of rejection.

- (e) In the event of an impasse in the selection of the third member from nominees of the first two members, the impasse shall be referred to representatives of the *Client* and the *Managing Contractor* and the third member shall be selected by mutual agreement of the *Client* and the *Managing Contractor* or, failing agreement within 5 *Business Days* of referral, the third member will be the person nominated (on the application by either *Party*) by the President or other senior officer for the time being of the New South Wales Law Society.

1.5 Dispute Resolution Panel Agreement

All three *Dispute Resolution Panel* members and the authorised representatives of the *Client* and the *Managing Contractor* shall execute the *Dispute Resolution Panel Agreement* (in the form set out in Annexure Part M) (the **DRP Agreement**) within 10 *Business Days* after the selection of the third member.

1.6 Replacement

The *Client* and the *Managing Contractor* will each be entitled to terminate the appointment of the member nominated by it to the *Dispute Resolution Panel* and to nominate and appoint a replacement in accordance with this section 1.

1.7 Appointments in Writing

All appointments of members of the *Dispute Resolution Panel* and any termination will be notified in writing to the other members of the *Dispute Resolution Panel* and the other *Party*.

2. Operating Procedures

2.1 Documents and Information

- (a) The *Client* will provide or make available a full copy of this *Contract* to each *Dispute Resolution Panel* member.
- (b) The members will be kept informed of activity with respect to the *Remediation Program* and *Services* and other developments by means of timely transmittal (which will be copied to the *Client*) of relevant information prepared by the *Managing Contractor* in the normal course of carrying out of the *Services*.
- (c) The *Managing Contractor* and the *Client* shall provide all other

documents and information reasonably requested by the *Dispute Resolution Panel*.

2.2 No consultation

The *Parties* shall not solicit advice or consultation from the *Dispute Resolution Panel* or its members on matters dealing with the *Remediation Program* and *Services* or the resolution of *disputes*.

2.3 Not representatives

It must be clearly understood that individual *Dispute Resolution Panel* members are not the representative of the *Party* which nominated that representative. The entire *Dispute Resolution Panel* must function as an objective, impartial and independent body at all times.

2.4 No communication

In order to avoid any suggestion of partiality or bias, there should be no individual communication between *Dispute Resolution Panel* members and employees of the parties during the life of the *Dispute Resolution Panel* (other than as required to comply with this Annexure Part). The *Parties* must direct any matters needing attention between meetings of the *Dispute Resolution Panel* to the Chairman of the *Dispute Resolution Panel*.

3. Disputes

3.1 Submittal of Disputes to the Dispute Resolution Panel

- (a) The *Dispute Resolution Panel* encourages the *Parties* to resolve potential *disputes* without resorting to the use of the *Dispute Resolution Panel*. However, when this cannot be accomplished, a *dispute* should be moved promptly to the *Dispute Resolution Panel* for its consideration.
- (b) The *Client* and the *Managing Contractor* will co-operate to ensure that the *Dispute Resolution Panel* considers *disputes* promptly, taking into consideration the particular circumstances and the time required to prepare appropriate documentation.
- (c) When the parties have completed the requirements in this *Contract* for dispute resolution (bearing in mind that, by agreement of the parties, steps may be omitted and time periods changed), either of the parties may refer the *dispute* to the *Dispute Resolution Panel*.
- (d) Requests for *Dispute Resolution Panel* review shall be submitted in writing to the Chairman of the *Dispute Resolution Panel* and shall state the *dispute* which the *Parties* have considered but have been unable to resolve. The request for review shall state clearly and in full detail the specific details of the *dispute* to be considered by the *Dispute Resolution*

Panel (which shall be in sufficient detail to enable the *Dispute Resolution Panel* to gain a reasonable understanding of the *dispute* and the other *Party* to prepare its response) and include a recommendation as to whether it may be heard at the next periodic *Dispute Resolution Panel* meeting which is no earlier than 15 *Business Days* after receiving the request for hearing or at a special hearing.

