

Construction Contract

LEARNING ACADEMY HOT FIRE TRAINING
GROUND (MELBOURNE)

Airservices Australia
ABN 59 698 720 886

Badge Constructions (SA) Pty Ltd
ACN 008 015 496

Blake Dawson

Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia
T 61 2 9258 6000
F 61 2 9258 6999

Reference
CTM FQU 02-2024-4791
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FORMAL INSTRUMENT OF AGREEMENT

DATE 2011

PARTIES

Airservices Australia (ABN 59 698 720 886) a body corporate established by the *Air Services Act 1995* (Principal)

Badge Constructions (SA) Pty Ltd ACN 008 015 496 (Contractor)

RECITALS

- A. The Principal enters into this Contract relying on the Contractor's representation that it is experienced in the design, construction, fabrication, installation, deployment and commissioning of the Works.
- B. The Principal engages the Contractor to assume responsibility for the design, construction, fabrication, installation, deployment and commissioning of the Works in accordance with the requirements of the Contract.

OPERATIVE PROVISIONS**1. FUNDAMENTAL OBLIGATIONS****1.1 Contractor's fundamental obligations**

The Contractor must do all things necessary to design, construct, fabricate, install, deploy commission and complete the Works in accordance with the Contract.

1.2 Principal's fundamental obligations

The Principal will pay the Contractor the sum of **45** excluding GST for the due and proper performance of the Works in accordance with the Contract.

2. GENERAL**2.1 Contract documents**

The Principal and the Contractor agree that the following documents shall together comprise the Contract between them:

- (a) this Formal Instrument of Agreement;
- (b) AS 4902-2000 General Conditions of Contract and Annexures as amended including Annexure Parts A to I inclusive (which for the purposes of this clause 2.1 does not include the Statement of Requirement);
- (c) the Statement of Requirement (which for the purposes of this clause 2.1 does not include the annexures to the Statement of Requirement); and
- (d) Annexures A and B to the Statement of Requirement.

2.2 Operation of Contract

This Contract applies to the Works under the Contract, whether the Works under the Contract is undertaken before, on or after the date of contract.

2.3 Entire agreement

This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.

2.4 Counterparts

The Contract may be executed in counterparts.

2.5 Parties empowered to enter into the Contract

Each of the Principal and the Contractor covenants that:

- (a) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into the Contract and to carry out the transactions that the Contract contemplates; and
- (b) it holds each authorisation that is necessary to:
 - (i) enable it to properly execute the Contract and to carry out the transactions that the Contract contemplates;
 - (ii) ensure that the Contract is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,

and it is complying with any conditions to which any of these authorisations is subject.

2.6 Disclaimer

The Contractor agrees that in entering the Contract it has not relied on any representation, warranty or inducement by the Principal nor is any representation, warranty or thing made or done by the Principal to be inferred, incorporated or implied into the Contract.

2.7 Amendment to the Contract

This Contract can only be amended by written instrument executed by both parties.

2.8 No trust

The Contractor warrants and represents that it is not entering into the Contract as trustee of any trust or settlement.

2.9 Attorneys

Each person who executes this Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

2.10 Defined terms

Terms defined in the General Conditions have the same meaning in this Formal Instrument of Agreement.

EXECUTED as a deed.

SIGNED for an on behalf of
AIRSERVICES AUSTRALIA on:

47F

Greg Russell
Name of signatory

Chief Executive Officer
Position of signatory

in the presence of:

47F

Name of witness

47F

Signature of witness

SIGNED for **Badge Constructions (SA)**
Pty Ltd under power of attorney in the
presence of:

Signature of attorney

Signature of witness

Name

Name

Book

No

Registration details

2.10 Defined terms

Terms defined in the General Conditions have the same meaning in this Formal Instrument of Agreement.

EXECUTED as a deed.

SIGNED for an on behalf of
AIRSERVICES AUSTRALIA on:

Name of signatory

Signature

Position of signatory

in the presence of:

Name of witness

Signature of witness

SIGNED for **Badge Constructions (SA)**
Pty Ltd under power of attorney in the
presence of:

47F

Signature of witness

47F

Name

47F

Signature of attorney

47F

Name

Book

No

Registration details

AS 4902-2000

AS 4902

Australian Standard™

**Based on or amended from
General conditions of *Contract* for
design and construct**

**Learning Academy Hot Fire Training
Ground (Melbourne)**

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This Australian Standard was prepared by Committee OB/3, General Conditions of *Contract*. It was approved on behalf of the Council of Standards Australia on 7 September 1999 and published on 27 December 2000.

The following interests are represented on Committee OB/3:

Association of Consulting Engineers Australia
Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Engineers, Australia
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Australian Standard™

Based on or amended from General conditions of *Contract* for design and construct

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PREFACE

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

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

AS 4902—2000 General conditions of *Contract* for design and construct, is a part of the suite of conditions of *Contract* based on AS 4000—1997 General conditions of *Contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the *Principal* is:

- (a) **design and construct**—the *Principal* would provide the *Principal's project requirements*, would not normally provide a detailed *preliminary design* and would not require novation;
- (b) **design development and construct**—the *Principal* would provide the *Principal's project requirements*, would always provide a *preliminary design* and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the *Principal* would provide the *Principal's project requirements*, would always provide a *preliminary design*, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subContract (including consultant's agreement) or selected subContract is to be novated to the *Contractor*.

WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than *WUC*) does not limit the liability of parties for special, indirect or consequential losses. This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance). Parties wishing to limit their liability should seek insurance and legal advice before entering a *Contract* under this Standard.
- (2) *Principals* should ensure that their specific requirements are fully and completely incorporated in the *Principal's project requirements* obtaining specialist advice if necessary. Where a *Contractor* provides a proposed design as part of its tender, the parties should consider whether that design should form part of the *preliminary design*.
- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) *Contractors* should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with *security of payments*. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard

General conditions of *Contract* for design and construct1. INTERPRETATION AND CONSTRUCTION OF *CONTRACT*

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

Airport Operator means Australian Pacific Airports (Melbourne) Pty Ltd.

Airservices Australia means AirServices Australia (ABN 59 698 720 886).

Airservices Australia's Material means any material including the documents stated in *Item 16* provided by or on behalf of the *Principal* to the *Contractor* for the purposes of the *Contract* or which is copied or derived from material so provided, including, but not limited to, documents, equipment, information and data stored by any means.

Approval means all consents, permits, authorisations and approvals from relevant *Authorities*, the owners and occupiers of adjoining land, suppliers of any services or utilities, and any person whose interests may be affected by the *WUC* in order for the *Contractor* to carry out the *WUC*.

Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

business day means a day other than a Saturday or a Sunday or a public holiday in Melbourne or 27, 28, 29, 30 and 31 December.

certificate of practical completion has the meaning in subclause 34.6.

Claims includes all sums of money, actions, suits, causes of action, proceedings, accounts, liability, losses, assessments, demands, costs, expenses, notices, demands for works or any other type of claim however arising and whether past, present or future, fixed or unascertained, actual or contingent.

Commissioning means verification that *the Works* and all relevant systems, equipment and assemblies have been installed, tested, operated and maintained in accordance with the requirements of this *Contract* and includes that *the Works* are designed and built as designed, are certified by a suitably qualified engineer and are fit for intended purpose (including the *stated purpose*).

Commonwealth means the Commonwealth of Australia.

compensable cause means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its *consultants*, agents or other contractors (not being employed by the *Contractor*); or
- (b) those listed (if any) in *Item 31*.

Confidential Information means the *Principal's Confidential Information* and the *Contractor's Confidential Information*.

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

consultant means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's Consultant* whose prior contract is novated to the *Contractor* under subclause 9.4.

Contract has the meaning in clause 6.

Contract Documents means the documents comprising this *Contract* as set out in clause 2.1 of the *Formal Instrument of Agreement*.

Contract Material means all material brought or required to be brought into existence as part of, or for the purpose of, performing the *Contract* including, but not limited to, documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules, data (stored by any means), time record sheets, books of account and operating records.

Contract sum means the lump sum set out in clause 1.2 of the *Formal Instrument of Agreement*, but excluding any additions or deductions which may be required to be made under the *Contract*.

Contractor means the person bound to carry out and complete *WUC* as defined in the *Formal Instrument of Agreement* to which these *General Conditions* are attached.

Contractor's Confidential Information means information that:

- (a) is designated by the *Contractor* as confidential; or
- (b) the *Principal* knows or ought to know is confidential,

but does not include:

- (c) *Contract Material*;
- (d) information which:
 - (i) is or becomes public knowledge other than by breach of the *Contract* or any other confidentiality obligation; or
 - (ii) has been independently developed or acquired by the *Principal* as established by written evidence.

Contractor Personnel means the officers, employees, agents or *subContractors* of the *Contractor* (including any officers, employees, agents or *subContractors* of the *FTS Contractor*).

Contractor's design obligations means all tasks necessary to design and specify the *Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 10* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*.

date for practical completion means:

- (a) where *Item 7(a)* provides a *date for practical completion*, the date;
- (b) where *Item 7(b)* provides a period of time for *practical completion*, the last day of the period,

but if any *EOT for practical completion* is directed by the *Superintendent* or allowed in any dispute resolution or litigation, it means the date resulting therefrom.

date of contract means the date of the *Formal Instrument of Agreement*.

date of practical completion means:

- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
- (b) where another date is determined in any dispute resolution or litigation as the date upon which *practical completion* was reached, that other date.

defects has the meaning in clause 35 and includes omissions.

Defects List means a defects list issued by the *Superintendent* setting out any *defects* in the *Works*.

defects liability period has the meaning in clause 35.

design and construction program has the meaning in subclause 32.2.

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 *Contractor*) for the construction of the *Works*.

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

dispute has the meaning in clause 42.

Electricity Cable means the high voltage electricity cable and any conduits located on, in or affecting the *site*.

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

Environmental Laws means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any other *legislative requirement* relating to the *Environment* which apply to the *WUC* being provided by the *Contractor*.

Environmental Management means elements of the overall management function of an organisation (including planning, implementation, monitoring and review) that develop, achieve, implement and maintain its environmental policy and objectives.

Environmental Management Plan means the construction environmental management plan to be prepared and provided by the *Contractor* pursuant to the *Statement of Requirement*.

EOT (from 'extension of time') has the meaning in subclause 34.3.

excepted risk has the meaning in subclause 14.3.

final certificate has the meaning in subclause 37.4.

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Final Detailed Design has the meaning given to it in the *Statement of Requirement*.

final payment has the meaning in clause 37.

final payment claim means the *final payment claim* referred to in subclause 37.4.

Formal Instrument of Agreement means the formal instrument of agreement to which these *General Conditions* are attached.

FTS or the Fire Training Simulator has the meaning given to it in the *Statement of Requirement*.

FTS Contract means the contract between the *Principal* and the *FTS Contractor* dated after the date of this *Contract* and substantially in a form attached as Annexure H.

FTS Contract Material means any *intellectual property right* or *Moral Rights* created pursuant to clause 10 of the *FTS Contract*.

FTS Contractor means Draeger Safety Pacific Pty Ltd (ACN 000 435 549).

FTS Novation Date means the date of the notice issued by the *Principal* under subclause 9.4(b).

FTS Novation Period means the date commencing on the date of this contract and ending on the date which is 4 weeks after the *Superintendent* has provided approval of the *Final Detailed Design*.

FTS Works means the works required to be carried out by the *FTS Contractor* under the *FTS Contract*.

General Conditions means these general conditions of contract and includes its annexures.

GST means the same as in *GST Law*.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

intellectual property right means any business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets) and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (but excludes any *intellectual property right* created under the *FTS Contract*).

Interface Works has the meaning given to it in the *Statement of Requirement*.

Item means an *Item* in Annexure Part A.

latent condition has the meaning in subclause 25.1.

Lease means the lease of the *site* between the *Lessor* and *Airservices Australia* dated on or about 1 November 2011 and being part of Annexure I.

legislative requirement includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction and stakeholders in connection with the carrying out of *WUC*;
- (c) fees and charges payable in connection with the foregoing;

- (d) any manuals and other documents applicable to the Melbourne Tullamarine Airport, including any such manuals and documents referred to in the *Statement of Requirement*; and
- (e) any guidelines or codes of practice that may be published from time to time in relation to the construction industry.

Lessor means Australia Pacific Airports (Melbourne) Pty Ltd ACN 076 999 114.

Letter of Intent means the Letter of Intent relating to the design of the *Works* between *Airservices Australia* and the *Contractor* dated 19 October 2011.

Loss means any loss, damage, cost or expense (including legal costs and expense on a solicitor and own client basis) and liability.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or may come to exist, anywhere in the world (but excludes any *Moral Rights* created under the *FTS Contract*).

Novation Date means the date of execution of the *Novation Deed* by the parties to the *Novation Deed*.

Novation Deed means the novation deed entered into by *Airservices Australia*, the *Contractor* and the *FTS Contractor* pursuant to subclause 9.4.

Off-site means any land or other place which is independent of the *site*.

OH&S means workplace and occupational health and safety.

OHS Management Plan means the OH&S management plan to be prepared and provided by the *Contractor* pursuant to the *Statement of Requirement* and in accordance with the *Principal's Health and Safety Requirements*.

On-site Works mean the components of the *Works* identified as such in the *Statement of Requirement*.

On-site Works Date means the date contained in *Item 38*.

payment certificate means a certificate issued under subclause 37.2(a).

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained from the information or opinion.

Plan means each of the following:

- (a) the *Project Management Plan*;
- (b) the quality management plan to be prepared and provided by the *Contractor* in accordance with the *Statement of Requirement*;
- (c) the construction management plan to be prepared and provided by the *Contractor* in accordance with the *Statement of Requirement*;
- (d) the *OHS Management Plan*;
- (e) the *Environmental Management Plan*;

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- (f) the site management plan to be prepared and provided by the *Contractor* in accordance with the *Statement of Requirement*; and
- (g) the testing and acceptance plan to be prepared and provided by the *Contractor* in accordance with the *Statement of Requirement*.

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

- (a) *the Works* are designed, constructed and completed in accordance with the requirements of this *Contract* except for minor *defects*:
 - (i) which do not prevent *the Works* from being reasonably capable of being used for their *stated purpose*;
 - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those tests and *Commissioning* activities which are required by the *Contract* (including the *Statement of Requirement*) to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed to the *Superintendent's* satisfaction;
- (c) the as-built drawings and manuals and any other documents and information required under subclause 8.7 and other parts of the *Contract* (including the warranties referred to in subclause 8.8 and the *Statement of Requirement*), or which, in the *Superintendent's* opinion, are essential for the use, operation or maintenance of *the Works* have been given to the *Superintendent* in the number and the format as required under this *Contract*;
- (d) all necessary occupation certificates and other *Approvals*, documents and certificates (including all fire rating certificates) required for the use and operation of *the Works* have been obtained and a copy given to the *Superintendent*, including but not limited to:
 - (i) an unconditional occupancy certificate, complete with all attachments;
 - (ii) all test certificates and certifications from all relevant *Authorities*, suppliers and persons required under the *Contract*; and
 - (iii) certificates and documentation confirming *Approvals* and acceptance from all *Authorities*, suppliers and persons for the whole of *the Works*;
- (e) all other requirements set out in the *Statement of Requirement*, the *Schedules* or in the *General Conditions* (including clause 27) which are necessary for *practical completion* have been met by the *Contractor*;
- (f) all warranties and performance guarantees have been provided to the *Superintendent*, together with all other documents and information required under this *Contract* or which, in the opinion of the *Superintendent*, is essential for the use, operation and maintenance of *the Works*;
- (g) all rubbish, surplus material and minor items of plant and equipment have been removed from the *site* so as to leave the *site* in a clean and tidy condition, except for those items which the *Superintendent* consents in writing to remain on the *site* for the purpose of performing work during the *defects liability period*;
- (h) all building services, services and installations are performing as required by the terms of this *Contract*, both under normal operating conditions and under simulated emergency operating conditions;

- (i) the *Contractor* has provided to the *Superintendent* a certificate from a licensed surveyor certifying that *the Works* are located on the *site* in accordance with the requirements of the *Contract* and all equipment, plant, services and installations have been installed in accordance with the *Contract* and have been tested and certified as operating correctly;
- (j) the *Contractor* has undertaken full and detailed cleaning of *the Works* and the *site* to the reasonable satisfaction of the *Superintendent* and the *Contractor* has cleaned all internal and external areas, removed all dust, dirt, markings, tape, including cleaning all glass; and
- (k) to assist in determining whether *the Works* have reached *practical completion*, the *Contractor* has provided to the *Superintendent* a list from each design *consultant* detailing, as far as the design *consultant* is aware:
 - (i) any non-conformances with the *Principal's project requirements* and the design documents; and
 - (ii) any defects or omissions in *the Works*.

preliminary design means the documents stated in *Item 11*.

prescribed notice has the meaning in subclause 41.1.

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

Principal's Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the *Principal* as confidential;
- (c) the *Contractor* knows or ought to know is confidential; or
- (d) is comprised in or relates to the *Principal's Material* or *Contract Material*, and includes the terms of the *Contract*, but does not include information which:
 - (e) is or becomes public knowledge other than by breach of the *Contract* or any other confidentiality obligations; or
 - (f) has been independently developed or acquired by the *Contractor* as established by written evidence.

Principal's Consultants means any other service providers engaged by the *Principal* in association with *the Works*.

Principal's Health and Safety Requirements means the guidelines and requirements of the *Principal* in relation to OH&S, including any such guidelines and requirements referred to in the *Statement of Requirement*.

Principal's Material means any material including the documents stated in *Item 39* provided by or on behalf of the *Principal* to the *Contractor* for the purposes of the *Contract* or which is copied or derived from material so provided, including, but not limited to, documents, equipment, information and data stored by any means.

Principal's project requirements means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10*, as amended pursuant to clause 9.4.

Principal Provided Approvals means those approvals referred to in *Item 16* (if any).

program has the meaning in clause 32.

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Project Management Plan means the project management plan prepared and provided by the Contractor in accordance with the *Statement of Requirement*

Proportionate Liability Legislation means the *Wrongs Act 1958* (VIC) – Part IVA.

provisional sum has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item.

provisional sum work means the works or goods described in *Item 13B*, for which the sum of money referred to in *Item 13A* is included in the *Contract sum*.

public liability policy has the meaning in clause 17.

qualifying cause of delay means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the Contractor); or
- (b) inclement weather which continues for a period of 2 days or more; or
- (c) strikes that are industry wide; or
- (d) a variation directed by the *Superintendent* in accordance with subclause 36.1; or
- (e) a change in *legislative requirement* of the type referred to in subclause 11.2; or
- (e) an event or circumstance of the type referred to in subclauses 14.3(b) or 14.3(c),

but in all cases excludes those events referred to in *Item 28*.

schedule of rates means any schedule (including *Item 12* of Annexure Part A) included in the *Contract* which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, *provisional sums*, other sums, quantities and prices.

Schedule means the schedules referred to in the *Statement of Requirement* (if any).

security means:

- (a) an approved unconditional undertaking (the form in Annexure Part B is approved) given by an approved financial institution or insurance company; or
- (b) other form approved by the party having the benefit of the security.

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

selected subContract work has the meaning in subclause 9.3.

selected subContractor has the meaning in subclause 9.3.

separable portion means a portion of the *Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4.

Side Letter Deed means the deed between the *Lessor* and *Airservices Australia* dated on or about 16 December 2011 and substantially in a form attached as Annexure I.

site means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract* as shown in the plan referred to in Annexure C to the *Statement of Requirement*.

stated purpose means the purpose or purposes set out in the *Statement of Requirement*.

Statement of Requirement means the statement of works attached as Annexure Part F of the *Contract*, as amended pursuant to clause 9.4.

subContractor has the meaning in clause 9 and includes a *consultant*.

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

Superintendent's Representative means an individual appointed in writing by the *Superintendent* under clause 21.

survey mark in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*.

Tax Invoice means the same as in the *GST Law*.

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

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

the Works means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*.

variation has the meaning in clause 36.

work includes the provision of materials.

WUC (from 'work under the Contract') means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, construction plant and temporary *works*, and all items of *work* that ought to be reasonably inferred from the proper execution and completion of the *Works* to the reasonable satisfaction of the *Superintendent* and for the proper performance by the *Contractor* of its obligations under this *Contract*, whether or not such items have been shown or described in any of the documents comprising this *Contract*,

and like words have a corresponding meaning.

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

- (a) references to days mean a reference to *business days* but does not include rostered days off and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday or 27th, 28th, 29th, 30th or 31st of December;

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- (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 *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction is the law of the jurisdiction in *Item 8*; and
- (i) the words "including", "include" and "included" are deemed to be followed by the words "without limitation".

1.2 Multiple parties

If a party to this *Contract* is made up of more than one person, or a term is used in this *Contract* to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately.

2. NATURE OF CONTRACT

2.1 Performance and payment

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

The *Principal* shall pay the *Contractor* the *Contract sum* (exclusive of *GST*) in accordance with this *Contract*, subject to the *WUC* being performed in accordance with the *Contract* and being fit for *stated purpose* to the reasonable satisfaction of the *Superintendent*, adjusted by any additions or deductions made pursuant to the *Contract*.

The *Contract sum* is fixed and not subject to rise and fall or any other adjustment whatsoever (including whether in respect of *site* allowances, superannuation, fluctuations and exchange rates or the cost of labour of materials or otherwise) unless expressly provided for in the *Contract*.

2.1A Letter of Intent

- (a) The parties:
 - (i) acknowledge that the *Letter of Intent* was entered into prior to the date of this *Contract* in order to permit the commencement of certain design activities prior to the date of this *Contract*; and
 - (ii) agree that, upon the parties entering into this *Contract*:

- (A) the provisions of the *Letter of Intent* (other than clause 6 of the *Letter of Intent*) ceased to operate;
 - (B) the provisions of the *Letter of Intent* were replaced by the provisions of this *Contract* (as and from the date of this *Contract*); and
- (b) No party is entitled to make any *Claim* as a consequence of or in connection with the matters referred to or contemplated in this clause 2.1A.
- (c) The parties acknowledge and agree that, on and from the date of this *Contract*, the provisions of this *Contract* will apply to any design obligations undertaken or completed under the *Letter of Intent* and the rights and obligations of the parties under this *Contract* will be the same as they would be under the *Letter of Intent* as if this *Contract* had been executed on the date of the *Letter of Intent*.
- (d) The parties acknowledge and agree that, on the date of this *Contract*:
 - (i) any payments made by the *Principal* to the *Contractor* under the *Letter of Intent* must be adjusted against the *Contract Sum*;
 - (ii) payments of the Design Costs Amount (as defined in the *Letter of Intent*) under the *Letter of Intent* are deemed to be:
 - (A) payments of; and
 - (B) (to the extent such payments are made) in satisfaction of the *Principal's* obligation to pay,
 part payment of the *Contract Sum* under this *Contract*.
 - (iii) the design activities undertaken by the *Contractor* under the *Letter of Intent* are deemed to form part of the design activities under this *Contract* (in accordance with clause 2.1A(d)(iii) and 2.1B of this *Contract*).
 - (iv) any claim made by the *Contractor* under the *Letter of Intent* which:
 - (A) complies with all procedural and other requirements of the *Letter of Intent*; and
 - (B) has not been determined at the date of this *Contract*,
 is deemed to be a claim properly made by the *Contractor* under the equivalent clause of the *Contract* and will be determined in accordance with the *Contract*.
- (e) any determination made, direction, approval or consent given or certificate issued under a provision of the *Letter of Intent* is deemed to be a determination made, direction, approval or consent given or certificate issued under the equivalent provision of this *Contract* notwithstanding that the determination, direction, approval or consent under this Deed was made or given by a different determining person.

2.1B Design process and proceeding with construction

- (a) The *Contractor* must, in undertaking and completing the *Contractor's design obligations*, and the design for the *Works* prepare such *design documents* as are necessary or desirable to carry out the *Works*, in accordance with any requirement in the *Statement of Requirement* or this *Contract*. The *Contractor* shall provide copies of all *design documents* to the *Superintendent* and to the *Principal* as soon as reasonably practicable after their preparation pursuant to the *Statement of Requirement* and the *Contract* prior to the intended date or time when construction of that part of the *Works* is to be commenced.

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- (b) *Design documents* submitted to the *Superintendent* and to the *Principal* must be accompanied by certification from the *consultant* or the relevant sub-consultant of the *consultant* that the design meets the requirements of the *Contract* and complies with all relevant Australian and/or International Standards (wherever applicable) and with the Building Code of Australia. The *Contractor* further acknowledges and agrees to provide the following relevant certifications:
- (i) TUV; and
 - (ii) DIN 14097-2: Firefighter training facilities - Part 2: Gas-fuelled simulation devices, in relation to *FTS Works*.
- (c) If the *Superintendent* notifies the *Contractor* that the *Principal* does not accept any part of the *design documents* (which decision may be made by the *Principal*, acting reasonably) within 10 *business days* of receipt by it, the *Contractor* will revise the *design documents* as required by the *Principal* and submit revised *design documents* to the *Superintendent*.
- (d) *Design documents* will not be issued by the *Contractor* for construction if they are not accepted by the *Superintendent* under this clause.
- (e) No adjustment to the *Contract sum* is payable by the *Principal* and the *Contractor* is not entitled to any adjustment to the *date for practical completion* for any change or revision due to any non-acceptance by the *Principal* under subclause 2.1B(c) if the *Superintendent* is of the reasonable opinion that such change or revision was necessary as a result of any error or failure of the *design documents* to comply with the requirements of the *Contract* and any reasonable requirements of the *Principal* previously notified in writing to the *Contractor*.
- (f) An acceptance of *design documents* or an authorisation to proceed with construction under this clause or any other provision of the *Contract* by the *Superintendent* does not amount to an acceptance that the *design documents* comply with the *Contract* and is to be construed as an authorisation to proceed with construction only.
- (g) Once acceptance of *design documents* is given or deemed to have occurred, the *Contractor* must not vary that part of the *Works* without the prior written approval of the *Superintendent* (which must not be unreasonably withheld).

2.2 **Contractor's representations and warranties**

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

- (a) the *Contractor*:
- (i) has examined:
 - (A) any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
 - (B) the *FTS Contract* and all documents provided by the *Principal* to the *Contractor* pursuant to clause 9.4(b).
 - (ii) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's consultants* for any *work* under the *FTS Contract* and any other contract novated under clause 9.4; and

- (iii) shall carry out and complete *WUC* in accordance with the *design documents* and the *Principal's project requirements* so that *the Works*, when completed, shall:
 - (A) be fit for their *stated purpose*; and
 - (B) comply with all the requirements of the *Contract* and all *legislative requirements*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's tender* are suitably qualified and experienced;
- (c) it has the skill, competence, resources, commitment and experienced personnel available to undertake *the Works*;
- (d) it will use due skill and care;
- (e) it will retain appropriately qualified personnel to ensure timely performance of its obligations;
- (f) *the Works* will be suitable for the purposes for which they are required as described in this *Contract*;
- (g) it has, and in this regard, shall be deemed to have:
 - (i) examined all information relevant to the risks, contingencies and other circumstances which might have an adverse or beneficial effect on *the Works*, the *Contractor's* responsibility and, in particular, the existing condition of the *site*; and
 - (ii) fully and properly informed itself of the nature of *the Works* and the materials necessary for the performance of *the Works*, the means of access to and from the facilities and services and the *site* and all relevant physical features of *the Works*;
- (h) all documentation and applicable materials supplied under this *Contract* will be sufficient to enable the *Principal* to make full and proper use of the *Works*;
- (i) any materials used to perform *the Works* will be new and free from defects in design, performance and workmanship and will be in accordance with the *Statement of Requirement*;
- (j) subject to clause 9, it will engage and retain sub-contractors which are suitably qualified and experienced;
- (k) it will construct and complete the *WUC* in accordance with the *Statement of Requirement* and *Schedules* and relevant Australian Standards so that *the Works*, when completed, will comply with all the requirements of the *Contract* and all *legislative requirements*;
- (l) in entering into the *Contract*, the *Contractor* has not relied on any representations, information or advice given by or on behalf of the *Principal*, or the accuracy, completeness, suitability of any information or data supplied or made available by the *Principal* to the *Contractor*, including the *preliminary design*, reports and any other information;
- (m) it shall execute *the Works* in a proper and workmanlike manner; and
- (n) it shall transfer unencumbered title to all materials and equipment used in *the Works* to the *Principal*.

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2.2A. Further warranties

Without limiting the generality of subclause 2.6, the *Contractor* represents and warrants to the *Principal* that the *Contractor*:

- (a) has examined and carefully checked that all *design documents* (including any *design documents* created by the *FTS Contractor* prior to the *FTS Novation Date*):
 - (i) are consistent with and conform with and meet all *legislative requirements*;
 - (ii) do not contain any material discrepancies, ambiguities or inconsistencies; and
 - (iii) are suitable for *the Works*;
- (b) has taken into account all of the risks in relation to *the Works* (including the risks described in subclause 2.6) and made full allowance for those risks in the *Contract sum* and the *date for practical completion* and has made its own interpretations as to the difficulties (if any) of executing *the Works*;
- (c) has examined the *WUC*, all *site* conditions and the surroundings of the *WUC* and has informed itself, to the extent a competent contractor experienced in carrying out work similar in size and complexity to the *WUC*, can reasonably inform itself, of all relevant physical conditions on and below the surface of the *site* and the climatic conditions likely to be encountered at and near the *site*;
- (d) will give the *Lessor* the same access and other rights in relation to the *site* that *Airservices Australia* is required to give to the *Lessor* under the *Lease*.
- (e) has informed itself of the nature of:
 - (i) the *work*, materials and *construction plant* necessary for the execution of the *WUC*;
 - (ii) the facilities at the *site*;
 - (iii) the means of access to and egress from the *site* and transport facilities for deliveries to the *site* and the constraints applicable from time to time in relation to that access and egress; and
 - (iv) the availability of car parking and parking for other vehicles both on and off the *site* and the restrictions on that parking;
- (f) except in respect of *Principal Provided Approvals*, has obtained (either itself or through the *FTS Contractor*) or will obtain all necessary *Approvals*;
- (g) is not, and has no reasonable grounds to believe it will become, insolvent or otherwise financially incapable of carrying out the *WUC* and there is no unfulfilled or unsatisfied judgment or court order outstanding against the *Contractor*;
- (h) is familiar with all *legislative requirements* affecting *the Works* and there is nothing in this *Contract*, including the *design documents*, that is inconsistent or at variance with any current *legislative requirements*;
- (i) will ensure all *WUC* is undertaken by suitably qualified, and where required, registered and insured persons; and
- (j) will comply with all conditions attached to the *Approvals* and *Principal Provided Approvals*.

2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's consultant* under subclause 9.4 and thereafter has retained that *consultant* in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Principal* or the *Superintendent*; or
- (d) any *variation*.

2.3A Acknowledgement

- (a) Despite anything in this Contract or the FTS Contract, the Contractor acknowledges and agrees that, the Contractor:
 - (i) has read the terms and conditions of the *Lease* and the *Side Letter Deed*; and
 - (ii) will not do, or permit to be done, or omit to be done, anything which may result in:
 - (A) *Airservices Australia* breaching the *Lease*; or
 - (B) prejudicing *Airservices Australia's* interest in the *Lease* or the *site*.
- (b) The *Contractor* further acknowledges and agrees that, notwithstanding anything in this Contract, subclauses 2.2 and 2.2A remain unaffected by:
 - (i) any novation of the *FTS Contract*; or
 - (ii) the relocation and/or removal of the *Electricity Cable*.

2.4 Preliminary design

- (a) The *Principal* grants to the *Contractor* a non-exclusive, non-transferable licence to use the *preliminary design* for the purpose of this Contract.
- (b) The *Contractor* acknowledges that the *Principal* has not given any warranty or guarantee or made any representation about the adequacy or suitability or the level of completeness of the *preliminary design*.
- (c) The *Principal* is not liable for and is released by the *Contractor* in respect of any *Loss* or claim of any nature by the *Contractor* in connection with or arising out of the *preliminary design* (including claims in tort, for quantum meruit or pursuant to law).

2.5 Contractor's obligations

The *Contractor*:

- (a) must comply with its obligations under the Contract; and
- (b) will bear and continue to bear full liability and responsibility for the design of the *Works* (including the risk of any *defects* which may arise (whether directly or indirectly) as a result of or in any way in connection with any design work incorporated into the Contract),

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notwithstanding that it may be required to adopt any part of the *preliminary design* which is incorporated into the *Contract* (including the novated design for *FTS Works*).

2.6 Risks accepted by the Contractor

- (a) The *Contractor* accepts all risks associated with the execution of the *WUC* and completion of the *Works*, including risks associated with additional time and cost (whether ascertainable or not) (other than risks specifically and expressly reserved to the *Principal* by the *Contract*) including risks associated with or arising in relation to:
 - (i) the constraints on working hours set out in clause 31;
 - (ii) compliance with all conditions attached to *Approvals*;
 - (iii) compliance with all conditions attached to *Principal Provided Approvals*;
 - (iv) the requirements of all relevant *Authorities*;
 - (v) restrictions to, or provision of access to the *site* in accordance with the rights and obligations under the *Lease*;
 - (vi) the exercise (or purported exercise) by the *Lessor* of any of its rights under the *Lease*; and
 - (vii) any works conducted in relation to the relocation and/or removal of the *Electricity Cable* on the *site*.
- (b) The *Contractor* agrees that it is not entitled to and that it will not seek an extension of time to the *date for practical completion* and/or an adjustment to the *Contract sum* or separate payment from the *Principal* arising out of or in connection with the risks referred to in subclause 2.6(a).

3. PROVISIONAL SUMS

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal*. The *Principal* will give the *Contractor* a *direction* either requiring the *Contractor* to proceed with the *provisional sum work* or deleting the *provisional sum work* in circumstances where the *provisional sum work* is not necessary to enable the *Contractor* to complete the *WUC*. Where the *Superintendent* gives the *Contractor* a notice under this clause requiring the *Contractor* to proceed with an item of *provisional sum work*, the *Contract sum* will be adjusted for the item of *provisional sum work* by adding to or deducting from the *Contract sum* such amount as is calculated pursuant to subclause 36.4 as if the *provisional sum work* was a *variation*.

4. SEPARABLE PORTIONS

4.1 Interpretation

The interpretation of:

- (a) *date for practical completion*;
- (b) *date of practical completion*;
- (c) *practical completion*,

and clauses 14, 27, 34 and 35 shall apply separately to each *separable portion* and references in those clauses to the *Works* and to *WUC* shall mean so much of the *Works* and *WUC* as is comprised in the relevant *separable portion*.

4.2 Use of partly completed Works

If a part of *the Works* has reached a stage equivalent to that of *practical completion* but another part of *the Works* has not yet reached such a stage, the *Principal* may determine that the respective parts shall be *separable portions*.

In using the *separable portion* that has reached *practical completion*, the *Principal* shall not hinder the *Contractor* in the performance of the *WUC*.

5. SECURITY

5.1 Provision

- (a) Subject to subclause 5.1(b), the *security* will be:
 - (i) provided by the *Contractor* to the *Principal* prior to the commencement of *the Works* in accordance with *Item 14* and this clause 5;
 - (ii) given by a financial institution approved by the *Principal* (acting reasonably).
- (b) The parties acknowledge and agree that:
 - (i) the *FTS Contractor* must provide to the *Contractor* replacement *security* pursuant to the *FTS Contract*, in the name of the *Contractor*, on the *Novation Date*; and
 - (ii) *AirServices Australia* must, to the extent that *AirServices Australia* has not had recourse to the *security* (provided under the *FTS Contract*) under subclause 5.2 of the *FTS Contract*, and upon provision of the replacement *security* by the *FTS Contractor* under subclause 5.2(b)(i), return the *security* held by it (under the *FTS Contract*) to the *FTS Contractor*.
- (c) If the *Contractor* fails to comply with subclause 5.1(a), the *Principal* may terminate the *Contract* and subclause 39.10 will operate as if the termination had been made pursuant to subclause 39.4(b).

5.2 Recourse

- (a) The *Principal* may have recourse to the *security* referred to in clause 5.1, and may convert into money *security* that does not consist of money where the amount remains unpaid and the *Principal* believes (acting reasonably):
 - (i) that the *Contractor* is in breach of any of its obligations under the *Contract*; or
 - (ii) it is entitled to terminate the *Contract*.
- (b) For the avoidance of doubt:
 - (i) *AirServices Australia* may only have recourse to the *security* which it holds pursuant to subclause 5.1(a) of the *FTS Contract*, prior to or on the *Novation Date*; and
 - (ii) the *Contractor* may only have recourse to the *security* which it holds pursuant to subclause 5.1(b)(i) after the *Novation Date*.

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5.3 Not used**5.4 Reduction and release**

Upon the issue of the *certificate of practical completion* for the whole of the *Works* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced to the amount in *Item 14(f)*, and the reduction shall be released and returned within 14 days to the other party.

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

A party's entitlement otherwise to *security* shall cease 14 days after the date of issue of the *final certificate* for the whole of the *Works*.

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

5.5 Not used**5.6 Not used****5.7 Interest**

Interest earned on *security* shall belong to the party holding that *security*.

5.8 No injunction

The *Contractor* acknowledges that it will not at any time take steps to injunct or otherwise restrain or attempt to injunct or otherwise restrain:

- (a) any issuer of any *security* contemplated in this clause 5 from paying the *Principal* pursuant to the *security*; or
- (b) the *Principal* from:
 - (i) taking any steps to obtain payment under any *security*; or
 - (ii) using the moneys received under any *security*.

6. EVIDENCE OF CONTRACT

This *Contract* constitutes the entire, final and concluded agreement between the *Principal* and the *Contractor*, as evidenced by the documents referred to in clause 2.1 of the *Formal Instrument of Agreement*. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the *Contract* and has no further effect.

7. SERVICE OF NOTICES

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

- (a) in the case of the *Principal*, if addressed or delivered to the address in *Item 2* and in the case of the *Contractor*, 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.

Documents, but not notices, may be given and received by way of e-mail or electronic transmission.

8. **CONTRACT DOCUMENTS**

8.1 **Interpretation and discrepancies**

If either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed. For the purposes of interpreting the *Contract* under this clause, the *Superintendent* must give precedence to the documents comprising the *Contract* in the order they are listed in clause 2.1 of the *Formal Instrument of Agreement*.

