

FORMAL INSTRUMENT OF AGREEMENT made from the 20th day of September 2024.

BETWEEN: MidCoast Council ABN 44 961 208 161 ("**Principal**")

AND: Gongues Constructions Pty Ltd ABN 47 103 639 087 ("**Contractor**")

RECITALS

- A.** The Contractor has submitted a tender for the Hawks Nest Sewage Treatment Plant Upgrade Contract No: 100857.4.
- B.** MidCoast Council rejected the tender and commenced negotiations with the Contractor.
- C.** MidCoast Council has accepted the Contractor's negotiated terms and conditions specified in this Contract between the parties ("**Contract**").

IT IS AGREED THAT:

- 1** This Formal Instrument of Agreement, together with the following documents (collectively referred to as the "**Contract Documents**" which are annexed hereto), will constitute the Contract:

ECM Document No.	Document Title	ECM Version No.
TERMS AND CONDITIONS DOCUMENT		
17307740	HN-STP-01 100857.4 Part 1B GENERAL TERMS & CONDITIONS.pdf	1
CONTRACT NEGOTIATIONS		
17308142	HN-STP-01 100857.4 Contract Documents - Gongues Constructions Acceptance.msg	1
17307737	HN-STP-01 100857.4 Contract Negotiations.xlsx	1
17307731	HN-STP-01 100857.4 Part 1C Schedule 2 Lump Sum Price Breakdown - Negotiated.xlsx	1
17307727	HN-STP-01 100857.4 Item 43 20240919 Electrical Pricing Schedule.pdf	1
17307724	HN-STP-01 100857.4 Item 66 20240916 Bioreactor Footpath.pdf	1
17307707	HN-STP-01 100857.4 20240911 Extension of Tender Validity.pdf	1

17307686	HN-STP-01 100857.4 MCC L004 Tender Validity Extension.pdf	1
17278537	HN-STP-01 100857.4 20240829 Gongues Constructions Tender Clarifications.zip	1
17278532	HN-STP-01 100857.4 20 year groundwater levels.xlsx	1
17278529	HN-STP-01 100857.4 Bores Map.jpg	1
17278534	HN-STP-01 100857.4 20240823 Extension of Tender Validity.pdf	1
17278528	HN-STP-01 100857.4 MCC L003 Tender Validity Extension.pdf	1
17278530	HN-STP-01 100857.4 MCC L002 Non-slip floor coating.pdf	1
17278531	HN-STP-01 100857.4 20240730 Extension of Tender Validity.pdf	1
17278527	HN-STP-01 100857.4 MCC L001 Tender Validity Extension.pdf	1
17278533	HN-STP-01 100857.4 Gongues Constructions Tender Clarifications.pdf	1
17278535	HN-STP-01 100857.4 Request for Clarification - Gongues Constructions.pdf	1
17278536	HN-STP-01 100857.4 Part 1C Gongues Constructions Tender Schedules.pdf	1
17278538	HN-STP-01 100857.4 Gongues Constructions Tender Submission.zip	1
UPDATED DRAWINGS AND SPECIFICATION DOCUMENTS (Bold is the latest version)		
17278037	HN-STP-01 100857.4 Part 2G P&ID Civil Structural Mechanical Drawings - 03.09.2024.pdf	1
17278036	HN-STP-01 100857.4 Part 2G P&ID Civil Structural Mechanical Drawings - 28.08.2024.pdf	1
17278035	HN-STP-01 100857.4 Part 2G P&ID Civil Structural Mechanical Drawings - 12.07.2024.pdf	1
17278008	HN-STP-01 100857.4 Part 2E Electrical Job Specification.pdf	1
17277889	HN-STP-01 100857.4 Part 2A Job Specification.pdf	1
17277887	HN-STP-01 100857.4 Part 2B Process Job Specification.pdf	1
17277886	HN-STP-01 100857.4 Part 2C Civil Job Specification.pdf	1
17277890	HN-STP-01 100857.4 Part 2D Mechanical Job Specification.pdf	1
17278013	HN-STP-01 100857.4 Part 2F Functional Description Specification.pdf	1