- (e) A copy of the request for review shall be simultaneously provided to the other *Party*.
- (f) The other *Party* may submit a concise written position statement on a *dispute* for which a hearing before the *Dispute Resolution Panel* has been requested. This position statement must be submitted to all *Dispute Resolution Panel* members and concurrently to the *Party* requesting the hearing.
- (g) The *Dispute Resolution Panel* will then determine the manner in which the *dispute* is presented to the *Dispute Resolution Panel*, including agreement on documents to be submitted, submissions to be made, dates and times for presentations by the parties (if required).
- (h) The *Dispute Resolution Panel* Chairman will schedule a hearing no earlier than 15 *Business Days* after receiving the request for hearing, except that this time may be reduced for simple or urgent matters or in order to schedule a hearing in conjunction with the next periodic meeting of the *Dispute Resolution Panel*.
- (i) Full position papers shall be submitted by both parties and must be accompanied by supporting documents which are numbered and referred to in the position paper by page number. In the interest of expediting consideration of a *dispute*, the *Dispute Resolution Panel* encourages the *Parties* to cooperatively prepare a compilation of all relevant documents with pages consecutively numbered for ease of reference for use by the parties in preparing submissions and during the hearing. The full position papers will be submitted to the *Dispute Resolution Panel* and exchanged between the parties no less than 10 *Business Days* prior to the date scheduled for hearing (or such time determined by the *Dispute Resolution Panel*).
- (j) In particularly large or complex *disputes*, the *Dispute Resolution Panel* may meet privately to review the documentation and information provided, discuss the procedures to be followed in hearing the *dispute* and the method of presentation to be followed. The *Dispute Resolution Panel* may also call a pre-hearing conference to discuss these issues with the parties.
- (k) Each *Party* may submit to the *Dispute Resolution Panel* statements in rebuttal to the other *Party's* position statement provided that such

statement is submitted so as to be received by the *Dispute Resolution Panel* and the other *Party* not less than 3 *Business Days* prior to the date scheduled for the hearing (or such time determined by the *Dispute Resolution Panel*).

- (l) At least 3 *Business Days* prior to the date scheduled for the hearing (or such time determined by the *Dispute Resolution Panel*), each *Party* must submit to the *Dispute Resolution Panel* members and to the other *Party* a list of the persons who will attend and/or represent them at the hearing.

3.2 Conduct of Hearings on disputes

- (a) Hearings will be conducted at the offices of the *Client*, or if that is not convenient or possible, at another location determined by the *Dispute Resolution Panel*. The *Parties* may also conduct hearings by electronic means. Private sessions of the *Dispute Resolution Panel* may be held at any convenient location.
- (b) Hearings will be conducted in an informal manner and otherwise in the manner as the *Dispute Resolution Panel* sees fit provided the *Dispute Resolution Panel* gives the parties reasonable notice of the matters to be addressed. The *Dispute Resolution Panel* is not bound by the rules of evidence.
- (c) The *Client* and the *Managing Contractor* shall have representatives at all meetings and hearings other than private sessions of the *Dispute Resolution Panel*.
- (d) The *Party* requesting *Dispute Resolution Panel* review will first present its position followed by the other *Party*. Each *Party* will then be allowed successive rebuttals until all aspects of the *dispute* are fully covered. This process will be limited to three attempts.
- (e) The *Dispute Resolution Panel* members may ask questions, request clarification, or ask for additional information. In difficult or complex *Disputes*, additional meetings may be necessary in order to facilitate full consideration and understanding of all the evidence presented by both parties.
- (f) Both the *Client* and the *Managing Contractor* shall be provided full and adequate opportunity to present all their evidence, documentation and testimony regarding all issues before the *Dispute Resolution Panel*.
- (g) Should new information be presented that is not contained in the position papers or rebuttal statements previously submitted to the *Dispute Resolution Panel* and the other *Party*, the hearing will, unless otherwise agreed by the parties, be suspended until such time as the other *Party* has had a reasonable opportunity to review, research and rebut such new information. This suspension should not exceed 5 *Business Days*.