The terms and conditions of this *Contract* must be read together with the rights and obligations set out in the *Formal Instrument of Agreement* and the annexures to this *Contract* (including but not limited to the *Statement of Requirement* and the *Schedules*) which are deemed to form part of and be included in this *Contract* and do not reduce the obligations in this *Contract*.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *Contract sum*.

The documents forming the *Contract* are to be taken as mutually explanatory of one another.

8.2 **Principal-supplied documents**

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

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

8.3 **Contractor-supplied documents**

The *Contractor* shall supply to the *Superintendent* and the *Principal*, the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent* and the *Principal*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* 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 *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations;

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- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable;
- (d) all electronic drawing files must be supplied in accordance with Annexure B to the *Statement of Requirement*.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent* which must be kept in a secure location and in good order; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

8.5 Disclosure and use of information

- (a) The *Contractor* undertakes for itself and all *Contractor Personnel* not to disclose, or otherwise make public, any of the *Principal's Material*, *Contract Material* or any other information or material acquired in connection with or during the performance of the *Contract* without the prior written approval of the *Principal*. In giving written approval, the *Principal* may impose such terms and conditions as in the *Principal's* opinion are appropriate.
- (b) The *Contractor* must ensure that none of the *Principal's Material* nor the *Contract Material* is used, copied, supplied or reproduced for any purpose other than for the performance of the *Contract*.
- (c) The *Contractor* must use best endeavours to ensure that its *Contractor Personnel* engaged in the performance of the *Contract* do not make public or disclose the *Principal's Confidential Information*.
- (d) The *Contractor* may disclose the *Principal's Confidential Information*:
 - (i) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
 - (ii) if required in connection with legal proceedings,but in each case, subject to the *Contractor* giving the *Principal* sufficient notice of any proposed disclosure to enable the *Principal* to seek a protective order or other remedy to prevent the disclosure.
- (e) The *Principal* may disclose *Contractor Confidential Information*:
 - (i) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party;
 - (ii) if required in connection with legal proceedings;

- (iii) for public accountability reasons, including a request for information by parliament or a parliamentary committee;
- (iv) to the *Principal* third party service providers on a need to know basis and then only for the purposes of providing goods and services to the *Principal*; or
- (v) for any other reporting requirements of the *Principal*.
- (f) Either party may disclose the other party's *Confidential Information* to its legal advisers in order to obtain advice in relation to its rights under this *Contract*, but only to the extent necessary for that purpose.
- (g) The *Contractor* must not disclose the *Principal's Confidential Information* on the internet for any purpose without the prior written consent of the *Principal*.
- (h) The *Contractor* must use, copy, supply and reproduce the *Principal's Confidential Information* held, acquired or which the *Contractor* may have had access to in connection with the *Contract* only for the purposes of fulfilling its obligations under this *Contract*.
- (i) On expiration or termination of the *Contract*, the *Contractor* must:
 - (i) deliver to the *Principal* within 10 business days (and not retain any copies) all material forms of the *Principal's Confidential Information*;
 - (ii) comply with any security obligations notified to the *Contractor* by the *Principal* in relation to the *Principal's Confidential Information*.
- (j) This clause will survive expiration or termination of the *Contract*.

8.6 Media

The *Contractor* shall not disclose any information concerning the *Works* for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the *Contract* or any matter referred to in the *Contract*.

8.7 As-built drawings and operating manuals for the *Works* ("as-built drawings and manuals")

- (a) The *Contractor* shall supply to the *Principal* three complete copies of the as-built drawings and manuals for the *Works*, which must be prepared in accordance with this *Contract* and the *Statement of Requirement*, as well as one set of reproducible copies of the as-built drawings and manuals. If the *Contractor* fails to provide as-built drawings within a required timeframe as set out in this *Contract* (including the *Statement of Requirement*), the *Superintendent* may deduct from the *Contract sum* the costs for producing the as-built drawings.
- (b) The *Contractor* must prepare and submit all building and operation and maintenance manuals in accordance with the procedures set out in the *Statement of Requirement*.
- (c) The *Contractor* shall also submit a draft copy of the as-built drawings and manuals not less than 14 days prior to compiling the final as-built drawings and manuals to be supplied to the *Principal*. The as-built drawings and manuals shall include:
 - (i) three hard copies of manuals labelled and indexed including a CD ROM version of all documentation;
 - (ii) three hard copies of all as-built drawings including digital copy on a CD ROM;
 - (iii) schedule of all *subContractors* and supplies with contract details; and

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- (iv) schedule of all finishes.

8.8 Trade and manufacturer warranties

- (a) Before commencement on *site* of any item of *the Work* for which a warranty is required, the *Contractor* must deliver to the *Superintendent* a draft copy of the relevant warranty which must be in a form acceptable to the *Superintendent* acting reasonably and based on industry standards and the *Statement of Requirement*. Payment will not be authorised in respect of any such item of *the Work* until this subclause 8.8(a) has been complied with.
- (b) Prior to *practical completion*, the *Contractor* shall:
- (i) ensure that the *Principal* obtains the benefit of all trade, manufacturers' and *subContractors'* warranties ordinarily provided for materials, products and equipment to be incorporated in *the Works* or otherwise required by the *Contract*; and
 - (ii) provide a copy of such warranties to the *Superintendent* and the *Principal*.
- (c) Each warranty must:
- (i) be a warranty for the period required by the *Superintendent*; and
 - (ii) be provided in writing duly executed by the supplier of the work, by the *Contractor*, and where the work is supplied by the supplier to a *Subcontractor*, by that *Subcontractor*.
- (d) The *Contractor* must procure, in respect of each warranty, that all applicable stamp duty is paid and that the warranty is duly stamped to denote such payment, before the warranty is delivered to the *Superintendent*. In the event that, in breach of this requirement, any warranty is delivered to the *Superintendent* which has not been duly stamped, the *Principal* shall be at liberty to cause it to be properly stamped and the duty paid by the *Principal* shall be recoverable as a debt due by the *Contractor* to the *Principal*.
- (e) Each warranty must provide a comprehensive statement of details, materials, components and workmanship that are included in the warranty whether such items are supplied and/or installed by the *Contractor* or a *Subcontractor* or by another party. A warranty of the whole shall imply warranty of each and every one of its parts, whether supplied or installed by the warrantor or by others.
- (f) The following provisions apply with respect to every warranty:
- (i) the warranty must not in any way relieve the warrantor from any liability under any law or statute for the consequences of any negligence; and
 - (ii) notwithstanding any limitations expressed or agreed under the conditions of the warranty, if any failure of, or defect in, the subject of the warranty is such that, if allowed to continue, consequential damage to the *Works* or any part of the *Works* can reasonably be expected to result and the warrantor, after receiving notification of the failure or defect, does not proceed with reasonable diligence to rectify or repair the failure or defect, he must be liable for the cost of repairing or reinstating all damage assessed by the *Superintendent* which occurred after the time when action by the warrantor should have been taken and every warranty shall be required to contain provisions to this effect.
- (g) No warranty is to be construed as, or have the effect of, relieving the *Contractor* of any of its contractual obligations under this *Contract*.
- (h) Notwithstanding any limitations expressed or implied under the conditions of the warranty of any failure of or defect in the subject of the warranty is such that, if allowed to continue,

consequential damage to the *Works* or any part of the *Works* can reasonably be expected to result and the warrantor after receiving notification of the failure or defect, does not proceed with reasonable diligence to rectify the failure or defect, he must be responsible for any damage as the *Principal* may assess as having occurred after the time when action by the warrantor should have been taken. Every warranty must be required to contain provisions to this effect.

- (i) No warranty is to be construed as or have the effect of relieving the *Contractor* of any of its contractual obligations under the maintenance and defects liability provisions of this *Contract*.
- (j) Coincidental product warranties not specifically required by the *Statement of Requirement* but which are available on products incorporated into the *Works* by virtue of the fact that the manufacturer of the product has published the warranty in connection with purchases and users of the product without regard for specific applications (except as otherwise limited by the terms of the warranty) must be bound together and handed to the *Superintendent* with all specified warranties.
- (k) In all instances where a warranty is not offered by a manufacturer, the *Contractor* is deemed to have extended a guarantee for the materials and workmanship for any product noted above for two years.
- (l) Where a manufacturer offers a warranty period for the product, the *Contractor* must warrant the workmanship component for the same period.
- (m) The *Contractor* warrants that:
 - (i) the *Works* will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the *Conditions of Contract*;
 - (ii) all materials to be supplied by the *Contractor* for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this *Contract*, those materials will be new;
 - (iii) the *Works* will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the *Building Act 1993* and the regulations made under the Act;
 - (iv) the *Works* will be carried out with reasonable care and skill and will be completed by the date for practical completion under the *Conditions of Contract*;
 - (v) the *Works* will be suitable for occupation at the time of practical completion under this *Contract*;
 - (vi) the *Works* and any materials used in carrying out that work will be fit for the purpose and will be of such a nature and quality that they might reasonably be expected to achieve that result.

8.9 Preparation of and compliance with Plans and other documents

- (a) The *Contractor* must prepare the *Plans* and other documents in accordance with this *Contract*, the *Statement of Requirement* and any requirements of the *Superintendent*, including any independent audit of those *Plans* and documents.
- (b) The *Contractor* must at all times:
 - (i) comply with each *Plan*; and
 - (ii) ensure that the *Contractor's Personnel* comply with each *Plan*.

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- (c) If the *Contractor* fails to comply with a *Plan*, the *Principal* must give the *Contractor* a written notice specifying:
 - (i) the alleged breach of a *Plan*; and
 - (ii) the date and time by which the *Contractor* must rectify the breach.
- (d) If the *Contractor* fails to remedy a breach within the time specified in the *Principal's* notice referred to in clause 8.9(c), the *Principal* may, in addition to any other remedy, engage a third party to rectify the breach at the *Contractor's* cost. The costs incurred by the *Principal* will be a debt due from the *Contractor* to the *Principal*.
- (e) To the extent of any inconsistency between a *Plan* and the *General Conditions*, the *General Conditions* prevail.
- (f) If the *Contractor* fails to:
 - (i) undertake an independent audit of any *Plans* or documents as required under subclause 8.9(a), the *Superintendent* may deduct from the *Contract sum* an amount equivalent to all costs incurred in relation to the engagement of an auditor to undertake review, correction and preparation of the relevant *Plan*; or
 - (ii) comply with any aspect of the *Project Management Plan*, the *Superintendent* may deduct from the *Contract sum* an amount equivalent to the costs of any such breach.
- (g) The *Contractor* will not be entitled to the grant of any extension of time in relation to delays resulting from the approval by the *Superintendent* or any other person in relation to the *OHS Management Plan* or any other *Plan*.

8.10 Shop drawings

- (a) The *Contractor* must, at its cost, check and submit one electronic (pdf) complete and accurate copy of shop drawings in sufficient time to allow the *Superintendent* and the *Principal* to examine the drawings, not less than 10 *business days* prior to stockpiling, fabrication or fixing commences.
- (b) All shop drawings must be prepared and issued in accordance with requirements of the *Superintendent*.
- (c) The *Contractor* must not stockpile, manufacture, assemble or supply anything affected by shop drawings until they have been reviewed by the *Superintendent*.
- (d) Subject to clause 8.10(a), the *Superintendent* will review the shop drawings and will notify the *Contractor* of any amendments required to the shop drawings within 10 *business days* of receipt or in any event, as soon as possible.
- (e) Any amendments proposed by the *Superintendent* pursuant to clause 8.10(d) will not in any way relieve the *Contractor* from responsibility in relation to the shop drawings, including any errors, omissions or interferences or from completing and providing the required workmanship or materials as specified by this *Contract* (including the *Statement of Requirement* and the *Schedules*).
- (f) The *Contractor* is not entitled to an *extension of time* under this clause 8.10(f) to the extent that:
 - (i) the *Superintendent* fails to notify the *Contractor* of the proposed amendments within the 10 *business day* period referred to in clause 8.10(d); or

- (ii) the delay in reviewing the shop drawings by the *Superintendent* is caused by or contributed to by any breach, act or omission of the *Contractor* or the *Contractor Personnel*.
- (g) Subject to clause 8.10(f), the *Contractor* is entitled to an *extension of time* (acting reasonably) if the *Superintendent* takes an unreasonable amount of time to examine the shop drawings.
- (h) The *Contractor* is not entitled to an *extension of time* under clause 8.10(f) to the extent a delay in the notice by the *Superintendent* is caused by or contributed to by any breach, act or omission of the *Contractor* or the *Contractor Personnel*. The *Contractor* is not otherwise entitled to an extension of time, adjustment to the *Contract sum* or *variation* arising out of or in connection with the shop drawings or submission or inadequacy of shop drawings.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

The *Contractor* shall not assign the *Contract* or any payment or any other right, benefit or interest under the *Contract* without the prior written consent of the *Principal*. The *Principal* may withhold its consent to such an assignment, acting reasonably.

9.2 SubContracting generally

The *Contractor* shall engage and retain the *consultants* identified in the *Contractor's* tender.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subContract or allow a *subContractor* to subContract any work described in *Item 19*; or
- (b) allow a *subContractor* to assign a subContract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the work to be subContracted and the name and address of the proposed *subContractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subContract documents without prices.

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

Approval may be conditional upon the subContract including:

- (c) provision that the *subContractor* shall not assign nor subContract without the *Contractor's* written consent;
- (d) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (e) provision that if the *Contract* is terminated and upon the *subContractor* being paid the sum certified by the *Superintendent* as owing to the *subContractor*, the *Contractor* and the *subContractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

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- (f) provision that the *subContractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c) and 24(d)*, provided that, where the *subContractor* is a *subContractor* of the *FTS Contractor* who:

- (i) permanently resides or is incorporated outside Australia; and
- (ii) does not conduct business in Australia,

then, any such *subContractor* of the *FTS Contractor* shall effect and maintain professional indemnity insurance on terms substantially similar to those required under *Items 24(c) and 24(d)* given the laws and regulations applicable in the place of residence or incorporation of that *subContractor* of the *FTS Contractor* and the usual market practices in that place.

9.3 Selected *subContract work*

If the *Principal* has included in the invitation to tender a list of one or more *selected subContractors* for particular work, the *Contractor* shall *subContract* that work to a *selected subContractor* and thereupon give the *Superintendent* written notice of that *selected subContractor's* name.

If no *subContractor* on the *Principal's* list will *subContract* to carry out the *selected subContract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

9.4 Novation

- (b) The *Contractor* acknowledges that:

- (i) the *Principal* has, prior to the date of this *Contract*, entered into the *FTS Contract*;
- (ii) the *Principal* intends to novate the *FTS Contract* to the *Contractor*, so that the *Contractor* delivers the *FTS Works* as part of the *Works* and the *FTS Contractor* will be a *subContractor* of the *Contractor*;
- (iii) on the date of novation, this *contract* will be varied in the manner set out in this clause 9.4.

- (c) The *Principal* may only novate the *FTS Contract* under this clause 9.4 during the *FTS Novation Period* and only in the form annexed to this *contract*. If the *Principal* notifies the *Contractor* in writing during the *FTS Novation Period* that it wishes to novate the *FTS Contract*, then:

- (i) the *Contractor*, without being entitled to compensation, must promptly execute a deed of novation in the form of Annexure Part D between the *Principal*, the *Contractor* and the *FTS Contractor*;
- (ii) from the *FTS Novation Date*, this *Contract* will be amended as follows:
 - (A) **clause 1.2 of the *Formal Instrument of Agreement*:** the lump sum set out in clause 1.2 of the *Formal Instrument of Agreement* will be amended by replacing **\$10,579,740** (excluding GST) with **\$10,829,740** (excluding GST);
 - (B) **clause 1:** definition of **the Works** - the words: "*the FTS Works and any*" will be inserted after the word "*including*";
 - (C) **Annexure Part F:** the statement of works attached as Annexure Part F of the *FTS Contract* will be inserted into Annexure Part F of this *Contract* in addition to the statement of works already contained in Annexure Part F, and the combined statements of works will, from the *Novation Date*, constitute the *Statement of Requirement*;

- (iii) the *Contractor* will not be entitled to make any claim in relation to the novation referred to in this clause 9.4, including but not limited to:
 - (A) any claim for compensation, additional payment or adjustment to the *Contract sum* (other than the adjustment of the *Contract sum* referred to in clause 9.4(b)(ii)(A));
 - (B) any claim for extension of time or for adjustment of the *date for practical completion* (including but not limited to a claim under clause 34); and
 - (C) any claim that the novation constitutes a *variation*.

9.5 **Contractor's responsibility**

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

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

The *Contractor* will be solely responsible for the management and co-ordination of its *subcontractors* and *selected subcontractors* and the co-ordination of the *Works* with any separate *subcontractors* engaged by the *Principal*.

9A **FTS WORKS**

- (a) The *Contractor* acknowledges that the conduct of the *FTS Works* requires that certain elements of the *Works* are conducted and completed sequentially with the *FTS Works*.
- (b) The *Contractor* acknowledges and agrees:
 - (i) to comply with its obligations under clause 9A.1 of the *FTS Contract* (from the *Date of Novation*);
 - (ii) that it will not be entitled to any *Claim* for compensation in relation to a failure to procure the completion of the *On-Site Works*; and
 - (iii) that it will not be entitled to any *extension of time* (other than the *Contractor's* entitlement under clause 34),

as a result of any matter contemplated under clause 9A.1 of the *FTS Contract*.

10. **INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS**

10.1 **Contract Material**

Subject to subclause 10.6, title to all *intellectual property rights* in all *Contract Material* vests immediately on its creation in the *Principal* and, if requested by the *Principal* to do so, the *Contractor* will bring into existence, sign execute or otherwise deal with any document which may be necessary to enable vesting of such title or right in the *Principal*.

10.2 **Warranty by Contractor**

The *Contractor* warrants that anything done by the *Contractor* in the course of performing the *WUC*, including the development of the *Contract Material*, or any use of the *Contract Material* by the *Principal* or its employees, officers, agents or contractors, will not infringe the *intellectual property rights* or *Moral Rights* of any person.

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10.3 Indemnity

The *Contractor* must at all times indemnify and hold harmless the *Principal*, its employees, officers, agents and contractors ("those indemnified") from and against any Loss or liability of any nature whatsoever incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceedings by any person against any of those indemnified in respect of any infringement of *intellectual property rights* or *Moral Rights* (in Australia or anywhere in the world) by the *Contractor* in carrying out the *Contract*, the use by the *Principal* of the *Contract Material* or otherwise in connection with this *Contract*. This indemnity survives the expiration or termination of this *Contract*.

10.4 Moral Rights consent

Without limiting clause 10.5, the *Contractor* must procure that each of its *Contractor Personnel* who are individuals engaged in the performance of the *Contract* consent in respect of *Moral Rights* for the benefit of the *Principal* set out in Annexure Part G. The *Contractor* must arrange for each consent to be given promptly and prior to the relevant *Contractor Personnel* being engaged in the performance of the *Contract*.

10.5 Copyright Act 1968 (Cth)

Notwithstanding anything to the contrary in this *Contract*, nothing in this *Contract* excludes or limits, or has the effect of excluding or limiting, the operation of subsection 47B(3), or section 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), or any corresponding law.

10.6 FTS Contract Material

Notwithstanding anything in this clause 10, the *Principal* acknowledges and agrees that any reference to *intellectual property rights* or *Moral Rights* under this clause 10, excludes any *intellectual property rights* or *Moral Rights* created under the *FTS Contract*.

10.7 Contract Material Licence

- (a) Clause 10.1 does not prevent the *Contractor* from using the *Contract Material* to undertake the *Works*. This use is on a non-exclusive, non-transferable, royalty-free basis for the term of this *Contract* and does not allow any further distribution or exploitation by the *Contractor* unless the *Principal* agrees otherwise in writing.
- (b) To the extent that any *Contract Material* (as that term is defined in the *FTS Contract*) has vested in the *Principal* prior to the *FTS Novation Date*, the *Principal* grants to the *Contractor* a non-exclusive, non-transferable, royalty-free licence for the term of this *Contract* in relation to that *Contract Material* but does not allow any further distribution or exploitation by the *Contractor* of that *Contract Material* unless the *Principal* agrees otherwise in writing.

10A. THE PRINCIPAL'S MATERIAL

- (c) The *Contractor* acknowledges the *Principal's* ownership or control by licence of the *Principal's Material* and all *intellectual property rights* in the *Principal's Material*.
- (d) Subject to this clause 10A, the *Principal* grants a non-exclusive, non-transferable, royalty-free licence to the *Contractor* to use the *Principal's Material* for the purpose of the performance of the *Contract* and inclusion in the *Contract Material* only. This licence extends to *Contract Material* created for the purpose of the performance of the *Contract*.
- (e) The *Principal* will inform the *Contractor* of any of the *Principal's Material* provided to the *Contractor* under this *Contract*, and of any conditions attaching to the use of that material because of such *intellectual property rights*. The *Contractor* must use that material only in accordance with those conditions.

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11.4 Exclusion of proportionate liability generally

In determining the rights, obligations and liabilities of the parties in any *Claims* arising under or in relation to this *Contract* the:

- (a) operation of any *Proportionate Liability Legislation* which would otherwise be applicable is expressly excluded to the maximum extent permitted by law; and
- (b) indemnity provisions of this *Contract* will apply notwithstanding any provision in any applicable *Proportionate Liability Legislation*, to the maximum extent permitted by law.

11.5 Exclusion of proportionate liability in subcontracts

The *Contractor* must:

- (a) in each subcontract into which it enters for the carrying out of *Works*, include provisions that, to the maximum extent permitted by law, expressly exclude the operation of any *Proportionate Liability Legislation* which would otherwise be applicable in determining the rights, obligations and liabilities of the parties in any claim arising under or in relation to the subject matter of each subcontract; and
- (b) require and ensure that each *subContractor* includes in any further contract that it enters into with others for the carrying out of *Works*, provisions that, to the maximum extent permitted by law, expressly exclude the operation of any *Proportionate Liability Legislation* in relation to all rights, obligations or liabilities under those further contracts.

12. PROTECTION OF PEOPLE AND PROPERTY

12.1 Protection measures

- (a) Insofar as compliance with the *Contract* permits, the *Contractor* shall:
 - (i) take measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (b) If the *Contractor* damages property, the *Contractor* must within 1 *business day* notify the *Principal* of such damage, and shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.
- (c) The *Contractor* must ensure that all equipment used by the *Contractor* or any of its *subContractors*, employees or agents in the performance of any part of the *WUC*:
 - (i) complies with any relevant statutory requirements;
 - (ii) is in safe condition;
 - (iii) when not in use is properly stored and secured; and
 - (iv) is operated with strict regard to safety.
- (d) If the *Contractor* uses any dangerous products then the *Contractor* must:
 - (i) ensure that the products are stored in correctly labelled and sealed containers;
 - (ii) ensure that the products are kept in secure storage areas when not in use; and

- (iii) store at the *site* only the amount necessary for *WUC*.
- (e) The *Contractor* must erect guard rails, warning signs and provide lights if so required to meet relevant safety standards.
- (f) If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.
- (g) Without limiting paragraph (e), the *Contractor* must erect, illuminate and maintain all necessary hoardings and fences, screens, gates, footways, gangways, gantries, platforms, temporary enclosures and similar safety items for the protection of *the Works* and people.

12.2 Protection of trees and plants

- (a) The *Contractor* must provide:
 - (i) adequate water to trees, plants and grassland on the *site* and to be retained; and
 - (ii) protection for trees, plants and grassland on the *site* from damage with suitable temporary guards or enclosures during the conduct of *the Works*.
- (b) The *Contractor* will remove the protective measures before *practical completion* or when directed to by the *Superintendent*.
- (c) In the event of damage to trees and plants:
 - (i) the damage will be assessed by the *Superintendent* and the *Contractor* is responsible for rectifying the assessed damage at its own cost;
 - (ii) all rectification must be carried out by an approved arborist;
 - (iii) the *Contractor* must submit details of the arborist for approval in writing by the *Superintendent* before rectification is commenced;
 - (iv) if rectification is impracticable, or is attempted but not approved by the *Superintendent*, the *Contractor* will remove the tree and root system, make good, and either replace with a tree of the same species and similar size, or pay the assessed cost of damage. If replacement by a smaller tree is approved, the *Contractor* will pay the difference between the replacement cost of the smaller and larger tree, as assessed by the *Superintendent*.

12A. OCCUPATIONAL HEALTH AND SAFETY AND OTHER SITE POLICIES

12A.1 Contractor's obligations

- (a) The *Contractor* must at all times comply with Commonwealth, state or territory and local government laws, codes of practice and regulations on occupational health and safety.
- (b) In respect of Commonwealth premises within the control of the *Contractor*, the *Contractor* must comply with all occupational health and safety obligations imposed upon the *Principal*.
- (c) The *Contractor* must comply with, and must ensure that its employees, agents and *subContractors* comply with all of the *Principal's* policies and procedures (including the *Principal's* Drug and Management Procedure) relating to the conduct of persons at the *site* and all reasonable directions and procedures relating to occupational health, safety or security in relation to the *site*.

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- (d) The *Contractor* must, when using the *Principal's* premises or facilities, comply with all directions and procedures relating to:
- (i) occupational health (including the *Principal's* smoke free work place policy);
 - (ii) safety;
 - (iii) security; and
 - (iv) the *Principal's* Drug and Alcohol Management Procedure,
- in effect at those premises or in regard to those facilities, as notified by the *Principal* or as might reasonably be inferred from the use to which the premises or facilities are being put.
- (e) For building works greater than \$3 million, the *Contractor* must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (refer to www.fsc.gov.au for further details).

12A.2 Risk Assessment

- (a) The *Contractor* must prepare and submit a risk assessment prior to commencing performance of *WUC* in accordance with this *Contract* (including the *Statement of Requirement*). The *Principal's* risk assessment form referred to in the *Statement of Requirement* will be used to record the risk assessment and risk control methods to be employed by the *Contractor*.
- (b) A completed risk assessment form must be submitted to the *Principal* for review and approval before the *Contractor* commences performing *WUC*.
- (c) The *Contractor* must, within 10 *business days* of the *FTS Novation Date*, amend the risk assessment referred to in clause 12A.2 to incorporate any changes which are necessary or desirable as a result of the incorporation of the *FTS Works* into the *Works*, and submit such revised risk assessment form to the *Principal* for review and approval.

12A.3 Performance

- (a) The *Contractor* must, when requested by the *Principal*, provide evidence of the ongoing performance of the *Contractor's* OH&S management system and compliance with this *Contract* in relation to OH&S, including the *Statement of Requirement*. Without limiting the requirements of this obligation, the *Contractor* must provide the following information on a monthly basis using the form referred to in the *Statement of Requirement*:
- (i) number of lost time injuries;
 - (ii) working days lost due to injury;
 - (iii) current status of any injured personnel, damaged property or environmental damage or pollution;
 - (iv) status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments; and
 - (v) status of OH&S management system audits undertaken.
- (b) The *Contractor* must, when requested by the *Principal*, provide evidence of certification and reports on OH&S inspections, audits or assessments undertaken during the course of this *Contract*.

12A.4 Accidents

- (a) If the *Contractor* is required by the *Occupational Health and Safety Act 1991* (Cth) or by any other *legislative requirement* to give any notice of an accident occurring during the performance by the *Contractor* of *WUC*, the *Contractor* will at the same time, or as soon as possible in the circumstances, provide the *Principal* with a copy of that notice.
- (b) The *Contractor* must promptly notify the *Principal* of any accident, injury, property or environmental damage which occurs during the performance of this *Contract*. The *Contractor* immediately notify the *Principal* of all lost time incidents. The *Contractor* must, within 3 days of any such incident, provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

12A.5 Non-compliance

- (a) If, during the performance of *WUC*, the *Principal* informs the *Contractor* that the *Principal* is not satisfied that the *Contractor* is:
 - (i) performing *WUC* in compliance with relevant *legislative requirement* or health and safety procedures provided by the *Principal* from time to time, including the *Principal's OH&S Requirements*;
 - (ii) maintaining certification of the *Contractor's OH&S* management system; or
 - (iii) performing *WUC* in such a way as to endanger the health and safety of *Contractor Personnel* or the employees, plant, equipment or materials of the *Principal* or any of its contractors or *subContractors*the *Contractor* will promptly remedy that breach of health and safety.
- (b) The *Principal* may direct the *Contractor* to suspend the work until such time as the *Contractor* satisfies the *Principal* that the work will be resumed in conformity with applicable health and safety provisions. During periods of suspension referred to above, the *Principal* will not be required to make any payment whatsoever to the *Contractor*.
- (c) If the *Contractor* fails to rectify any breach of health and safety for which the work has been suspended (including any failure to maintain or provide evidence of certification), or if the *Contractor's* performance has involved recurring breaches of health and safety, the *Principal* may, as its option, immediately terminate this *Contract*, without further obligation to the *Contractor*. In this event, the *Principal's* liability will be limited to payment for *WUC* performed and costs incurred by the *Contractor* up to the time of termination or an earlier suspension of the *WUC*.

12A.6 OH&S Management System

- (a) The *OH&S* management system of the *Contractor* must, as a minimum requirement, demonstrate compliance with all duties of an employer specified in the *Occupational Health and Safety Act 1991* (Cth).
- (b) The *Contractor* must, when requested by the *Principal*, submit a complete copy of their *OH&S* management system documentation using the form referred to in the *Statement of Requirement*, that must include as a minimum requirement:
 - (i) *OH&S* policy and objectives;
 - (ii) organisation structure and responsibilities;
 - (iii) safe work practices and procedures;

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- (iv) OH&S training and induction;
- (v) OH&S auditing and inspection procedures;
- (vi) OH&S consultation procedures; and
- (vii) OH&S performance monitoring.

12A.7 OHS Management Plan

- (a) *Management Plan* specific to the *Contract*, prepared in accordance with the *Principal's Health and Safety Requirements* and the *Statement of Requirement*.
- (b) The *OHS Management Plan* must:
 - (i) identify all specific OH&S hazards and issues arising from performance of the *WUC*; and
 - (ii) detail the systems and methods the *Contractor* has implemented and will implement to manage such hazards and issues.
- (c) The *Contractor* must not commence the *WUC* until the *Contractor* has submitted an *OHS Management Plan* that is acceptable to the *Principal*, and the *Principal* has accepted the *OHS Management Plan* in writing.

12A.8 Occupational Health and Safety Accreditation Scheme

- (a) The *Contractor* must at all times maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (**Scheme**) established by the *Building and Construction Industry Improvement Act 2005* (Cth).
- (b) The *Contractor* must, promptly upon request by the *Principal*, provide to the *Principal* evidence that the *Contractor* is an accredited person under the Scheme.

12A.9 SubContracts

Not used.

13. URGENT PROTECTION

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

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

14. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

14.1 Care of *WUC*

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

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and

- (b) outstanding work and items to be removed from the site by the Contractor after 4:00 pm on the date of practical completion until completion of outstanding work or compliance with clauses 29, 30 and 35.

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

At all intervals between the carrying out of the Work, the Contractor must ensure that the Works are left in a secure condition.

14.2 Reinstatement

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

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

14.3 Excepted risks

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

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

14.4 Supervision and key personnel

The Contractor must, at its cost:

- (a) provide efficient and appropriate site supervision, management and administration as necessary for execution of the Works;
- (b) provide proper supervision of all workmen in relation to the Works at all times;
- (c) prior to the commencement of the Works, notify the Superintendent in writing of the key personnel nominated by the Contractor for the Works and such key personnel must be approved by the Superintendent in writing (acting reasonably);
- (d) keep the key personnel referred to in paragraph (c) employed in relation to the Works at all times during the conduct of the Works, unless a change to the key personnel has been agreed in writing by the Superintendent under subclause 14.4(e);

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- (e) promptly notify the *Superintendent* and obtain the written consent of the *Superintendent* to any change in key personnel; and
- (f) on before 5 *business days* prior to accessing the *site* and commencing any part of the *Works* on the *site*, notify the *Superintendent* of the name and contact details of the person who may be contacted after hours and in the event of an emergency and who has full authority of the *Contractor* to act immediately on behalf of the *Contractor* in the event of an emergency.

15. DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

15.1 Indemnity by Contractor

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

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property (including, without limitation, the WUC);
- (b) any *Claims* by any person (including *subContractors* and any of their personnel) against the *Principal* in respect of or arising directly or indirectly from any personal injury, illness or death of any person or loss of, or damage to, any other property;
- (c) any *Claim*, action, damage, loss, liability, cost or expenses which the *Principal* incurs or is liable for in connection with any breach of the *Lease* by the *Contractor*.
- (d) any breach of this *Contract* by the *Contractor*, its employees, contractors, *consultants* or agents; and
- (e) any nuisance, unreasonable noise or disturbance, including nuisance and noise suffered by any occupiers of any adjoining land,

arising out of or as a consequence of the carrying out of WUC (including by reason of the use of the *site* or the act or omission of the *Contractor* or its *subContractors*), but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Principal* or its *consultants*, agents or other *Contractors* (not being employed by the *Contractor*) may have contributed to the injury, illness, death, loss or damage.

This subclause shall not apply to:

- (f) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (g) exclude any other right of the *Principal* under the *Contract* or exclude any rights at common law; and
- (h) things for the care of which the *Contractor* is responsible under subclause 14.1.

Without limiting any other provision in these *General Conditions* or any right of the *Principal* at law or otherwise, and despite any other provision in these *General Conditions*, the indemnity contained in this subclause 15.1 is not affected by the insurances referred to in clauses 16 or 17 and includes indemnification by the *Contractor* for any deductible or excess amount under those insurances.

16. INSURANCE OF THE WORKS

Before the date of the *Formal Instrument of Agreement*, the *Principal* shall insure WUC in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in WUC.

16B. PROFESSIONAL INDEMNITY INSURANCE

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant* (if within a category stated in *Item 24(c)*), and the *FTS Contractor*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(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 as stated in *Item 24(d)*.

17. PUBLIC LIABILITY INSURANCE

Before the date of the *Formal Instrument of Agreement*, the *Principal* shall effect in relation to *WUC*, a *public liability policy* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

18. OTHER CONTRACTOR INSURANCES

18.1 Insurance of employees

- (a) Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.
- (b) Where permitted under the relevant statutory scheme and in respect of any employers liability policy, the insurance policy or policies shall extend to indemnify the *Principal* for the their respective statutory liability to the *Contractor's* employees.
- (c) Subject to paragraph (d), the *Contractor* shall ensure that all *consultants* and *subContractors* have similarly insured their employees.
- (d) Pursuant to clause 18 of the *FTS Contract*:
 - (i) the *Contractor* shall ensure that all *subContractors* of the *FTS Contractor* under the *FTS Contract* who:
 - (A) permanently reside or are incorporated outside Australia; and
 - (B) do not conduct business in Australia,
- (e) If any *subContractor* of the *FTS Contractor* under the *FTS Contract* referred to in paragraph (d)(i) enters Australia for the purposes of conducting or carrying out *FTS Works*, the *Contractor* must ensure that any such *subContractor* of the *FTS Contractor* maintains insurances in accordance with paragraph (c).

18.2 Motor vehicle insurance

The *Contractor* must, before the *Contractor* commences any part of the *Works*, effect or cause to be effected motor vehicle insurance in the amount of not less than \$20 million covering all mechanically propelled vehicles used in connection with the *Works*, whether registered or capable of being registered and extended specifically to cover the transportation of items and substances

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and including insurance against personal injury or death as required under all applicable *legislative requirements* and insurance for third party property damage and personal injury or death.

The insurance in this subclause shall cover the parties and all subcontractors whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

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

18.3 Construction plant insurance

The *Contractor* must, before the *Contractor* commences any part of the *Works*, effect or cause to be effected an insurance policy covering loss or damage of all *construction plant* for an amount which is equivalent to the replacement value of the *construction plant*.

The insurance in this subclause must be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld). The *Contractor* agrees that, to the extent that such approval has been provided by *Airservices Australia* to the *FTS Contractor* prior to the *Novation Date*, such approval will bind the *Contractor* after the *Novation Date*.

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

19. INSPECTION AND PROVISIONS OF INSURANCE POLICIES

19.1 Proof of insurance

Before the *Contractor* commences *WUC*, within 10 *business days* of the *FTS Novation Date*, and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence (including a full copy of each policy including schedules and endorsements) to the satisfaction of the *Principal* of such insurance effected and maintained. The *Contractor* agrees that, to the extent that any such evidence provided by the *FTS Contractor*, and considered satisfactory by *Airservices Australia* prior to the *Novation Date*, such insurance effected and maintained will bind the *Contractor* after the *Novation Date*.

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

19.2 Failure to produce proof of insurance

If within 5 days after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance with clauses 16B, 17 or 18, then without prejudice to other rights or remedies, the other party may, but is not obliged to, insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

19.3 Notices from or to insurer

- (a) The party insuring under clause 16B or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:
 - (i) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subContractor* a notice in connection with the policy;
 - (ii) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subContractor* shall be accepted by the insurer

as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subContractor*; and

- (iii) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.
- (b) Paragraph (a) does not apply to any insurance policy effected, or required by this *Contract* to be effected, by a *subContractor* of the *FTS Contractor* who:
 - (i) permanently resides or is incorporated outside Australia; and
 - (ii) does not conduct business in Australia,

provided that, any such *subContractor* of the *FTS Contractor* complies with the laws and regulations of that *subContractor's* relevant place of residence or incorporation pursuant to the *FTS Contract*.

19.4 Notices of potential claims

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

19.5 Settlement of claims

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

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

19.6 Named insured

Any insurance required to be effected in accordance with the *Contract* in the names of more than one insured 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 as a result and not impute any acts, omissions or breach of the duty of disclosure by any one insured to any other insured).

19.7 Airside exclusions

The *Contractor* must ensure that the policies of insurance to be effected and maintained by the *Contractor* under this *Contract* do not contain any airside exclusions.

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20. SUPERINTENDENT

- (a) The *Principal* shall ensure that at all times there is a *Superintendent*, and use reasonable endeavours to ensure that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.
- (b) Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.
- (c) Notwithstanding any other provision of the *Contract*, the *Superintendent*:
 - (i) may exercise any or all of the *Principal's* powers under this *Contract*; and
 - (ii) acts as agent for the *Principal* for the purposes of receiving payment claims under subclause 37.1 and issuing a *payment certificate* under subclause 37.2, including:
 - (A) acting as agent for the *Principal* for the purposes of serving payment schedules under the *Contract* and the *Building and Construction Industry Security of Payment Act 2002* (Vic); and
 - (B) acting as agent for the *Principal* for the purpose of giving all notices and other documents required to be given by the *Principal* (unless the *Principal* gives notice to the *Contractor* to the contrary).