17278029	HN-STP-01 100857.4 Part 2H Electrical Drawings - STP 29.08.2024.pdf	1
17278030	HN-STP-01 100857.4 Part 2H Electrical Drawings - STP 27.08.2024.pdf	1
17278014	HN-STP-01 100857.4 Part 2H Electrical Drawings - RTP 21.08.2024.pdf	1
17277883	HN-STP-01 100857.4 Part 2A Appendix (ii) Detailed Design Report.pdf	1
17277882	HN-STP-01 100857.4 Part 2A Appendix(iii) Safety in Design Report.pdf	1
17277880	HN-STP-01 100857.4 Part 2A Appendix(x) Interface & Construction Staging Strategy.pdf	1
17277885	HN-STP-01 100857.4 Part 2A Appendix(xvi) Master Equipment Schedule - 28.08.2024.xlsx	1
17277884	HN-STP-01 100857.4 Part 2A Appendix(xvi) Master Equipment Schedule - 27.08.2024.xlsx	1
17277904	HN-STP-01 100857.4 Part 2E Appendix(i) Cable Schedule - 03.09.2024.xlsx	1
17277895	HN-STP-01 100857.4 Part 2E Appendix(i) Cable Schedule - 28.08.2024.xlsx	1
17277894	HN-STP-01 100857.4 Part 2E Appendix(i) Cable Schedule - 27.08.2024.xlsx	1
17277901	HN-STP-01 100857.4 Part 2E Appendix(ii) Electrical Equipment List - 27.08.2024.xlsx	1
17277900	HN-STP-01 100857.4 Part 2E Appendix(iv) PLC IO Schedule - 27.08.2024.xlsx	1
17277888	HN-STP-01 100857.4 Part 2E Appendix (vi) Prelim Electrical Cutover Plan.pdf	1
17277896	HN-STP-01 100857.4 Part 2E Appendix(vii) E300 Settings - 05.09.2024.xlsx	1
17277903	HN-STP-01 100857.4 Part 2E Appendix(viii) VSD Parameters & Settings - 05.09.2024.xlsx	1
17277898	HN-STP-01 100857.4 Part 2E Appendix(viii) VSD Parameters - 27.08.2024.xlsx	1
17277905	HN-STP-01 100857.4 Part 2E Appendix(ix) Verification Documents.pdf	1
17277899	HN-STP-01 100857.4 Part 2E Appendix(x) Communications Room Heat Loading Calculations.xlsx	1
17277897	HN-STP-01 100857.4 Part 2E Appendix(xi) Switchroom Heat Loading Calculations.xlsx	1
17277881	HN-STP-01 100857.4 Part 2E Appendix (xii) FDS FAT-SAT Documents - 19.08.2024.pdf	1
17278006	HN-STP-01 100857.4 Part 2E IO List For SAT Documents - 19.08.2024.xlsx	1
17277902	HN-STP-01 100857.4 Part 2E Circuit Breaker Protection Settings - 05.09.2024.xlsx	1