- (h) Normally a formal transcript will not be prepared. When requested by either *Party*, the *Dispute Resolution Panel* may allow preparation of a transcript of proceedings by a court reporter with the cost to be allocated as agreed by the parties. Audio or video recordings will not be permitted. The *Dispute Resolution Panel* shall be provided with four copies of any transcript or recordings prepared.
- (i) Legal representation is generally discouraged at *Dispute Resolution Panel* meetings and hearings. Legal counsel or independent claims or technical experts may participate in a hearing, for the sole purpose of facilitating a *Party's* presentation, only with the prior approval of the *Dispute Resolution Panel*.
- (j) Legal counsel may not:
 - (i) examine directly or by cross-examination any witness;
 - (ii) object to questions or factual statements made or related during the hearing; or
 - (iii) make or argue legal motions.
- (k) Legal counsel and independent experts present must not make statements of fact for or on behalf of a *Party* or witness and shall at all times comply with the instructions of the *Dispute Resolution Panel*. The *Dispute Resolution Panel* may ask legal counsel for either *Party* to address legal issues that the *Dispute Resolution Panel* determines would assist it in resolution of the *dispute* before it.

3.3 Delivery of Dispute Resolution Panel Determination

- (a) After the hearing of a *dispute* is concluded, the *Dispute Resolution Panel* will confer to formulate its determination. All *Dispute Resolution Panel* deliberations shall be conducted in private, with all individual views kept strictly confidential from disclosure to others.
- (b) The recommendations will be based on this *Contract*, the facts and circumstances involved in the *dispute* and the documentation provided by the parties for the purpose of the hearing.
- (c) Both parties agree that the *Dispute Resolution Panel* may not rewrite (and has no authority to vary, amend or supplement) this *Contract*.
- (d) Should there be additional questions, the Chairman may schedule a follow-up hearing. All individual views of the *Dispute Resolution Panel* members will be kept strictly confidential.
- (e) A determination made by the *Dispute Resolution Panel* under this Annexure Part must be made unanimously in order to have a final and binding affect upon the *Managing Contractor* and the *Client* under the *Contract*.

-
- (f) The *Dispute Resolution Panel's* determination of the resolution of the *dispute* will be provided in writing to both the *Client* and the *Managing Contractor* within 10 *Business Days* of the completion of the hearings. The determination of a *dispute* must meet the requirements of this *Contract* and must be reached as, and the *Dispute Resolution Panel* acts as, an expert and not as an arbitrator.
 - (g) In difficult or complex *disputes* and in consideration of the *Dispute Resolution Panel's* schedule, the timing in paragraph (f) may be extended by mutual agreement of all parties.
 - (h) Should the *dispute* remain unresolved because of a bona fide lack of clear understanding of the determination, either *Party* may request that the *Dispute Resolution Panel* clarify specified portions of its determination.
 - (i) If new evidence has become available, either party may request that the *Dispute Resolution Panel* reconsider its determination.

4. General

4.1 Confidentiality

All proceedings, meetings and hearings must be held in private and must be kept confidential (including all submissions, documents, statements and determinations made in connection with any such proceedings, meetings or hearings and any other confidential information) except:

- (a) with the prior written consent of the *Parties*;
- (b) as permitted under the *Contract*;
- (c) as may be required by law; or
- (d) as may be required in order to enforce any determination of the *Dispute Resolution Panel*.

5. Status of documents

5.1 Status

The *Parties* agree that:

- (a) all submissions and other statements made or documents prepared by either *Party* pursuant to this Annexure Part L are made or prepared on a "without prejudice" basis; and
- (b) if a *Party* produces a *document* pursuant to its compliance with this Annexure Part L and that *document* would otherwise have been privileged from production or from admission into evidence, the *Party*

does not waive that privilege merely by producing the *document*.

5.2 Conflict

The members of the *Dispute Resolution Panel* must:

- (a) inform the *Parties* of:
 - (i) any relationship or interest with the parties or their respective officers, employees, contractors, contractors or agents;
 - (ii) any interest the member has in the matters in *dispute*; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the member's capacity to act independently or impartially or without bias,immediately upon becoming aware of any such circumstances;
- (b) upon making any disclosure under paragraph (a), unless and until the *Parties* agree otherwise, terminate any hearings on foot at that time; and
- (c) not communicate with one *Party* to the determination without the knowledge of the other *Party*.