21. SUPERINTENDENT'S REPRESENTATIVE

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

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

22. CONTRACTOR'S REPRESENTATIVE

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

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

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative. This provision applies to each successive appointment of a representative.

23. **CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS**

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* reasonable opinion, is incompetent, negligent, guilty of misconduct or fails to comply with the *Principal's* policies or protocols in relation to the *site*.

24. **SITE**

24.1 **Access and possession**

- (a) Before the expiry of the time stated in *Item 26*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.
- (b) The *Contractor* acknowledges that substantial components of the conduct of *FTS Works* comprise the procurement and assembly of a *Fire Training Simulator* which will be:
 - (i) constructed at premises owned or leased by the *FTS Contractor*;
 - (ii) commissioned to an operational and functional standard described in the *Statement of Requirement*; and
 - (iii) dissembled and transported to the *site*.
- (c) The *Contractor* assumes the risk of all delays, increased costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the matters referred in subclause 24.1(b) except for any *EOT's* granted pursuant to clause 34.5.
- (d) If the:
 - (i) *Contractor* fails to procure the completion of the *On-site Works* by the *On-site Works Date*; and
 - (ii) *FTS Contractor* is ready, willing and able to commence the *Interface Works*; and
 - (iii) *Principal* has provided a notice to the *FTS Contractor* (in its absolute discretion) to store the *Fire Training Simulator* to an *Off-site* location,
 then the:
 - (iv) *Contractor* must ensure that the *FTS Contractor* has the relevant insurances and certificates of currencies in accordance with clauses 16 to 19 (inclusive) of the *Contract* in relation to the *Off-site* location; and
 - (v) *Contractor* must (at the request of the *Principal*) relocate and complete *Interface Works* when the *On-site Works* are complete.
- (e) The *Contractor* assumes the risk of all delays, increased costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the matters referred in subclause 24.1(d).
- (f) Provided the *Contractor* has complied with or satisfied the following requirements:
 - (i) obtaining the written approval of the *Superintendent* to the *Contractor's OHS Management Plan*;
 - (ii) providing evidence of insurance in accordance with subclause 19.1;

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- (iii) providing a *design and construction program*;
- (iv) providing written confirmation to the *Principal* that the *Superintendent* may have reasonable access to the *WUC* at all times;
- (v) establishing, to the reasonable satisfaction of the *Superintendent*, that the *Contractor* is complying with its *OH&S* obligations as set out in clause 12A; and
- (vi) establishing, to the reasonable satisfaction of the *Superintendent*, that the *Contractor* has, or will have, each of the *Plans* in place and those *Plans* are being complied with, including the *Environmental Management Plan* which must, amongst other things, deal with noise, vibration, rubbish and dust,

the *Principal* shall before the expiry of the time in *Item 26*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall, subject to this clause, give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

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

24.2 Access generally

- (a) The *Principal* and the *Principal's* employees, consultants, agents, visitors and other contractors may at any time, have access to any part of the *site* for any purpose. This access is to be co-ordinated through the *Superintendent* who will notify the *Contractor* prior to such access. The *Principal* and the *Principal's* employees, consultants, agents, visitors and other contractors will comply with the *Contractor's* reasonable conditions regarding health and safety.
- (b) The *Contractor* shall permit persons engaged by the *Principal* to carry out work on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.
- (c) The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.
- (d) The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.
- (e) The *Contractor* must, having regard to the matters noted in subclause 25.4(e):
 - (i) co-operate with the *Principal* and (where applicable) others, and must perform *WUC* so as to cause as little inconvenience as possible to the occupants of the *site* or those adjacent to the *site*;
 - (ii) not impede the free passage of vehicles past the *site* on any permanent or temporary roadways, and ensure that its execution of *WUC* does not present a hazard to such vehicles;
 - (iii) access the *site* through access points designated by the *Principal* and at no other places; and
 - (iv) not install or display signs or advertisements in or around the *site* without the prior written approval of the *Superintendent* and must, at its cost, immediately remove any signs or advertisements if directed by the *Superintendent*.

- (f) The *Contractor* must at all times while it is on the *site*:
- (i) confine its activities within the minimum area necessary for execution of the *WUC*;
 - (ii) not bring onto or use on the *site* without first obtaining the *Principal's* consent, any dangerous substances, including explosive or inflammable materials;
 - (iii) not carry out any dangerous activities on the *site* including, arc or flame cutting, flame heating, arc or gas welding and any use of explosives, without first obtaining the *Principal's* consent;
 - (iv) take all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
 - (v) not carry out activities which in the reasonable opinion of the *Superintendent* are noisy or disruptive or which would interfere with any other communications, services or systems in any way between the hours as directed by the *Superintendent*;
 - (vi) keep the *site* clean and tidy and regularly remove rubbish;
 - (vii) advise the *Principal*, at least 5 *business days* prior to the commencement of any work, of the personnel who require access to the *site*;
 - (viii) comply with the *Principal's* no smoking policies;
 - (ix) at its cost and without limiting subclause 24.4:
 - (A) comply with and ensure that the *Contractor Personnel* comply with all security and access arrangements and requirements of the *Principal* and the *Airport Operator* and all airport authorities. The *Contractor* is not entitled to seek any extensions of time, costs or *variation* in relation to such arrangements or requirements;
 - (B) provide *site* security and parking facilities for its *Contractor Personnel* and *subContractors* to the satisfaction of the *Superintendent* and the *Airport Operator*; and
 - (C) submit details of its proposed *site* access and circulation to the *Superintendent* for approval:
 - (I) at least 10 *business days* prior to commencing any part of the *Works*; and
 - (II) at least 10 *business days* after the *FTS Novation Date*; and
 - (x) provide appropriate signage and a project signboard in the location and to the requirements of the *Superintendent* within 5 *business days* of commencing the *Works* on the *site* and construct the signage and signboard in accordance with the requirements of the *Superintendent* and the *Airport Operator*; and
 - (xi) comply with the terms of the *Lease*.

24.3 Minerals, fossils and relics

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

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- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

The *Contractor* is not entitled to any costs, claim or extension of time in relation to the matters referred to in this clause.

24.4 Security identification card

If required, the *Contractor* will at its cost ensure that each of the *Contractor Personnel* engaged in the carrying out of *WUC*:

- (a) obtains all required security identification cards or short term security passes as approved by the *Superintendent*; and
- (b) complies with all security requirements required in accordance with or attached to the security identification cards or passes (as applicable).

For the avoidance of doubt, the *Contractor* is not entitled, under any circumstances, to any claim for delay or for costs associated with the processing of applications for any security identification cards or passes.

24.5 Security checks

The *Principal* may, at its discretion, conduct security checks of the people performing *WUC*.

24.6 Security breaches

The *Principal* may terminate this *Contract* where the *Contractor* or any of the *Contractor Personnel* breach any security requirements which govern the *site*.

24.7 Work on adjoining land

Where the execution of the *Works* requires the *Contractor* to execute work on or to land adjoining the *site* or otherwise requires the *Contractor* to have access to other land, the *Contractor* must, at its own cost and risk, obtain the appropriate permission and authority to access and use that land and comply with all conditions attaching to such permission and authority, including making good of any damage and the observance of any conditions as to working space, hours of work and otherwise.

The airside/landside boundary of the *site* must be strictly maintained by the *Contractor*. If required by the *Airport Operator* or the *Principal* at any time, the *Contractor* must comply with any airside escorting requirements at the sole cost of the *Contractor*.

The *Contractor* is liable for and indemnifies the *Principal* against any *Loss* or claim of any nature suffered or incurred by the *Principal* as a result of the matters referred to in this subclause.

25. LATENT CONDITIONS AND SITE CONDITIONS

25.1 Scope

Latent conditions are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent *Contractor* at the time of the *Contractor's* tender response if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering and this *Contract*;

- (b) all information relevant to risks, contingencies and other circumstances having an effect on the *Contract* or influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries;
- (c) the *site* and its near surrounds; and
- (d) any other conditions which the *Contract* specifies is a *latent condition*.

25.2 Notification

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

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially and substantially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

25.3 Deemed variation

Subject to clause 36.4, the effect of the *latent condition* shall be a deemed *variation*, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2.

25.4 Site conditions and compliance with requirements

- (a) Notwithstanding subclause 25.1, the *Principal* makes no representation and gives no warranty to the *Contractor* in relation to the condition of the *site* or any structure or other thing on or near to the *site* or the existence, location, condition or availability of utility services (including gas, electricity or water) for, on or under the *site*.
- (b) The *Contractor* must accept the *site* and any structure or thing on or near the *site* in their present condition subject to all defects including all subsurface conditions.
- (c) Subject to the *Contractor's* rights under subclauses 25.1 and 25.3, the *Contractor* assumes the risk of all increased costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the physical conditions and characteristics of the *site*, any services and its surroundings (including water, atmospheric and subsurface conditions or characteristics).
- (d) The *Contractor* acknowledges and agrees that it has made allowance for the fact that *WUC* is to be undertaken on or in the vicinity of an operating airport and that those operations (including in particular safety and security requirements) impact on the manner in which the *Contractor* must execute *WUC*.
- (e) The *Contractor* acknowledges and agrees that:
 - (i) the *site* is used for or is adjacent to airport operations (including in particular commercial airlines) carrying on business at the *site*;

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- (ii) the *site* forms part of the airport which may be under development and that there may be execution of work on or adjacent or proximate to the *site* by other contractors, including by contractors engaged by the *Principal*;
- (iii) it will, at its cost, comply at all times with any requirements set out in the *Statement of Requirement* in respect of occupants and adjoining owners and, if requested by the *Superintendent*, must immediately stop work in and around an area of an adjoining owner. The *Contractor* is not entitled to any extension of time or additional costs as a result of these matters, including any disputes with adjoining owners or occupiers;
- (iv) the *site* contains existing services of critical importance to the operation of the airport (which may include buried electrical power supply cables, telephone and IT data transmission cables including fibre-optic cables, and cables carrying closed circuit television signals);
- (v) any interruption or damage to, or loss of, any one or more of those services may cause serious harm and damage to the *Principal* and other users of the airport;
- (vi) the *Contractor* must comply with the *Airport Operator's* rules, requirements and policies when working on the *site* and in relation to any aspect of the *WUC*;
- (vii) in relation to services:
 - (A) the *Contractor* is responsible, at its cost, for ensuring that all activities in relation to services are carried out in accordance with the *Statement of Requirement* (including maintenance) and the *Superintendent* and the *Contractor* is not entitled to any extension of time, *variation* or adjustment to the *Contract sum* as a result of these matters;
 - (B) without limiting paragraph (A), the *Contractor* is responsible for any disruption or damage to existing services as a result of the *WUC* and the *Contractor* must protect and maintain existing services at all times and ensure that there is no disruption to the continuous and proper supply of services as a result of the *Works*;
 - (C) where it is necessary to cut into existing services, the *Contractor* must give the *Superintendent* at least 10 *business days* written notice and make provision for alternative or emergency service supply as required or directed by the *Superintendent*; and
 - (D) the *Contractor* is responsible, at its cost, for arranging all temporary and other services and services connections and the relocation of any existing services which are required in relation to the *Works* or described in the *Statement of Requirement* and must pay all associated charges and usage; and
- (viii) the *Contractor* must provide the *Superintendent* and any representative of the *Superintendent* unrestricted access to a telephone connection to the *site*, which must be installed by the *Contractor* within 3 *business days* of the date of the *Formal Instrument of Agreement*.
- (f) The *Contractor* must, at its cost, comply with any *legislative requirements* in respect of the *site*, including all relevant rules and regulations imposed by the *Principal* and *Airport Operator* from time to time and any requirements set out in the *Statement of Requirement*.
- (g) The *Contractor* must ensure that a direction given by:
 - (i) a representative of the Civil Aviation Safety Authority; or

(ii) the *Airport Operator*,

is complied with immediately.

(h) If the *Airport Operator* declares an emergency in relation to the airport, the *Contractor* must vacate the *site* and ensure that the *site* is vacated and remains vacated until the *Airport Operator* gives notice that the *Contractor* can re-enter the *site*.

(i) The *Contractor* must:

- (i) notify the *Superintendent* within 1 *business day* after the *Contractor* becomes aware of an industrial relations event or a likely event in respect of the *site* or the *Works*, with a written notice setting out the details of the industrial relations event, including any demands made by or against the parties to the industrial relations event;
- (ii) provide, at its cost, all relevant awards and formal industrial agreements for all *WUC* carried out on the *site* and must ensure compliance with such awards and agreements, including any Building Industry Agreements, as applicable;
- (iii) assume the responsibility for resolving all on-site disputes resulting from any non-compliance by the *Contractor* with this subclause 25.4(i);
- (iv) must ensure that there is minimum interruption to the progress of the *Works* as a result of any matters referred to in this subclause 25.4(i); and
- (v) not make any claim and is not entitled to any extension of time or costs as a result of any industrial disputes or any failure to comply with this clause.

25.5 Works accommodation and amenities

The *Contractor* must, at its cost:

- (a) provide works accommodation and amenities for the *Contractor Personnel* and its *subContractors* and any personnel directly engaged by the *Principal* or the *Superintendent* as required by the *Superintendent* and in accordance with all legislative requirements;
- (b) erect the works accommodation and amenities prior to the commencement of the *Works* on the *site*; and
- (c) remove the works accommodation and make good the *site* on or before *practical completion*.

26. SETTING OUT THE WORKS

26.1 Setting out

The *Contractor* shall set out the *Works* in accordance with the site drawing referred to in *Item 16*.

26.2 Errors in setting out

- (a) If the *Contractor* discovers an error in the position, level, dimensions or alignment of any *WUC*, the *Contractor* must immediately notify the *Superintendent* and unless the *Superintendent* directs otherwise, the *Contractor* must rectify the error.
- (b) If the *Superintendent* provides the *Contractor* with data, *survey marks* or other information:
 - (i) it is for information purposes only and the *Contractor* must independently verify that information and not rely on it; and

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- (ii) the *Contractor* releases the *Superintendent* and the *Principal* in relation to any loss, cost or claim suffered by the *Contractor* due to reliance on such data, *survey marks* or other information.
- (c) Before commencing any of the *Works* on the *site*, the *Contractor* must carry out a detailed condition survey of all buildings and other works adjacent to the *site* and record the condition and all visible defects in each building by means of photographs, drawings and description, as necessary. A copy of this condition survey (hard and soft copies) must be provided to the *Superintendent* within 5 *business days* of commencing the *Works*.
- (d) Prior to *practical completion*, the *Contractor* will arrange a joint inspection on *site* with the *Superintendent* to carry out a post-completion review of the condition survey. Additional defects in adjacent buildings and *works* that the *Superintendent* believes have resulted from *WUC* must be repaired by the *Contractor*.
- (e) Within 10 *business days* of *practical completion*, the *Contractor* must carry out a further survey of the *Works* and the relationship of the *Works* with other buildings and structures and provide a copy of the survey report (hard and soft copies) to the *Superintendent*.

26.3 Not used

27. CLEANING UP

- (a) The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.
- (b) Prior to the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.
- (c) If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.
- (d) If:
 - (i) the *Contractor* fails to comply with such a *direction*; and
 - (ii) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* carried out by others,

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

- (e) Without limiting paragraph (a), the *Contractor* must:
 - (i) remove all refuse, including food scraps and the like resulting from the *Works*;
 - (ii) ensure that all refuse dropped from upper floors is discharged into hoppers, shutters, chutes or refuse buckets that are covered or designed to confine the material completely and prevent dust emission;
 - (iii) ensure that adjoining buildings, occupiers and the public are protected against dust, dirt and water;
 - (iv) ensure that the area immediately to the front of the *site* is kept clean of dust, dirt, mud and debris at all times and, in the event that the *Contractor* fails to clean or

clear the area within 4 hours of a request to do so by the *Superintendent*, the *Superintendent* may (at the *Contractor's* cost, which may be deducted from the *Contract sum*) organise for such cleaning or clearing;

- (v) provide temporary paved areas, roads, washing down facilities and associated drainage and other items necessary to ensure that mud is not carried on to adjacent roadworks or paved areas by vehicles leaving the *site*;
- (vi) ensure that vehicles removing spoil, rubbish and other items from the *site* are not loaded beyond normal capacity and are fitted with proper tail-boards and side-boards to eliminate dropping of spoil or rubbish;
- (vii) ensure that all roads and paths, if fouled by spoil, concrete or other material as a result of the *Works*, are cleaned immediately and comply with any requirements of the *Superintendent*;
- (viii) on completion of the *Works* and prior to *practical completion*, complete a full clean of the *Works* and the *site*, to the satisfaction of the *Superintendent*, including but not limited to:
 - (A) thoroughly cleaning and polishing all glass and mirrors;
 - (B) thoroughly scrubbing, cleaning and sealing all floors;
 - (C) thoroughly cleaning all frames, kickplates, louvres, and similar;
 - (D) ensuring that all light fittings, mechanical air registers, fire detectors and all ducts are fully cleaned;
 - (E) checking that all door hardware and closers are clean and correctly adjusted; and
 - (F) cleaning out all cupboards, shelves, recesses and the like.

28. MATERIALS, LABOUR AND CONSTRUCTION PLANT

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

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Contractor* must comply with the *Statement of Requirement* and the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange an inspection at reasonable times, if it gives the *Contractor* reasonable notice at such place by the *Superintendent*, the *Principal* and persons authorised by the *Principal*. The *Contractor* or its representative may accompany the *Principal* on any such inspections.

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

If the *Contractor* or its *subContractors* propose using any special equipment including cutting and drilling equipment, the *Contractor* shall notify the *Superintendent* as to the nature of that equipment and shall comply with any *direction* that the *Superintendent* issues in connection with the use of such equipment.

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29. QUALITY**29.1 Quality of material and work**

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

29.2 Quality assurance

(a) The *Contractor* shall:

- (i) plan, establish and maintain a quality system in accordance with the *Statement of Requirement*; and
- (ii) ensure that the *Superintendent* has access to the quality system of the *Contractor* and *subContractors* so as to enable monitoring and quality auditing.

(b) 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 *Contractor's* other obligations under the *Contract*.

(c) For the purposes of paragraph (a)(ii), the *Superintendent* acknowledges and agrees that:

- (i) some *subContractors* of the *FTS Contractor* who:
 - (A) permanently reside or are incorporated outside Australia; and
 - (B) do not conduct business in Australia,

may not be able to provide access to the quality system to enable monitoring and quality auditing provided that any such *subContractors* of the *FTS Contractor* comply with all laws and regulations of their relevant place of residence or incorporation pursuant to the *FTS Contract*.

29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (e) the *Contractor* fails to comply with such a *direction*; and
- (f) that failure has not been made good within 5 days or such other period as the *Superintendent*, acting reasonably, may direct after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

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

29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

29.4A Variations due to defective materials or work

Instead of a *direction* under subclause 29.3 or subclause 29.4, the *Superintendent* may direct a *variation* in the circumstances referred to in this clause 29. The *variation* shall be valued under subclause 36.4, and if the *variation*:

- (a) causes an increase or decrease in the value to the *Principal of the Works*, the *Superintendent* may, in determining the price of the *variation* under subclause 36.4, also have regard to that increase or decrease; and
- (b) results in the *Contractor* incurring more or less costs than would reasonably have been incurred had the *Contractor* been given a *direction* under subclauses 36.1 and 36.2 the *Superintendent* may, in determining the price of the *variation* under subclause 36.4, also have regard to that difference in costs.

29.5 Timing

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

30. EXAMINATION AND TESTING

30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* must also carry out the *testing*, *Commissioning* and provide samples as required under the *Statement of Requirement* and the *Specification* (including *testing* and *Commissioning* requirements prior to and after *practical completion*). The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be reasonably directed by the *Superintendent*.

30.2 Covering up

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

30.3 Who conducts

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

30.4 Notice

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

30.5 Delay

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

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30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

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

30.7 Costs

The cost arising out of or in connection with all *testing* required under this *Contract* is to be borne by the *Contractor*.

31. WORKING HOURS

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of *work on site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

In approving a variation to the working hours or working days, the *Superintendent* may impose any conditions to that variation, including conditions which preclude the performance of *WUC* requiring inspection or attendance by or on behalf of the *Principal* or a requirement that the *Contractor* pays the *Principal's* costs of inspection or attendance at the *WUC* during the varied times approved by the *Superintendent*.

32. PROGRAMMING

32.1 General requirements

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

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

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

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be reasonably assessed by the *Superintendent* and added to or deducted from the *Contract sum*.

The *Contractor* must attend all *site* meetings convened by the *Superintendent*.

32.2 Design and construction program

A *design and construction program* which complies with the *Statement of Requirement* and *Schedules*, showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

Within 3 *business days* of the date of execution by the parties of the *Formal Instrument of Agreement*, the *Contractor* must submit to the *Superintendent* a *design and construction program* (in electronic and PDF format) which:

- (a) comprises at least a time scaled gantt chart detailing the dates by which, or times within which, the various stages or portions of *WUC* are to be carried out or completed and the method proposed for completion of *WUC*;
- (b) clearly shows each item of work or activity and its planned start and finish date;
- (c) contains at least the following information:
 - (i) a clearly indicated critical path indicating the sequence of activities which constitute the critical path;
 - (ii) a break up of the *WUC* to enable the *Superintendent* to accurately monitor progress of *WUC* both on and off the *site*;
 - (iii) all activities necessary for the completion of *WUC* and any requirements and review points as set out in the *Statement of Requirement*;
 - (iv) the time for provision of required drawings, prototypes and samples;
 - (v) the times for *Commissioning*, final inspections and handovers;
 - (vi) an estimated amount of labour required per activity and labour required per day;
 - (vii) off-site activities including prefabrication and equipment orders; and
 - (viii) the date for practical completion.

The *Superintendent*:

- (d) may examine the *design and construction program* with respect to its comprehensiveness in demonstrating the *Contractor's* ability to meet all time, quality and cost obligations under the *Contract*;
- (e) is not responsible for any aspect of the *design and construction program*, including ensuring the correctness of the *design and construction program*, and the examination by the *Superintendent* will not diminish or affect the *Contractor's* obligations under this *Contract*, including ensuring that the proper duty of care has been applied in the *design and construction program* and compliance with the *design and construction program*.

Any amendment to the *design and construction program* does not entitle the *Contractor* to an extension of time unless the *Superintendent*, in its discretion at all times (acting reasonably), otherwise determines that the *Contractor* is entitled to an extension of time or the *Contractor* is otherwise entitled to an extension of time pursuant to clause 34.

If the *Superintendent* reasonably considers that the *design and construction program* is not satisfactory, the *Contractor* must provide to the *Superintendent* an amended *design and construction program* within 5 *business days* of being requested to do so by the *Superintendent*.

Compliance with this clause in relation to the *design and construction program* is a condition precedent to the issue of any progress payment certificate under this *Contract*.

32A. REPORTING BY CONTRACTOR AND PROGRESS MEETINGS

32A.1 Not used

32A.2 Regular site meetings and reporting

- (a) Within 5 *business days* of the *date of contract*, the *Contractor* must hold a project pre-start meeting at the *site* in accordance with the requirements set out in the *Statement of Requirement*. The *Contractor* must invite the *Principal*, the *Superintendent* and any other person required by the *Superintendent* to attend the meeting. The *Contractor* must take

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and circulate minutes of the meeting to each attendee of the meeting and the *Principal* within 2 *business days* of the meeting.

- (b) From the *date of contract* until the *date of practical completion* of the *Works*, the *Contractor* must convene and chair progress meetings. The *Superintendent*, the *Contractor*, the *Contractor's* project manager and site manager and any *Contractor Personnel* or *subContractors* (as required by the *Principal*) must, and the *Principal* may, attend the progress meetings. The progress meetings are to be held:
 - (i) on a fortnightly basis as set out in the *Statement of Requirement*;
 - (ii) at such other times as the *Superintendent* or the *Principal* reasonably requires; and
 - (iii) on the *site* or at such place and time convenient to the *Superintendent's Representative* and any representative of the *Principal* or the *Contractor*.
- (c) At each meeting, the *Contractor* must submit a progress report setting out details of:
 - (i) the progress of the *Works* and the minimum requirements set out in the *Statement of Requirement*;
 - (ii) a summary of mitigation strategies employed by the *Contractor* in relation to any delays identified by the *Superintendent* and also the *Contractor*;
 - (iii) an updated program showing the status of the *Works* against baseline and identifying progress achieved against planned works in the approved *design and construction program*, together with reasons for any slippage against the approved *design and construction program* and the corrective actions the *Contractor* intends to take to remedy the slippage (which must not result in an increase to the *Contract sum*); and
 - (iv) a status report on the *Contractor's* compliance or non-compliance with the requirements of the Code or the Industry Guidelines under clause 56.
- (d) The *Contractor* will take minutes of each progress meeting, to the satisfaction of the *Superintendent*, and give a copy of such minutes to the *Superintendent* and the *Principal* within 2 *business days* of the date of the relevant progress meeting.
- (e) The inclusion in the records of the meetings of any instruction given by the *Superintendent* to the *Contractor* will, following confirmation of the record of the meeting by the *Superintendent*, comprise a written *direction* by the *Superintendent* in accordance with this *Contract*.

32A.3 Design meetings

- (a) The *Contractor* must attend a weekly design meeting with the *Superintendent* in accordance with the *Statement of Requirement* and must ensure that the *Contractor's* architect, lead engineers and construction manager also attend the meeting, if required by the *Superintendent*.
- (b) The *Contractor* must, in those meetings, keep the *Superintendent* fully informed of the progress made to fulfil design deliverables and any design issues.
- (c) Minutes of the meeting and a written summary of issues discussed at the meeting must be provided by the *Contractor* to the *Superintendent* within 3 *business days* of the meeting taking place.

32A.4 Communications and submissions

- (a) The *Contractor* must:

- (i) regularly communicate with and keep informed the *Superintendent*, the *Principal* and the *Airport Operator* of all relevant matters relating to this *Contract* and the *Works* during the carrying out of the *WUC*; and
 - (ii) keep the *Superintendent* informed of all communications between the *Contractor* (and any person on behalf of the *Contractor*) and the *Airport Operator* (as applicable).
- (b) The *Contractor* is not relieved of any of its obligations under this *Contract* by reason of any:
 - (i) submissions made by the *Contractor* to the *Superintendent* or the *Principal*;
 - (ii) examination of, comments on or approval or rejection of those submissions by the *Superintendent* or the *Principal*; or
 - (iii) requests for information by the *Superintendent* or the *Principal* to the *Contractor*.
- (c) All submissions prepared by *subContractors* or suppliers of the *Contractor* (including the *FTS Contractor*) must be fully checked by the *Contractor* for compliance with the *Contract Documents* and this *Contract* and amended, as required to ensure compliance, prior to the *Contractor* submitting those submissions to the *Superintendent*.
- (d) The *Contractor* must:
 - (i) make all submissions to the *Superintendent* not less than 10 *business days* prior to the date on which the *Superintendent* is required to respond in relation to the submission;
 - (ii) co-ordinate the submissions of its *subContractors* and suppliers so that those submissions are received by the *Superintendent* not less than 10 *business days* prior to the date on which the *Superintendent* is required to respond in relation to the submission; and
 - (iii) without limiting paragraphs (i) or (ii), allow time for the *Superintendent* to examine a submission having regard to the *design and construction program* and the extent and complexity of the submission.

33. SUSPENSION

33.1 *Superintendent's suspension*

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

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

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33.2 Contractor's suspension

The *Contractor* may only suspend the whole or part of the *WUC* in accordance with subclause 39.9.

33.3 Recommencement

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

The *Contractor*:

- (a) must recommence the *WUC* suspended pursuant to:
 - (i) subclause 33.1(a), on and from the date the breach is remedied; or
 - (ii) subclause 57.2, on and from the date the *Contractor* is no longer entitled to suspend the *WUC* pursuant to the *Security of Payment Act*; and
- (b) may otherwise recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. The *Contractor* is not entitled to any additional payments or an adjustment to the *Contract sum* for any costs incurred by the *Contractor* due to a suspension, regardless of the cause of such suspension, except to the extent, the cause of the suspension was a default of the *Principal* or *Superintendent* under this *Contract*.

34. TIME AND PROGRESS**34.1 Progress**

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

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay within 5 business days of becoming aware of that delay.

Notwithstanding any other provision in this clause 34, the *Contractor* must use all reasonable endeavours to mitigate any delays, as soon as the *Contractor* becomes aware of such delay. The *Contractor* will only be entitled to an *EOT* in accordance with this clause 34, to the extent that the *Contractor* has used all reasonable endeavours to mitigate the delay and has failed to do so.

34.3 Claim

- (a) Subject to subclause 34.4, the *Contractor* shall be entitled to such extension of time (but not costs) for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:
 - (i) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*;

- (ii) the *Contractor* gives the *Superintendent*, within 15 days after the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent);
 - (iii) the delay claimed affects the critical path of the progress of the *WUC*; and
 - (iv) the *Contractor* has taken all practical steps to avoid or minimise the delay.
- (b) If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (a)(ii) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.
- (c) The *Superintendent* is not required to assess the *EOT* claimed until the *Superintendent* and the *Contractor* have reached agreement on the amendments to the *design and construction program*, including but not limited to any resultant change to the *On-site Works Date*.

34.4 Assessment

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is a *qualifying cause of delay* then to the extent that the delays are concurrent, the *Contractor* will not be entitled to an *EOT*.

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

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

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

The *Contractor* is not entitled to an *EOT* in circumstances where the *Superintendent* has issued an acceleration direction under subclause 34.10 to overcome a delay to *practical completion* in circumstances where the *Contractor* would otherwise be entitled to an *EOT*.

34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*. In exercising this discretion, the *Superintendent* is not required to exercise the discretion for the benefit of the *Contractor*.

34.6 Practical completion

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

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

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

34.7 Liquidated damages

Subject to subclause 34.8, if *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every *business day* after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

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

34.8 Cap on liquidated damages

The *Contractor's* total liability under subclause 34.7 is limited to a maximum amount of \$200,000.

34.9 Delay damages

For every day by which the *date for practical completion* is extended due to a *compensable cause*, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor* in respect of the *compensable cause*, provided that the damages must not exceed the total of:

- (a) a rate of:
 - (i) \$1,000.00 for each *business day* of actual delay during the period of the *Works* involving design activities (which, for the avoidance of doubt, shall mean the period up to the date on which the *Superintendent* notifies the *Contractor* in writing that the *Principal* accepts the *design documents* pursuant to subclauses 2.1A(d)(iii) and 2.1B); and
 - (ii) \$2,000.00 for each *business day* of actual delay during the period of the *Works* involving construction activities (which, for the avoidance of doubt, shall mean the period commencing after the date on which the *Superintendent* notifies the *Contractor* in writing that the *Principal* accepts the *design documents* pursuant to subclauses 2.1A(d)(iii) and 2.1B); and
- (b) after the *Novation Date*, the amount for each *business day* of actual delay payable by the *Contractor* under clause 34.9 of the *FTS Contract*, which the parties acknowledge is as follows:
 - (i) a rate of \$500.00 for each *business day* of actual delay during the period of the *Draeger Works* involving design activities (which, for the avoidance of doubt, shall mean the period up to the date on which the *Superintendent* notifies the *Contractor* in writing that the *Principal* accepts the *design documents* pursuant to subclauses 2.1A(d)(iii) and 2.1B of this *Contract*); and
 - (ii) a rate of \$1,000.00 for each *business day* of actual delay during the period of the *Draeger Works* involving construction activities (which, for the avoidance of doubt, shall mean the period commencing after the date on which the *Superintendent* notifies the *Contractor* in writing that the *Principal* accepts the *design documents* pursuant to subclauses 2.1A(d)(iii) and 2.1B of this *Contract*).
- (c) Without limiting any other provisions of this contract, the amounts payable under this subclause 34.9 will be a limitation upon the *Principal's* liability to the *Contractor* for any delay that:

- (i) the *Contractor* encounters in carrying out the *WUC*; and
- (ii) arises out of, or in any way in connection with, any breach by the *Principal* of this *Contract*,

and the *Contractor* will not be entitled to make, nor will the *Principal* be liable for, any claim in those circumstances other than for the amount payable by the *Principal* under this subclause 34.9.

34.10 Acceleration of the Works

- (a) The *Principal* may (acting reasonably) at any time and for any reason, by notice to the *Contractor*, direct the *Contractor* that the *Works* (or any part thereof) be accelerated by means of overtime, additional crews, additional shifts or otherwise. A *direction* under this paragraph (a) is only to be recognised if it is headed with the words "Acceleration Direction under subclause 34.10 of the General Conditions of the Construction Contract for the Learning Academy Hot Fire Training Ground (Melbourne)".
- (b) Upon receipt of a direction under paragraph (a) which is headed with the words contemplated in paragraph (a), the *Contractor* must comply with it.
- (c) Subject to the second sentence of paragraph (a) and paragraph (c) the *Contractor* must carry out any acceleration directed pursuant to this subclause 34.10 on a lump sum basis as mutually agreed to by the *Principal* and the *Contractor*. If the *Principal* and the *Contractor* cannot agree on a lump sum amount, then the *Contractor* will be entitled to reimbursement of its increased cost as a result of such acceleration in accordance with subclause 36.4.
- (d) In the event of any acceleration directed pursuant to this subclause 34.10, the *Contractor* must promptly provide the *Principal* with a revised *design and construction program* for the most effective and economical acceleration.
- (e) The *Contractor* has no entitlement to claim for payment for acceleration unless it has carried out such work specified in paragraph (a) within the time specified in the direction.
- (f) Subject to subclause 34.5 and despite anything contrary in this *Contract*, the *Principal* acknowledges and agrees that it is only entitled to exercise its rights under this subclause 34.10, if the *Superintendent* (acting reasonably) informs the *Principal* that, by exercising its rights under this subclause 34.10, the *Principal* may be able to achieve *practical completion* of the *Works* in accordance with the *date for practical completion*.

35. DEFECTS LIABILITY

- (a) No earlier than 5 *business days* before the *date for practical completion*, the *Superintendent* will prepare a *Defects List*, identifying all of the *defects* in the *Works* which exist as at that date.
- (b) The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4.00pm.
- (c) The *Contractor* must rectify any *defects* in the *WUC* identified in the *Defects List* as soon as possible after the *date of practical completion*, but no later than 40 *business days* after the *date of practical completion*.
- (d) Without limiting subclause 35(c), at any time during the *defects liability period*, the *Superintendent* may direct the *Contractor* to promptly rectify any *defect* in the *WUC* for which the *Contractor* is responsible. The direction:
 - (i) must identify the *defect*;

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- (ii) may state a date by which the *Contractor* must complete the rectification, or if no date is specified, that date is 20 *business days* after the date of the direction;
- (iii) may state a date by which the rectification work must commence, or if no date is specified that date is 1 *business day* after the date of the direction;
- (iv) may provide that in respect of the rectification work, there will be a separate *defects liability period* of the same period as the original *defects liability period*, commencing on the date that rectification of the *defect* is completed. This clause 35 will apply in respect of the rectification work and any additional *defects liability period* for that rectification work.
- (e) Not used.
- (f) If rectification work by the *Contractor* is not commenced by the stated date for commencement or completed by the stated date for completion, the *Superintendent* may have the rectification work carried out at the *Contractor's* expense, but without prejudice to any other rights that the *Principal* may have against the *Contractor* with respect to such *defect*, and the reasonable cost of such rectification work incurred by the *Principal* will be a debt due from the *Contractor* to the *Principal*.
- (g) The *Contractor* must carry out all rectification work at times and in a manner which causes as little inconvenience to the occupants or users of the *Works* as is reasonably possible and in accordance with any directions of the *Principal*.
- (h) The *Contractor* must, in addition to its other obligations during the *defects liability period*, replace or otherwise make good any:
 - (i) *defect* which becomes apparent during the *defects liability period*;
 - (ii) damage which results from such *defect*; and
 - (iii) damage from work to remedy the *defect* and which becomes apparent during the *defects liability period*.
- (i) The *Contractor* must adjust and test equipment replaced during the *defects liability period* to show that the system of which it forms a part is providing commercial operation and the replaced items are performing according to the specified operating conditions.
- (j) All equipment repaired or replaced during a *defects liability period* must have a 12 month *defects liability period* commencing from the date of repair or replacement. The *Contractor* must perform any rectification work instructed in writing by the *Superintendent* within 5 *business days* of the written notice by the *Superintendent*.
- (k) The *Contractor* must:
 - (i) provide continuous maintenance service during the *defects liability period* to make adjustments to locks, doors, windows, drawers, catches and similar items whether or not the *Contractor* has been requested to do so by the *Superintendent*; and
 - (ii) ensure that there are at least 4 visits during the *defects liability period* with the *Contractor* and the *Principal* attending for the purpose of viewing the status of the *Works*. The *Principal* must be given 5 *business days* notice before each visit.
- (l) During the *defects liability period*, the *Contractor's* responsibility includes the provision of all labour and materials and the meeting of all other costs associated with the removal of defective parts and the installation, adjusting and testing of replacements and to carry out such work within a reasonable time. This condition operates irrespective of whether payment for such part or parts may have been included in a *payment certificate* issued by the *Superintendent*.