17277879	HN-STP-01 100857.4 ECN-043842 Level 3 Certified Design-RevB.pdf	1
17278009	HN-STP-01 100857.4 Part 2G P&ID Civil Structural Mechanical Drawing Register - 03.09.2024.pdf	1
17278007	HN-STP-01 100857.4 Part 2G P&ID Civil Structural Mechanical Drawing Register - 28.08.2024.pdf	1
17278012	HN-STP-01 100857.4 Part 2H Electrical Document Drawing Register - 05.09.2024.pdf	1
17278011	HN-STP-01 100857.4 Part 2H Electrical Document Drawing Register - 29.08.2024.pdf	1
17278010	HN-STP-01 100857.4 Part 2H Electrical Document Drawing Register - 27.08.2024.pdf	1
TENDER DOCUMENTS (in order of release)		
17252963	100857.4 Hawks Nest STP Upgrade - Vendor Panel Request Summary Report.pdf	1
17252967	100857.4 Hawks Nest STP Upgrade-Part 2E Electrical Job Specification-Rev1 23.05.2024.pdf	1
17252973	100857.4_Hawks_Nest_STP_Upgrade-Part_2G_Civil_Structural_and_Mechanical_Drawings - 23.05.2024.pdf	1
17252975	100857.4_Hawks_Nest_STP_Upgrade-Part_2H_Electrical_Drawings - 23.05.2024.pdf	1
17252970	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(i)-Cable Schedule-Rev2 23.05.2024.xlsx	1
17252962	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(ii) Electrical Equipment List Rev2 23.05.2024.xlsx	1
17253047	100857.4 Surface_Level_Model.dwg	1
17252353	100857.4_Hawks_Nest_STP_Upgrade-Part_1B-GENERAL_TERMS&CONDITIONS-Rev_1.pdf	1
17252961	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(ii) Electrical Equipment List Rev1 16.05.2024.xlsx	1
17252976	100857.4_Hawks_Nest_STP_Upgrade-Part_2H_Electrical_Drawings - 16.05.2024.pdf	1
17252964	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(viii)-VSD Parameters-Rev 1 16.05.2024.xlsx	1
17252977	100857.4_Hawks_Nest_STP_Upgrade-Part_2H_Electrical_Drawings - 06.05.2024.pdf	1
17252365	100857.4_Hawks_Nest_STP_Upgrade-Part_2C_Civil_Job_Specification-Updated.pdf	1
17253043	Contract_100857.4-Pre-Tender_Meeting_Minutes.pdf	1
17252958	100857.4 Hawks Nest STP Upgrade - Questions 22-04-2024- Reply.pdf	1
17252959	100857.4 Hawks Nest STP Upgrade - Questions 19-04-2024- Reply.pdf	1

17254598	100857.4 Hawks Nest STP Upgrade - Questions 19-04-2024- Reply Survey Data.zip	1
17252351	100857.4_Hawks_Nest_STP_Upgrade-Part_1A-TENDER_REQUIREMENTS&PRELIMINARIES.pdf	1
17252350	100857.4_Hawks_Nest_STP_Upgrade-Part_1C-TENDER_SCHEDULES.docx	1
17252352	100857.4_Hawks_Nest_STP_Upgrade-Part_1C-TENDER_SCHEDULES.pdf	1
17252354	100857.4_Hawks_Nest_STP_Upgrade-Tender_Schedule_No.2-Lump_Sum_Price_Breakdown.xlsx	1
17252367	100857.4_Hawks_Nest_STP_Upgrade-Part_2A_Job_Specification.pdf	1
17252366	100857.4_Hawks_Nest_STP_Upgrade-Part_2B_Process_Job_Specification.pdf	1
17252364	100857.4_Hawks_Nest_STP_Upgrade-Part_2D_Mechanical_Job_Specification.pdf	1
17252427	100857.4 Hawks Nest STP Upgrade-Part 2E Electrical Job Specification.pdf	1
17252960	100857.4_Hawks_Nest_STP_Upgrade-Part_2F_Functional_Description_Specification.pdf	1
17252972	100857.4_Hawks_Nest_STP_Upgrade-Part_2G_Civil_Structural_and_Mechanical_Drawings.docx	1
17254453	100857.4_Hawks_Nest_STP_Upgrade-Part_2G_Civil_Structural_and_Mechanical_Drawings.pdf	1
17252974	100857.4_Hawks_Nest_STP_Upgrade-Part_2H_Electrical_Drawings.docx	1
17252979	100857.4_Hawks_Nest_STP_Upgrade-Part_2H_Electrical_Drawings.pdf	1
17253000	100857.4_Hawks_Nest_STP_Upgrade-Part_2I_Process_&Instrumentation_Drawings.pdf	1
17253001	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(i)-General_Specification.pdf	1
17253004	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(ii)-Detailed_Design_Report.pdf	1
17253003	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(iii)-Safety_in_Design_Report.pdf	1
17253002	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(iv)-BCA_Report.pdf	1
17253010	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(v)-Preferred_Equipment_List.pdf	1
17253044	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix_(vi)-SCADA_&Control_Specification.pdf	1
17253015	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(viii)-Geotechnical_Investigations.pdf	1
17253012	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(ix)-Prelim_Assessment_Dewatering_&Discharge_Options.pdf	1