6. Payment and Expenses

- (a) The *Client* will pay all fees and expenses of the three *Dispute Resolution Panel* members for attendance at the periodic meetings of the *Dispute Resolution Panel*.
- (b) The fees and expenses of all three members of the *Dispute Resolution Panel* for additional meetings and for the review of *disputes* in accordance with this Contract, where additional fees and expenses are incurred by the *Dispute Resolution Panel* (including a requirement for meetings additional to the periodic *Dispute Resolution Panel* meetings), shall be shared equally by the *Client* and the *Managing Contractor*.
- (c) The *Managing Contractor* shall pay the invoices of the *Dispute Resolution Panel* members after approval by both parties. The *Managing Contractor* shall then invoice the *Client* for 100% of such invoices for the periodic meetings and 50% of such invoices for additional fees and expenses referred to in paragraph (b).
- (d) If the *Dispute Resolution Panel* reasonably requires special services such as legal advice, accounting, expert advice, data research and the like, both parties must agree to such services (acting reasonably) and the costs will be shared by them as mutually agreed or, if not agreed, equally between the parties.

-
- (e) Each *Party* shall be responsible for its own costs during the *Dispute Resolution Panel* process, including staff time for preparatory work and attendance at meetings, consultants and legal and counsel fees and any other costs.

Part M

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

DRP Agreement

THIS AGREEMENT is made [] on the day of 202

between the following parties:

1. **The Crown in right of the State of New South Wales**, represented by the Office of Project Remediate, NSW Department of Customer Service (the **Client**); and
2. **[Contractor]** (ACN[*]) registered in [*]/incorporated in [*] of [*] (the **Managing Contractor**); and
3. **MEMBERS OF THE DISPUTE RESOLUTION PANEL** (collectively Members), namely:
 - [NAME AND ADDRESS OF MEMBER]
 - [NAME AND ADDRESS OF MEMBER]
 - [NAME AND ADDRESS OF MEMBER]

RECITALS:

- A. The *Client* and the *Managing Contractor* have entered into a Contract for the performance of *Services* in respect of *Project Remediate* (the **Contract**).
- B. Clause 29 and Annexure Part L of the *Contract* provide for a *dispute* resolution process through the establishment and the operation of a *Dispute Resolution Panel (DRP)* to assist in resolving *disputes* under the *Contract*.
- C. This Agreement sets out the rights and obligations of the Members, the *Client* and the *Managing Contractor* in relation to the *Client* and the *disputes*.

THIS AGREEMENT PROVIDES

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Agreement means this Agreement.

Parties means the Client, the Managing Contractor and the Members.

Members means each of the individuals appointed to the DRP in the terms of this Agreement.

1.2 Interpretation

In this Agreement, headings and underlining are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority; and
- (d) a reference to a part, clause or party, is a reference to a part and clause of, and party to, this Agreement.

Words and phrases defined in the *Contract* and used in this Agreement have the same meaning given to them under the *Contract*.

2 Agreement to Prevail

- (a) The Parties agree that if there is any inconsistency between the terms of this Agreement and the *Contract* the terms of the Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue for the duration of the *Contract*, unless terminated earlier.

3. Formation of the DRP

The Parties acknowledge that the DRP:

- (a) has been formed in accordance with the *Contract*; and
- (b) will perform its obligations (including functions) under the *Contract* (including clause 29 and Annexure Part L).

4. DRP Member's Obligations

4.1 Impartiality

Each Member agrees to consider fairly and impartially the *disputes* referred to the DRP.

4.2 Independence

Each Member agrees to act honestly and independently in the performance of its obligations under the *Contract* (including in the consideration of facts and conditions relating to a *dispute*) and otherwise in accordance with clause 4 of this Agreement.

4.3 Contractual Duty

Each Member agrees honestly to perform the obligations (including functions) required by the *Contract* to achieve the objectives of the *Contract*.

4.4 General Duties

Each Member agrees to carry out his or her obligations as a Member of the DRP:

- (a) with due care and diligence;
- (b) in compliance with the *Contract*; and
- (c) in compliance with all applicable laws.

5. Commitment and Responsibilities of the Client

Except for its participation in the DRP's activities as provided in the *Contract*, the *Client* will:

- (a) not solicit advice or consultation from the DRP or any of the Members on matters dealing with the resolution of *disputes* which may compromise the *Client's* integrity or compliance with this Agreement;
- (b) act in good faith towards each Member and the DRP; and
- (c) comply with the reasonable requests and *directions* of the DRP.