- (m) If, in the opinion of the *Superintendent*, the circumstances require it, for example where an inherent *defect* is suspected in any item of plant or equipment, the *Superintendent* may direct that the *defects liability period* will apply to that plant or equipment from the date of repair or replacement and not from the date of *practical completion*.
- (n) If the rectification is not commenced or completed by the stated times and dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

36. VARIATIONS

36.1 Directing *variations*

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

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclauses 2.2 and 2.2A):

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

36.2 Proposed *variations*

- (a) The *Superintendent* may direct the *Contractor* to submit a price for a proposed *variation* and the *Contractor* must:
 - (i) submit a price for that *variation* within the time frame specified in the direction or, if no time is specified, within 5 *business days* of the direction;
 - (ii) provide the following information, together with the price submitted in response to the direction:
 - (A) a detailed scope of the proposed *variation*, including drawings where applicable and all other supporting documentation in relation to the *variation*;
 - (B) a detailed breakdown of the price, including:
 - (I) the number of hours required for the *Contractor* to carry out the proposed *variation*;
 - (II) the number of hours of work which are required to be conducted by the *Contractor* out of hours to carry out the proposed *variation*, the rate for the out of hours work and an amount calculated by multiplying the number of out of hours by the nominated rate (**Out of Hours Amount**);
 - (III) any delay or disruption costs which may be incurred by the *Contractor* as a consequence of the proposed *variation*; and

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- (IV) any *subContractor* pricing;
 - (C) the effect, if any, of the proposed *variation* on the *date for practical completion*; and
 - (D) the expiry period for acceptance of the *variation* which must not be less than 10 *business days* (or for urgent work, such shorter time as the *Superintendent* allows) from the date of receipt by the *Superintendent* of the *variation* proposal of the *Contractor*.
- (b) On receipt of information referred to in paragraph (a)(i) and (ii), the *Superintendent* may, in its discretion, do any one of the following:
- (i) direct the *Contractor* to provide further information;
 - (ii) accept the *variation* proposal and give the *Contractor* a *direction* to carry out the *variation* on the terms contained in the *variation* proposal in which case a valuation under subclause 36.4 will not be made and the addition or deduction to the *Contract sum* will be the price offered by the *Contractor* in the *variation* proposal;
 - (iii) make a recommendation to the *Principal* for the assessment by a quantity surveyor of the *variation*, where the *Superintendent* considers it necessary as a result of the nature of the *variation*;
 - (iv) negotiate different terms with the *Contractor* on which the *variation* will be carried out;
 - (v) give the *Contractor* a *direction* to carry out the *variation*, but on terms in accordance with subclause 36.4; or
 - (vi) reject the *variation* proposal.

36.3 Variations for convenience of *Contractor*

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

36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* (including, for the avoidance of doubt, any *provisional sum* arising under clause 3) using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a priced *schedule of rates* to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices,

and such price must:

- (e) if the adjustment is an increase to the value of the *Works*, include an amount calculated by multiplying 5% by the amount determined under paragraphs (b), (c) or (d) (as applicable); and

- (f) if the adjustment is a decrease to the value of the *Works*, be reduced by an amount calculated by multiplying 3% by the amount determined under paragraph (b), (c) or (d) (as applicable),

and this calculation will, subject to this subclause 36.4, be conclusive as to any profits and overheads (including any loss of profits) payable in relation to the relevant *variation*.

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

If the *Contractor* fails to submit costs within a reasonable period for the purposes of agreeing a price in paragraph (a), the *Superintendent* will price the *variation* in accordance with this subclause 36.4.

37. PAYMENT

37.1 Payment claims

- (a) The *Contractor* may only serve a payment claim on the *Superintendent* if the *Contractor* has complied with its obligations in subclause 5.1 and either:
- (i) in the case of a progress claim, the payment claim is served in accordance with *Item 33*; or
 - (ii) on the issue of the *certificate of practical completion*.
- (b) Each payment claim must be submitted before the 25th day of the relevant month, given in writing to the *Superintendent* and must include the value of *WUC* carried out by the *Contractor* in the performance of the *Contract* to that time and may include details of other amounts then due to the *Contractor* pursuant to the provisions of the *Contract*.
- (c) If the time for any payment claim under paragraph (b) falls due on a day which is not a *business day* the *Contractor* must submit the payment claim on the day next following that date which itself is a *business day*.
- (d) If the *Contractor* does not serve a payment claim in accordance with paragraph (a) then:
- (i) the *Superintendent* will not be obliged to undertake any assessment of that purported payment claim; and
 - (ii) the *Principal* will not be obliged to make any payment in respect of that purported payment claim,
- until a payment claim has been served following the occurrence of all matters referred to in paragraph (a).
- (e) Without limiting the generality of this subclause, the payment claim submitted by the *Contractor* must also include:
- (i) the percentage of the *WUC* completed with respect to the *Contract sum* breakdown (in a format to be agreed with the *Superintendent* prior to submission of the first payment claim by the *Contractor*);
 - (ii) a statutory declaration by the *Contractor* (or where the *Contractor* is a corporation, by a representative of the *Contractor* who is in a position to know the facts declared), that all *subContractors* (including but not limited to the *FTS Contractor*) have been paid all moneys due and payable to them in respect of *WUC*; and
 - (iii) any other information required by the *Superintendent*.

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- (f) Within 5 *business days* of the *date of contract*, the *Contractor* must provide to the *Superintendent* a detailed cash flow based on the *design and construction program*.
- (g) Without limiting any other provision in this subclause 37.1, *payment claims* submitted by the *Contractor* must also include a report from each *consultant* which must:
 - (i) report on such matters (including, without limitation, the quality of the *Works* and compliance and conformity of the progress and execution of their relevant portion of the *Works* with the *Principal's project requirements, design and construction program, design documents*, the relevant Australian and/or International Standards and the Building Code of Australia and all relevant *legislative requirements*); and
 - (ii) be in a form and provided as often,

as the *Superintendent* may reasonably require.

A copy of each *consultant's* report must be delivered to the *Superintendent*, the *Principal* and the *Contractor*, on the same day as the relevant *progress claim*.

37.2 Certificates

- (a) Within 10 *business days* of receipt of a payment claim submitted in accordance with subclause 37.1(a), the *Superintendent* shall assess the payment claim and will issue to the *Contractor* a *payment certificate* stating the amount of the payment which, in the *Superintendent's* reasonable opinion, is to be made by the *Principal* to the *Contractor* or by the *Contractor* to the *Principal*.
- (b) The *Superintendent* shall set out in the *payment certificate* the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the *Contractor*, the reasons for the difference. The *Superintendent* shall also set out, as applicable, in any *payment certificate* issued under clause 37, the allowances made for:
 - (i) the value of work carried out by the *Contractor* in the performance of the *Contract* to the date of the claim;
 - (ii) amounts otherwise due from:
 - (A) the *Principal* to the *Contractor*; and
 - (B) the *Contractor* to the *Principal* or for which the *Principal* is entitled to set off under subclause 37.6;
 - (iii) amounts assessed under subclause 41.2 that are not disputed; and
 - (iv) amounts paid previously under the *Contract*;

arising out of the *Contract* resulting in the balance due to the *Contractor* or the *Principal*, as the case may be.
- (c) If the *Contractor* fails to make a payment claim under subclause 37.1, the *Superintendent* may nevertheless issue a *payment certificate*. The *Superintendent* is not obliged to exercise its discretion under this paragraph for the benefit of the *Contractor*.
- (d) Within 5 *business days* after the issue of the *payment certificate* referred to in paragraph (a) and the *final certificate* under subclause 37.4, or if no *payment certificate* has been issued, the expiry of the period of 10 *business days* referred to in paragraph (a), the *Contractor* must issue a *Tax Invoice* to the *Principal* in respect of the amount of such *payment certificate* (or, if no *payment certificate* has been issued, in the amount of the *Contractor's* payment claim).

- (e) Subject to subclause 37.2(f), the *Novation Deed* and the provisions of the *Contract*, within 20 business days after receipt by the *Superintendent* of a payment claim referred to in subclause 37.1 (**Relevant Claim**), the *Principal* must pay to the *Contractor* or the *Contractor* must pay to the *Principal*, as the case may be, an amount not less than the amount shown in the *payment certificate* or the *final certificate* under subclause 37.4 as due to the *Contractor* or to the *Principal*, as the case may be.
- (f) The *Principal* and the *Contractor* acknowledge and agree that, following the *Novation Date*, any payment made pursuant to clause 5 of the *Novation Deed* by Airservices Australia (to the *FTS Contractor* in relation to a Relevant Claim will be conclusive evidence of accord and satisfaction, and in discharge of the *Principal's* obligations in connection with payment of the Relevant Claim to extent it has been paid except for:
 - (i) fraud or dishonesty relating to the Relevant Claim or any part thereof or to any matter dealt with in the *final certificate*;
 - (ii) any defect or omission in *FTS Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
 - (iii) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
 - (iv) unresolved issues the subject of any notice of dispute pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.
- (g) Subject to subclauses 37.2(e) and 37.2(f), the *Principal* is not liable for and is released by the *Contractor* in respect of any Loss or claim of any nature by the *FTS Contractor* in connection with or arising out of the Relevant Claim (including claims in tort, for quantum meruit or pursuant to law).
- (h) A payment made under clause 37 will not prejudice the right of either party to *dispute* under clause 42 whether the amount so paid is the amount properly due and payable and on determination (whether under clause 42 or as otherwise agreed) of the amount so properly due and payable, the *Principal* or the *Contractor*, as the case may be, will be liable to pay the difference between the amount of such payment and the amount so properly due and payable.
- (i) Payment of moneys will not be evidence of the value of *work* or an admission of liability or evidence that *WUC* has been executed satisfactorily but will be a payment on account only, except as provided under subclause 37.4.

37.3 Unfixed plant and materials

- (a) The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34*.
- (b) The *Principal* shall not be liable to pay for the unfixed plant and materials referred to in paragraph (a):
 - (i) unless the *Contractor* satisfies the *Superintendent* (acting reasonably) that:
 - (A) all factory acceptance testing is complete in relation to the steelworks for the *FTS Works* conducted *Off-site*; and
 - (B) the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*; and
 - (ii) unless and until the plant and materials referred to in paragraph (a) have been verified by the *Principal's* quantity surveyor.

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- (c) Upon payment to the *Contractor*, the subject plant and materials shall be the unencumbered property of the *Principal*.

37.4 *Final payment claim and certificate*

Within 28 days after the *date of practical completion*, the *Contractor* shall give the *Superintendent* 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*.

All such claims, whether under subclause 37.1 or this subclause 37.4, which have not already been barred, shall be barred after the expiration of the period for lodging a *final payment claim*.

Within 56 days after the *date of practical completion*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*. Prior to issue of the *final certificate*:

- (a) a final inspection of the *Works* must be undertaken by the *Contractor* and the *Superintendent* prior to the completion of the *defect liability period*;
- (b) all items noted for attention during the *defect liability period* must be completed to the satisfaction of the *Superintendent*;
- (c) the *Contractor* must undertake maintenance of essential services as identified during the *defect liability period* and the final inspection referred to in paragraph (a);
- (d) the *Contractor* must have satisfied all requirements of *Authorities* and this *Contract*;
- (e) electronic drawings in respect of the *Works* supplied by the *Contractor* to the *Superintendent* at the time of *practical completion* must be re-issued to the *Superintendent* with all changes, new works or other alterations identified with revision labels; and
- (f) the *Contractor* must have provided all training and software as outlined in this *Contract*.

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

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

37.5 *Interest*

Interest in *Item 35* shall be due and payable after the date of default in payment.

37.6 Other moneys due

The *Principal* may set off any moneys that are due and owing to the *Principal*, whether in connection with the *Contract* or otherwise.

37.7 Set off by the Principal

Without limiting the *Principal's* rights elsewhere under the *Contract* or otherwise:

- (a) the *Principal* may deduct from moneys due to the *Contractor* any money due from the *Contractor* to the *Principal* or any claim (including a claim for delay in achieving *practical completion*) which the *Principal* may have against the *Contractor*; and
- (b) if the moneys referred to in paragraph (a) are insufficient, the *Principal* may, subject to clause 5, have recourse to the *security*.

37.8 Format of claim and invoices

The *Contractor* will submit all progress claims and *Tax Invoices* in a template and format approved by the *Principal*.

38. PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS

38.1 Workers, consultants and subContractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subContractors*;
- (b) the *FTS Contractor*, and
- (c) all other *subContractors*,

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

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to *workers* and *subContractors*.

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

38.2 Withholding payment

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

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

38.3 Direct payment

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

- (a) permitted by law;
- (b) given a court order in favour of the *worker* or *subContractor*; or

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- (c) requested in writing by the *Contractor*.

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

39. DEFAULT OR INSOLVENCY

39.1 Preservation of other rights

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

39.2 *Contractor's* default

If the *Contractor* defaults in any of its obligations under the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Defaults include, but are not limited to:

- (a) failing to:
- (i) perform properly the *Contractor's* design obligations;
 - (ii) provide security;
 - (iii) provide evidence of insurance;
 - (iv) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
 - (v) use the materials or standards of work required by the *Contract*;
- (b) wrongful suspension of work;
- (c) substantial departure from the *design and construction program* without reasonable cause or the *Superintendent's* approval; and
- (d) where there is no *design and construction program*, failing to proceed with due expedition and without delay.

39.3 *Principal's* notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these *General Conditions*;
- (b) the alleged default;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

39.4 *Principal's rights*

- (a) If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:
 - (i) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
 - (ii) terminate the *Contract*.
- (b) If the *Contractor* shows reasonable cause by the stated date and time set out in a notice under subclause 39.2, the *Principal* will not be entitled to take the action referred to in subclause 39.4(a).

39.5 *Take out*

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

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
 - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
 - (ii) contract with such of the *subContractors*; and
 - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC*.

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

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

39.6 *Adjustment on completion of work taken out*

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

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

39.7 *Principal's default*

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

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Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36* (where the *Contractor* has complied with its obligations under subclause 24.1); or
 - (ii) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

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

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these *General Conditions*;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

39.9 **Contractor's rights**

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

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

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

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

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

39.10 **Termination**

If the *Contract* is terminated pursuant to subclause 5.1, 24.6, 39.4(a)(ii) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

39.11 Insolvency

If:

- (a) the *Contractor* informs the *Principal* in writing, or creditors generally, that the *Contractor* is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against the *Contractor* by a creditor;
- (c) the *Contractor* 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 the *Contractor* being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,
 then the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a)(i).

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no other breach of *Contract* and for the purposes of this *Contract* an event of insolvency by the *Contractor* under this subclause 39.11 shall be deemed a breach of contract by the *Contractor*.

40. TERMINATION BY FRUSTRATION

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *payment certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not

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been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;

- (b) the *Principal* shall pay the *Contractor*:
 - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
 - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
 - (iii) the costs reasonably incurred:
 - (A) removing *temporary works* and *construction plant*;
 - (B) returning to their place of engagement the *Contractor*, *subContractors* and their respective employees engaged in *WUC* at the date of frustration; and
 - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

40A. TERMINATION FOR CONVENIENCE

- (a) The *Principal* may, at any time by written notice (in accordance with clause 7), terminate this *Contract*, in whole or in part. Termination takes effect on and from the time specified in the notice. If the *Contract* is so terminated, the *Principal* will be liable only for:
 - (i) payment of an amount of the *Contract sum* for *WUC* performed before the effective date of termination and which has not yet been paid for, provided that that *WUC* has been performed in accordance with the *Contract* and the *Contractor* is not otherwise in breach of the *Contract*; and
 - (ii) subject to this clause 40A, any reasonable costs in respect of unavoidable loss or damage sustained or incurred by the *Contractor* and directly attributable to the termination or partial termination of this *Contract* (including any payment required by the *Contractor* under clause 40A of the *FTS Contract*), provided that the costs are fully substantiated to the *Principal*.
- (b) Except as specified in this clause 40A, the *Principal* will not be liable to pay compensation to the *Contractor* in an amount which would, in addition to any amounts paid or due, or becoming due, to the *Contractor* under this *Contract*, exceed the *Contract sum*. The *Contractor* will not be entitled to compensation for loss of prospective profits or any other form of expectation or consequential loss.
- (c) Upon receipt of a notice of termination under this clause 40A, the *Contractor* must:
 - (i) stop work as specified in the notice and comply with any other directions or requests included in the notice, in particular in relation to the *Principal's Material* and *Contract Material*;
 - (ii) continue work on any part of the *WUC* not affected by the notice; and
 - (iii) take all available steps to minimise or avoid any *Loss* resulting from that termination and to protect the *Principal's Material* and *Contract Material*.
- (d) The *Principal* has an unfettered discretion to terminate this *Contract* in whole or in part under this clause 40A.

- (e) In the event that the *Principal* elects to terminate the *Contract* under this clause 40A then it may employ another contractor to complete the *Works*.

40B. TERMINATION UNDER SIDE LETTER DEED

- (a) The *Contractor* acknowledges and agrees that the *Principal* may, by written notice (in accordance with clause 7), terminate this *Contract* provided that the *Lessor* has terminated the *Side Letter Deed*.
- (b) If the *Contract* is so terminated (in accordance with paragraph (a)), the *Principal* will be liable only for:
 - (i) payment of an amount of the *Contract sum* for *WUC* performed before the effective date of termination and which has not yet been paid for, provided that that *WUC* has been performed in accordance with the *Contract* and the *Contractor* is not otherwise in breach of the *Contract*; and
 - (ii) subject to this clause 40B, any reasonable costs in respect of unavoidable loss or damage sustained or incurred by the *Contractor* and directly attributable to the termination or partial termination of this *Contract* (including any payment required by the *Contractor* under clause 40A of the *FTS Contract*), provided that the costs are fully substantiated to the *Principal*.
- (c) Except as specified in this clause 40B, the *Principal* will not be liable to pay compensation to the *Contractor* in an amount which would, in addition to any amounts paid or due, or becoming due, to the *Contractor* under this *Contract*, exceed the *Contract sum*. The *Contractor* will not be entitled to compensation for loss of prospective profits or any other form of expectation or consequential loss.
- (d) Upon receipt of a notice of termination under this clause 40B, the *Contractor* must:
 - (i) stop work as specified in the notice and comply with any other directions or requests included in the notice, in particular in relation to the *Principal's Material* and *Contract Material*; and
 - (ii) take all available steps to minimise or avoid any *Loss* resulting from that termination and to protect the *Principal's Material* and *Contract Material*.
- (e) The *Principal* has an unfettered discretion to terminate this *Contract* in whole or in part under this clause 40B.
- (f) In the event that the *Principal* elects to terminate the *Contract* under this clause 40B then it may employ another contractor to complete the *Works*.
- (g) If the parties fail to resolve the issues in accordance with this clause 40B, the parties may pursue the matter under clause 42 of this *Contract*.

41. NOTIFICATION OF CLAIMS

41.1 Communication of claims

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

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

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

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41.2 Liability for failure to communicate

The *Principal* is not liable for and is released by the *Contractor* in respect of any loss or claim by the *Contractor* in connection with or arising out of:

- (a) a breach of the *Contract*;
- (b) the *Works*,

(including claims in tort, for quantum meruit or pursuant to statute) unless within 20 *business days* after the first day on which a competent and experienced contractor ought reasonably have been aware of the circumstances which might give rise to any such claim, the *Contractor* has given to the *Principal* and to the *Superintendent* a notice in writing of those circumstances.

41.3 Superintendent's decision

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

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

42. DISPUTE RESOLUTION**42.1 Agreed procedure**

If there is a *dispute* in connection with this *Contract*, the parties will take the steps set out in this clause 42 to seek to resolve the dispute before taking legal proceedings.

42.2 Notice

If a party believes a *dispute* has arisen in connection with this *Contract*, that party will give written notice to the other party, adequately identifying and providing details of the *dispute*.

42.3 Escalation

On receipt of a *dispute* notice the parties will use their best efforts to resolve the *dispute* without delay, including by escalating the *dispute* to senior management if necessary.

42.4 Senior Management Meeting

If those efforts are unsuccessful then, no later than seven days after the *dispute* notice is received, the parties will meet in person at an agreed time and place in order to discuss the *dispute* in an attempt to resolve the *dispute* by negotiation.

If no time or place is agreed, the parties will meet at 2.00pm on the day 14 days after receipt of the *dispute* notice at Melbourne, Tower Road, Melbourne Airport, Tullamarine VIC 3043.

42.5 Authority to resolve

Each party will be represented at the senior management meeting by a person with authority to resolve the dispute.

42.6 Mediation

- (a) If the *dispute* is not resolved during senior management meetings within 15 days after receipt of the *dispute* notice or such later date as agreed by the parties the *dispute* must be submitted to mediation in accordance with this subclause 42.6 and the Institute of Arbitrators & Mediators Australia (IAMA) Mediation and Conciliation Rules.
- (b) Either party may commence mediation by serving a mediation notice on the other party in accordance with clause 7 (**Mediation Notice**).
- (c) The Mediation Notice must provide particulars of the dispute (in detail) to the other party.
- (d) The mediation must take place in Melbourne, Victoria.
- (e) Following provision of the Mediation Notice in accordance with subclause 42.6(b), the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment of a mediator within 7 days of service of the Mediation Notice, either party may apply to IAMA to appoint a mediator in accordance with the Mediation and Conciliation Rules.
- (f) Once the mediator has accepted the appointment, the parties must comply with the mediator's reasonable instructions.
- (g) If the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases and either party may commence legal proceedings.
- (h) The parties must enter into an agreement with the appointed mediator on such terms as the parties and the mediator agree, or failing agreement, on terms reasonably requested by the mediator, provided those terms do not conflict with this subclause 42.6.
- (i) The mediator may fix the charges for the mediation which must be paid equally by the parties.
- (j) If the dispute is settled, all parties must sign such terms of settlement as are agreed between them, which terms will be binding on the parties.
- (k) The mediation must be confidential and:
 - (i) statements made by the mediator or the parties;
 - (ii) discussions between the participants to the mediation, before after or during the mediation,must not be used in any legal proceedings.
- (l) It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to the mediation.
- (m) The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.
- (n) The parties agree that each party may be represented by a legal practitioner or legal practitioners of its choice in the mediation.
- (o) Each party must pay its own costs in relation to the mediation and the matters contemplated under this subclause 42.6.

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- (p) Any information or documents disclosed by a party under this subclause 42.6 will be subject to subclause 8.5.

42.7 Scope

This dispute resolution procedure does not prevent a party from applying to a court for urgent interlocutory relief or any relief to protect *intellectual property rights*.

43. WAIVER OF RIGHTS

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

44. OTHER CONTRACTORS

- (a) The *Contractor* acknowledges that the *Principal* is entitled to enter into contracts with other contractors to carry out work on or near the *site*, concurrently with the execution of the *WUC*.
- (b) The *Contractor* must fully co-operate, liaise and co-ordinate with all other contractors engaged by the *Principal* or the *Superintendent* whose names have or may be notified to the *Contractor* by the *Superintendent* and must carry out *the Works* so as to reasonably avoid interference with or disruption to or delay of the *WUC* or the work of the other contractors.
- (c) The *Contractor* must promptly give all necessary information and assistance to the *Principal* in connection with the coordination and integration of *the Works* with the works of other contractors so as to prevent any delay or disruption to *the Works* and/or to the works undertaken by other contractors and must allow for the protection of works by other contractors against damage and reimburse those other contractors in relation to any damage caused to their work due to a neglect or default of the *Contractor* under this *Contract*.
- (d) If execution of any part of the *WUC* is dependent upon the quality and completeness of work performed by other contractors, the *Contractor* must inspect the other contractor's work and immediately report all defects (if any) therein to the *Superintendent* which in his opinion render such work unsuitable for the proper execution of *WUC*.
- (e) The *Contractor* must execute *the Works* by the *date for practical completion* notwithstanding the presence of other contractors on or near the *site*.
- (f) The *Contractor* must allow access to and through the *site* to any and all other contractors that the *Superintendent* may require. Such access shall be granted at such times and in such manner so as to permit the orderly and timely performance of the work of the other contractors and *the Works*.
- (g) The *Contractor* warrants and acknowledges that it has made all due and appropriate allowances in respect of *the Works* (including in relation to sequencing, programming, non-exclusive possession of and access to the *site*) for coordination and integration of *the Works* with all works to be undertaken by others on the *site* as specified in or to be inferred from the *Contract* or as may be reasonably required by the *Principal* and that any failure to do shall not give rise to any entitlement or right to claim any additional monies (whether by

way of damages, loss, expense or otherwise) or give rise to any *EOT* under, pursuant to or otherwise in connection with this *Contract* or the *Works*.

45. GST

45.1 Same Meaning as GST Law

Words defined in the *GST Law* have the same meaning in this clause, unless it is clear that a different meaning is intended.

45.2 GST Payable

In addition to paying the *Contract sum*, and other amounts due to the *Contractor* in accordance with the *Contract*, which amounts are exclusive of *GST*, the *Principal* shall:

- (a) pay to the *Contractor* an amount equal to any *GST* payable by the *Contractor* on any supply to the *Principal* by the *Contractor* under the *Contract*; and
- (b) make that payment of that *GST* as and when the *Principal* must pay payment claims.

45.3 Tax Invoice

The *Contractor* (or, in respect of the *final certificate*, the *Principal* if applicable) shall, within 5 *business days* after:

- (a) the issue of a *payment certificate* from the *Superintendent* under clause 37.2;
- (b) the expiry of the 20 *business days* referred to in clause 37.2(c); or
- (c) the issue of the *final certificate* from the *Superintendent* under clause 37,

(whichever is applicable), issue a tax invoice (or an adjustment note) to the *Principal* (or the *Contractor*, as applicable) in the amount referred above, and must include in the tax invoice (or adjustment note) the particulars required by the *GST Law* for the *Principal* to obtain an input tax credit for that *GST*.

45.4 Adjustments

The *Contractor* must promptly create an adjustment note for, or apply to the Commissioner for, a refund of, and a refund to the *Principal* any overpayment by the *Principal* for *GST*.

45.5 No price exploitation

The *Contractor* must comply with the *Competition and Consumer Act 2010* (Cth) and the Australian Competition and Consumer Commission's Guidelines on Price Exploitation in relation to the transaction contemplated by this *Contract*.

45.6 GST on claims or expenses recovered

If a payment made by either party to satisfy a claim or a right to claim that the other party has under or in connection with the *Contract* (for example, for misrepresentation or for a breach of any warranty of the *Contractor* or for indemnity or for reimbursement of any expense) gives rise to a liability to pay *GST*, the party must pay and indemnify the other party on demand against the amount of that *GST*.

46. VARIATION OF THE TERMS OF THIS CONTRACT

The *Contract* can only be amended, supplemented, replaced or novated by another document signed by the parties.

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47. **WORK CARRIED OUT PRIOR TO THE CONTRACT**

The parties agree that this *Contract* applies retrospectively to all work undertaken by the *Contractor* for the *Principal* in connection with *the Works* and applies whether the work was undertaken (or should have been undertaken) prior to or after the date of this *Contract*. The *Contractor* acknowledges that any payments made to it prior to the date of the *Contract* are on account only and form part of the *Contract sum*.

48. **PRIVACY**

- (a) In this clause 48, the terms 'agency', 'approved privacy code' (**APC**), 'Information Privacy Principles' (**IPPs**), 'National Privacy Principles' (**NPPs**) and 'personal information' have the same meaning as they have in section 6 of the *Privacy Act*.
- (b) This clause 48 only applies where the *Contractor* deals with personal information when, and for the purpose of, performing this *Contract*.
- (c) The *Contractor* acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**Privacy Act**), and agrees in respect of the carrying out of the *WUC* under this *Contract*:
 - (i) to use or disclose personal information obtained during the course of performance of this *Contract*, only for the purposes of this *Contract*;
 - (ii) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the *Privacy Act*, which if done or engaged in by an agency, would be a breach of that IPP;
 - (iii) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
 - (iv) to notify individuals whose personal information the *Contractor* holds, that complaints about acts or practices of the *Contractor* may be investigated by the Privacy Commissioner who has power to award compensation against the *Contractor* in appropriate circumstances;
 - (v) to maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of personal information held in connection with this *Contract* and not list or index that information by government identifiers except by ABNs;
 - (vi) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the *Contractor*, unless:
 - (A) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this *Contract*; or
 - (B) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this *Contract*, and the activity or practice which is authorised by this *Contract* is inconsistent with the NPP or APC;
 - (vii) to disclose in writing to any person who asks, the content of the provisions of this *Contract* (if any) that are inconsistent with an NPP or an APC binding a party to this *Contract*;
 - (viii) to immediately notify the agency if the *Contractor* becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 48, whether by the *Contractor* or any *subContractor* of the *Contractor*;

- (ix) to comply with any directions, guidelines, determinations or recommendations issued by the agency or the Privacy Commissioner to extent that they are not inconsistent with the requirements of this clause 48; and
 - (x) to ensure that any employee of the *Contractor* who is required to deal with personal information for the purposes of this *Contract* is made aware of the obligations of the *Contractor* set out in this clause 48.
- (d) In addition to these obligations, the *Contractor* must comply with any applicable requirements of the National Privacy Principles applicable to the *Contractor* under the *Privacy Act*.
- (e) The *Contractor* agrees to ensure that any *subContract* entered into for the purpose of fulfilling the *Contractor's* obligations under this *Contract* contains provisions to ensure that the *subContractor* has the same awareness and obligations as the *Contractor* has under this clause 48, including the requirement in relation to *subContracts*.
- (f) The *Contractor* agrees to indemnify the *Principal* in respect of any *Loss* or claim of any nature suffered or incurred by the *Principal* arising out of or in connection with a breach of the obligations of the *Contractor* under this clause 48 or any misuse of *Personal Information* or disclosure in breach of an obligation under the *Privacy Act*, or otherwise, except to the extent that the *Loss* or claim is directly caused by a negligent or wilfully wrongful act or omission of the *Principal* or any of its officers or employees. For the purposes of this paragraph (d), "*Loss*" includes any loss or liability assumed by the *Principal* to pay a person a reasonable amount as compensation for loss or damage suffered by that person as a result of any breach of this clause by the *Contractor* for which the *Principal* would have been liable under the *Privacy Act 1988* if such breach had been that of the *Principal*.

49. CONFLICT OF INTEREST

- (a) The *Contractor* warrants that, at the date of this *Contract*, no conflict of interest exists or is likely to arise in the performance of its obligations.
- (b) During the performance of this *Contract*, the *Contractor* must use best endeavours to:
- (i) ensure that a situation does not arise which may result in a conflict of interest; and
 - (ii) ensure that no *Contractor Personnel* engage in any activity or obtain any interests likely to conflict with or restrict the *Contractor* in performing its obligations under this *Contract* fairly and independently.
- (c) Subject to clause 49(d), the *Contractor* must not engage in any activity, that may result in a conflict of interest arising or continuing.
- (d) Where a conflict of interest, a risk of conflict of interest or a perceived conflict of interest arises in the performance of the *Contractor's* obligations under this *Contract*, the *Contractor* must notify the *Principal* immediately of the situation and must follow all reasonable directions made by the *Principal* about the method for handling the conflict of interest, risk of conflict of interest or perceived conflict of interest.

50. AUDITS AND ACCESS TO CONTRACTOR'S PREMISES AND RECORDS

Audits under clause 51 may be conducted of:

- (a) the *Contractor's* practices and procedures including security procedures, as they relate to the *Contract*;
- (b) the manner in which the *Contractor* performs its obligations under the *Contract*;

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- (c) the compliance of the *Contractor's* invoices and reports with its obligations under the *Contract*;
- (d) the *Contractor's* compliance with all its obligations under the *Contract*;
- (e) the *Contractor's* compliance with its confidentiality, privacy, security and Commonwealth policy obligations under the *Contract*; and
- (f) any other matters determined by the *Principal* to be relevant to the performance of the *Contractor's* obligations under the *Contract*.

51. AUDITS

- (a) The *Contractor* must participate in audits under the *Contract* at the frequency and in relation to the matters specified by the *Principal*, (including on an ad hoc basis if requested by the *Principal*), for the purpose of ensuring that the *Contract* is being properly performed and administered. The *Principal* may, but is not obliged to, appoint an independent person to assist in the audits. Audits may consider all aspects of the *Contractor's* performance.
- (b) The *Contractor* must participate promptly and cooperatively in any audits conducted by the *Principal* or its nominee.
- (c) Except for those circumstances in which notice is not practicable or appropriate (eg. caused by a regulatory request with shorter notice or investigation of theft or breach of contract), and without limiting any other right, recourse or remedy of the *Principal*, the *Principal* must give the *Contractor* reasonable notice of an audit and where reasonably practicable an indication of which documents and/or class of documents the auditor may require.
- (d) Unless specified otherwise in this *Contract* (including the *Statement of Requirement*), each party must bear its own costs of any audits.
- (e) Subject to clauses 51(f) and 51(g), the requirement for, and participation in, audits does not in any way reduce the *Contractor's* responsibility to perform its obligations in accordance with the *Contract*.
- (f) The *Principal* must use reasonable endeavours to ensure that audits performed pursuant to clause 51(a) do not unreasonably delay or disrupt in any material respect the *Contractor's* performance of its obligations under the *Contract*.
- (g) Any amendments to the *Contract* resulting from audits must be effected by agreement in writing between the parties in accordance with amendment provisions of the *Contract*.
- (h) The *Contractor* must promptly take, at no additional cost to the *Principal*, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the *Contractor* has under the *Contract*:
 - (i) carried out the *WUC*; or
 - (ii) calculated any claim pursuant to clause 37, or any other amounts or charges billed to the *Principal* arising from the *WUC*.

52. ACCESS TO THE CONTRACTOR'S PREMISES AND RECORDS

- (a) For the purposes of clause 51 and this clause 52, the *Contractor* must upon reasonable notice save and except in the case of emergency ensure that its *subContractors* grant the *Principal* and its nominees or the Auditor-General access as required by the *Principal*, to the *Contractor's* premises and data, records, accounts and other financial material or material (including the *Principal's* property) relevant to the performance of the *Contract*,

however and wherever stored or located, under the *Contractor's* or its *subContractors'* custody, possession or control for inspection and/or copying.

- (b) In the case of documents or records stored on a medium other than in writing, the *Contractor* must make available on request at no additional cost to the *Principal* such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (c) Subject to subclause 51(c), and without limiting any other provision of the *Contract*, the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions and/or powers respectively, may, at reasonable times:
 - (i) access the premises of the *Contractor* or its *subContractors*;
 - (ii) require the provision by the *Contractor* of records and other information which are related to the *Contract*; and
 - (iii) access, inspect and copy documentation and records or any other matter relevant to the *Contractor's* obligations or performance of the *Contract*, however stored, in the custody or under the control of the *Contractor*.
- (d) The *Contractor* must ensure that any *subContract* entered into for the purpose of the *Contract* contains an equivalent clause granting the rights specified in clause 50 to 52 inclusive with respect to the *subContractors'* premises, data, records, accounts, financial material and information and those of its employees, agents or *subContractors*.
- (e) This clause 52 applies for the term of the *Contract* and for a period of 7 years from the date of its expiration or termination.
- (f) In the exercise of the general rights granted under clause 52, the *Principal* must use reasonable endeavours not to unreasonably interfere with the *Contractor's* performance under the *Contract* in any material respect.
- (g) If, in exercising the rights granted under clause 50, clause 51 or clause 52, the *Principal* unreasonably interferes with the *Contractor's* performance of its obligations under the *Contract* in a material respect and that interference substantially delays the *Contractor* in performing its obligations, the *Contractor* may request an extension of time to perform its obligations.
- (h) The *Principal* must not unreasonably refuse a request pursuant to clause 52(g) where the *Contractor* substantiates the request, within a reasonable time, to the satisfaction of the *Principal*, provided that:
 - (i) the *Contractor* advises the *Principal* of the delay within 14 days of the exercise of the rights and the delay occurring;
 - (ii) the delay could not have been reasonably contemplated or allowed for by the *Contractor* before entering the *Contract*; and
 - (iii) the *Contractor* has taken or takes all reasonable steps to minimise any delay.
- (i) In no circumstances will any extension of time pursuant to clause 52 exceed the amount of any delay directly arising from the exercise of the rights.
- (j) In no circumstances will the *Contractor* be entitled to any delay costs or other costs or expenses of whatever nature relating in any way to the exercise of any rights under clause 50, clause 51 or clause 52 other than to the extent expressly provided for under clause 51(d).

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- (k) Without limiting any of its other obligations under the *Contract*, the *Contractor* must, at its cost, ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to the *Contract* or its performance are maintained in such a form and manner as to facilitate access and inspection under clause 50, clause 51 or clause 52.
- (l) If, recognising the obligation in clause 52(k) and the rights under clause 50, clause 51 or clause 52, the *Contractor* reasonably believes that the exercise of the rights granted under clause 50, clause 51 or clause 52 will cause the *Contractor* to incur direct expenses which, having regard to the value of the *Contract*, are substantial and materially exceed those which it would otherwise have to incur in meeting its obligations under clause 52(k) ("excessive direct expenses"), it may give notice of that belief to the *Principal*. If the *Contractor* substantiates that its direct expenses in complying with the exercise of the rights in such circumstances are excessive direct expenses, the *Principal* and the *Contractor* will negotiate any appropriate reimbursement, but in no circumstances shall any reimbursement be greater than the direct expenses incurred.
- (m) Nothing in the *Contract* reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights under the *Contract* are in addition to any other power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.
- (n) Despite anything to the contrary in this clause 52, the parties acknowledge and agree that, this clause 52 does not apply to *subContractors* of the *FTS Contractor* who:
 - (i) permanently reside or are incorporated outside Australia; and
 - (ii) do not conduct business in Australia,
 provided that, the *Contractor* uses reasonable endeavours to seek evidence from the *FTS Contractor* that it has used reasonable endeavours to incorporate a provision substantially similar to this clause 52 in any *subContract* of the *FTS Contractor* in accordance with the *FTS Contract*.

53. ENVIRONMENTAL OBLIGATIONS

- (a) The *Contractor*:
 - (i) must, at its cost, comply with and must ensure that the *Contractor Personnel* comply with the *Statement of Requirement* and *Environmental Laws* in relation to the *Environment*;
 - (ii) is responsible for:
 - (A) *Environmental* management associated with the *WUC*;
 - (B) obtaining all necessary licenses, permits and approvals; and
 - (C) paying all fees due as required by all *Environmental Laws*;
 - (iii) must ensure that the *Works* do not emit anything that could be detrimental to personnel, nearby neighbours, the operation of other equipment or the *Environment* after the necessary precautions have been taken;
 - (iv) must notify the *Superintendent* of any incidents relating to performance of *WUC* that may have an *Environmental* impact;

- (v) must comply with the *Principal's* reasonable directions about all *Environmental* issues;
 - (vi) indemnifies the *Principal* against any *Loss* or claim of any nature incurred by the *Principal* arising out of or in connection with a breach by the *Contractor* of its obligations under this clause 53, including a contravention caused by the *Contractor* or its personnel of any *Environmental Laws*;
 - (vii) must otherwise meet industry best environmental practice in connection with the performance of the *WUC*; and
 - (viii) on request by the *Principal*, demonstrate its compliance with the obligations specified in this clause 53.
- (b) Deleted clause.
- (c) Subject to paragraph (d), the *Contractor* must comply and ensure that each of its *subContractors* and *Contractor Personnel* comply with the *Environmental Management Plan* in carrying out the *WUC*.
- (d) For the purposes of paragraph (c) above:
- (i) the *Contractor* shall ensure that all *Contractor Personnel* and *subContractors* of the *FTS Contractor* who:
 - (A) permanently reside or are incorporated outside Australia; and
 - (B) do not conduct business in Australia,
 comply with the *Environmental Management Plan* in carrying out the *FTS Works* under the laws and regulations of their relevant place of residence or incorporation pursuant to the *FTS Contract*.
- (e) If any *subContractor* or *Contractor Personnel* of the *FTS Contractor* referred to in paragraph (d)(i) enters Australia for the purposes of conducting or carrying out the *FTS Works*, the *Contractor* must ensure that such *subContractor* or *Contractor Personnel* of the *FTS Contractor* complies with the *Environmental Management Plan* in accordance with paragraph (c).