17253016	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(x)-Interface&Construction_Staging_Strategy.pdf	1
17253011	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xi)-Site_Integration_Management_Plan_Example.pdf	1
17253013	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xii)-PLC_Specification.pdf	1
17253014	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xiii)-GeoSCADA_Installation_&_Configuration.pdf	1
17253017	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xiv)-PlantSCADA_Installation&Configuration.pdf	1
17253042	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix_(xv)-Standard_Operating_Procedure_Example.pdf	1
17253038	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xvi)-Master_Equipment_List.xlsx	1
17253037	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xvii)-MCC_Water_Services_Drawing_Procedures.pdf	1
17253036	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xviii)-MCC_Water_Services_Work_as_Executed_Procedure.pdf	1
17253018	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xix)-Review_of_Environmental_Factors.pdf	1
17253040	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xx)-AHIP_Investigations.pdf	1
17253045	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xxiii)-Standard_Drawings.pdf	1
17253041	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xxiv)-Water_Services_Asset_Tagging_Convention.pdf	1
17253035	100857.4_Hawks_Nest_STP_Upgrade-Part2A_Appendix(xxvi)-P&ID_Asset_and_Cable_Naming_numbers.xlsm	1
17252953	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(i)-Cable Schedule.xlsx	1
17252965	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(ii) Electrical Equipment List.xlsx	1
17252954	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(iii) Prelim Electrical Cutover Plan.pdf	1
17252956	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(iv)-PLC IO Schedule.xlsx	1
17252968	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(v)-CCTV Pole Details.pdf	1
17252966	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(vi)-CCTV Pole Footing Design.pdf	1
17252971	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(vii)-E300 Settings.xlsx	1
17252952	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(viii)-VSD Parameters.xlsx	1
17252957	100857.4 Hawks Nest STP Upgrade-Part2E Appendix(ix)-Verification Document.pdf	1

17252955	100857.4 Hawks Nest STP Upgrade-Part 2E Appendix(x) Switchroom HeatLoad Calcs Comms Room.xlsx	1
17252969	100857.4 Hawks Nest STP Upgrade-Part 2E Appendix(xi) Switchroom Heat Loading Calculations.xlsx	1
NA	HN-STP-01-100857 Site Model-For information Only.nwd	NA

- 2** To the extent of any inconsistency between the Contract Documents listed in clause 1, the documents will be given precedence in the order that they appear in clause 1. For the avoidance of doubt, those documents higher in the list will have priority over those lower in the list to the extent of the inconsistency.
- 3** The Contract Sum is the accepted negotiated tender price of, Forty Six Million, Four Hundred and Eleven Thousand, Two Hundred Dollars and Zero cents (\$ 46,411,200.00) inclusive of GST, calculated as follows:
- | | |
|-------------------------|-------------------------|
| Negotiated tender price | \$ 42,192,000.00 |
| GST | \$ 4,219,200.00 |
| TOTAL | \$ 46,411,200.00 |
- 4** This Instrument of Agreement may be executed in any number of counterparts and all such counterparts when executed and taken together will constitute the Contract.

EXECUTED AS AN AGREEMENT

Executed by **MidCoast Council** (ABN 44 961 208 161)

by its authorised delegate pursuant to s377 of the *Local Government Act 1993* and in accordance with Council resolution, Reference – 280/2024 on 24/07/2024, in the presence of:



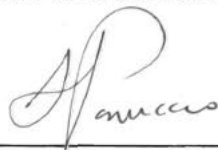
Witness Signature

Danielle Johnston

Name

09.10.2024

Date



Authorised Delegate Signature

Adrian Panuccio

General Manager – MidCoast Council

Name

09.10.2024

Date

Gongues Constructions Pty Ltd (ABN 47 103 639 087)

in accordance with s127 of the *Corporations Act 2001*:



Director Signature

Name

02/10/2024

Date



Director Signature

Name

02/10/2024

Date

Hawks Nest Sewage Treatment Plant Upgrade

Contract No 100857.4

Part 1B

General Terms and Conditions AS 2124

August 2024

Hawks Nest Sewage Treatment Plant Upgrade

Contract Number: 100857.4

Doc ID	Revision Description	Prepared / Revised By	Reviewed By	Approved By	Revision Date
Part 1B	General Terms	M.Koller	B.Ryan	M.Stace	08/04/2024
Part 1B	Outline Numbering	M.Koller	B.Ryan	M.Stace	18/05/2024
Part 1B	Construction	B.Ryan	M. Koller	M.Stace	20/09/2024
Reference No.		Status		Version No.	
100857		Issued for Construction		1.0	

This document shall remain the property of MidCoast Council. Unauthorized use of this document in any form is prohibited.

AS 2124—1992

With

AS 2125 - 1992

AS 2127 - 1992

(Incorporating Amendment No. 1)

Australian Standard®

General conditions of contract (AS 2124—1992)

together with

General conditions of tendering and form of tender (AS 2125—1992)

Form of formal instrument of agreement (AS 2127—1992)



**ANNEXURE to the Australian Standard
General Conditions of Contract**

PART A

This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

Primary Schedule

The law applicable is that of the State or Territory of: (Clause 1)	New South Wales
Payments under the Contract shall be made at: (Clause 1)	Taree, NSW.
The Principal: (Clause 2)	MID-COAST COUNCIL (Mid-Coast Council Water and Sewer Branch) ABN 44 961 208 161
The address of the Principal:	PO Box 482, Taree NSW 2430 Australia.....
The Superintendent: (Clause 2)	Manager of Capital Works – Water Services, MidCoast Council
The address of the Superintendent:	PO Box 482, Taree NSW 2430.....
Limits of accuracy applying to quantities for which the Principal accepted a rate or rates: (Clause 3.3(b))	Not Applicable
Bill of Quantities—the alternative applying: (Clause 4.1)	Not Applicable
The time for lodgement of the priced copy of the Bill of Quantities: (Clause 4.2)	Not Applicable
# Contractor shall provide security in the amount of: (Clause 5.2)	5% of the contract sum which applies to each Separable Portion (unapportioned), despite clause 35.3.

Where there are Separable Portions, these items shall be deleted

# Principal shall provide security in the amount of: (Clause 5.2)	Not Applicable.....
# The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)	5 days
The percentage to which the entitlement to security and retention moneys is reduced: (Clause 5.7)	50% on Practical Completion of all Separable Portions and 50% at end of Defects Liability Period for all Separable Portions
Interest on retention moneys and security—the alternative applying: (Clause 5.9)	Not applicable
The number of copies to be supplied by the Principal: (Clause 8.3)	One electronic copy only
The number of copies to be supplied by the Contractor: (Clause 8.4)	One electronic copy only
The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies: (Clause 8.4)
Work which cannot be subcontracted without approval: (Clause 9.2)	An individual subcontract valued at more than \$35,000
The percentage for profit and attendance: (Clause 11(b))	15%
The amount or percentage for profit and attendance: (Clause 11(c))	15%
Insurance of the Works—the alternative applying: (Clause 18)	Alternative 1.....

Where there are Separable Portions, these items shall be deleted

Part 1B GENERAL TERMS AND CONDITIONS AS 2124

The assessment for insurance purposes of the costs of demolition and removal of debris: (Clause 18(ii))
The assessment for insurance purposes of consultants' fees: (Clause 18(iii))	Not Applicable.....
The value of materials to be supplied by the Principal: (Clause 18 (iv))	Not Applicable.....
The additional amount or percentage: (Clause 18(v))	Not Applicable.....
Public Liability Insurance—the alternative applying: (Clause 19)	Alternative 1.....
The amount of Public Liability Insurance shall be not less than: (Clause 19)	\$20,000,000.....
Public Liability Insurance specifics:	Any one occurrence and not in aggregate
Workers compensation insured amount: (Clause B1.25)	As Required by legislation
Motor vehicle insurance policy shall have a limit of not less than: (Clause B1.26)	\$20,000,000.....
Motor vehicle insurance specifics: (Clause B1.26)	As required in accordance with Part 1A
The amount of Professional Indemnity insurance shall not be less than: (Clause B1.27)	\$10,000,000.....
Professional Indemnity insurance specifics: (Clause B1.27)	Any one occurrence and not in aggregate
Fidelity insurance policy: (Clause B1.28)	See for each Separable Portion-
The time for giving possession of the Site: (Clause 27.1)	
# The Date for Practical Completion: (Clause 35.2)	See for each Separable Portion.....