6. Contractor's Commitments and Responsibilities

Except for its participation in the DRP's activities as provided in the *Contract*, the *Managing Contractor* will:

- (a) not solicit advice or consultation from the DRP or any of the Members on matters dealing with the resolution of *disputes* which may compromise the DRP's integrity or compliance with this Agreement;
- (b) act in good faith towards each Member and the DRP; and
- (c) comply with the reasonable requests and *directions* of the DRP.

7. Confidentiality

In relation to all *Confidential Information* disclosed to the DRP during the resolution of a *dispute* each Member agrees:

- (a) to keep that *Confidential Information* confidential; and
- (b) not to disclose that *Confidential Information* except as permitted

under Annexure Part L of the *Contract*,
except to the extent such *Confidential Information* is or later becomes in the public domain otherwise than due to a breach of this Agreement by any Member.

8. Conflict of Interest

If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must immediately inform the *Client* and the *Managing Contractor* and the other Members of the DRP.

9. Liability

9.1 Liability

Each Member is not liable to either the *Client* or the *Managing Contractor* for any act or omission done in good faith and with due care and diligence.

9.2 Due Care and Diligence

For the purpose of clause 9.1, the *Parties* agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

10. Indemnity

10.1 Indemnity

The *Client* and the *Managing Contractor* each indemnify each Member against all *Claims* from a person not a *Party* to this Agreement, where such *Claims* arise from any act or omission done by the Member under this Agreement in good faith and with due care and diligence.

10.2 Due Care and Diligence

For the purpose of clause 10.1, the *Parties* agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

11. Termination of Agreement

Subject to clause 12.3, this Agreement may be terminated at any time by mutual written agreement of the *Client* and the *Managing Contractor*. However, this Agreement will remain in force until a replacement agreement (on terms substantially the same as this Agreement) has been fully executed.

12. Members' Termination

12.1 Resignation

A Member may resign from the DRP by providing 20 *Business Days*' written notice to the other Members, the *Client* and the *Managing Contractor*.

12.2 Termination

A Member may be terminated at any time by the party or parties that nominated them.

12.3 Re-Appointment

A replacement Member must be appointed in accordance with Annexure Part L of the Contract. The parties acknowledge that they and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the *Contract*.

13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales and all parties hereby submit to the exclusive jurisdiction of the courts of New South Wales.

14. Relationship of the Parties

This Agreement is not intended to create any partnership, agency or joint venture with respect to any one or more of the parties.

15. Notices

All notices must be in writing and sent to the addresses on page 1 of this Agreement.

Part N

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Not used

Part O

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Global Façade Consultant Signed Agreement.

Part P

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Design Consultant Agreement.

Part Q

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Triage Services Agreement.

Part R

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Remediation Contract.

Part S

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Superintendent Services Agreement

Part T

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Independent Assurer Services Agreement

Part U

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of Managing Contractor / Owners Corporation / Remediation Contractor Tripartite Deed

[Note: The attached draft deed is an early draft. It is anticipated that the attached draft will be developed such that this tripartite agreement will cover as a minimum the following matters:

- **The builder and the Owners Corporation will not vary the contract without approval from the Managing Contractor;**
- **The Owners Corporation will not terminate the contract without first consulting the Managing Contractor and giving the Managing Contractor a chance to step in and remedy any issues; and**
- **The Managing Contractor may act as agent of the Owners Corporation in certain circumstances.]**

Part V

Annexure to the Australian Standard
Managing Contractor agreement—Design and construct
AS 4904—2009

Form of OBC / [Managing Contractor] / Owners Corporation Deed Poll

[Note: No draft attached, intentionally. It is anticipated that a deed or deed poll will be developed, to be between the Client, each Owners Corporation and possibly the Managing Contractor, to cover as a minimum the following matters:

- That the Owners Corporation agrees to participate in the *Program*;
- Repayment by each Owners Corporation to OBC of 70% of the design costs - The Owners Corporation will pay the OBC \$[#] for the design and preparatory work done to date, which represents a [30]% discount on the actual costs to the OBC/state;
- The Owners Corporation will take a novation of the design consultants; and
- Release and indemnity by each Owners Corporation in favour of OBC (and possibly the Managing Contractor) from any claims whatsoever in respect of the design, *Services*, *Remediation Works* and the *Program*.]

AMENDMENT CONTROL SHEET

AS 4904—2009

Amendment No. 1 (2010)

CORRECTION

SUMMARY: This Amendment applies to the inside front cover.

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