54. EQUAL EMPLOYMENT OPPORTUNITY

- (a) The *Contractor* must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) (the **Act**).
- (b) Subject to paragraph (c), the *Contractor* must not enter into a *subContract* under the *Contract* with a *subContractor* named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the **Act**.
- (c) Paragraph (b) above does not apply to *SubContractors* of the *FTS Contractor* who:
 - (i) permanently reside or are incorporated outside Australia; and
 - (ii) do not conduct business in Australia,
 provided that any such *subContractor* of the *FTS Contractor* complies with all laws and regulations of its place of residence or incorporation pursuant to the *FTS Contract*.
- (d) If the *subContractor* of the *FTS Contractor* referred to in paragraph (c)(i) enters Australia for the purposes of conducting or carrying out the *FTS Works*, the *Contractor* must ensure

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that any such *subContractor* of the *FTS Contractor*, must not be named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Act.

- (e) Subject to paragraph (f), any *subContract* must include a provision which requires the *subContractor* to notify the Equal Opportunity for Women in the Workplace Agency of any failure to comply with the Act.
- (f) Paragraph (e) does not apply to *subContracts* which are entered into with any *subContractors* of the *FTS Contractor* who:
 - (i) permanently reside or are incorporated outside Australia; and
 - (ii) do not conduct business in Australia,

provided that, the *Contractor* uses reasonable endeavours to seek evidence from the *FTS Contractor* that it has used reasonable endeavours to incorporate a provision substantially similar to paragraph (e) in any *subContract* of the *FTS Contract* in accordance with the *FTS Contract*.

55. INDEMNITY

- (a) The *Contractor* must at all times indemnify and hold harmless the *Principal*, its officers, employees and agents ("those indemnified") from and against all Loss whatsoever incurred or suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the *Contractor* or *Contractor Personnel* in carrying out the *WUC* or in connection with this *Contract*. This indemnity extends to any Loss caused or contributed to in any way by any breach of this *Contract* by the *Contractor*.
- (b) The *Principal* may enforce the indemnity in clause 55(a) in favour of those indemnified for the benefit of each of such persons in the name of the *Principal* or of such persons.
- (c) The *Contractor's* liability to indemnify the *Principal* under clause 55(a) will be reduced proportionally to the extent that a wilfully wrongful or negligent act or omission of the *Principal*, its officers, employees or agents contributed to the Loss, as established by the *Contractor*.
- (d) Nothing in the indemnity in clause 55 will in anyway reduce or qualify the *Principal's* rights at common law in respect of the events which are the subject of the indemnity.
- (e) The indemnity referred to in clause 55(a) will survive the expiration or termination of this *Contract*.

56. NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY

- (a) The *Contractor* will comply, in the performance of this *Contract*, with the requirements of the National Code of Practice for the Construction Industry 1997 (**the Code**) and the Australian Government Implementation Guidelines 2009 edition, including the industry guidelines for the industrial relations and occupational health and safety components of the National Code of Practice for the Construction Industry (**the Industry Guidelines**).
- (b) Compliance with the Code or the Industry Guidelines will not relieve the *Contractor* from responsibility to perform this *Contract*, or from any liability arising from compliance with the Code or the Industry Guidelines.
- (c) Where a change to the *Contract* is proposed and that change would affect compliance with the Code or the Industry Guidelines, the *Contractor* must submit a report to the *Principal*

specifying the extent to which the *Contractor's* compliance with the Code or Industry Guidelines will be affected.

- (d) The *Contractor* must maintain adequate records of the compliance with the Code and the Industry Guidelines by itself, its related entities and its *subContractors*. The *Contractor* must permit the *Principal* to have access to these records and to its premises, as is necessary to allow validation of its progress in complying with the Code and the Industry Guidelines. The *Contractor*, in all *subContracts*, will require *subContractors* and related entities to maintain and provide access for the *Principal* to the *subContractor's* records and premises to the same extent as required from the *Contractor* by this *Contract*.
- (e) If the *Contractor* does not comply with the requirements of the Code or the Guidelines in the performance of the *Contract* such that a sanction is applied by the Minister for Employment and Workplace Relations or the *Principal*, the Code Monitoring Group or the *Commonwealth*, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the *Contractor* or a related entity in respect of work funded by the *Commonwealth* or its agencies.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the *Contractor* may give preference to subcontractors and consultants that have demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (g) The *Contractor* must permit the *Commonwealth*, including a person occupying a position in the Office of the Building and Construction Commissioner full access to the *site* and any other construction sites or places including privately funded construction sites or places to which the Code and the Industry Guidelines apply, to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to *the Works*;
 - (iii) interview any person; and
 - (iv) request the *Contractor* to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,as is necessary to allow validation of its progress in complying with the Code and the Industry Guidelines.
- (h) The *Contractor* must ensure that each *subContractor* engaged in connection with *the Works* provides the *Commonwealth* (or any person authorised by the *Commonwealth*, including a person occupying a position in the Office of the Australian Building and Construction Commissioner), with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any records relevant to *the Works*;
 - (iii) interview any person; and

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- (iv) request the *Contractor* (or the relevant *subContractor*) to produce any specified document within a specified period (being not less than 14 days from the date of the request) in person, by fax or by post,
- (v) as is necessary to allow validation of progress in complying with the Code and the Industry Guidelines.
- (i) Subject to paragraph (j), the *Contractor* must not appoint a *subContractor* or supplier in relation to the *WUC* where:
 - (i) the appointment would breach a sanction imposed by the *Principal* or by the Minister for Employment and Workplace Relations; and
 - (ii) the *subContractor* has had judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.
- (j) Paragraph (i) above does not apply to *SubContractors* or suppliers of the *FTS Contractor* who:
 - (i) permanently resides or is incorporated outside Australia; and
 - (ii) does not conduct business in Australia,

provided that any such *subContractor* of the *FTS Contractor* complies with all laws and regulations of its place of residence or incorporation pursuant to the *FTS Contract*.
- (k) If any *subContractor* or supplier of the *FTS Contractor* referred to in subclause (j) enters Australia for the purposes of conducting or carrying out the *FTS Works*, the *Contractor* must ensure that any such *subContractor* or supplier of the *FTS Contractor* does not breach subclause (i).
- (l) The *Contractor* must ensure that all *subContracts* contain requirements functionally equivalent to the requirements of this clause.
- (m) The *Contractor* must immediately notify the *Superintendent* upon becoming aware that it has not complied with the Code or the Industry Guidelines in any respect, and provide details of the remedial or corrective action(s) the *Contractor* proposes to take in relation to the non-compliance, and the timeframe for such action to be carried out.

57. SECURITY FOR PAYMENT

57.1 Service of notices under the Security of Payment Act

The *Contractor* must:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to the *Principal* of whatever nature in relation to the *Security of Payment Act* (including, a payment claim under the *Security of Payment Act*) is provided to the *Superintendent* at the same time; and
- (b) when the *Contractor* becomes aware that a subcontractor is entitled to suspend work pursuant to the *Security of Payment Act*, promptly and without delay give the *Superintendent* a copy of any written communication of whatever nature in relation to the *Security of Payment Act* which the *Contractor* receives from that subcontractor.

57.2 Suspension of works under the Security of Payment Act

If the *Contractor* suspends the whole or part of the *Work* under the *Contract* pursuant to the *Security of Payment Act*:

- (a) the suspension does not of itself affect the *date for practical completion* but the cause of the suspension may be a ground for an extension of time under subclause 34.3;
- (b) the *Principal* is not liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the *Contractor* as a result of the suspension;
- (c) the *Superintendent* may direct the *Contractor* to omit the whole or part of the suspended work and thereafter the *Principal* may engage others to carry out the suspended work;
- (d) the *Principal* may terminate the *Contract* by written notice whereupon the *Contractor* is entitled to the following payments as determined by the *Superintendent*;
 - (i) for any part of *the Works* carried out prior to the date of termination, the amount which would have been payable if the *Contract* had not been terminated and the *Contractor* submitted a payment claim for the relevant part of *the Work* carried out to the date of termination;
 - (ii) the cost of goods or materials reasonably ordered by the *Contractor* for *the Works* for which the *Contractor* is legally bound to pay provided that:
 - (A) the value of the goods or materials is not included in the amount payable under clause 1.2 of the *Formal Instrument of Agreement*; and
 - (B) title in the goods and materials vests in the *Principal* upon payment; and
 - (iii) any payment owed under the *Security of Payment Act* which is not included in a payment under clause 1.2 of the *Formal Instrument of Agreement*..

57.3 Subcontractor suspension

If the *Principal* becomes aware that a subcontractor is entitled to suspend work pursuant to the *Security of Payment Act*, the *Principal* may (acting reasonably but subject always to any obligation under *Security of Payment Act*) pay the subcontractor such money that is or may be owing to the subcontractor in respect of that work, and any amount paid by the *Principal* is a debt due from the *Contractor* to the *Principal*.

57.4 Indemnity

The *Contractor* must indemnify the *Principal* against all damage, expense (including legal costs on a full indemnity basis), loss or liability of any nature suffered or incurred by the *Principal* arising out of:

- (a) a suspension pursuant to the *Security of Payment Act* by a subcontractor of work which forms part of *the Work*; or
- (b) a failure by the *Contractor* to comply with this *Contract*.

57.5 No limitation

- (a) The provisions of this *Contract* do not limit or exclude the operation of, or the rights of either party under, the *Security of Payment Act*.
- (b) If any provision of this *Contract* would have the effect of excluding, modifying or restricting the operation of the *Security of Payment Act*, then such provision is to be read and construed so as not to have that effect and, if it cannot be so construed, this *Contract* is to be interpreted as if the provision was severed without affecting the validity of any other provision of the *Contract*.

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Released by Airservices under the Freedom of Information Act 1982

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ANNEXURE to the Australian Standard General Conditions of *Contract* for Design and Construct

Part A

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 the General Conditions of *Contract* and shall be read as part of the *Contract*.

| <i>Item</i> | | |
|-------------|--|---|
| 1 | <i>Principal</i> (clause 1) | Airservices Australia |
| | ACN/ABN | (ABN 59 698 720 886) |
| 2 | <i>Principal's address</i> | Alan Woods Building, 25 Constitution Avenue, Canberra ACT 2601 |
| 3 | <i>Contractor</i> (clause 1) | Badge Constructions (SA) Pty Ltd |
| | ACN/ABN | (ACN 008 015 496) |
| 4 | <i>Contractor's address</i> | 9 Anzac Highway, Keswick SA 5035 |
| 5 | <i>Superintendent</i> (clause 1) | 47F |
| | ACN | N/A |
| 6 | <i>Superintendent's address</i> | 47F |
| † 7 | a) <i>Date for practical completion</i> (clause 1) | 11 January 2013 |
| | OR | |
| | b) <i>Period of time for practical completion</i> (clause 1) | Not applicable |
| 8 | <i>Governing law</i> (page 5, clause 1(h)) | Victoria |
| 9 | a) <i>Currency</i> (page 5, clause 1(g)) | Australian dollars |
| | b) <i>Place for payments</i> (page 5, clause 1(g)) | The Superintendent Attention: 47F |
| | c) <i>Place of business of bank</i> (page 3, clause 1(d)) | Not Applicable |
| 10 | <i>The Principal's project requirements are described in the following documents</i> (clause 1) | <i>Statement of Requirement</i> (including all annexures to the <i>Statement of Requirement</i>) |
| 11 | <i>Preliminary design</i> (clause 1) | Not applicable |
| 12 | <i>Quantities in schedule of rates, limits of accuracy</i> | |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

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| | | |
|------|--|--|
| | (subclause 2.5(b)) | |
| 13A | <i>Provisional sum</i> , percentage for profit and attendance (clauses 3 and 36.4) and the schedule of rates to be applied to the calculation of the <i>provisional sum</i> (clauses 3 and 36.4) | As set out in clause 36.4 |
| 13B | <i>Provisional Sum Work</i> (clauses 1 and 3) | Waste Water Treatment Plant 45 |
| † 14 | <i>Contractor's security</i> | |
| a) | Form (clause 5) | 45 |
| b) | Amount or maximum percentage of <i>contract sum</i> (clause 5) | 45 |
| c) | If retention moneys, percentage of each <i>payment certificate</i> (clause 5 and subclause 37.2) | Not Applicable |
| d) | Time for provision (except for retention moneys) (clause 5) | The date of the <i>Formal Instrument of Agreement</i> and the <i>Novation Date</i> (as applicable) |
| e) | Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3) | Nil |
| f) | <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4) | 45 |
| † 15 | <i>Principal's security</i> | |
| a) | Form (clause 5) | Not Applicable |
| b) | Amount or maximum percentage of <i>contract sum</i> (clause 5) | Not Applicable |
| c) | Time for provision (clause 5) | Not Applicable |
| d) | <i>Principal's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4) | Not Applicable |
| 16 | <i>Principal-supplied documents</i> (subclause 10A) | The items referred to in Annexure B to the <i>Statement of Requirement</i> - 1 soft copy |
| 17 | Documents, numbers of copies, and times or stages at which they are to be supplied by the <i>Contractor</i> (subclause 8.3) | The documents referred to in the <i>Statement of Requirement</i> at the times required under the <i>Statement of Requirement</i> - 5 hard copies and 1 soft copy |
| 18 | Time for <i>Superintendent's direction</i> about documents | 14 days |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

| | | | |
|----|---|---|------------------------|
| | (subclause 8.3) | | |
| 19 | Subcontracting (subclause 9.2) | To be submitted by the Contractor for approval by Superintendent | |
| 20 | Novation (subclause 9.4) | Subcontractor | Particular part of WUC |
| | | 22 | FTS Works |
| 21 | Not used | Not used | |
| 22 | Legislative requirements | | |
| | a) Those excepted (subclause 11.1) | None stated | |
| | b) Identified WUC (subclause 11.2(a)(iii)) | Not Applicable | |
| 23 | Insurance of the Works (clause 16A) | | |
| | a) Alternative applying | Not Applicable | |
| | If Alternative 1 applies | | |
| | b) Provision for demolition and removal of debris | Not Applicable | |
| | c) Provision for consultants' fees | Not Applicable | |
| | d) Value of materials or things to be supplied by the <i>Principal</i> | Not Applicable | |
| | e) Additional amount or percentage | Not Applicable | |
| 24 | Professional indemnity insurance (clause 16B and subclause 9.2(f)) | | |
| | a) Levels of cover of Contractor's professional indemnity insurance shall be not less than | 45 | |
| | b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the <i>final certificate</i> | | |
| | c) Categories of <i>consultants</i> and levels of cover of <i>consultants'</i> professional indemnity insurance | | |
| | d) Period for which each <i>consultant's</i> professional indemnity insurance shall be maintained after issue of the <i>final certificate</i> | | |
| 25 | Public liability insurance (clause 17) | | |
| | a) Alternative applying | Not Applicable | |
| | If Alternative 1 applies | | |
| | b) Amount per occurrence shall be not less than | Not Applicable | |
| 26 | Time for giving access/possession (subclause 24.1) | Subject to approval by the Lessor following the Contractor's application for access, to be made as directed by the Principal | |
| 27 | The information, materials, documents or instructions and the times by, or periods within which | Documents or instructions | Times/Periods |
| | | 1. | |

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| | they are to be given to the Contractor (clause 32) | 2. |
| | | 3. |
| 28 | Qualifying causes of delay, causes of delay for which EOTs will not be granted (paragraph (b)(iii) of clause 1 and subclause 34.3) | <ul style="list-style-type: none"> Any matter referred to in clause 24.4, including any delay in relation to the issue of any security identification card or pass required for the conduct of the WUC; inclement weather which does not continue for a period of 2 days or more or which occurs after the date for practical completion; strikes which are not industry wide, which are specific to the site or the Contractor or the WUC or which occur after the date for practical completion; compliance with the requirements of any <i>Environmental Laws</i>, including but not limited to the removal of contaminated material from the site; delay by any <i>Authority</i> in granting any <i>Approval</i>, except the Development Approval in accordance with the <i>Statement of Requirement</i>; any breach or omission by the Contractor; any matter referred to or contemplated by clause 9A of the <i>FTS Contract</i>. |
| † 29 | Liquidated damages, rate (subclause 34.7) | 45 per business day |
| † 30 | Bonus for early practical completion (subclause 34.8) | |
| | a) Rate | Not Applicable |
| | b) Limit | Not Applicable |
| † 31 | Delay damages, other compensable causes (clause 1 and subclause 34.9) | As in clause 34.9. |
| 32 | Defects liability period (clause 35) | 12 months |
| 33 | Progress Claims (subclause 37.1) | |
| | a) Times for progress claims | Submitted on or before the 25 th day of each month for WUC For work claimed to the 25 th day of that month |
| | OR | |
| | b) Stages of WUC for progress claims | Not Applicable |
| 34 | Unfixed plant and materials for which payment claims may be made (subclause 37.3) | 22 |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

- 35 Interest rate on overdue payments (subclause 37.5) 45
- 36 Time for *Principal* to rectify inadequate possession (subclause 39.7)days
If nothing stated, 14 days
- 37 Arbitration (subclause 42.3)
- a) Person to nominate an arbitrator **Not Applicable**
- b) Rules for arbitration **Not Applicable**
- c) Appointing Authority under UNCITRAL Arbitration Rules **Not Applicable**
- 38 On-site Works Date (clause 1) **13 June 2012**

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Annexure to the Australian Standard General Conditions of *Contract* for Design and Construct

Part B

This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

Approved form of unconditional undertaking

(clause 1 – security)

At the request of

ACN..... ABN (the *Contractor*) and in consideration of

ACN..... ABN (the *Principal*) accepting this undertaking
in respect of the *Contract* for

..... (the Project)

ACN..... ABN (the Financial Institution) unconditionally
undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a
maximum aggregate sum of

..... (\$)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer
required by the *Principal* or until this undertaking is returned to the Financial Institution or until payment to the
Principal by the Financial Institution of the whole of the sum or such part as the *Principal* may require.

Should the Financial Institution be notified in writing, purporting to be signed by
..... for and on behalf of the *Principal* that the *Principal* desires
payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial
Institution will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and
notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the *Principal*
the sum of

..... (\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be
required and specified by the *Principal* and thereupon the liability of the Financial Institution hereunder shall
immediately cease.

Dated at this day of 20.....

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part C

Deed of novation

(subclause 9.2(e))

This Deed made the day of 20
between (the *Principal*)
of ACN ABN
and (the *Contractor*)
of ACN ABN
and (the *SubContractor*)
of ACN ABN
and (the *Incoming Contractor*)
of ACN ABN
witness that:

- 1 Upon receipt by the *SubContractor* of the sum certified by the *Superintendent* as owing under the prior *Contract* described in the Schedule hereto:
 - (a) the prior *Contract* shall be discharged;
 - (b) the *SubContractor* shall release the *Contractor* from the further performance of the prior *Contract* and from all claims and demands in connection with the prior *Contract*;
 - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior *Contract* as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior *Contract* as if the *Incoming Contractor* had been named in the prior *Contract*; and
 - (d) the *SubContractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior *Contract* were incorporated herein.
- 2 The *Principal* and *SubContractor* each warrant to the *Incoming Contractor* that:
 - (a) subContract work carried out to the date hereof is in accordance with the provisions of the prior *Contract*; and
 - (b) all claims and demands in connection with the prior *Contract* have been made to the *Contractor*.
- 3 The *Principal* and *SubContractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *SubContractor* in connection with the prior *Contract*.
- 4 A dispute between:
 - (a) the *Principal* and the *SubContractor* in connection with the *Superintendent's* certification of the sum owing under the prior *Contract*; or
 - (b) the *Incoming Contractor* and the *SubContractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 SubContract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

Schedule

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

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of the *Contractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of the *SubContractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part D

Note: Usually the *continuing party* is the *subContractor*,
selected *subContractor* or *consultant*, as the case
may be.

Deed of novation

(subclause 9.4)

This Deed made this day of 20
between:

AirServices Australia (*AirServices*) of Alan Woods Building, 25 Constitution Avenue, Canberra
ACT 2601 ABN 59 698 720 886 and

Badge Constructions (SA) Pty Ltd (*Civil Works Contractor*) of 2 Eton Road, Keswick, SA 5035
ACN 008 015 496 and

Draeger Safety Pacific Pty Ltd (*Draeger*) of Unit 99, 45 Gilby Road, Mount Waverley, VIC, 3149
ABN 96 000 435 549

1. Upon receipt by *Draeger* of all moneys owing under the prior *Contract*:
 - (a) the *Civil Works Contractor* shall punctually perform the obligations of *AirServices* under the *Contract* described in the Schedule hereto as far as they are not performed. The *Civil Works Contractor* acknowledges itself bound by the provisions of the *Contract* as if the *Civil Works Contractor* had been named as the "Principal" in the *Contract*;
 - (b) *Draeger* shall punctually perform like obligations and be bound to the *Civil Works Contractor* as if the provisions of the *Contract* were incorporated herein; and
 - (c) Subject to clause 6 of this Deed, *AirServices* and *Draeger* shall each release and forever discharge the other from the further performance of the *Contract* and from all claims and demands in connection with the *Contract* arising prior to the date of this Deed.
2. *Draeger* warrants to the *Civil Works Contractor*, as at the date of this Deed, that all of *Draeger's* work under the *Contract*, including any preliminary design carried out to the date of this Deed, is in accordance with the provisions of the *Contract*.
3. Title to all *intellectual property rights* in all *Contract Material* vests in *Draeger* upon creation. From the date of this Deed, *Draeger* grants to the *Civil Works Contractor* an irrevocable, royalty-free, licence to use the *Contract Material* and *Draeger's Works* for the purposes of conducting works under the *Civil Works Contract*. This use does not allow any further distribution or exploitation by the *Civil Works Contractor* unless *Draeger* otherwise agrees in writing. This clause survives the expiration of this Deed and the *Contract*.
4. *Draeger* warrants to *AirServices* that:
 - (a) the completed *Final Detailed Design* will:
 - (i) satisfy the requirements of the *Statement of Requirement* and provisions of the *Contract*; and

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- (ii) be and remain during the applicable design life specified in the *Statement of Requirement* fit for their intended purposes.
 - (b) the construction of *Draeger's Works* will be and will remain in accordance with the completed *Final Detailed Design* and will satisfy the requirements of the *Statement of Requirement* and the *Contract*.
 - (c) the workmanship and materials used in *Draeger's Works*:
 - (i) will be, upon completion of *Draeger's Works* (as defined in the *Contract*), fit for the intended purposes of *Draeger's Works* as specified in the *Statement of Requirement* and the provisions of the *Contract*; and
 - (ii) will remain at all relevant times fit for the intended purposes of *Draeger's Works* as specified in the *Statement of Requirement* and the provisions of the *Contract*.
5. From the date of this Deed the provisions of this clause 5 apply.
- (a) At the time of lodgement of a payment claim under the *Civil Works Contract*, the *Civil Works Contractor* must ensure that the *Superintendent* provides to *AirServices* *Superintendent* copies of:
 - (i) any *payment certificate* issued by the *Superintendent* under subclause 37.2 of the *Contract* in respect of a payment claim served by *Draeger* (in accordance with subclause 37.1 of the *Contract*); and
 - (ii) the *Civil Works Contractor's* payment claim for the relevant period pursuant to the *Civil Works Contract* (but excluding the amount identified in paragraph (i) above).
 - (b) Following assessment and issuance of a *payment certificate* by the *AirServices Superintendent* (in accordance with the *Civil Works Contract*), *AirServices* must, by the date on which the *Civil Works Contractor* would be required to pay under clause 37.2(e) of the *Contract*, pay the amount shown in the *payment certificate* referred to in paragraph (a)(i) of this Deed (**Payment Amount**).
 - (c) The *Civil Works Contractor* agrees and acknowledges that the payment by *AirServices* of a *Payment Amount* satisfies and discharges any obligation by *AirServices* under the *Civil Works Contract* to pay the *Civil Works Contractor* any amount in relation to a payment claim under the *Civil Works Contract* in respect of the works the subject of a payment claim referred to paragraph (a)(ii).
 - (d) *Draeger* agrees and acknowledges that the payment by *AirServices* of a *Payment Amount* satisfies and discharges any obligation by the *Civil Work Contractor* and/or *AirServices* under the *Contract* or this Deed to pay *Draeger* any amount in relation to a payment claim under the *Contract* in respect of the works the subject of a payment claim referred to in paragraph (a)(i).
 - (e) Despite anything in this clause 5, the parties agree and acknowledge that, *Draeger* and the *Civil Works Contractor* must provide two (2) separate tax invoices following issuance of the *payment certificate* but prior to the payment of the *Payment Amount* (pursuant to paragraph (b) above).
6. *AirServices*:
- (a) warrants to the *Civil Works Contractor* that on the *Novation Date*, it is not in breach of any of its obligations under the *Contract*; and
 - (b) indemnifies the *Civil Works Contractor* against each *Loss* or *Claim* against the *Civil Works Contractor* arising from or in connection with any breach of paragraph (a).

7. The parties agree and acknowledge that any provision of the *Contract* (including but not limited to clauses 5, 10, 10A, 10B, 16, 17, 18, 19, 37.2, 51 and 52) which contains an obligation of the *Contractor* which is specifically referred to as being in favour of *AirServices* will continue to operate as an obligation between *Draeger* and *AirServices* after the date of this Deed.
8. The parties acknowledge and agree that, on the date of the this Deed, the *Superintendent* noted in Item 5 of Part A to the *Contract* will be replaced by a *Superintendent* appointed by the *Civil Works Contractor*.
9. This Deed shall be governed by the governing law of the *Contract*.
10. Definitions contained in the *Contract* apply to this Deed.

Executed as a Deed:

[EXECUTION TO BE INSERTED PRIOR TO SIGNING]

Schedule

The contract between the *AirServices Australia* and the *Draeger* dated on or before the date of this Deed which is attached to this Deed.

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**Annexure to the Australian Standard
General Conditions of *Contract* for
Design and Construct**

Part E

DELETIONS AMENDMENTS AND ADDITIONS

Released by Airservices under the Freedom of Information Act 1982

AS 4902-2000

**Annexure to the Australian Standard
General Conditions of *Contract* for
Design and Construct**

Part F

STATEMENT OF REQUIREMENT

Released by Airservices under the Freedom of Information Act 1982

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part G

MORAL RIGHTS DEED POLL

DATE: _____

SINCE Airservices Australia (Principal) intends to carry out the design and construction of works at Melbourne Tullamarine Airport in relation to the Learning Academy Hot Fire Training Ground (**Project**) and wishes to ensure that it has all the rights necessary to allow it to change (including relocate, demolish or destroy) the Project, and to authorise the Project to be so changed **AND SINCE** I, (print full name) _____

_____, of (insert address) _____

_____ have Moral Rights in respect of the Works:

I now unconditionally and irrevocably, to the fullest extent permitted by law:

1. give the consent stated in clause 2 for the benefit of Principal, and its licensees, successors in title, and anyone authorised by any of them to do any acts comprised in the copyright throughout the world (each a **Moral Rights Beneficiary**); and
2. consent to any acts or omissions (whether taking place before or after this consent) that would otherwise infringe my Moral Rights in respect of the Works created by me in the course of my employment with [company], including:
 - (a) any alteration to or deletion from the Works (including the relocation, demolition or destruction of) the Building;
 - (b) any use of the Works that does not identify me as the author of the Works; and
 - (c) any use of the Works that may falsely attribute authorship of the Works to any other person.

In this deed:

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and all rights of a similar nature conferred by statute or otherwise, that exist, or that may come to exist, anywhere in the world in the Works.

the Works means the Project (and each part of the Project), and any copyright work:

- (a) relating specifically to (including any plans or instructions used in the construction of) the Project or a part of the Project; and
- (b) authored, created, produced or reproduced by me, whether solely or jointly with another person.

Executed as a deed poll.

I agree that no provision of this deed poll shall be revoked or otherwise modified without the prior written consent of the Principal and the Contractor.

SIGNED, SEALED and DELIVERED by [name of party] in the presence of:

Signature of party

Signature of witness

Name of witness

**Annexure to the Australian Standard
General Conditions of *Contract* for
Design and Construct**

Part H

FTS CONTRACT

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**Annexure to the Australian Standard
General Conditions of *Contract* for
Design and Construct**

Part I

LEASE AND SIDE LETTER DEED

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Standards Australia

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body.

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Australian Standards are prepared by committees of experts from industry, governments, consumers and other relevant sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

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Standards Australia is responsible for ensuring that the Australian viewpoint is considered in the formulation of international Standards and that the latest international experience is incorporated in national Standards. This role is vital in assisting local industry to compete in international markets. Standards Australia represents Australia at both ISO (The International Organization for Standardization) and the International Electrotechnical Commission (IEC).

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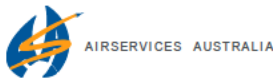
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ASA PRN_5146
Airservices Civil Works for Fire Training Ground
Statement of Requirement



ASA PRN_5146

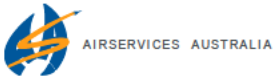
Airservices Civil Works for Fire Training Ground

STATEMENT OF REQUIREMENT

Note to Badge:

This Statement of Requirement is in draft form only and may be amended once the Conditions of Contract have been finalised. This Statement of Requirement has been provided in advance of the finalised Conditions of Contract only so that Badge may familiarise itself with the requirement under Airservices' Request for Tender PRN 5146. Further, as Badge is aware, this SoR is subject to change following meetings with AsA and Draeger.

Further highlighted notes are found throughout this Statement of Requirement where particular issues are noted for Badge's attention.



ASA PRN_5146
Airservices Civil Works for Fire Training Ground
Statement of Requirement

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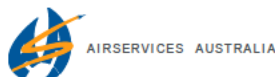
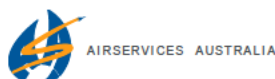
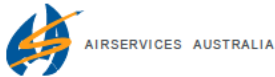


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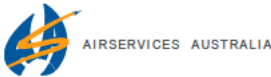
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1. DEFINITIONS

Terms in this Statement of Requirement have the meaning given to them in the Conditions of Contract. In addition, the following terms in this Statement of Requirement have the following meanings, except that in the case of any inconsistency between definitions in the Conditions of Contract and definitions in this Statement of Requirement, the definitions in the Conditions of Contract will prevail:

Airports Act means the *Airports Act 1996* (Cth) and the *Airports (Transitional) Act 1996* (Cth).

Airports Regulations means all regulations made under the Airports Act.

Airport Operator means Australian Pacific Airports (Melbourne) Pty Ltd.

Airservices means Airservices Australia.

Building Approval means a building approval under regulation 2.11 of the *Airports (Building Control) Regulations 1996* (Cth) to carry out the Project.

Business day has the same meaning as in the Conditions of Contract.

CASA means the Civil Aviation Safety Authority.

CCD means the date of contract (as defined in the Conditions of Contract).

Civil Works means the civil works defined at section 2.3 of this Statement of Requirement.

Conditions of Contract is a reference to the AS:4902-2000 General conditions of contract, as amended by agreement between the parties.

Contractor has the meaning given to that term in the Conditions of Contract.

Defects Liability Period has the meaning given to that term in the Conditions of Contract.

Design and Construction Program means a design and construction program to be prepared by the Respondent and included with the Respondent's Response, complying with this Statement of Requirement and the Conditions of Contract and showing the dates by which, or the times within which, the Works and the various stages or separable portions of the Works (if applicable) are to be carried out or completed by the Contractor in accordance with the Conditions of Contract and this Statement of Requirement.

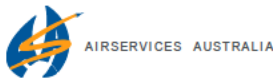
Development Approval means any development consent or approval required to be procured under applicable legislation in relation to the Project.

FTS means the fire training simulator to be constructed by the FTS Contractor in accordance with the FTS Contract.

FTS Contract means the contract between Airservices and the FTS Contractor for the provision of a fire training simulator.

FTS Contractor means Draeger Safety Pacific Pty Ltd (ACN 000 435 549), the contractor engaged to provide the FTS.

PMP means a project management plan as described in Section 3 of this Statement of Requirement.



Principal has the meaning given to that term in the Conditions of Contract and is a reference to Airservices.

Principal Supplied Documents means the documents provided by or on behalf of Airservices to the Respondent or the Contractor (as applicable).

Project means the design, fabrication, construction, installation and commissioning of the Civil Works, the FTS and all associated infrastructure at the Airservices Melbourne compound.

Response means the Respondent's written response submitted in relation to the RFT.

RFT means the Request for Tender released by Airservices for the provision of the Civil Works.

Site has the meaning given to that term in the Conditions of Contract.

Statement of Requirement means this document.

Superintendent has the meaning given to that term in the Conditions of Contract.

Works has the meaning given to that term in the Conditions of Contract, to be delivered in accordance with the requirements set out in this Statement of Requirement and the Conditions of Contract.

WWTP means the waste water treatment plant to be constructed in accordance with this Statement of Requirement.

2. INFORMATION TO CONTRACTOR

2.1. PRINCIPAL'S CORE BUSINESS OPERATIONS

Airservices Australia (Airservices) is a Government-owned corporation and is responsible for the provision of air traffic management, air navigation support (communications infrastructure, radar and navigation aids), and Aviation Rescue and Fire-Fighting (ARFF) services to the aviation industry. The core business is the provision of air traffic control and flight decision support information and facilities for safe and efficient air traffic flow.

Airservices is responsible for the airspace stretching in latitude from two degrees to 90 degrees south; and in longitude from 75 degrees to 163 degrees east. This is an area of 19,995,070 sq nautical miles (51,786,992 sq km) - or some 11 percent of the world's total airspace.



2.2. BACKGROUND TO THE PROJECT

The ARFF Service currently operates at 20 airport locations around Australia. The core functions of ARFF are:

- a) To rescue persons and property from an aircraft that has crashed or caught fire during landing or take-off; and
- b) To control and extinguish and to protect persons and property threatened by, fire at an aerodrome, whether or not in an aircraft.

ARFF is one of the world's largest providers of airside rescue and fire fighting services. Currently, training is conducted at a number of sites around the country; however, it is the intent of the organisation to consolidate this training through the provision of a new centralised training ground. This ground is to be regulatory compliant (as per Civil Aviation Safety Authority (CASA) regulations) and provide environmentally responsible live fire training on a Category 10 training simulator.



Airservices is seeking to engage Contractors to design, fabricate, construct, install and commission a centralised hot fire training ground incorporating an FTS, training centre and associated infrastructure at the following location:

Melbourne Airservices Australia Compound
Tower Road
Tullamarine, Melbourne Airport
Victoria 3043

2.3. THIS PROCUREMENT ACTIVITY

This procurement activity relates to the design, fabrication, delivery, installation, commissioning of the Civil Works and FTS. This is to be delivered in accordance with the requirements set out in this Statement of Requirement and the Conditions of Contract.

The Civil Works (detailed in Annexure A) includes the following elements:

- (a) the control room for the Fire Training Simulator (FTS);
- (b) the hardstand (pad) for the FTS, including extended hardstand for HAZMAT storage. The pad is to provide a hard surface (concrete) training area on which to place the FTS and conduct the training activities. Further, the hard surface forms the catchment area for contaminants such as fuel and foam used during the training, for input to the training complex's waste water treatment plant (WWTP);
- (c) the training centre, incorporating ultra large fire vehicle (ULFV) garaging;
- (d) the waste water treatment plant (WWTP);
- (e) civil works, including roadways, footpaths and landscaping;
- (f) additional prop storage facility (i.e. shipping container or shed);
- (g) lighting and security; and
- (h) design, fabrication, delivery, installation and commissioning of the FTS.

This procurement activity further includes the design and fabrication of the FTS unit at an off-site location by the FTS Contractor with the eventual aim of delivery, re-assembling, installation, commissioning and testing of the FTS and the Civil Works to achieve practical completion. The Contractor must deliver to Airservices a fully commissioned FTS unit and control room (including but not limited to any systems and/or equipment necessary to operate the FTS unit).

This document does not relate to any other works.

2.4. INDICATIVE KEY MILESTONES FOR THE PROJECT

The following table shows the indicative key milestone dates for the Project.

| | |
|--------------------------------------|---------------------------------------|
| Contract Signed | 15th August 2011 |
| Design Completed | 29th November 2011 |
| Forecast Practical Completion | 17th September 2012 |

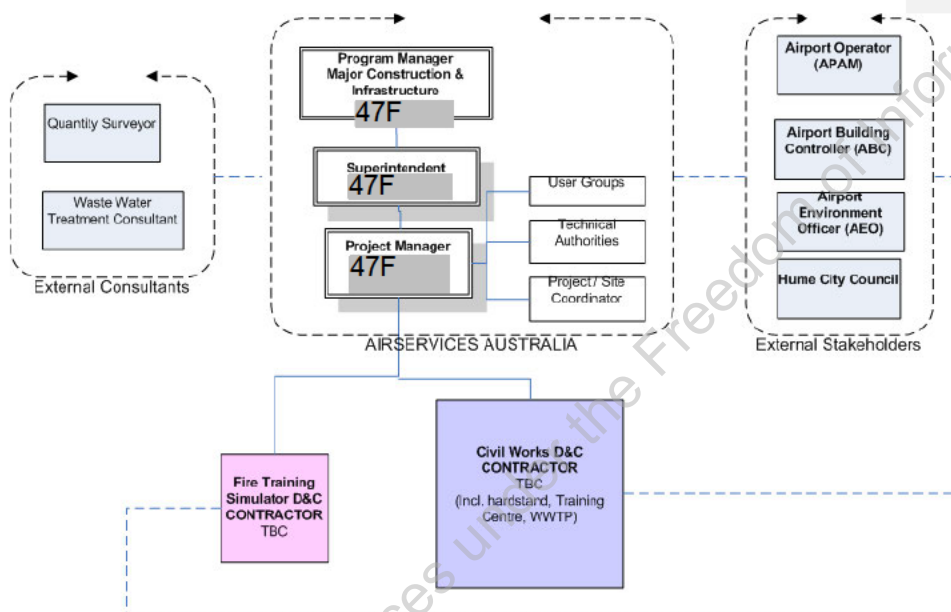


The Contractor must deliver to Airservices, in accordance with the Conditions of Contract and this Statement of Requirement, a design and construction program which takes into account the above milestones and incorporates the milestones into an achievable program.