Where there are Separable Portions, these items shall be deleted

Part 1B GENERAL TERMS AND CONDITIONS AS 2124

# Liquidated Damages per day: (Clause 35.6)	\$5000 per day
# Limit of Liquidated Damages: (Clause 35.7)	10% of Contract Sum
# Bonus per day for early Practical Completion: (Clause 35.8)	Not Applicable.....
# Limit of bonus: (Clause 35.8)	Not Applicable.....
# Extra costs for Delay or Disruption: (Clause 36)	<u>Event</u>
# The Defects Liability Period: (Clause 37)	See for each Separable Portion.....
The Charge for overheads, profit, etc. for Daywork: (Clause 41(f))	15%, except for any variations using schedule of rates within Part 1C of tender schedules which include profits and overhead
Times for Payment Claims: (Clause 42.1)	Last day of the Month
Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.1(ii))
Retention Moneys on: (Clause 42.3) (a) work incorporated in the Works and any work or items for which a different amount of retention is not provided,% of the value until% of the Contract Sum is held; (b) items on Site but not yet incorporated in the Works,%; (c) items off Site but in Australia%; (d) items not in Australia%;

	(e) disbursements incurred by the Contractor for customs duties, freight, marine insurance, primage, landing and transport in respect of the work under the Contract%;
Unfixed Plant or Materials—the alternative applying: (Clause 42.4)	Alternative 2
The rate of interest on overdue payments: (Clause 42.9)	5%
The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7)	28 days after the date of the letter of approval of Project Management Plan and any other documentation required by MidCoast Council as set out in the Preliminaries at clauses 2 – 8 (inclusive) of the Part 1A Tender Requirements and Preliminaries document. -
The alternative required in proceeding with dispute resolution: (Clause 47.2)	Alternative 2
The person to nominate an arbitrator: (Clause 47.3)	The President of the Resolution Institute
Location of arbitration: (Clause 47.3)	Taree, New South Wales

¶ Separable Portion 1 (SP1)

- | | |
|---|---|
| 1. Separable Portion: | Phases 0, 1 and 2 of the STP Upgrade Project..... |
| 2. Contractor shall provide security in the amount of:
(Clause 5.2) | The Primary Schedule applies to this item |
| The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:
(Clause 5.5) | The Primary Schedule applies to this item |
| 2A Provision of Project Management Plan for SP1: | The Contractor must provide a Project Management Plan (including Construction Plan) for SP1 by and any other documentation required by MidCoast Council as set out in the Preliminaries at clauses 2 – 8 (inclusive) of the Part 1A Tender Requirements and Preliminaries document |
| 2B Time for Commencement of Work on the Site for Separable Portion 1
(Clause 35.1) | From the date that MidCoast Council provides written approval of the Contractor's Project Management Plan, Environmental Management Plan, Site Safety Plan and any other documentation required by MidCoast Council as set out in the Preliminaries at clauses 2 – 8 (inclusive) of the Part 1A Tender Requirements and Preliminaries document. |
| 3. The Date for Practical Completion for SP1:
(Clause 35.2) | No later than July 2025 or 26th August 2026 on acceptance of construction programme |
| 4. Liquidated Damages per day:
(Clause 35.6) | The Primary Schedule applies to this item |
| 5. Limit of Liquidated Damages:
(Clause 35.7) | The Primary Schedule applies to this item |
| 6. Bonus per day for early Practical Completion:
(Clause 35.8) | [Not applicable]..... |

¶ Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Contract. Make a separate column for each Separable Portion.

7. Limit of bonus:
(Clause 35.8) [Not applicable].....
- Event
8. Extra costs for Delay or Disruption:
(Clause 36) The Primary Schedule applies to this item
-
-
9. Defects Liability Period:
(Clause 37) 12 months after the Date of Practical
Completion of SP1

Separable Portion 2 (SP2)

- | | | |
|----|---|--|
| 1. | Separable Portion: | Phases 3 and 4 of the STP Upgrade Project..... |
| 2. | Contractor shall provide security in the amount of:
(Clause 5.2) | The Primary Schedule applies to this item |
| | The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:
(Clause 5.5) | The Primary Schedule applies to this item |
| 2A | Provision of Project Management Plan for SP2: | The Contractor must provide a Project Management Plan (including Construction Plan) for SP2 by and any other documentation required by MidCoast Council |
| 2B | Time for Commencement of Work on the Site for SP2 (Clause 35.1) | No earlier than 28 th April 2026
No later than 31 st July 2025 15 th June 2026
subject to the Principal, in its absolute discretion, providing the letter of approval of Project Management Plan for SP2 and any other reasonably documentation required by the Principal to satisfy itself that the Contractor will be able to complete SP2 by the Date for Practical Completion of SP2. |
| 3. | The Date for Practical Completion for SP2:
(Clause 35.2) | No later than 30 th 27 th November 2026 2025
or on acceptance of construction programme |
| 4. | Liquidated Damages per day:
(Clause 35.6) | The Primary Schedule applies to this item |
| 5. | Limit of Liquidated Damages:
(Clause 35.7) | The Primary Schedule applies to this item |
| 6. | Bonus per day for early Practical Completion:
(Clause 35.8) | [Not applicable]..... |
| 7. | Limit of bonus:
(Clause 35.8) | [Not applicable]..... |

Event

- | | |
|--|---|
| 8. Extra costs for Delay or Disruption:
(Clause 36) | The Primary Schedule applies to this item

.....

..... |
| 9. Defects Liability Period:
(Clause 37) | 12 months after the Date of Practical
Completion of SP2..... |

Separable Portion 3 (SP3)

- | | | |
|----|---|---|
| 1. | Separable Portion: | Phases 5 and 6 of the STP Upgrade Project..... |
| 2. | Contractor shall provide security in the amount of:
(Clause 5.2) | The Primary Schedule applies to this item |
| | The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:
(Clause 5.5) | The Primary Schedule applies to this item |
| 2A | Provision of Project Management Plan for SP3: | The Contractor must provide a Project Management Plan (including Construction Plan) for SP3 by and any other documentation required by MidCoast Council |
| 2B | Time for Commencement of Work on the Site for SP3 (Clause 35.1) | On successful completion of SP2 subject to the Principal, in its absolute discretion, providing the letter of approval of Project Management Plan for SP3 and any other reasonably documentation required by the Principal to satisfy itself that the Contractor will be able to complete SP3 by the Date for Practical Completion of SP3. |
| 3. | The Date for Practical Completion:
(Clause 35.2) | On acceptance of construction programme
29 th April 2027 |
| 4. | Liquidated Damages per day:
(Clause 35.6) | The Primary Schedule applies to this item |
| 5. | Limit of Liquidated Damages:
(Clause 35.7) | The Primary Schedule applies to this item |
| 6. | Bonus per day for early Practical Completion:
(Clause 35.8) | [Not applicable]..... |
| 7. | Limit of bonus:
(Clause 35.8) | [Not applicable]..... |

Event

8. Extra costs for Delay or Disruption: (Clause 36) The Primary Schedule applies to this item

.....
.....

9. Defects Liability Period: (Clause 37) 12 months after the Date of Practical Completion of SP3.....

APPROVED FORM OF UNCONDITIONAL UNDERTAKING

(Clause 5.3)

At the request of. ('the Contractor') and in consideration
of ('the Principal') accepting this undertaking in respect of
the contract for.....

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

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

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

Provided always that the Financial Institution may at any time without being required so to do
pay to the Principal the sum of \$
(.....)

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

DATED at.....this.....day of.....19.....