2.5. PROJECT MANAGEMENT TEAM

Airservices will appoint a Superintendent under the Conditions of Contract.

The project management team will be as follows:



2.6. PRINCIPAL'S TECHNICAL AUTHORITY GROUPS

Airservices Project nominated representatives will review the design and verify, on behalf of Airservices, that the design meets the operational and other requirements of Airservices prior to commencement of fabrication, construction and installation of the Works and will review fitness for purpose and any other aspect of the design. This verification is for the benefit only of Airservices and does not affect or limit the obligations of the Contractor under the Conditions of Contract. Applicable parties include:

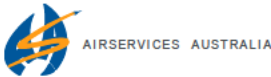
Planning and Integration – Airservices Engineering and Asset Management Authority;

Facilities Management Services – Airservices Maintenance and Installation Authority;

National Property – Property Management Authority;

Corporate Affairs – Airport liaison;

Safety – Operational Safety and Occupational Health and Safety;



Finance & Procurement;

Technology and Asset Services (TAS);

Aviation Rescue and Fire Fighting – Operational Standards Group;

People and Change – Learning Academy;

Environment and Safety; and

Any other party nominated by Airservices, from time to time.

The design phases of the Works (to be set out in the Design and Construction Program) must include 2 hold points, one at 50% design and another at 100% detailed design, to allow for a two week verification process followed by an approval process.

The Contractor will be required to amend the design to take into account any changes or requirements of Airservices following the review by the Airservices Project nominated representatives and prior to verification being provided.

Other stakeholders include (but are not limited to):

Airport Operator (Airservices leases this Site from the Airport Operator);

Airport Building Controller (ABC);

Airport Environment Officer (AEO); and

Hume City Council.

Several documents describing the requirements of these stakeholders are included in Annexure B of this Statement of Requirement.

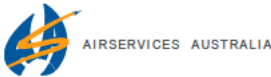
3. SCOPE OF WORKS

3.1. GENERAL SCOPE

The Project includes the design and, following the design review and verification process, the subsequent fabrication, construction, installation and commissioning of the Civil Works and FTS and associated infrastructure at the Airservices Melbourne compound. As per Section 2.3, this Statement of Requirement, and therefore the Works as defined in the Conditions of Contract, relate only to the provision of the civil works components of the Project. However it is anticipated that the FTS Contract will be novated from Airservices to the Contractor and, at that point, the Contractor will be responsible for the entire Project, including the provision and commissioning of the FTS.

The design and construction of the Works must take into account any requirements set out in this Statement of Requirement and the Conditions of Contract, including the Principal Supplied Documents and the Functional Specification which is Annexure A to this Statement of Requirement.

The Contractor will be responsible for obtaining all approvals in relation to the Works, including but not limited to any Development Approval, Building Approval or other consent, permit or approval required in relation to the Works. Additionally, regardless of whether the FTS Contract is novated, the Contractor will be responsible for obtaining all approvals in relation to the FTS, including but not limited to any Development Approval, Building Approval or other consent, permit or approval required.



3.2. OVERVIEW OF SERVICES

The scope of the Works that the Contractor must carry out includes, without limitation, the following elements:

- a) preparation of documents;
- b) provision of design services;
- c) application for, and obtaining, all required development and environmental approvals for the Project (including the FTS) from the relevant authorities at the Contractor's cost;
- d) provision of construction and commissioning services for the building and infrastructure works;
- e) provision of Site, construction management and site management services;
- f) provision of required services during the Defects Liability Period; and
- g) provision of Warranty services.

The Contractor will also be required to supply a scheduled servicing program for the life of the Works governed by the Conditions of Contract.

These services and the Works are described in more detail throughout this Statement of Requirement and must be read in conjunction with the Conditions of Contract (including its annexures) and other documents or requirements referenced in or attached to this Statement of Requirement or the Conditions of Contract.

3.3. CONDITIONS OF CONTRACT

The Contractor must enter into a contract based on the AS:4902-2000 General Conditions of Contract, to be amended as agreed between the parties (referred to as the "Conditions of Contract") and must undertake the Works in accordance with the Conditions of Contract.

3.4. NOVATION

At a point to be agreed between the Contractor, Airservices and the FTS Contractor, the FTS Contract will be novated from Airservices to the Contractor and the Contractor will thereafter assume all of Airservices' rights and obligations under the FTS Contract and will accept the FTS Contractor as a subcontractor under the Conditions of Contract. The novation mechanism is set out in the Conditions of Contract and the FTS Contract.

3.5. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE

The Contractor must comply with the National Code of Practice for the Construction Industry and the Implementation Guidelines in the performance of the Contractor's activities and including the activities of the FTS Contractor after novation. Compliance with the National Code or the Guidelines will not relieve the Contractor from its obligations under the Conditions of Contract, or otherwise.

It is also a condition of participation in this RFT that, at the time of lodgement of the Response, the Contractor must not be:

- (a) precluded from tendering for Australian Government funded work; or
- (b) subject to a judicial decision against them relating to employee entitlements, not including decisions under appeal, and have not paid the claim.

A failure to meet these conditions of participation will mean that the Contractor will be automatically excluded from the RFT.

During the Works, the Contractor must attend each Site meeting, described in section 4.7, and prepare and present a status report on the Contractor's compliance and/or non-compliance with the requirements of the National Code of Practice for the Building and Construction Industry. In the event a non-compliance is identified, the Contractor must immediately notify the Superintendent, and advise what remedial or corrective action(s) the Contractor intends to take and the timeframe for the action to be carried out and adopted.

3.6. COMPLIANCE WITH THE FEDERAL SAFETY COMMISSION'S OH&S ACCREDITATION SCHEME

The Contractor must be, and must ensure that any subcontractors (including the FTS Contractor after novation) are, approved by the Federal Safety Commission (FSC). In order to obtain FSC approval the Contractor and its subcontractors may be required to meet relevant requirements under Victorian occupational health and safety legislation, regulations and Codes of Practice.

4. CONTRACT DOCUMENTS AND SITE MEETINGS

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In addition to other requirements as set out in this Statement of Requirement and the Conditions of Contract, the Contractor must provide the Superintendent with a number of documents and also hold Site meetings. Details in relation to the required documents and the Site meetings, the timeframe for submission of the documents to the Superintendent and the section of this Statement of Requirement in which they are referenced are detailed below:

| Contract Document(s) | Reference Section | Timeframe for submission to the Superintendent |
|------------------------------------|-------------------|--|
| Design and Construction Program | 4.6 | CCD plus ten (10) business days |
| Project Management Plan (PMP) | 4.1 | CCD plus thirty (30) business days |
| Quality Management Plan (QMP) | 4.2 | CCD plus thirty (30) business days |
| Construction Management Plan (CMP) | 4.11 | CCD plus twenty (20) business days |

| | | |
|---|------|--|
| Preliminary Design Documents | 6.3 | CCD plus twenty (20) business days |
| Final Detailed Design | 6.4 | CCD plus fifty (50) business days |
| Operation and Maintenance Manuals | 4.9 | Draft to be provided fifteen (15) business days prior to Practical Completion |
| OHS Management Plan | 4.3 | Provided with CMP |
| Construction Environment Management Plan (CEMP) | 4.11 | Provided with CMP |
| Certificates of Currency for Insurances | 5 | On CCD |
| Site Management Plan (SMP) | 4.5 | Twenty (20) business days prior to commencement of Works on-Site |
| Site Meetings | 4.7 | Initial site meeting CCD plus five (5) business days then weekly during construction |
| Testing and Acceptance Plan | 13 | Draft to be provided prior to completion of the Final Detailed Design |

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4.1. PROJECT MANAGEMENT PLAN

The Contractor must submit a Project Management Plan (PMP) to the Superintendent or nominated Representative for approval. The PMP must include, as a minimum:

- [REDACTED]
- Objectives;
- Applicable Key Legislation, Regulation, Licensing;
- Key Management Issues;
- Site Actions;
- Performance Measures;
- Monitoring and Reporting;
- Corrective Actions;

Risk Management Strategy and Risk Assessment – this is to be prepared in accordance with AS/NZS 4360 Risk Management. The Risk Management Strategy is to address and manage potential risks to the Project;



Communications Management Strategy – used to identify the methods and procedures to be utilised to ensure all stakeholders are provided with relevant and timely information concerning the status of the Project;

Issue Management Strategy – process by which any and all unresolved issues affecting the Project are monitored and managed through to resolution; and

Supply Chain Management Strategy – details of how the Contractor will manage all sub-contractors and suppliers.

The PMP will form the baseline project management document and must be maintained by the Contractor for the duration of the Conditions of Contract. The Contractor must, at all times, comply with the PMP in the form as approved by the Superintendent or nominated Representative and make any changes to the PMP as required by the Superintendent or nominated Representative from time to time.

The Contractor must not amend or deviate from the PMP approved by the Superintendent or nominated Representative without the written approval of the Superintendent or nominated Representative. The PMP must be updated by the Contractor and resubmitted as required to ensure its accuracy and currency.

4.2. QUALITY MANAGEMENT PLAN

The Contractor must provide for the review by and approval of the Superintendent or nominated Representative a Quality Management Plan (QMP) in accordance with the Conditions of Contract and the requirements of AS/NZS ISO 10005:2006 Quality Management Systems – Guidelines for Quality Plans which describes the Contractor's quality management system and how it will be applied to fulfil the specific requirements of the Project.

The Contractor must maintain the QMP for the duration of the Conditions of Contract. The QMP must outline the processes and procedures to be implemented by the Contractor to ensure quality of materials, installation and design execution to comply with all relevant Airservices requirements and Australian and International Standards. The plan is to detail inspection requirements at all designated hold and witness points throughout the Project.

The Contractor must, at all times, comply with the QMP in the form as approved by the Superintendent and make any changes to the QMP as required by the Superintendent or nominated Representative from time to time.

The Contractor is to make all quality assurance and systems records available to the Superintendent or nominated Representative at all times. Quality assurance and systems records may be requested by the Superintendent or nominated Representative at the completion of the Project, and the Contractor is to allow for the compilation of these records at the completion of the Project, if requested.

4.3. OHS MANAGEMENT PLAN

The Contractor must prepare an occupational health and safety management plan (OHS Management Plan) as part of its Site specific Construction Management Plan (CMP).

Access to the Site will not be made available to the Contractor until the OHS Management Plan has been approved by the Superintendent or nominated Representative. The Superintendent or nominated Representative may permit the Contractor to mobilise on Site providing at least the Job

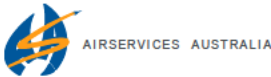


Specific Safety Analysis has been approved by the Superintendent and the balance of the OHS Management Plan contents is submitted within ten (10) business days of mobilisation. An extension of time will not be granted for any delay experienced by the Contractor for not having its OHS Management Plan approved.

The Contractor must make all occupational health and safety records available to the Superintendent at all times. Occupational Health and safety records may be requested by the Superintendent or nominated Representative at the completion of the Project, and the Contractor must allow for the compilation of these records at the completion of the Project, if requested.

The OHS Management Plan must, at a minimum, consider the following key elements:

- a) Supervision / Responsibilities;
- b) Contact Details;
- c) Job Safety Analysis;
- d) Safe Work Method Statement;
 - The Contractor must construct the Works in accordance with the original submitted Safe Work Method Statement or revise the Safe Work Method Statement to reflect the adopted (agreed) work method. Changes to the work method shall be immediately forwarded to the Superintendent or nominated Representative. Any change to the Safe Work Method Statement requires the Contractor to assess whether there are any new hazards associated with the changed work method and document and action the Risk Control Measure.
- e) Training;
- f) Site Induction; and
- g) Tool Box Talks.
 - There must be formal meetings where minutes are recorded and kept as part of the OH&S Management Plan. The Contractor shall hold at least one 'Toolbox Meeting' per fortnight with its employees to:
 - Take action, if any, over hazards that are identified by staff;
 - Discuss any improvements that can be made to working conditions;
 - Reinforce Project specific or other procedures operating on Site;
 - Make its employees aware of any good safety procedures;
 - Do anything else the Contractor may want to discuss, direct or whatever; and
 - Provide Personal Protective Equipment (PPE) to its employees.
- h) Site Establishment / Access And Logistics
- i) Competency Assessments For Operators
- j) Safety Checklists, Inspection And Auditing Requirements
 - the Contractor must ensure that each day, prior to starting operations, its employees conduct a safety check of the equipment and report any faults to the foreman. Unless otherwise delegated the foreman shall conduct a daily Site inspection to identify any



hazards that may not be controlled by the Job Specific Safety Analysis and take appropriate action to control any hazard that is discovered. Any hazard identified shall be recorded in the foreman's Site diary or other appropriate report together with the action taken. If no hazards were identified, then the foreman's report shall state that no hazards were identified. Each report shall be initialled. The foreman's checklist shall include the checking of the implementation and effectiveness of any new or existing procedure being used to control a risk.

k) Site Log Book

l) Incident Notification / Reporting / Management

- If the Contractor is required by the Occupational Health and Safety (Incident Notification) Regulations or by any other regulations to give any notice of an incident occurring during the performance by the Contractor of the Works, the Contractor shall at the same time or as soon thereafter as possible in the circumstances give a copy of the notice to the Superintendent or nominated Representative and must promptly notify the Superintendent or nominated Representative of any accident, injury, incident, property or environmental damage which occurs during the carrying out of the Works. The Contractor's foreman must immediately notify the Superintendent or nominated Representative of all lost time incidents and within three (3) days of any such incident the Contractor must provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

m) Emergency Response Plan

n) First Aid

The Contractor will provide PPE to all visitors to Site. Where an unsolicited visitor to the Site must pass a hazardous area before being inducted, then signs and/or barricades shall warn visitors about the Personal Protective Equipment required on the Site. The Contractor must provide safety helmets for the temporary use whilst on the Site of visitors whose presence on the Site is authorised, permitted or necessary under the provisions of the Conditions of Contract. The Contractor must ensure that all subcontractors and employees wear as a minimum at all times: safety helmets, safety boots, and high visibility clothing.

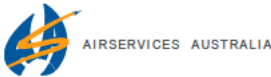
If, during the performance of Works, the Superintendent or nominated Representative informs the Contractor via a non-conformance notification that it is the opinion of the Superintendent or nominated Representative that the Contractor is:

- a) Not conducting the work in compliance with the OHS Management Plan, health and safety management procedures or relevant legislation; or
- b) Conducting the work in such a way as to endanger the health and safety of the Contractor's employees or subcontractor's employees, plant, equipment or materials, or the public,

the Contractor must promptly remedy that breach of health and safety.

The Superintendent or nominated Representative may direct the Contractor to suspend any part of the Work until such time as the Contractor satisfies the Superintendent or nominated Representative that the Works will be resumed in conformity with the OHS Management Plan and/or applicable health and safety regulations.

During any periods of suspension referred to above, neither Airservices or its nominated Representative, as the case may be, will be required to make any payment whatsoever to the Contractor.



If the Contractor fails to rectify any breach of health and safety for which the Works have been suspended, or if the Contractor's performance has involved recurring breaches of health and safety, the Superintendent or nominated Representative may exercise his rights under the Conditions of Contract on the basis of default by the Contractor.

The Contractor must, at all times, comply with the OHS Management Plan in the form as approved by the Superintendent or nominated Representative and make any changes to that plan as required by the Superintendent from time to time.

4.4. ENVIRONMENTAL MANAGEMENT PLAN

The Contractor is required to develop an Environment Management Plan designed to meet the requirements set out in the Melbourne Airport – Construction Environmental Management Plan Requirements For Development. This document is listed in Appendix B.

Specifically, the Contractor is responsible for preparing all documentation and lodging the Environment Management Plan and/or Construction Environment Management Plan. The Contractor must allow for costs arising out of, or in connection with, the co-ordination, liaison and application of the EMP to the AEO, as required.

The Superintendent or nominated Representative may conduct regular on-site audits to ensure the Contractor is working in accordance with the approved EMP/CEMP.

4.5. SITE MANAGEMENT PLAN

The Contractor must develop Site Specific Management Plans (SMP) prior to commencing work at the Site, for the review by and approval of the Superintendent or nominated Representative. The SMP must take into account all requirements detailed within this Statement of Requirement, the Conditions of Contract (including its annexures) and any other documents referenced in or attached to this Statement of Requirement or the Conditions of Contract. As a minimum, the SMP must include, without limitation, the following items;

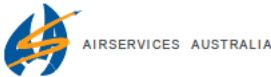
- a) security procedures;
- b) Site maintenance, including but not limited to waste management and cleaning procedures;
- c) vehicle and traffic management procedures; and
- d) location and description of the site establishment activities at the Site.

The Contractor must, at all times, comply with the SMP in the form as approved by the Superintendent or nominated Representative and make any changes to the SMP as required by the Superintendent or nominated Representative from time to time.

4.6. DESIGN & CONSTRUCTION PROGRAM

The Contractor must provide for the review by and approval of the Superintendent, a Design and Construction Program which provides a detailed breakdown of the tasks that are required to be undertaken to complete the Works, including but not limited to assignment and completion levels.

The Design and Construction Program is to be prepared using Microsoft Project 2007 (or earlier edition) and must include, as a minimum, the following;



- a) Design commencement and completion dates;
- b) Critical Path Program;
- c) Client meetings;
- d) Design approval meetings;
- e) Applications for approvals at the airport locations;
- f) Site mobilisation;
- g) Procurement activities, including shop drawings and long lead time orders;
- h) Construction/Installation Staging;
- i) Phased and individual construction task activities;
- j) Site meetings;
- k) Identification of any program contingency;
- l) Commissioning and completion / handover activities; and
- m) Invoicing dates and values.

The Design and Construction Program is to be supplied in the form a pdf file as well as a soft copy.

The Works must be programmed to accommodate the requirements of the Airport Operator to ensure that construction works will not interfere with operations of the main runway or access of Airservices staff to the Melbourne compound and to minimise the impact of the Works on Airservices personnel and Airservices' business.

4.7. SITE MEETINGS

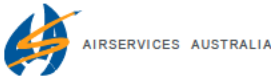
The Contractor must within five (5) business days of the CCD and prior to commencing any Works, conduct a Project pre-commencement meeting at the Site. The Contractor must invite the Superintendent and any other person(s) required by the Superintendent to attend the meeting.

The purpose of the pre-commencement meeting is to review the Project requirements, introduce team members, review the Project Program, establish ground rules, discuss options with local staff and promote a team working environment for the on-going management of the Project. The Contractor must take minutes of the pre-commencement meeting and circulate the minutes for review and approval of all attendees within two (2) business days of the date of the pre-commencement meeting.

Following the pre-commencement meeting, the Contractor must arrange and chair Site meetings at weekly intervals, or as reasonably directed by the Superintendent. The Contractor shall provide at each weekly meeting an updated version of the Project Program as detailed in section 4.6 of this Statement of Requirement. The Contractor is to prepare minutes of these meetings and forward the minutes to all relevant personnel within two (2) business days of the meeting for review and approval.

The Contractor shall submit a weekly progress report at least one (1) day prior to the meeting, containing as a minimum:

- a) Program (an updated program showing status against baseline);



- b) Any extensions of time or cost variations;
- c) Co-ordination matters;
- d) Requests for information (RFI); and
- e) Operational safety, OHS and environment issues.

4.8. MANAGEMENT MEETINGS

The Contractor is to attend monthly management meetings in Melbourne to discuss the Works with the Superintendent. A senior representative of the Contractor must be present at each meeting.

The Contractor is to submit a monthly progress report at least one (1) day prior to the meeting, containing as a minimum:

- a) the progress of the Contractor in providing the Works and achieving milestones set out in the Design & Construction Program, and where milestones are not being or have not been, achieved, or are not reasonably likely to be achieved, on or before the applicable milestone date set out in the Design & Construction Program;
- b) the actions to be taken to ensure that the relevant milestone will be achieved promptly after the applicable milestone date; and/or
- c) the progress of the Contractor in achieving milestones or implementing actions that were the subject of previous monthly progress reports;
- d) a summary of significant work activities or issues (including those undertaken by subcontractors) being undertaken or required to be addressed in the current reporting period;
- e) a summary of significant work activities or issues expected to be undertaken or requiring to be addressed in the next reporting period;
- f) a summary of progress against the Design & Construction Program;
- g) a summary of the current status of all deliverables;
- h) a financial summary, including:
 - updated cash flow forecast;
 - costs to date;
 - approved variations;
 - forecast variations; and
 - forecast cost at completion;
- i) a list of all progress meeting issue items and their status;
- j) a copy of a Risk & Issue Register which reflects the current status of risks and issues;
- k) a copy of a Request for Information (RFI) Register, which records all activities relating to the reporting period; and
- l) a construction program (including an updated program in bar chart format showing status against baseline), extensions of time, costs, variations, co-ordination matters, RFIs and Safety.

4.9. OPERATION AND MAINTENANCE MANUALS

The Contractor must submit for the review by and approval of the Superintendent or nominated Representative, an Operation and Maintenance Manual for the Works which includes the following sections and information:

- a) Front page which clearly identifies the project name, location, date and Contractor;
- b) Index of sections;
- c) Introduction and description of the works performed and systems installed;
- d) As Built Drawings of structures and electrical services;
- e) Commissioning documentation;
- f) Warranties;
- g) Letter from relevant registered bodies confirming that the FTS complies with all applicable Australian and International Standards.
- h) Letter from the core user group stating the FTS performs in accordance with the functional specification which is Annexure A to this Statement of Requirement;
- i) Certificate of Electrical Safety;
- j) Contractors contact information; and
- k) Maintenance and care requirements and procedures.

Upon acceptance of the documentation by the Superintendent or nominated Representative, the Contractor must provide to the Superintendent or nominated Representative three (3) hard copies and one (1) soft copy of the approved Operation and Maintenance Manuals for the Works.

4.10. PRINCIPAL SUPPLIED DOCUMENTS

Annexure B to this Statement of Requirement refers to the Principal Supplied Documents for the Project.

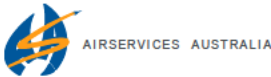
All documents and information provided by Airservices, including but not limited to the Principal Supplied Documents, are for information purposes only to assist the Respondent's understanding of the Project. The Respondent is responsible for ensuring the quality and accuracy of all documents and information.

4.11. CONSTRUCTION MANAGEMENT PLAN

4.10.1. PROVISION OF A CMP

The Contractor must provide an approved and fully certified Construction Management Plan (CMP), addressing each of the key elements identified below. The Contractor must provide a Site specific CMP for the Works to the Superintendent for review and approval.

The CMP must be specific to the Project (a generic CMP is not acceptable). The Contractor shall provide for an independent auditor who shall confirm that the CMP is adequate for the purposes for which it is to be used and complies with the Contractor's systems. Should the Contractor fail to provide a certified CMP, then the Superintendent or nominated Representative may deduct from the contract sum under the Conditions of Contract, an amount equivalent to the cost of employing a lead auditor to undertake review, correct and/or necessary preparation of the CMP. The Contractor



is responsible for implementing a regular internal audit program to ensure it is complying with the CMP (and business management systems).

In addition, the Contractor is to allow for external auditing of its management system by an accredited independent auditor at the following intervals during the course of the Works, two (2) months after Works have commenced on Site, and at six (6) month intervals throughout the remainder of the Works up to and including the date of practical completion under the Conditions of Contract. The external auditor is to produce an audit report that is to be provided to the Superintendent or nominated Representative within five (5) days of the audit. The Contractor is to allow for and pay all costs associated with these external auditor requirements. The Contractor must implement any recommendations on the audit report within the timeframe specified or if no timeframe specified then within fifteen (15) days. If the audit report is not submitted to the satisfaction of the Superintendent or nominated Representative, the Superintendent or nominated Representative is entitled to arrange for an alternative accredited auditor to undertake a further audit at the expense of the Contractor.

The Contractor shall refer to the Principal Supplied Documents for Site specific requirements. The costs of compliance with these requirements shall be deemed to be included in the Response and the contract sum under the Conditions of Contract.

Should the Contractor fail to comply with any aspect of the CMP / system the Superintendent may deduct from the contract sum under the Conditions of Contract an appropriate sum of money (determined by the Quantity Surveyor) to accord with the relevant breach.

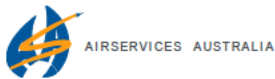
The Contractor shall make all systems records available to the Superintendent at all times. QA records may be requested by the Superintendent at the completion of the Project, and is to allow for the compilation of these records at the completion of the Project, if requested.

4.10.2. KEY ELEMENTS

The Site specific CMP/s must consider the key elements set out below (as applicable) and any other requirements of the Principal. Further, the key elements must encompass Commonwealth, State and Airservices specific requirements, including the Specifications, drawings and other documents.

The key element in the Site specific CMP/s are:

- a) Introduction;
- b) Public safety, amenity and site security (For example: Company Contact Details, Onsite Contact Details (compliance with CMP), Onsite Contact Details, Emergency Contact Details, etc.);
- c) Project description (For example: Extent of Work, Programme, Hours of Work);
- d) Risk management;
- e) Communications (For example: Project Team Structure, Responsibilities, Reporting, Consultation and Communication Strategy);
- f) Site establishment (For example: Preliminaries, Condition Reports, Services, etc.);
- g) Demolition and construction sequencing / staging;
- h) Structure methodology overview;
- i) Occupational health and safety;
- j) Environmental management systems (For example: Heritage and Archaeology, Flora & Fauna, Air Quality Management, Soil and Water Management, Waste

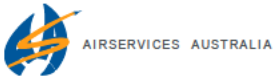


Management, Materials Reuse Management, Hazardous Materials Plan, Transport Plan, Contamination Management Plan, Emergency Procedures);

- k) Traffic management; and
- l) Quality project plan.

The Contractor shall address the following items for each of the key elements (as applicable):

- a) Objectives;
- b) Identify Key Legislation, Regulation, Licensing;
- c) Key Management Issues;
- d) Site Actions;
- e) Training / Education;
- f) Performance Measures;
- g) Monitoring and Reporting;
- h) Corrective Actions; and
- i) Site Specific Management Plan.



ASA PRN_5146
Airservices Civil Works for Fire Training Ground
Statement of Requirement

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Released by Airservices under the Freedom of Information Act 1982

6. DESIGN & CONSTRUCTION SERVICES

6.1. FUNCTIONAL AND PERFORMANCE REQUIREMENTS

The functional and performance requirements for the Works are set out in the section titled "Functional Requirements" in Annexure A to this Statement of Requirement.

The requirements stated within Annexure A are the minimum requirements that must be satisfied by the Contractor in the development of the final design for, and the construction of, the Works. The Contractor must also comply with any other requirements set out in this Statement of Requirement and the Conditions of Contract in respect of the design of the Works.

6.2. DESIGN PHASE OBJECTIVES AND PROCESS

The overall objectives of the design phase of the Works are as follows:

- Development by the Contractor of a detailed design that meets the functional and performance requirements as provided in Annexure A and this Statement of Requirement generally; and
- For Airservices to satisfy itself that the Contractor's proposed design meets Airservices requirements and business needs.

The design process will involve the Contractor preparing a preliminary design package for review and comment by Airservices prior to the submission of the final detailed design package to Airservices.

6.3. PRELIMINARY DESIGN

The purpose of the preliminary design phase is for the Contractor to prepare a design package based on the provided functional and performance requirements, the site specific conditions / preliminaries, general requirements as provided in this Statement of Requirement and the Conditions of Contract for review by the Superintendent. The preliminary design package must be submitted to the Superintendent and must include, as a minimum, the following:

- Provision of 2D drawings and, where required by the Superintendent, 3D perspectives of the proposed Works;
- Draft Fabrication, Construction and Works Plan; and
- Any other documents as requested by the Superintendent during the design kick-off meeting in relation to the preliminary design package.

Within ten (10) business days of the date of submission to the Superintendent of the preliminary design package, the Superintendent will convene a preliminary design review meeting. The purpose of the preliminary design meeting is for Airservices to review the provided design package, determine the required amendments for completion by the Contractor and detail the requirements for the final detailed design package.

The Contractor must amend the preliminary design package as required by Airservices and notified in writing to the Contractor.

6.4. FINAL DETAILED DESIGN

The purpose of the final detailed design phase of the Works is for the Contractor to prepare a final detailed design package which incorporates the required amendments as detailed during the preliminary design meeting. The final detailed design package must be submitted by the Contractor to the Superintendent and must comply with the requirements stated for the preliminary design package in section 6.3.

Within ten (10) business days of date of the submission by the Contractor to the Superintendent of the final detailed design package, the Superintendent will convene a final detailed design review meeting. The purpose of the final detailed design review meeting is for:

- Airservices to review the final detailed design package to ensure all required amendments have been incorporated into the final detailed design package by the Contractor; and
- the Superintendent to provide approval of the final detailed design package to the Contractor and an instruction to release the design for development of 'For Construction Drawings'.

6.5. INTERFACE DOCUMENT

If the FTS Contract has not been novated at the time of final detailed design of the FTS, Airservices will provide the Contractor with an Interface Document for the FTS works. The Interface Document will include drawings and/ or description of all interfaces between the FTS and its systems with the Infrastructure and Civil Works. The document will provide all necessary information and requirements for the FTS to perform in accordance with its Statement of Requirement. The document shall be provided to the Superintendent or nominated Representative for approval.

The Contractor is required to provide Autocad drawings to the FTS Contractor for amendment, to enable the FTS Contractor to include interface requirements directly on the design drawings.

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6.6. CONSTRUCTION SERVICES

The Contractor must, after the approval of the final detailed design, prepare a 'For Construction' package which incorporates the required amendments as detailed during the detailed design meeting. The 'For Construction' package must be submitted by the Contractor to the Superintendent and must comply with the requirements stated for the detailed design package in section 6.4.

Within ten (10) business days of date of the submission by the Contractor to the Superintendent and the Civil Works Contractor of the 'For Construction' package, the Superintendent will provide approval of the 'For Construction' package to the Contractor.

The Contractor is not entitled to commence any construction activities until the Superintendent has approved, by notice in writing to the Contractor, the 'For Construction' package or has otherwise approved the commencement of specified Works by notice in writing to the Contractor.

The Contractor must, after the approval of the 'For Construction Drawings' has been provided by the Superintendent, commence fabrication, construction and installation activities. During these phases, the Contractor will be required to construct the Works in accordance with the approved 'For Construction Drawings' and the requirements of the Conditions of Contract and this Statement of Requirement.

6.7. WASTE WATER TREATMENT PLANT (WWTP) DESIGN

The functional and performance requirements for the WWTP are critical for the project. A study has been undertaken by an external consultant and reports including preliminary process design documentation will be provided to the Contractor as part of this Statement of Requirements (refer to Appendix B). The consultant has been engaged to conduct additional activities, which include running a pilot plant. It is estimated that the results and reports from the pilot plant will be supplied by Airservices to the Contractor by 15 September 2011.

[Note: The parties to discuss any impact on the design process and finalisation (if any)]

7. SITE SPECIFIC CONDITIONS

7.1. INTRODUCTION

The Site specific conditions in respect of the Works include any preliminaries items that are identified as applying specifically to the Works.

The Contractor is responsible for leading and submitting all Approvals required for the project. The FTS Contractor will be required to provide all supporting information to the Superintendent or its nominated Representative 10 days prior to the Contractor lodging the relevant application.

7.2. AIRPORT OPERATOR

Melbourne Airport is located 22 kilometres from the city of Melbourne and is Australia's major southern gateway for passengers and freight. Privatised in July 1997, Melbourne Airport is now operated by Australia Pacific Airports (Melbourne) Pty Ltd. The Airport Operator's registered business name is Melbourne Airport.



As Melbourne Airport is a privately-owned airport, building works are subject to regulatory controls by the Federal Government under Part 5 of the Airports Act, any relevant Airports Regulations including the Airports (Building Control) Regulations.

The Contractor will be required to have regular contact with the Airport Operator throughout the construction phase of the Works via, or in conjunction with, the Superintendent. The Contractor shall allow for, observe, abide by, and co-ordinate all procedures, permits, and requirements outlined in the Principal Supplied Documents and any documents provided by the Airport Operator.

7.3. AIRPORT BUILDING CONTROLLER

The Federal Government has retained responsibility for ensuring that building works in relation to the Melbourne Airport are designed and constructed in accordance with appropriate standards, and has appointed (through the Department of Infrastructure, Transport and Regional Development) the Airport Building Controller, as follows:

[REDACTED]
Airport Environment Protection and Building Control Office
Level 2, International Terminal
Melbourne Airport VIC 3045
Contact: 47F [REDACTED]

Tel: 47F [REDACTED]

PO Box 594, Canberra ACT 2601

The ABC may be changed, in the absolute discretion of the Airport Operator.

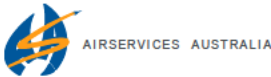
The Contractor will be required to have regular contact with the ABC throughout the construction phase of the Works via, or in conjunction with, the Superintendent or nominated Representative. Airservices will arrange for payment of the Contractor's associated application or permit fees, however the Contractor must allow for all costs arising out of or in connection with the co-ordination of, liaison with and application for related permits, as required. The Contractor is responsible for ensuring that it has full details in relation to these matters.

The ABC may, from time to time during the course of the Project, inspect the Works and the activities of the Contractor to ascertain whether construction works are carried out in accordance with the Building Code of Australia or any other requirements of the ABC. The Contractor will be required to co-ordinate and allow access as required for the ABC to carry out inspections and tests, and shall supply all certificates of compliance and supporting documentation to the ABC (as required by the ABC) for the purpose of achieving a certificate of occupancy. If any non compliance by the Contractor is noted by the ABC, appropriate action necessary to remedy such non-compliance will be the responsibility of the Contractor.

7.4. AIRPORT ENVIRONMENT OFFICER

The Department of Infrastructure, Transport and Regional Development has selected an Airport Environment Officer (AEO) for Melbourne Airport, as follows:

47F [REDACTED] (AEO)
Airport Environment Protection and Building Control Office
Level 2, International Terminal
Melbourne Airport VIC 3045



Tel: 47F

PO Box 594, Canberra ACT 2601

The Contractor may be required to have regular contact with the AEO throughout the construction phase of the Works via the Superintendent or nominated Representative. Specifically, the Contractor is responsible for preparing all documentation and lodging the CEMP. The Contractor must allow for all costs arising out of or in connection with the co-ordination of, liaison with and application, as required. Information in this respect is included in the Principal Supplied Documents (although the Contractor is responsible for ensuring that it has full details in relation to these matters).

7.5. SITE COMPOUND AND ACCESS

The Airservices Melbourne lease compound is located at Tower Road, Tullamarine. As the Site is a newly leased area, access to the Site will be from a separate gate off Operations Road. The Contractor shall be allocated, as determined by the Superintendent a suitable location within the lease area for the establishment of the required Site amenities and storage.

At all times while the Contractor and its Representatives are at the Site, the Contractor must, and must ensure that its Representatives, comply with all directions given by Airservices or the Superintendent.

8. GENERAL

8.1. PERMITS TO WORK

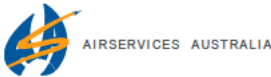
There is a range of permits that the Contractor will be required to obtain. These permits form part of a system that ensures an adequate level of public safety, contractor safety and protection of property and business.

The Contractor must follow the relevant process for obtaining all permits for the Works and will be responsible for applying for and obtaining all such permit approvals prior to commencing any part of the Works. The Contractor shall ensure that all applications and permits are jointly viewed and signed by the Contractor and the Superintendent or nominated Representative.

The permits may include, but are not limited to the following:

- a) Building Consents (issued by Airport Operator and Airservices);
- b) Building Works Permit (issued by ABC);
- c) Permit to Commence Works (PERCOW) (issued by Airport Operator and Airservices); and
- d) Certificate of Compliance (issued by ABC).

The Contractor shall allow for costs, observe, abide by, and co-ordinate all procedures, permits, and requirements advised by the Superintendent, Airservices or as otherwise required by the Airport Operator.



8.2. PRELIMINARIES

The preliminaries must include fees, activities, general plant and equipment and labour necessarily undertaken during a design and construction process but which are not permanent physical parts of construction and are not directly associated with individual permanent physical parts or components of construction.

The preliminaries must be read in conjunction with the Conditions of Contract, and are to be additional to and not reduce or modify the respective requirements in the Conditions of Contract. They shall not be subject to escalation, and must be based on the Contractor's own assessment of the period to be covered by the approved Design and Construction Program, including delays for which extensions of time are not permitted under the Conditions of Contract.

Where staff and labour costs are involved in preliminaries, the lump sum in the Conditions of Contract must include all on-costs such as accident compensation, insurance, superannuation, long service leave, holidays with pay, public holidays, sick leave, wet weather pay, payroll tax, Site allowances, future cost increases, and any other indirect labour costs for the duration of the Conditions of Contract.

Due to the nature of the Site, its occupants and its operational characteristics, the Contractor must comply with all Site specific conditions outlined in this Statement of Requirement and/or raised by Airservices, the Superintendent or the Airport Operator.

8.3. PROJECT CENTRE – COLLABORATIVE WEB BASED MANAGEMENT TOOL

The Contractor must provide the "Aconnex system" to Airservices and appropriate training to Airservices and Airservices' consultants as required for the duration of the Works to enable participation in this collaborative system, including submission of progress claims, requests for information and variations.

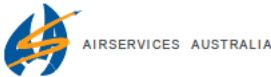
Aconnex provides a secure web based system for managing construction projects throughout design, construction and operating phases of the Project, allowing advanced collaboration between all members of the Project from a single web based server.

8.4. SITE CCTV CAMERA FOR MONITORING CONSTRUCTION PROGRESS

Airservices will supply and install a stand alone high resolution colour CCTV camera (on exterior of building or pole) to feed into the internet to allow Airservices to have 24 hour viewing access of the Site. The camera will record and capture the progression of activities on the Site and a still image will be recorded at 7am, 12 noon and 5pm every day.

At the end of the project the images will be compiled into a 60 second clip of the construction works, in which Airservices will own the intellectual property rights.

The Contractor must provide power and a pole for Airservices to use to install the CCTV camera.



9. ADMINISTRATION

9.1. SUPERVISION

The Contractor must provide efficient and appropriate Site-supervision, management and administration as necessary for the performance of the Works and proper supervision of workmen and control of the quality of workmanship.

The Contractor must retain its nominated key construction supervisors from commencement of the Works to the date of practical completion of the Works under the Conditions of Contract.

The Contractor must notify the Superintendent and obtain the Superintendent's written approval before substituting any other persons for those nominated in the Conditions of Contract.

Within the period of ten (10) business days prior to commencing any Works on the Site, the Contractor must notify the Superintendent of the name and contact details of the responsible person who may be contacted after hours in the event of an emergency and who has the full authority of the Contractor to act immediately on its behalf in such an emergency. The Superintendent must be notified within two (2) days of any change to those names and contact details.

9.2. CONTRACTOR'S DISBURSEMENTS

The Contractor must bear the cost of all disbursements related to performing the Works, including but not limited to air and road travel, accommodation, printing, copying, etc. For the avoidance of doubt, the Contractor must allow for all disbursements associated with managing an "interstate project", accordingly/if required.

9.3. CONCURRENT WORKS

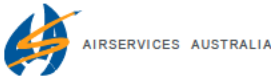
During the time of the carrying out of the Works, adjacent tenants, the Airport Operator or Airservices may have other works and services being performed on, adjacent or near to the Site (outside of the Conditions of Contract), by other contractors. The Contractor is to liaise with the Superintendent and those contractors and co-ordinate the Works as necessary and share access roads, if required.

9.4. ACCESS FOR SEPARATE CONTRACTORS / SUB-CONTRACTORS

The Principal may, in its discretion, have performed works and services as part of its development of the infrastructure and services to facilitate improved business service at the Site. This may require a number of preliminary works, some parallel works and works subsequent to the completion of the Works.

The nature and location of some of these works and services may require the Contractor to plan, monitor and control the performance of the Works in several distinct stages so that key milestones are met to allow the Principal (or its contractors) to progress other associated works and services.

The Contractor must allow for the protection of all work by other contractors against damage and shall recompense the other contractors for damage caused to any other contractors' work due to any neglect or default by the Contractor.



9.5. ACCESS FOR VISITORS

The Principal may take any visitor onto the Site, via co-ordination through the Superintendent. The Principal will notify the Contractor beforehand and comply with the Contractor's reasonable directions regarding health and safety.

9.6. ACCESS FOR PRINCIPAL'S CONSULTANTS

The Contractor shall allow access for the Principal's consultants to carry out inspections, reporting, witnessing and testing and other activities as required during the performance of the Works. The Contractor must ensure that it provides adequate notification to the Superintendent for each of the necessary inspections, witnessing and testing points.

9.7. ON-SITE DOCUMENTS

In addition to the documents referred to in the Conditions of Contract, the Contractor is to keep at the Site in good order a full set of stamped permit documents or any other document identified by any Authority (as defined in the Conditions of Contract), which must be kept in a secure place and which shall not be made available for general use on the Site, but which together with the documents referred to in the Conditions of Contract must be made available for use only by the Contractor's employees supervising the Works as referred to in the Conditions of Contract and the Superintendent.

9.8. STATUTORY REQUIREMENTS

The Contractor must, at its own expense, comply with and give all notices required by any legislative requirement or any Authority (both as defined in the Conditions of Contract). Following a request from the Superintendent, completion of the Works or termination of the Conditions of Contract for any reason, the Contractor must surrender to the Superintendent any documents in its possession issued by or evidencing the approval of Authorities in connection with the Works. The Superintendent may order that performance of the Works to which any such requirement applies, must not be undertaken until such evidence is supplied.

If the Contract Materials (as defined in the Conditions of Contract) are, or may be, at variance with any statutory requirements, the Contractor is to immediately notify the Superintendent in writing. Any of the Works carried out contrary to such statutory requirements and without such notification to the Superintendent may be rejected.

9.9. AIRSERVICES DRUG AND ALCOHOL POLICY

Airservices is committed to protecting the health and safety of all employees, contractors, consultants, customers and members of the public by minimising accidents, incidents and injuries. This commitment involves maintaining a drug and alcohol free workplace. All contractors retain the responsibility to be fit for duty and adhere to Airservices' Drug and Alcohol Management Procedure (DAMP). All contractors working on behalf of Airservices and their employees and subcontractors will be required to complete Airservices' drug and alcohol training prior to commencing duty.

All contractors, their employees and subcontractors may be subject to other screening tests under the DAMP. The DAMP is included in the Principal Supplied Documents.



10. GENERAL SITE CONDITIONS

10.1. AVIATION INDUSTRY SECURITY

Airports, associated infrastructure and facilities are divided into 2 categories of area separation: "Landside" and "Airside". Access within and between landside and airside areas, and into the Airservices compound is tightly controlled by security measures.

The Contractor is required to comply with all security and access arrangements required by Airservices and the Airport Operator and its authorities.

Airservices will provide the Contractor with access to the Airservices compound and/or facilities for the purpose of providing the Works, subject to personnel complying with security requirements. The Contractor must agree with the Superintendent regarding the type and quantity of cards and passes to be provided for the Works.

Individuals who require access to security restricted areas of Airservices and/or airports will require either an Airservices ID Card or an ASIC (Aviation Security Identification Card).

→ Airservices ID Card

Airservices ID cards are for use by staff and contractors who do not require unescorted access to 'Landside Security Zones' within Airservices facilities or other facilities within the Landside area of a security controlled airport.

The Contractor should be aware that applications for the Airservices ID Card include a Police Record Check (PRC) and provision of Identification Documents and a photograph. Processing times vary, but are usually completed within a few weeks. Airservices will cover the cost of each application.

→ ASIC (Aviation Security Identification Card)

ASICs are for use by staff and contractors who require unescorted access to either Landside or Airside Security Zones for the purpose of their employment.

Further, the ASIC applications undergo extensive background checking with the Australian Federal Police, Australian Security and Intelligence Organisation and the Department of Immigration and Multicultural Affairs. Individuals requiring the issue of a security access identification card, who are not Australian citizens, must provide police records check from their home country to Airservices with their completed application form. ASIC applications and processing times vary upon the individual and can take up to 12 weeks, sometimes longer. The Contractor must allow for a minimum of \$170 for each ASIC application.

The Contractor must consider all of the above in its planning of the Works, and allow for time in the program for application of cards. It is strongly suggested that the Contractor submit applications for relevant personnel directly upon appointment. No time or cost variation / claim will be considered for delays related to application process, or re-submission following rejection of application of an individual, or for lost and/or replacement cards. The Contractor is advised that all lost/replacement ID and ASIC cards will be at the cost of the Contractor at approximately \$170 each.

10.2. SIGNAGE

The Contractor shall supply and install appropriate signage for the Site to advise visitors to the Site clearly and in accordance with occupational, health and safety guidelines.

10.3. SITE ACCESS, CIRCULATION AND PARKING

The Contractor must provide safe movement and security for pedestrians and vehicles on public roads and land adjacent to the Site at all times. The Contractor must provide and operate required traffic safety and control equipment, including barricades, signs and lights. The Contractor must provide and operate additional traffic control equipment required by the relevant authorities, if any, and must provide the personnel to operate such equipment.

The Contractor will be responsible for isolating work areas in a safe manner to prevent access of the general public from entering work areas. The level of security provided by any temporary fencing must be lockable and prevent the general public from entering work or storage areas. Three (3) keys to the lockable gate must be provided to the Superintendent at the commencement of the Works to enable emergency access.

The Contractor must arrange parking facilities as required for all Contractor, subcontractor and goods/material deliveries and handling. The Contractor must provide all necessary temporary crossovers, ramps and the like for vehicular access to the Site.

10.4. SITE AMENITIES

The Contractor must provide all Site amenities and requirements in accordance with the relevant state requirements. These will include, but are not be limited to, ablution facilities, lunch room, first aid room, change room and sanitary accommodation (including safe and secure area for females). All Site amenities must be made available to the FTS Contractor whenever the FTS Contractor reasonably requires them, regardless of whether the FTS Contract has been novated.

The Contractor must erect the Site amenities before commencement of the Works and will be responsible for removal and make good at practical completion of the Works under the Conditions of Contract. The Contractor must provide for all Authorities' applications and approvals, service connections and associated costs.

10.5. TEMPORARY SERVICES FOR SITE

Electricity

The Contractor must arrange a connection point to an approved connection point for the purposes of providing temporary lighting and the utilisation of power tools where required.

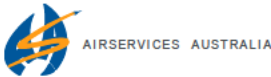
Lighting

The Contractor must provide temporary access lighting and the necessary task lighting to undertake the Works at the Site.

The Contractor is to note that any working hours which require Site lighting, specifically in the evening, will require permission and approval by Airservices and the Airport Operator to ensure no disruption to aircraft and/or air traffic control systems and personnel.

Night Lighting

The Contractor must obtain all relevant approvals prior to provision of night lighting and must conform to design requirements for night lighting (i.e. directed down from the horizontal) so as not to cause any safety issues or risks to business continuity or air safety. The Contractor is to provide night lighting for the purpose of security of the Works/Site and for any part of the Works which is



potentially hazardous and/or not fully protected from contact by a person. The Contractor must provide night lighting for any part of the Works if directed by the Superintendent to do so.

Water

The Contractor must arrange connection to an approved water connection point to be available on the Site.

Telephone Services

The Contractor must have, and must notify the Superintendent of, a nominated telephone contact number for the Site.

Internet

The Contractor must provide, as part of the Works, an internet connection for administration of the Works. The Contractor is to provide a connection to the internet with a minimum access speed to send and receive all Project related information in a timely manner. The Contractor must pay all installation and recurrent costs associated with the provision of this service.

Obstacle Lighting

Should the Contractor require the use of any booms or cranes during this Project, the Contractor must seek further guidance from the Superintendent as to the requirements that the Contractor must satisfy before bringing any booms or cranes on Site.

10.6. GENERAL RUBBISH AND DEBRIS

The Contractor must regularly remove rubbish and debris associated with the Works from the Site and surrounding areas. The Site must be maintained in a neat and tidy condition throughout the duration of the Works to the satisfaction of the Superintendent. The Contractor shall as necessary sweep, hose or wash down any footpaths, kerbs, drains and walkways or roadways and leave the Site in an entirely clean condition.

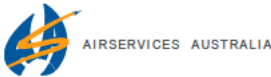
10.7. EXISTING UNDERGROUND SERVICES

Prior to commencing the Works, the Contractor must locate and identify all existing underground services and similar embedded and concealed items on or adjacent to the Site which might be affected by the Works or the performance of the Works.

The Contractor must record the location of all underground services on the provided drawings, including inactive services, and progressively record any other services discovered during the Works.

Disruption or damage to the existing underground services will be the responsibility of the Contractor and all costs incurred are to be borne by the Contractor.

For guidance purposes only, recent land survey results incorporating identification of underground services are included in the Principal Supplied Documents. No guarantees are made in respect of their accuracy and the Contractor remains responsible for the requirements specified under this section.



10.8. TEMPORARY STRUCTURES

Temporary structures shall only be installed at locations on the Site approved in writing by the Superintendent or nominated Representative.

All temporary structures erected on Site shall be maintained to present a neat, clean and orderly appearance.

The Contractor shall make good all services, drains, fences, surfaces (including grassed surfaces and access road surfaces) and the like disturbed or damaged during the performance of the Works.

10.9. WORKING HOURS

The normal working hours for the Site are currently anticipated between the hours of 7am – 6pm, Monday to Friday.

Weekend works may be conducted following prior approval in writing from the Superintendent.

11. SITE CONTROL

11.1. SYSTEM INTERFERENCE

The Contractor is required to ensure that radio communications, tools and equipment or any Works carried out by the Contractor do not interfere with Airservices' or the Airport Operator's communications, services and systems, or with those of any entity on the airport, in any way.

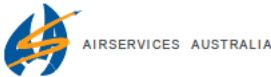
11.2. SERVICE SHUTDOWNS EFFECTING ADJOINING OWNERS, OCCUPIERS OF TENANTS

Airservices' and adjoining owners' core businesses are in continuous operation (24/7) at the Site. The Contractor must plan the sequence of Works to ensure that Airservices and owners, occupiers and tenants of other premises supplied with services supplied from, passing through or supplied in common with those to the Site have full and uninterrupted use of all services at all times in those areas occupied by them. Where shutdowns of any services are essential for the performance of the Works, these shall be performed at times and in a manner agreed with the Superintendent. The Contractor must ensure that any service shutdown does not result in damage or loss to Airservices or to owners, occupiers and tenants of other premises supplied with these services. In liaison with all selected and separate subcontractors, the Contractor shall provide a program and method of works for approval to the Superintendent, at least 14 days prior to any services shutdown.

11.3. FIRE PROTECTION SERVICES

To minimise fire risk during the performance of the Works, the Contractor must provide an adequate number of fire extinguishers throughout the Site. The Contractor must, as early as practicable, install and temporarily equip the fire hydrants where nominated by the Superintendent.

The Contractor will be responsible for all costs, disruption and time lost as a result of false alarms activated, and/or attendance by the Aviation and Rescue Fire Fighting (ARFF) or similar service as a result of the Works or any activity of the Contractor.



11.4. SAFEGUARDING OF SITE

The Contractor will be wholly responsible for the proper and adequate safeguarding of the Works and of fixed and unfixed materials on the Site during both working and non-working hours. This shall include, but is not restricted to, the risk of fire, water penetration damage, theft, loss and interference.

No claims for extensions of time or extra costs will be allowed in respect of damage or loss of materials or interruption of Works due to the Contractor's failure to adequately safeguard the Works or the Site.

At all intervals between work (e.g. overnight, public holidays, weekends, shutdowns) the Contractor must ensure that the Works are left in a secure condition and not left in a condition considered to be an enticement for trespass, theft or other interference, either with the Works or the Site itself.

11.5. EVACUATION PLAN

The Contractor must, prior to commencing Works on the Site, prepare evacuation plans in accordance with the Superintendent's requirements. The Contractor shall allow for evacuation plans to be placed at all locations as specified by the Superintendent. The evacuation plans shall be produced in A3 format and framed.

11.6. SITE INDUSTRIAL

The Contractor must provide, pay for and be responsible for compliance with the relevant awards and formal industrial agreements for the Works. The Contractor is responsible for resolving all on-Site disputes resulting from any non-compliance by the Contractor and ensuring minimum interruption to the progress of the Works.

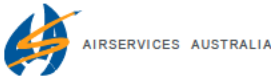
The Contractor shall carry out the Works in accordance with the requirements of all standard Building Industry Agreements as applicable. No claims for extensions of time or extra costs will be allowed in respect of industrial disputes or interruption of work due to the Contractor's failure to comply with the above.

11.7. NOISE, NUISANCE AND DISRUPTION

The Contractor must take into account at all times the nature of the Site and the requirements of the public and the occupiers of the adjacent properties. In general, the Contractor shall comply with the recommendations set out in ISO 1996/AS:2436 Guide to Noise Control on Construction, Maintenance and Demolition Sites, and all legislative requirements concerning noise and nuisance arising from the Works being carried out.

The Contractor must take all reasonable precautions to minimise noise and disruption to general public and adjoining properties including, but not limited to the following items:

- a) Obscuring sight lines to and from existing Airservices Australia ATC Tower and equipment;
- b) Flyaway debris and rubbish (ie: into flight paths, etc);



- c) Sun glare arising from Contractor's plant and equipment (eg: crane), into existing Airservices ATC Tower and equipment;
- d) The avoidance of litter, trails of dirt and dust etc;
- e) Permission shall be obtained from the Superintendent before carrying out Work involving high level noise;
- f) All construction equipment shall be fitted with noise suppressors, acoustic linings or shields. All tools and silencers shall be kept in optimum working condition at all times;
- g) Respecting the rights and privacy of the building occupants, contents and general public;
- h) Not using radios, cassettes or devices capable of similar outputs to play music or other broadcasts;
- i) Avoiding whenever possible the need for shouting in order to communicate;
- j) The Contractor's personnel shall conduct themselves in a polite and understanding manner at all times;
- k) Not using offensive language and avoiding offensive behaviour such as wolf whistling;
- l) Sexual harassment or racial discrimination is illegal and regulations relative to such harassment will be enforced. Any person who, in the opinion of the Superintendent, contravenes these regulations will be dealt with under the relevant legislative requirements referred to in the Conditions of Contract;
- m) Limiting offensive odours arising from the Works;
- n) Explosive tools and equipment;
- o) Provision and enforcement of suitable rules amongst the Contractor's staff and subcontractors, suppliers of others working at the Contractor's instruction concerning the use of proper toilet facilities and the avoidance of spitting on Site;
- p) Consumption of alcohol and use of illegal substances whilst on Site or the Principal's premises is strictly prohibited; and
- q) Animals are not permitted on the Site.

11.8. ADJOINING OWNERS / NEIGHBOURS

The Contractor must ensure that if any aspect of the Works affects any adjoining owner, then these are carried out as quickly as possible with minimal disruption to the adjoining owner and include:

- a) Making good any damage to the adjoining owner's property caused as a result of the Works;
- b) Minimising dust and noise;
- c) Cleaning up in and around the neighbour's property at the end of each day; and
- d) Keeping a photographic record of the existing condition of the neighbour's property.



The Contractor will not be entitled to an extension of time resulting from not being permitted access to an adjoining owner's property or any extension of time under the Conditions of Contract in relation to proceedings or disputes with adjacent or neighbouring owners or occupiers.

11.9. RIGHTS OF OWNERSHIP

The Contractor must not remove any goods or materials from the delivery location at any time and ownership, but not the risk, of any goods or materials transfers to the Principal without recourse to the Contractor's terms and conditions once delivery occurs.

11.10. SITE ALLOWANCES

The Contractor must allow for any Site allowances normally paid to workers that may be agreed, at any time, between itself and its employees and in accordance with the current requirements or as awarded by State or Federal Industrial Commissions for any contract.

11.11. SAFETY WARNING SIGNS

The Contractor must provide and display in prominent positions on the Site warning signs of dangerous activities, in accordance with AS1319 and dangerous goods legislation and all relevant regulations.

11.12. WELDING, CUTTING OR GRINDING IN SITU

The Contractor must ensure that all operations by the Contractor are carried out in accordance with Australian Standard 1674 Cutting and Welding Safety Code. Before Work is commenced, all relevant permits must be obtained by the Contractor, including Airservices / Airport Operator permits, Hot Work Permits, etc. Before issue of the permit, the Contractor must inspect the Site and ensure that:

- a) All combustible materials are moved at least 10 metres clear of the work. Where this is not practicable, combustible materials, including structural timber, are kept damp or shielded against the gas flame, sparks, slag or falling hot metal by sheet metal, asbestos, fire resistant curtains, or similar (not ordinary tarpaulins);
- b) Any floor openings within 10 metres are covered, or if not possible, the floor below is protected;
- c) The area on the opposite side of a wall through which heat from a torch or flame might be conducted is clear of combustibles;
- d) A person is designated to stand by to watch for sparks, slag or hot metal that may penetrate the shields and take action;
- e) Fire extinguishers are placed in special readiness in the area, and that the positions of hoses and hose reels are noted; and
- f) Welders, assistants and watchers are instructed on the use of fire fighting equipment present.



After operations are complete, or during interruptions (lunch or tea breaks), patrol areas, including surroundings and lower floors where smouldering fires may start, for one hour after work ceases. Special precautions must be taken where work in or near hazardous locations is unavoidable, e.g. flammable solvents, gases or combustible dusts are present, on tanks, ovens, ducting or near spray shops. The Contractor must comply with all relevant Australian Standards in this respect.

12. MATERIALS AND WORKS

12.1. METHOD OF DESCRIBING ITEMS

Where an item is described in this Statement of Requirement (or any attachment to it) as being 'similar to' or 'equal approved' to that listed in a particular firm's catalogue, it is clearly understood that this has been done only to set an acceptable standard. The Superintendent shall have absolute discretion in deciding whether alternative materials proposed by the Contractor will be acceptable.

When selecting equipment 'similar to' or 'equal to' that nominated in the Specification, delivery dates and availability of spares shall also be equal to or better than that specified.

Where proprietary brands of materials or equipment are used, they shall be used with full cognisance of the manufacturer's direction.

The information supplied by consultants is subject to copyright and shall be used solely for the production of shop drawings for the Works and is not to be disclosed or sold to other parties.

12.2. SHOP DRAWINGS

The Contractor must include in the Design & Construction Program details of the activities and sufficient time for the production and distribution and examination of shop drawings.

The Contractor must ensure that subcontractors only submit shop drawings and other information to the Contractor. The Contractor must check and verify the shop drawing and information provided for completeness prior to forwarding to the Superintendent. The Superintendent shall arrange for the examination and approval of shop drawings and other information. The Superintendent will only return shop drawings to the Contractor who will then return them to subcontractors.

Shop drawings must be submitted in sufficient time to allow for examination and any necessary amendments and re-submission etc., well before stockpiling, fabrication or fixing is scheduled to be commenced. An allowance of at least ten (10) business days must be made for inspection and examination of shop drawings.

The Contractor must keep on the Site at all times a full set of stamped shop drawings to be available as the Superintendent may require.

The procedure for issue and return of shop drawings is as noted below:

- (a) The Contractor obtains and submits to the Superintendent copies of comprehensive shop drawings in the format and quantity requested in the relevant sections of the Specification and as may be necessary, clearly indicating all details of fabrication, assembly, installation, finishing and fixing of the items concerned, and including all necessary explanatory notes or Specifications.
- (b) The submitted shop drawings will have been examined approved and signed by the Contractor prior to submission to the Superintendent. The Superintendent will not approve the shop drawings and will rely on the approval of the consultant that the shop drawings

represent work that will comply with all provisions of their design and of the Conditions of Contract.

- (c) No stamped or written indication that a shop drawing has been examined, inspected, viewed or the like by any consultant shall be or be deemed to be an acceptance of any materials or workmanship not in accordance with the Conditions of Contract or an authority for a variation under the Conditions of Contract. Nor does it in any way relieve the Contractor or any subcontractors from responsibility for errors and omissions or for the necessity of furnishing such workmanship and/or materials, as may be required for the completion of the Works in accordance with the Conditions of Contract, and the intent of the Specification.
- (d) Whenever possible, shop drawings shall be compiled from actual Site measurements.
- (e) Should urgency necessitate shop drawings being compiled before the Works are sufficiently advanced to enable Site measurements to be made, then the shop drawings shall incorporate all necessary tolerance allowances, modifications of fixing methods, and the like to provide for any discrepancy which may arise between adopted dimensions and parts of the Works executed later.
- (f) Delays caused by or arising out of late submissions of shop drawings, or by inadequate shop drawings, shall not be, nor be deemed to be, nor allow the Contractor to claim a variation under the Conditions of Contract, any extension of time or any adjustment to the contract sum under the Conditions of Contract.

12.3. CO-ORDINATION OF SERVICES

The Contractor must carry out adequate planning and co-ordination of all services, penetrations, concrete profiles, concealed structural elements and embedment to the base-structure to prevent physical conflicts and changes to installed work.

The Contractor must prepare and submit co-ordination drawings of services, penetrations, concrete profiles, concealed structural elements and embedment to the base-structure in sufficient time before commencing work for perusal by the Superintendent. The Contractor must make changes directed by the Superintendent, if any, and distribute to relevant subcontractors. Co-ordination drawings shall be for information only. No claim for additional cost or extension of time will be approved under the Conditions of Contract for additional work or materials, or rectification of installed work as a result of failure to prepare co-ordination drawings in sufficient time before commencing performance of the Works.

Co-ordination drawings must be in an approved electronic format, and all measurements shall relate to grid lines, co-ordinates and levels. They shall be distributed as per shop drawings. Concealed structural elements shall include footings, slabs, beams, walls, precast concrete and masonry. Services shall include pipes, ducts, conduits and wiring, including junctions, changes in direction, fittings, cocks, access points, pits and sumps. Penetrations shall include sleeves, blockouts chases, ducts, recesses and the like.

12.4. AS-BUILT DRAWINGS AND ASSET REGISTER

- (a) During the installation of each serviceable component of the Works, the Contractor must maintain a check and recording system for the exact location, size, materials etc. of such component.

- (b) The Contractor must keep an accurate 'As-Built' record of the Works with relevant updated drawings to include architectural, structural, electrical etc and pay all costs associated.
- (c) The Contractor must employ only competent draftsmen to carry out the recording legibly with suitable dimensions and labels in accordance with Australian Standards and to SPEC ESS01, show levels of in-ground services and dimensions to columns or fixed parts of the Works and show control valves, pits etc.

The drawings referred to in section 12.4(b) shall form the basis for recording the final actual locations of all services and other alterations and in particular as follows:

- Water Supply (including cocks, etc.)
- Stormwater (including pits)
- Sewerage (including pits)
- Trade Waste (including pits)
- Fire Service (including control valves, etc.)
- Electrical cables
- Communication and Security service cables and connections

The Contractor must employ only competent draftsmen to carry out the recording legibly with suitable dimensions and labels in accordance with Australian Standards and to SPEC ESS01, show levels of in-ground services and dimensions to columns or fixed parts of the Works and show control valves, pits etc.

Reference should be made to various trades in the Specifications for detailed requirements. Recording and preparation of drawings of services installed under subcontracts will be carried out by the relevant subcontractor and the records required to be furnished by the Contractor in accordance with this Statement of Requirement shall be in accordance with the requirements of all servicing authorities as necessary for them to certify compliance prior to registration of the titles for the apartments and the common areas.

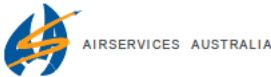
The Contractor will report progress on preparation of Operation and Maintenance manuals and will, prior to the date of practical completion under the Conditions of Contract, submit the manuals to the Superintendent in the format and quantity specified by Airservices.

If the Contractor fails to provide as-built drawings within the required timeframe the Superintendent may deduct from the contract sum payable under the Conditions of Contract the costs for producing as-built drawings.

As part of the Operation & Maintenance manuals, the Contractor must provide a comprehensive Asset Register in accordance with Airservices' Management Instruction MI-1602 and a typical Airservices Asset Register available from the Superintendent.

12.5. WARRANTIES

The Contractor must provide warranties in relation to all components of the Civil Works. These warranties must comply with the requirements set out in the Conditions of Contract and must apply for a minimum period of 24 months. In the case of manufacturer's warranties for any components of the Works that have a longer duration than 24 months, the Contractor must pass on the benefit of such warranties to Airservices.



12.6. INTERPRETATION OF DRAWINGS

The Contractor shall check all relevant dimensions on the Site before proceeding with the performance of the Works under the Conditions of Contract.

All measurements and other information required to carry out the Works under the Conditions of Contract shall be obtained by the Contractor on the Site. The Contractor shall not be entitled to any extra cost resulting from its failure to obtain measurements and other information on the Site.

12.7. SERVICE AND MAINTENANCE AGREEMENT

Airservices requires the Contractor to provide ongoing maintenance and support services in relation to the Civil Works for a minimum of 5 year initial term with two 5 year options, commencing on the date of practical completion.

Airservices will require a comprehensive maintenance plan with intervals determined by usage rates. This plan is to be flexible and is to take into consideration the usage rates outlined in Annexure A.

Further, the response/ call out times for individual emergency maintenance must be appropriate and correlate to the risks posed. These response times are to adhere to the following levels:

- (a) Level 1 – requirement for maintenance presents a potential safety risk and therefore all training must be suspended (this will automatically apply to any fault in the LPG systems): Response required within 1 hour.
- (b) Level 2 – requirement for maintenance has a partial impact on training capability, causing downgraded training functions. Response required within 24 hours.
- (c) Level 3 – requirement for maintenance has a minimal impact on training capability, but if left unattended will escalate to a higher level defect. Response required within 48 hours

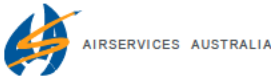
The objectives of Airservices in relation to the maintenance and support services to be provided by the Contractor are:

- (a) compliance with the performance criteria specified in the Functional Requirements (set out in Annexure A);
- (b) long term supportability; and
- (c) minimisation of life cycle cost to Airservices.

The Contractor must provide the documentation, tools, spare parts, training and other related items to allow Airservices to safely and effectively support and maintain the Civil Works in accordance with this Statement of Requirement and the Functional Requirements set out in Annexure A.

12.8. SPARES

Spare components and materials shall be procured, packaged, identified and handed over to the Superintendent prior to, and as a condition of, the issue of the certificate of practical completion under the Conditions of Contract.



A spares register with relevant identifying information shall be provided on electronic spreadsheet format using Microsoft Excel for Windows software. The spares register shall be submitted on CD/DVD, each with a full index of the contents.

The Contractor must maintain adequate stock of Spare Parts to meet:

- Airservices' requirements for additional spares; and
- The Contractor's support requirements and applicable service levels in the most cost effective manner.

The Contractor must hold those spare parts at its own cost.

13. TESTING AND ACCEPTANCE

The Contractor must provide a Draft Testing and Acceptance Plan and Test Procedures (including agreed test cases) prior to completion of the Final Detailed Design of the Project (which for the avoidance of doubt incorporates both the Civil Works and the FTS) for approval by Airservices.

The aim of these tests is for Airservices to satisfy itself that the Project is compliant and performs to Airservices requirements.

It is expected that tests would be conducted on all identified segments of the System and that appropriate systems integration verification testing is conducted between interacting segments.

It is the responsibility of the Contractor to record and manage defects identified during testing. Airservices may also provide defect reports to the Contractor.

Final acceptance by Airservices occurs when Airservices confirms its acceptance of the system after it has been successfully commissioned for operational use.

13.1. TESTING AND ACCEPTANCE PLAN

The Contractor must prepare a Testing and Acceptance Plan (which includes Acceptance Test Procedures and Acceptance Test Reports) in accordance with the Contract, to be submitted to Airservices for review and approval in accordance with the Contract.

13.2. AIRSERVICES INVOLVEMENT IN TESTING AND ACCEPTANCE

Airservices may, at its option, attend all formal acceptance verification activities conducted by the Contractor. The Contractor must provide Airservices with at least one calendar month's notice before the commencement of the verification activity.

Unless otherwise stated in the Contract, the cost of Airservices personnel attending testing and acceptance activities will be borne by Airservices.

13.3. ACCEPTANCE

As a general principle, it is the Contractor's responsibility to verify to Airservices' satisfaction that the delivered Civil Works and FTS comply with the requirements of Airservices.



Formal acceptance of key milestones (particularly payment milestones) will occur as part of a formal review process.

Final acceptance by Airservices will be based on site acceptance test results, Site Operational Evaluation and the correction of any defects arising from these.

14. TRAINING SERVICES

The Contractor must provide a training program to Airservices in accordance with an approved Training Plan delivered by the Contractor.

This training program must enable Airservices to support and maintain the Civil Works and the FTS and to achieve the functional and performance requirements set out in this Statement of Requirement in the most cost effective manner to Airservices.

14.1. TECHNICAL TRAINING

Airservices' training objectives are for the technical training to be adequate to ensure that Airservices maintenance and system support staff will be competent to maintain elements of the system. Further, sufficient training is also to be provided to Airservices technical / engineering staff so those staff can effectively engage in acceptance test activities prior to the first acceptance test activity.

The Contractor must ensure that adequate training is provided to Airservices, so that Airservices maintenance and system support staff will, at a minimum:

- a) understand the Civil Works and the FTS (as defined in Annex A to this Statement of Requirement) as a whole and its major sub-systems;
- b) understand and be capable of performing the day to day support and maintenance services required by Airservices;
- c) be capable of performing all basic diagnostics, corrective and preventative maintenance tasks;
- d) understand and be capable of performing Civil Works and FTS system status reporting and performance monitoring and how to respond with appropriate preventative or corrective action;
- e) understand and be capable of using the maintenance, test and diagnostic equipment and procedures;
- f) understand the Civil Works and FTS functionalities to a sufficient degree to be capable of performing effective diagnosis, recovery and/or workaround of faults; and
- g) have a general understanding of the maintenance and support services provided by the Contractor.
- h) appropriate media such as Operational Manuals, User Guides or Electronic Help/Tutorial facilities sufficient to act as a detailed resource for use by Airservices staff for ongoing reference.

Annexure A – Civil Works Technical Specification



AIRSERVICES AUSTRALIA

Airservices Civil Works for Fire Training Ground

SPECIFICATIONS

1. ABBREVIATIONS AND DEFINITIONS

1.1 ABBREVIATIONS

| | |
|------|--|
| BCA | Building Code of Australia |
| CASA | Civil Aviation Safety Authority |
| CAT | Category (as defined by ICAO ARFF Aerodrome ratings) |
| DCP | Dry Chemical Powder |
| FTG | Fire Training Ground |
| ICAO | International Civil Aviation Organisation |
| FTS | Fire Training Simulator |
| LPG | Liquid Petroleum Gas |
| OHS | Occupational Health and Safety |
| PPE | Personal Protective Equipment |
| ULFV | Ultra Large Fire Vehicle |

1.2 CONTRACT DEFINITIONS

Terms used as defined terms in this document that are not specifically defined in this document are defined in the Contract.

2. INFORMATION TO RESPONDENTS

2.1 INTRODUCTION

These Works are commissioning the Design and Construction of the associated building and infrastructure works for the Fire Training Ground. The Project overall incorporates these Works and the provision of a Fire Training Simulator (FTS) under a separate contract (the FTS Contract). The Civil Works (which do not include the FTS) to be performed by the Contractor include the following elements:

- the control room for the Fire Training Simulator (FTS);
- the hardstand (pad) for the FTS, including extended hardstand for HAZMAT storage. The pad is to provide a hard surface (concrete) training area on which to place the simulator and conduct the training activities. Further, the hard surface forms the catchment area for contaminants such as fuel and foam used during the training, for input to the training complex's waste water treatment plant (WWTP)
- the training centre, incorporating ultra large fire vehicle (ULFV) garaging;
- the waste water treatment plant (WWTP);
- civil works, including roadways, footpaths and landscaping;
- additional FTG prop storage facility (i.e. shipping container or shed); and
- lighting and security.

2.2 PURPOSE OF THE DOCUMENT

This document describes the general, functional and performance requirements for the building and infrastructure elements of the Works. Further, requirements specific to Airservices with regard to building works etc. are also specified.

The Contractor will use this document as the basis for formulating its Response as to how it will meet the Requirement.

3. GENERAL, PERFORMANCE AND CAPACITY REQUIREMENTS

3.1 PHILOSOPHY

Activities at the Airservices Fire Training Ground will complement additional training conducted at other sites around the country. For all but new recruits, who will use the facility considerably during their course, the Training Ground will be used for assessing students' strategic fire fighting abilities and equipment handling. As such the versatility of the ground to present numerous scenarios and the ability to simulate a large scale aviation disaster is of greater importance than its ability to simply generate a large scale fire.

The Training Centre will be used to complement more comprehensive training facilities elsewhere in the Airservices Melbourne compound. The Training Centre will be a "dirty" facility, where Fire Fighting trainees and staff will be based during practical activities and can be in their turnout gear. Existing facilities housed in the wider Airservices Australia Learning Academy will be for "clean" training, such as lectures and theory sessions. A plan of the Airservices Australia Melbourne compound is given at Figure 1 and an aerial photograph with the proposed lease boundary is given at Figure 2.

33(a)(i)





Figure 1: Airservices Melbourne Compound (North to top of the page)

33(a)(i)



3.2 REGULATORY REQUIREMENTS

The Works shall comply with Civil Aviation Safety Regulations 1998, Part 139H and be guided by International Civil Aviation Organisation (ICAO) – Annex 14 and the ICAO Airport Services Manual. In addition, the design, manufacture and site installation works are to be compliant with Commonwealth (Comcare) and State building legislation. Where Commonwealth Legislation is silent, local jurisdiction (State) requirements apply to the works. This legislation includes, but is not limited to the following:

Building Code of Australia (BCA).

Commonwealth Occupational Health and Safety Legislation (OHS Act) 1991.

Commonwealth Occupational Health and Safety (Safety Standards) Regulations 1994: In particular: Part 1 Introduction, Part 3 - Noise, Part 4 - Plant, Part 6 Hazardous Substances, Part 8 Storage and Handling of Dangerous Goods, Part 10 - Electricity and Part 11 Construction Work.

Commonwealth Occupational Health and Safety Code of Practice 2008. In particular- Part 1 Risk Management, Part 3 - Noise, Part 11 Storage and Handling of Dangerous Goods and Part 12 Hazardous Substances.

Victorian Gas Safety (Gas Installation) Regulations 2009.

Victorian Electrical Regulations 2009 (where applicable).

Australian Standards for electrical wiring and gas supply systems.

Site installation and construction works must be undertaken by Federal Safety Commission (FSC) approved contractors who also may be required to meet relevant requirements under the Victorian OHS Legislation, Regulations and Codes of Practice.

3.3 PERFORMANCE & CAPACITY REQUIREMENTS

Airservices Australia provides initial and recurrent training for ARFF recruits and operational fire fighting staff. This training is accredited under the Learning Academy's Registered Training Organisation (RTO) status and all courses are approved by the Civil Aviation Safety Authority (CASA) as meeting the regulatory requirements for Aviation Rescue Fire Fighting Training and ongoing Competency Evaluations.

Training usage is currently projected at 48 weeks of the year, with a minimum of four live fire training exercises conducted every weekday. All training utilises up to four ARFF ULFVs and an aerial appliance. The technical specifications for these vehicles are included in the Principal Supplied Documents.

The usage of the facility is projected to be year round, with Airservices Australia's Learning Academy running Recruit, Certificate IV and Diploma courses and the Aviation Rescue Fire Fighters conducting Operational Competency Workshops and Evaluations. The estimated training requirement is summarised at Table 1.

| Course Information | | | | |
|--------------------|------------------|-----------------|------------------------------|-----------------|
| Course | Duration (weeks) | #Courses/ Annum | # Staff/ Course ¹ | #Exercises/ Day |
| Recruit | 4 | 4 | 25 | 4 |
| Cert IV | 2 | 3 | 15 | 4 |
| Diploma | 2 | 3 | 15 | 4 |
| Operational | 1 | 20 | 14 | 4 |

Table 1: Estimated Learning Academy and ARFF Training Requirement

Projected standard hours of operation will be from 8am to 4pm, Monday to Friday.

No training will occur on weekends.

It is expected night training will predominantly be conducted in winter. On days when night training is scheduled, operating hours will shift to 12pm to 9pm.

The following night training sessions are expected to be conducted:

- Recruit – twice per course = 8 sessions p/annum
- Diploma – twice per course = 6 sessions p/annum
- Cert IV – twice per course = 6 sessions p/annum

¹ Recruit: Up to 18 students and 7 instructors; all other courses, 12 students and up to 3 staff.

- Operational – once per workshop = 20 sessions p/annum

All training courses will utilise the both the Fire Training Ground for practical exercises and the Training Centre for exercise review, breaks, and clean up. On a standard day of training, the following could be expected to occur:

- The situation will be set up at the simulator by the instructors and FTG manager.
- Up to four vehicles will be mobilised from the Training Centre to the FTG.
- The subsequent burn time is expected to be a few minutes at most, depending on how well the students respond to the exercise – the instructors will have the ability to reignite the fires if not extinguished correctly.
- Total exercise time is expected to be up to 90 minutes. This includes time for rescue activities after all live fires have been extinguished.
- The FTG will then be “re-set” for the next exercise.
- On average, four exercises will occur on a standard day of training. Not every exercise will utilise external fire scenarios.

3.4 EXTINGUISHING AGENTS

The extinguishing agents to be used at the facility are:

- Foam,
- Dry Chemical Powder (DCP), and
- Water.

4. FUNCTIONAL REQUIREMENT - HARDSTAND (PAD)

Sizing of the hardstand is to consider and balance the following competing design priorities:

- the manoeuvrability of the ULFVs,
- the throw of the monitors on the ULFVs;
- the weight of the ULFVs and the FTS;
- minimisation of impact of training activities on surrounding infrastructure; and
- physical site constraints(size, gradients etc).

The FTG is to include an additional hardstand area for HAZMAT storage.

A Land survey of the Site has been completed and results are included in the Principal Supplied Documents at Annexure B to assist the Respondent's understanding of the Project.

All concrete and constructed elements are to be in accordance with the relevant Australian Standards.

The FTG is to be designed such that no extinguishing agents will be able to permeate the soil. All applied agents will be caught and directed into the waste water treatment plant.

The FTG is to include a fuel spill (ground) fire, consisting of four individual “fire pits” representative of fuel leakages from an aircraft. All of these pits must be operated by LPG;

however two pits – one on either side of the fuselage - must also have dual fuel (kerosene and LPG) capability.

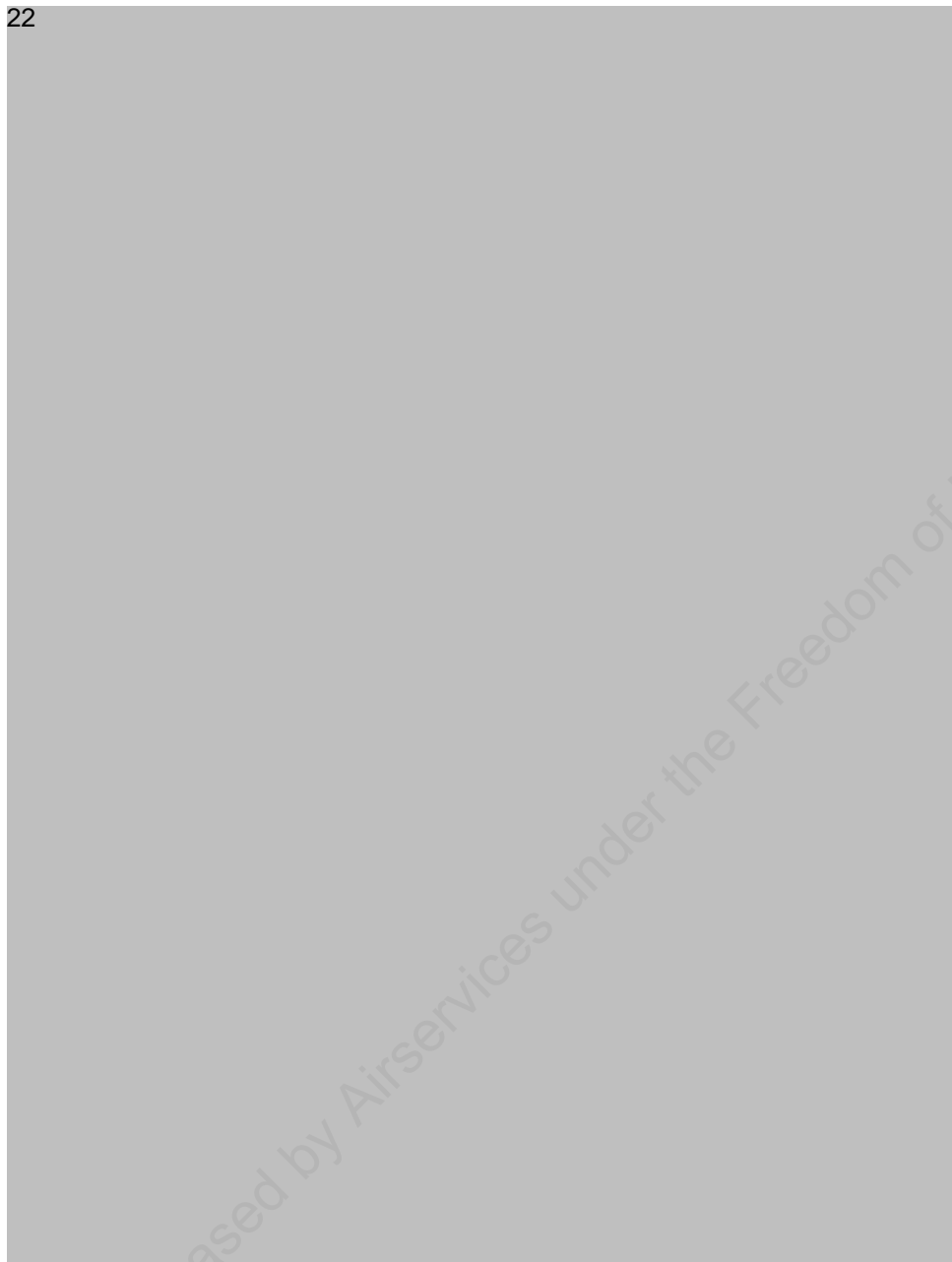
The fuel spill area is to be designed to minimise fuel usage whilst not compromising impact of the fire for training purposes.

The fuel spill area is to be designed to withstand the weight and impact of the trainees and extinguishing agents, with no trip hazards.

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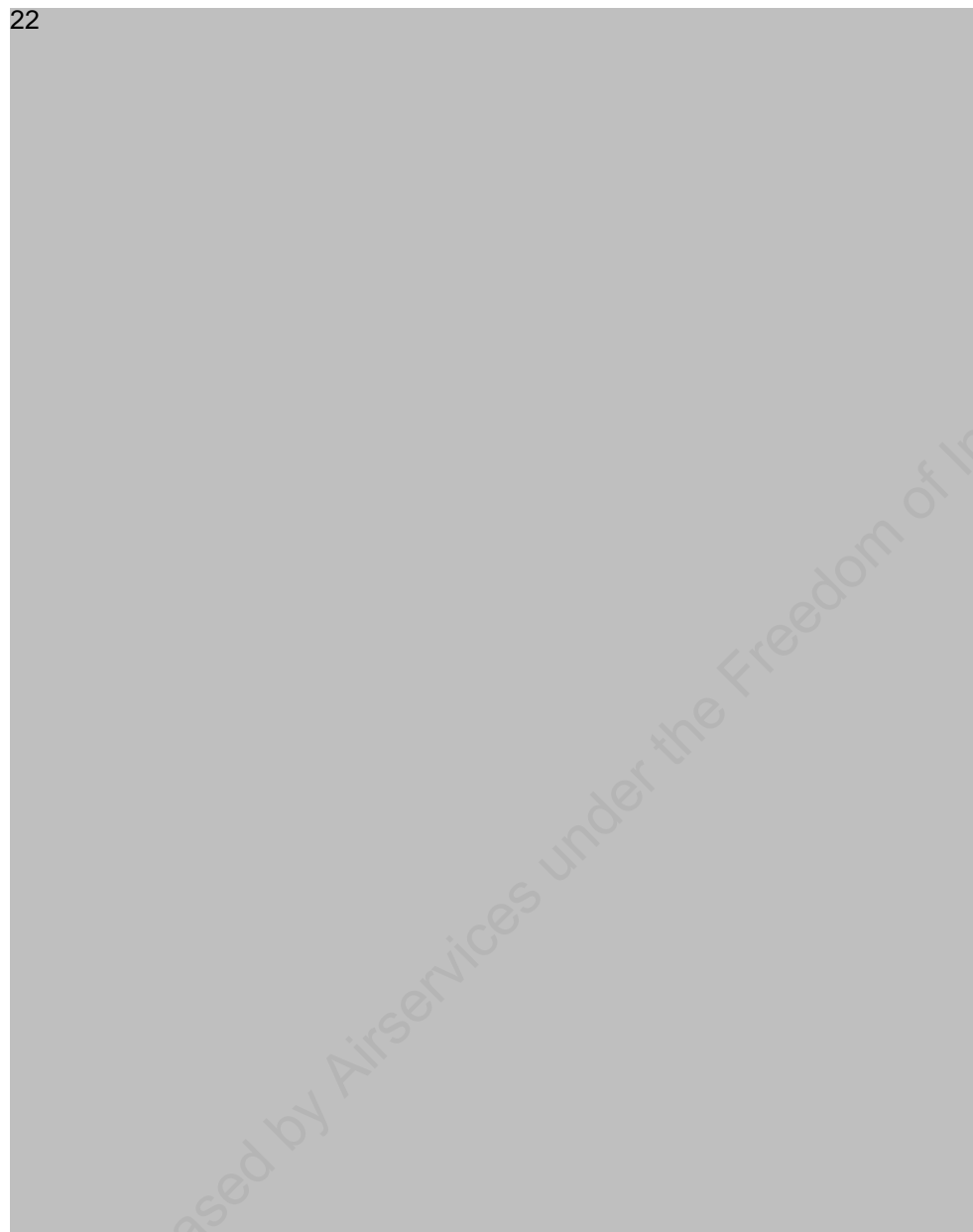
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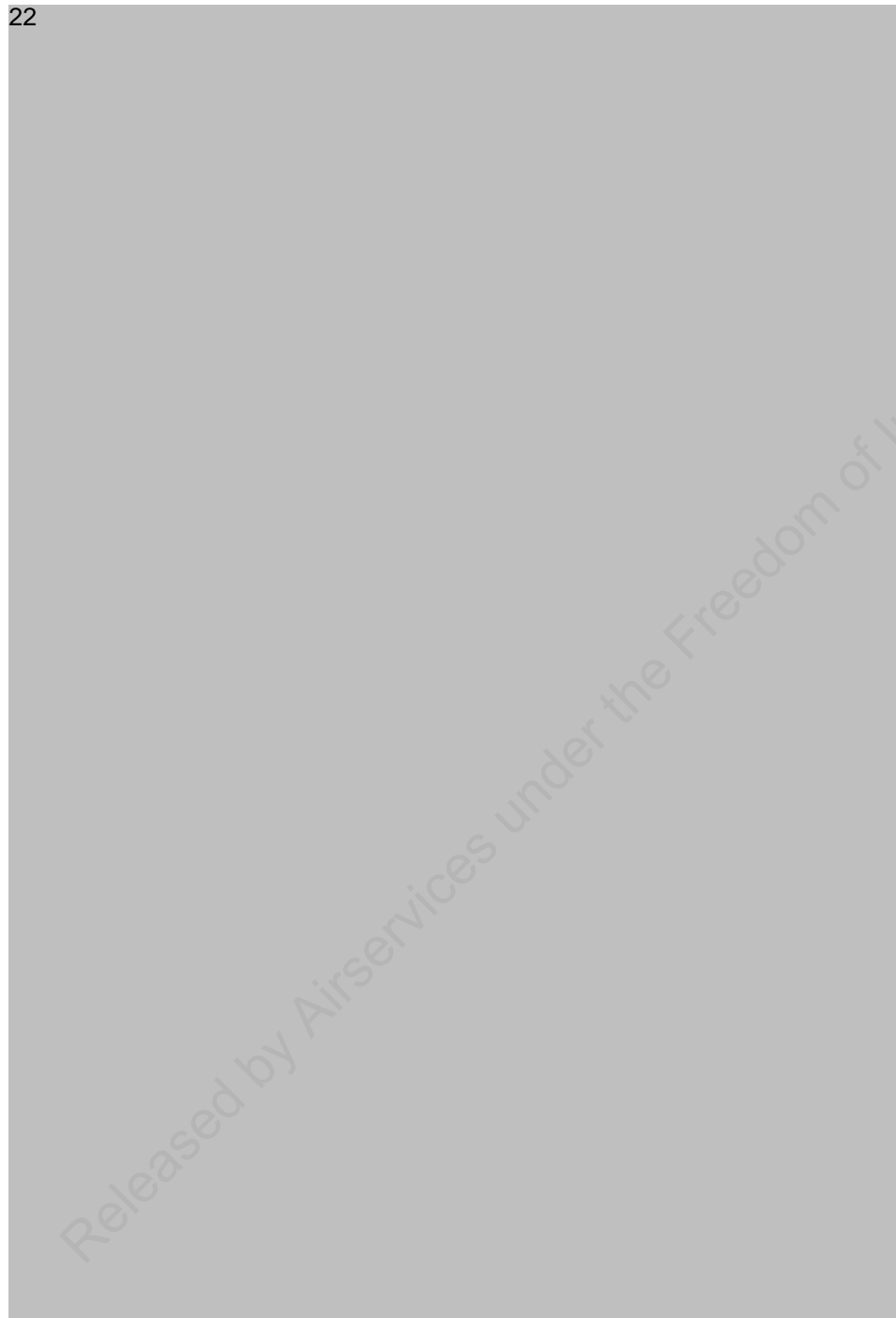
5.3 CIVIL WORKS

Civil works are to consist of the following items:

- Earth Mounds
- Roadways & Pathways
- Hard stand for the Waste Water Treatment Plant
- Base for water storage tanks

To comply with Melbourne Airport tree replacement strategy, it is Airservices' intention to plant trees, shrubs and ground covers on the Hot Fire Training Ground Site where possible. The requirement is plant 172 trees and 233 shrubs if possible. The Contractor is requested to allow for the plantation of trees and shrubs. To comply with security specifications, the trees are to be at least 2m away from the security fence.

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6. FUNCTIONAL REQUIREMENTS – WATER TREATMENT

This part of the document outlines the functional requirements for the water treatment plant

6.1.1 PURPOSE OF THE WWTP

The WWTP will be a closed loop system with NO lagoons due to proximity to the runways; this system will be required to recycle the fire training ground and stormwater from the FTG and Training Centre buildings to a Class A water suitable for reuse in the following areas of operation:

- LMU quenching system
- Vehicle wash down area
- Fire Hydrant located around the LMU Pad
- Refilling the Fire Trucks
- Flushing of Toilets in Training Building
- Watering of shrubbery and grassed areas as required.

The WWTP is to use storage tanks suitable to maintain the in coming and outgoing flows in conjunction with the capacity of the WWTP system and the usage of the FTG.

Discharge from the WWTP is to be kept to as minimal as possible; discharge from the system if any will be required to meet discharge requirements of Melbourne Water's trade waste regulations.

No sewerage discharge from the FTG is to be allowed to enter the WWTP.

6.1.2 ANTICIPATED FLOW

The WWTP is to treat the discharged water from a full fire fighting exercise consisting of four ULFB'S, quenching water flow requirements from the LMU; four times per day for 48 weeks a year and 1 in 100 year rainfall .

Details of the ULFB's are included in the Annexe B - Principal Supplied Documents.

Quenching requirements are to be sourced from the supplier of the FTS.

6.1.3 DESIGN OF THE WWTP

| Item | Area | Outcome |
|------|--------------------|---|
| 1.0 | Dirty Water Tank | Size to be determined; but will be required to consider the following: <ul style="list-style-type: none"> • Ability to accept all waste water from training exercises including the smoke house • Storm Water from all Training ground structures including bunded areas • Vehicle wash down water • 1 in a 100 year rainfall |
| 2.0 | Treatment facility | To be designed on recommendation of Arup Water investigation. |
| 3.0 | Clean Water Tank | Size to be determined; but will be required to consider the following: <ul style="list-style-type: none"> • Ability to accept all treated water from the treatment facility • Have excess capacity to enable water reuse in quenching, FTG fire hydrant system and the refilling of the ULFV's |
| 4.0 | Discharge Pumps | Size to be determined; but will be required to consider the following: <ul style="list-style-type: none"> • Have the capacity and adequate pressure to enable water reuse in the LMU quenching system, FTG fire hydrant system and the refilling of the ULFV's |

5 Certifications

The following certificates and letters of confirmation are to be provided by the Contractor at completion and handover.

| Item | Applicable Standards |
|------------------------------------|----------------------------|
| General Building | Building Code of Australia |
| Electrical | AS 3000: 2007 |
| Hydraulics – HVAC Installation | AS 3500 |
| Hydraulics – Plumbing and drainage | AS 3500 |

| | |
|---|--------------------------------|
| Fire detection equipment and installation | AS 1603 Series, AS 1670 Series |
| EWIS | AS 1670 Series |
| HVAC – Heating ventilation and air conditioning | AS 1668.2 |
| Emergency and exit lighting | AS 2293.1: 2005 |
| Glazing | AS 1288:2006 |
| Data connections and speed tests | ASA Specification |
| Lighting levels | AS 1680 Series |
| Safe Access | AS 1657:1995 |
| Internal Signage | AS 1319 |

6 Notes

In the event that tender costs exceed available funds and additional funds cannot be obtained, the above scope will be revisited and reduced to suit the available funding.

All offices to have vinyl floors unless otherwise noted.

All new corridors to have vinyl floors unless otherwise noted.

7 Regulatory Requirements

The Works shall comply with Civil Aviation Safety Regulations 1998, Part 139H and be guided by International Civil Aviation Organisation (ICAO) – Annex 14 and the ICAO Airport Services Manual.

In addition, the design, manufacture and site installation works are to be compliant with Commonwealth (Comcare) and State building legislation. Where Commonwealth Legislation is silent, local jurisdiction (State) requirements apply to the Works. This legislation includes, but is not limited to the following:

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Victorian Gas Safety (Gas Installation) Regulations 2009.

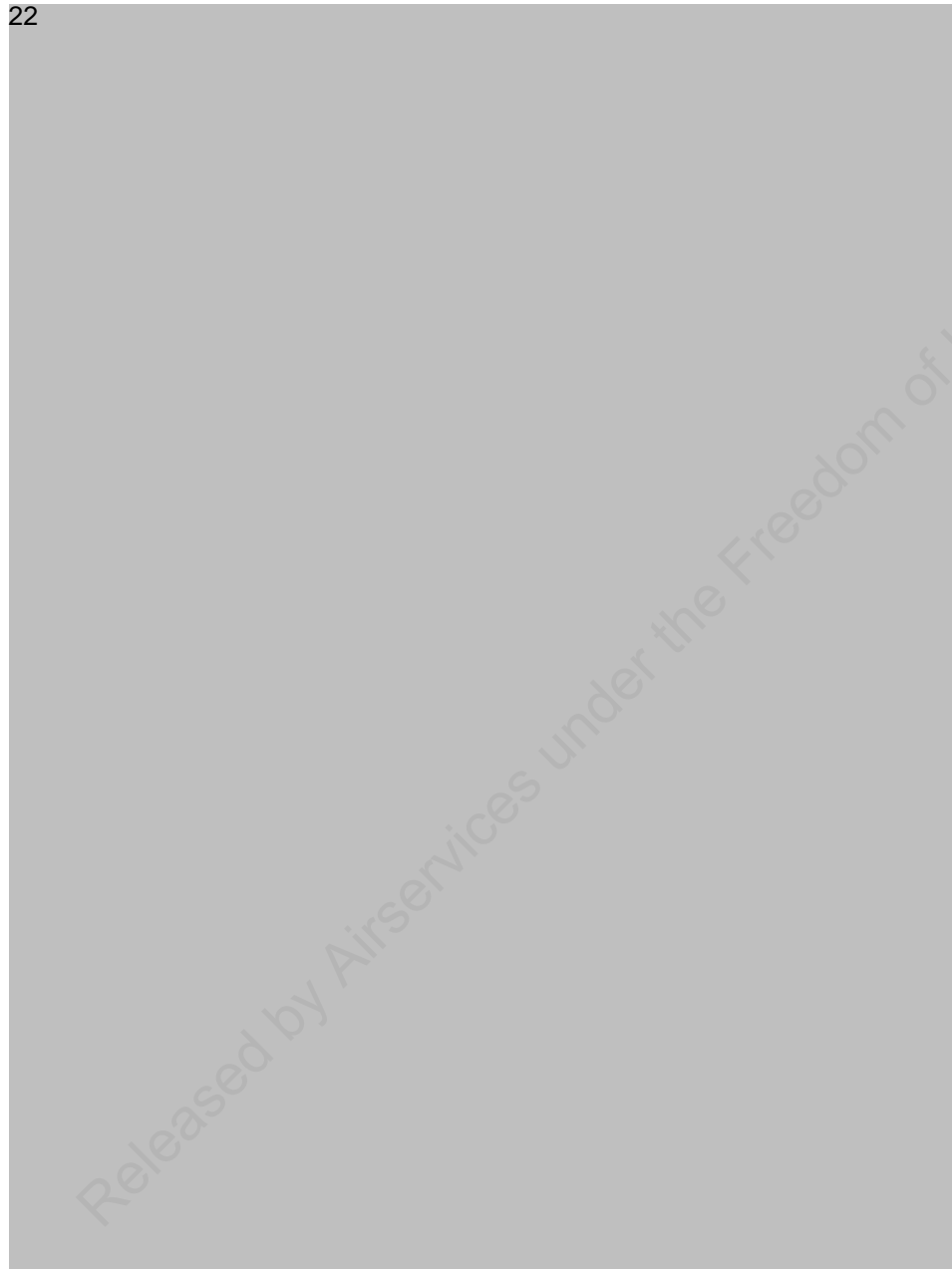
Victorian Electrical Regulations 2009 (where applicable).

Australian Standards for electrical wiring and gas supply systems.

Site installation and construction Works must be undertaken by Federal Safety Commission (FSC) approved contractors who also may be required to meet relevant requirements under the Victorian OHS Legislation, Regulations and Codes of Practice.

Annexure B – Principal Supplied Documents

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ADDITIONAL DOCUMENTS

20110729

AsA Functional Description + P&ID

Airservices Australia Recycled Water -
Evaluation Report FinalTAS0140.23.16 AECOM_Ecol
Assessment_Final30June11 30/06/11

Victoria University - Final Report January 2011

TAS0140.23.16 AECOM_Heritage Due
Diligence Report_FinalTAS0140.23.16 29/07/11
AECOM_CRA_29July11_Final

Badge Constructions (SA) Pty Ltd
ABN 85 008 015 496
Licence BLD 9020

9 Anzac Highway
Keswick SA 5035

P: 08 8293 5099
F: 08 8293 5799

badge.net.au

28th March 2012

Airservices Australia
PO Box 1093
Tullamarine VIC 3043

Attention: 47F

Dear 47F,

**RE: AIRSERVICES AUSTRALIA – Waste Water Treatment Plant
(WWTP) – Staged Approach Recommendation.**

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Yours sincerely

47F

BADGE CONSTRUCTIONS

CONTENTS

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- 3. CURRENT SUBMISSION BRIEF
- 4. DESIGN PARAMETERS
- 5. LIMITATIONS
- 6. BUDGET BREAKDOWN

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3. CURRENT SUBMISSION BRIEF

Stage 1: Design, supply, install and commission treatment equipment to permit discharge to Melbourne Airport / City West Water sewer system.

Stage 2: Design, supply, install and commission treatment equipment to recycle waste water to Class A quality.

The sub-contract is intended to be let as follows:

- Commission of Stage 1 Design Phase
- Confirmation of Stage 1 Construction price
- Commission of Stage 1 Construction works
- Commission of Stage 2 Design Phase (including testing)
- Confirmation of Stage 2 Construction price
- Commission of Stage 2 Construction works

Badge recommends that the successful contractor be initially awarded the design phase/s. As noted above, the successful sub contractor will need to design the required plant and equipment to meet budget figures submitted as part of this tender. If at the end of either design phase the sub-contractor is unable to meet the submitted budget price, Badge / the Client reserves the right to tender the completed design works to the market / choose not to proceed with the works (with the Design Fees paid accordingly to the sub contractor).

As per previous submissions, provision of the water treatment shed, and base build electrics will be provided by Badge. The WWTP sub contractor will allow for:

1. Provide all necessary plant and equipment for water treatment, including considerations for waste collection (where necessary), access, maintenance and compliance with related standards and authority requirements.
2. Wiring from the distribution board within the waste water treatment shed (DB provided by Badge)
3. All necessary control systems – note that coordination to provide necessary alarm signal outputs via Scada or other system will be required to interface with the training facility.
4. Connection to a sewer discharge point within the WWTP shed
5. Supply of Class A water to the Treated Water Storage Tank (located within 10m of WWTP shed).
6. Transfer of waste water from in-ground waste water storage tanks to WWTP shed / processing equipment. Badge to clarify pump spec for recycled water supply back into mains system once flow rates are locked in.
7. The sub-contractor will highlight where cost savings could potentially be realised through the design process to achieve savings for the client for both stages prior to placing orders and procuring equipment.
8. A 12 month defect liability / warranty period will be allowed for the works.
9. A proposal for an optional service and maintenance period of 12 months, with option for extension of this period has also been provided. (Note that the waste water storage tank is intended to have a three day capacity, and the supply water tank will have potable water 'top up', so Level 2 and Level 3 responses should only apply).

4. CURRENT DESIGN PARAMETERS

Waste water profile

The sub contractor will allow for input waste water based on a one week typical training scenario provided by Airservices. This will define:

1. Amount and type of training foam to be used, as well as quantity of water from the ULFV's
2. Dry chemical powder quantities
3. Estimated 'burn time' for both LPG and kerosene scenarios
4. Quantity of 'deluge' water produced by the simulator

Additional consideration will need to be given to:

1. Carbonaceous fires within the simulator (crib fires of wood)
2. Surface contaminants on the pavement areas (oil and other vehicle residue)
3. Silt and dust blown onto the pavement from surrounding areas
4. Detergent residue from vehicle wash down on the pad
5. Litter or debris blown onto the training pad

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5. LIMITATIONS

The selected sub contractor will provide a guarantee of water treatment based on the parameters set out in Item 4 above. Where the facility is not operated within agreed tolerances (say a significant influx of a particular contaminant), the operation of the facility cannot be guaranteed.

As a part of the design process this will be made clear to the stakeholders for agreement, to ensure a clear understanding of appropriate operation.

As discussed throughout this design process, there is also a risk of disruption in the event of a failure in the WWTP. Below are intended mitigation strategies to ensure minimum impact on training programs:

1. Discharge to sewer – approval will be sought from appropriate authorities to allow temporary discharge to sewer where Stage 1 systems remain operational and Stage 2 systems are under repair.
2. Waste water storage capacity – while exact training operations will determine the amount of waste water generated, the waste water tank has been sized to nominally allow three days storage.

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6. BUDGET BREAKDOWN

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ASA WASTE WATER TREATMENT SYSTEM

BADGE

STAGE 1 - D&C OF A TYPICAL DAF SYSTEM TO TREAT THE WASTE WATER PRIOR TO BEING DISCHARGED TO SEWER

| | ITEM | WJP SOLUTIONS | 22 |
|----|--|---------------|----|
| 1 | DESIGN / DOCUMENTATION | \$ 45 | |
| 2 | PROJECT MANAGEMENT FEE | \$ 45 | |
| 3 | ON SITE PRELIMINARY & SITE ESTABLISHMENT | \$ 45 | |
| 4 | 250KL UG WASTE WATER BALANCE TANK, 250KL UG FIRST FLUSH TANK & 160KL supply tank | \$ 45 | |
| 5 | DAF SYSTEM | \$ 45 | |
| 6 | CHEMICAL DOSING SYSTEM | \$ 45 | |
| 7 | INSTRUMENTS | \$ 45 | |
| 8 | PIPING / VALVES / PUMPS | \$ 45 | |
| 9 | ELECTRICAL / CONTROLS SYSTEM | \$ 45 | |
| 10 | MECHANICAL INSTALLATION | \$ 45 | |
| 11 | COMMISSIONING / TESTING / TRAINING | \$ 45 | |
| 12 | 12 MONTHS SERVICE AGREEMENT EXCL CHEMICALS | \$ 45 | |
| 13 | RESULT VERIFICATION & GUARANTEE | \$ 45 | |
| 14 | CREDIT FOR CHANGING PROCESS TIME FROM 8 -16hrs | 45 | |
| 15 | SUB-TOTAL | \$ 45 | |
| 16 | BADGE & Hyder design management | \$ 45 | |
| 17 | Pipe connection from DAF to Sewer line (50m) (PC SUM) | \$ 45 | |
| 18 | Basic portal frame with sheet metal cladding only. (45) | \$ 45 | |
| 19 | Civil component for in-ground tank | \$ 45 | |
| 20 | Ancillary services (Pumps, valve sets, etc) | \$ 45 | |
| 21 | SUB-TOTAL | \$ 45 | |
| 22 | BADGE OVERHEAD & MARGIN (45) | \$ 45 | |
| 23 | LESS ORIGINAL OH/M ON PC SUM 45 | 45 | |
| 24 | GRAND TOTAL | 45 | |

STAGE 2 - UPGRADE TO BE ABLE TO RECYCLE THE WASTE WATER FOR RE-USE.

| | ITEM | WJP SOLUTIONS | 22 |
|-----------------------------------|--|-----------------|----|
| 25 | PILOT TEST VERIFICATION | \$ 45 | |
| 26 | DESIGN / DOCUMENTATION | \$ 45 | |
| 27 | PROJECT MANAGEMENT FEE | \$ 45 | |
| 28 | ON SITE PRELIMINARY & SITE ESTABLISHMENT | incl in item 24 | |
| 29 | 400KL WASTE WATER BALANCE TANK (UG) | incl in stage 1 | |
| 30 | 260KL FIRST FLUSH TANK (UG) | incl in stage 1 | |
| 31 | 150KL TREATED WATER STORAGE (AG) | incl in stage 1 | |
| 32 | FLOCCULATION SYSTEM | incl in stage 1 | |
| 33 | UF MEMBRANE SYSTEM | \$ 45 | |
| 34 | OZONE SYSTEM | \$ 45 | |
| 35 | CHEMICAL DOSING SYSTEM | \$ 45 | |
| 36 | INSTRUMENTS | \$ 45 | |
| 37 | PIPING / VALVES / PUMPS | \$ 45 | |
| 38 | ELECTRICAL / CONTROLS SYSTEM | \$ 45 | |
| 39 | COMMISSIONING / TESTING / TRAINING | incl in item 24 | |
| 40 | MECHANICAL INSTALLATION | incl in item 24 | |
| 41 | ON GOING SERVICE AGREEMENT | \$ - | |
| 42 | ADDITIONAL PROCESSES SUGGESTED: | | |
| 43 | - DAF SYSTEM | Incl In stage 1 | |
| 44 | - TRIPLE INTERCEPTER PIT | \$ - | |
| 45 | - FILTER (MEDIA) | \$ - | |
| 46 | - GAC | \$ - | |
| 47 | - MICRONIC FILTER | \$ - | |
| 48 | - UV FILTER | \$ - | |
| 49 | CREDIT FOR CHANGING PROCESS TIME FROM 8 -16hrs | 45 | |
| 50 | SUB-TOTAL | \$ | |
| 51 | BADGE SUPERVISION INCL PRELIMS, PERMITS, APPROVALS, CONSULTANT REVIEW. | \$ | |
| 52 | BADGE OVERHEAD & MARGIN (45) | \$ | |
| 53 | GRAND TOTAL | \$ | |
| TOTAL TREATMENT PLANT COST | | | |

3 General Description of Installation

3.1 Overview

Fire-fighting water, including residual fire-fighting products i.e. foam, together with unspent fuels from training exercises drains across the test pad and into drainage pipework.

The drainage pipework system connects to the Diversion Pit, which is fitted with two actuated penstock valves.

One outlet from the Diversion Pit directs wastewater to the Wastewater Holding Tank.

The other outlet allows flow through to the site's stormwater system, but only under specific controlled circumstances.

Wastewater is pumped from the Wastewater Holding Tank through the DAF Unit.

An anti-foaming agent and a flocculant are dosed into the DAF Reaction Tank, which has been sized to provide a half-hour retention time.

Water passing through into the DAF Flotation Cell is dosed with polymer, which helps to bind the floccs to increase the particle sizes, and increasing the effectiveness of the DAF process.

A scraper automatically skimmed the scum from the DAF Flotation Cell into a sludge hopper, with clean water carrying over into the DAF Pump-Well.

Periodically the DAF Sludge Pump transfers sludge to the Sludge Holding Tank.

The Sludge Holding Tank is periodically emptied by an approved waste removal contractor.

A pH sensor continuously monitors the pH of the water within the DAF Pump-Well.

The Treated Water Transfer Pump pumps water from the DAF Pump-Well.

If pH correction is required, the appropriate dosing pump will operate, dosing into the discharge pipework prior to a static mixer.

OPERATION & MAINTENANCE MANUAL

The water then passes through a series of in-line cartridge filters, which contain a variety of MyCelx cartridge filters designed to absorb hydrocarbons.

A hydrocarbon sensor and a second pH sensor continuously monitor the water from the filters.

Providing that the water is within required parameters, a three-way valve directs the treated water to discharge to the sewer.

If the water is not within required parameters, the three-way valve directs the water back into the Wastewater Holding Tank to be retreated.

3.2 Wastewater and First Flush Collection and Storage

Fire-fighting water, including residual fire-fighting products i.e. foam, together with unspent fuels from training exercises drains across the test pad and into drainage pipework.

The drainage pipework system connects to the Diversion Pit, which is fitted with two actuated penstock valves.

One outlet, serviced by AV-01 directs wastewater to the Wastewater Holding Tank. The other outlet, serviced by AV-02 allows flow through to the site's stormwater system.

The default position has AV-01 open, and AV-02 closed, and hence wastewater is directed to the Wastewater Holding Tank.

Wastewater can only be directed to stormwater when no training is underway, and after a pre-determined amount of rainfall has fallen over a pre-determined interval, whereby sufficient rainwater has flushed the training pad of residual contaminants i.e. after a "first flush" event.

A tipping bucket rain gauge is connected to the WWTP control system, and records rainfall.

After the "first flush" event, AV-02 opens, and its changed position is confirmed by feedback to the PLC, then AV-01 opens, and its changed position is also confirmed by feedback to the PLC.

If either valve fails to achieve its required position change within a pre-determined interval, an alarm will be initiated.

OPERATION & MAINTENANCE MANUAL

If the diversion arrangement is discharging to stormwater, and a training session request is initiated from the Training Control Centre, the diversion will change back to the default position, with valve position confirmation, before the Training Permission OK condition can be initiated.

A level transmitter (LT 01) monitors the liquid level in the Wastewater Storage Tank, with adjustable set-points controlling the operation of the Wastewater Transfer Pumps (P-001A & B).

A High Level Alarm float switch (LS-01) is provided as a digital back-up in the event of a fault occurring with the analogue transmitter.

3.3 Wastewater Transfer and DAF

The DAF (Dissolved Air Flotation) Unit is comprised of four basic tanks.

The Wastewater Transfer Pumps pump from the Wastewater Storage Tank into the DAF's Reaction Tank, displacing water from the inter-connected Flotation Cell, into the DAF's Pump Well.

Dissolved Air is introduced into the Flotation Cell which rises up through the water, lifting suspended solids, which create a scum on top of the water. Scraper blades skim the scum off into the Sludge Hopper.

A Flow Meter monitors flow to the DAF unit.

A level transmitter (LT 02) monitors the liquid level in the DAF Pump Well, with adjustable set-points controlling the operation of the DAF, and the Wastewater Transfer Pumps.

A High Level Alarm float switch (LS-02) provides a digital back-up in the event of a fault occurring with the analogue level transmitter.

3.4 DAF Dosing

As wastewater is being introduced into the Reaction Tank, an anti-foaming agent is dosed in to reduce any tendency for foaming within the DAF.

A flocculant is also dosed in, which helps consolidate small suspended solids into larger particles.

OPERATION & MAINTENANCE MANUAL

A mixer in the Reaction Tank ensures that the dosing chemicals are well integrated with the wastewater.

The Reaction Tank is sized to provide a 30 minute contact time to allow the various inter-actions to occur.

When the DAF is operating, a polymer is dosed into the wastewater as it enters the DAF Flotation Cell.

The polymer helps to bind the smaller flocced particles into larger particles that are then lifted to the surface by the rising air with the cell.

Each chemical is dosed at an adjustable dosing rate, to achieve optimal performance from the DAF.

The available level in each of the chemical storage tanks is monitored, with a Low Alert and an Empty level switch.

The dosing pump will not run when its tank is empty.

3.5 DAF Sludge Transfer & Storage

Sludge is scraped from the top of the DAF Flotation Cell into the Sludge Hopper.

The DAF is fitted with a Sludge Pump which operates based on an adjustable timer.

Periodically the Sludge Pump will run, transferring sludge through to the Sludge Holding Tank.

A level transmitter (LT 03) monitors the sludge level in the Sludge Holding Tank, with adjustable set-points.

A High Level Alert will be initiated when the tank level needs to be reduced, with sludge being removed by an approved waste removal contractor.

If the level in the Sludge Holding Tank continues to increase, a High Level Alarm will be initiated, and the DAF will not be able to operate, until the sludge level has been reduced.



OPERATION & MAINTENANCE MANUAL

3.6 Treated Water Conditioning and Discharge

When the DAF Unit is operating, water overflows from the DAF Flotation Cell into the DAF Pump Well.

A pH sensor monitors the pH of the water within the Pump Well.

The Treated Water Pump pumps down the Pump Well when necessary.

Dosing Pumps provide either acid or alkalinity to adjust the pH of the treated water if necessary.

The water is pumped through a static mixer, followed by a series of cartridge filters containing MyCelex cartridges designed to remove hydrocarbons.

A side stream flow of treated water is directed to sensors that monitor the pH and Total Hydrocarbons continuously during pump-out of the DAF Pump Well..

The water is then directed to a three-way diversion valve, which will direct water to either a sewer drain discharge point if the water quality is within required parameters, or back to the Wastewater Storage Tank if not.

A Flow Meter monitors flow to the sewer.