**ANNEXURE to the Australian Standard
General Conditions of Contract****PART B**

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended or added to Australian Standard 2124—1992

1. B ANNEXURE PART B

Part B of the Annexure to the General Conditions of Contract shall be deemed to be completed as follows:

B1 ADDITIONS

The following clauses have been added to those of AS 2124-1992 as amended:

B1.1.1 The Primary Documents

The Contract Documents included in the Formal Instrument of Agreement includes “Specification Documents” (referred to herein as “**the Primary Documents**”) supplied by the Principal.

No inference should be drawn from the fact that an item is shown as required in one place, or several places, but is not shown elsewhere in the Primary Documents. It may be that to complete the work in a workmanlike manner or in accordance with the requirements of the law or the Building Code of Australia or to make the Works suitable for purpose, the Contractor will have to provide the item in other places also.

B1.1.2 Faults and Conflicts in Primary Documents

- (a) Subject to clauses B1.1.3 and B1.1.4, the Primary Documents may contain material errors or may be inconsistent, ambiguous or misleading in material respects (“**fault**”). They may conflict with statutory requirements or the requirements of the Building Code of Australia or some other code or standard which the Contract requires the Contractor to follow (“**conflict**”). The Principal is relying upon the Contractor to find and either notify it of these faults or conflicts, or overcome these problems.
- (b) The Contractor must check the Primary Documents. At least 21 days before the Contractor proposes to use a Primary Document, the Contractor must notify the Principal of any fault or conflict in that Primary Document and any related Primary Documents. The Principal must resolve any fault notified under clause B1.1.2(a).
- (c) Subject to clauses B1.1.3 and B1.1.4, if the Principal resolves a fault or conflict in the Primary Documents, then, subject to clause B1.1.2(d):
 - (i) to the extent that the Principal resolves the fault or conflict by instructing a Variation, clause 40 (“**Variations**”) applies; and

- (ii) to the extent that the Principal resolves the fault or conflict other than by instructing a Variation:
- if the resolution has an effect on the time to achieve Completion, the Contractor may make a claim for an extension of time in accordance with this Contract (without delay costs), or the Principal may assess a reduction of time; and
 - if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders, the parties may agree in writing on an adjustment to the Contract Price or if not agreed the Contractor may make a Claim for an adjustment to the Contract Price to be valued.
- (d) If the Principal resolves a fault in the Primary Documents that was not notified in accordance with clause B1.1.2(a), the Contractor is not entitled to any costs for delay or the cost of any aborted work.

B1.1.3 Detail finalisation

- (a) Notwithstanding any provision to the contrary contained in this Contract or any other document forming part of the Contract (including the Primary Documents), it is understood and agreed for the avoidance of doubt that:
- (i) While the design provided to the Builder under this Contract may be complete in all major respects, it is recognised that, throughout the term of the Contract (including construction) details in the design will require further development, refinement, or specification to ensure that the Works are fully functional; compliant with relevant codes and standards; and fit for their intended purpose as described in the Primary Documents;
- (ii) The Contractor is required to use its professional skill, care, and diligence to interpret, complete, or otherwise provide detail to any such aspects of the design and/or documentation; and
- (iii) The Contractor will not be entitled to any Variation (including additional costs or extensions of time) with respect to this detailing or corresponding construction.
- (b) The Builder's obligations under this clause are fundamental to the Contract, and failure to adequately fulfill these obligations will constitute a material breach of the Contract, subject to the remedies outlined herein.

B1.1.4 Design by Contractor and Contractor's Documents

- (a) The Contractor must complete the design provided by the Principal and carry out all other design necessary in connection with the Works. The Contractor's design obligations include, but are not limited to:

- (i) completion of design, documentation and workshop detailing for design provided by the Principal, including coordination of design activities and the interaction of the various disciplines;
- (ii) development of the preliminary design provided by the Principal, including items, services and components of the Works;
- (iii) full design by the Contractor of the items, services and components of the Works which the Contractor must fully design;
- (iv) items, services and components of the Works in respect of which the Contractor may depart from the design provided by the Principal (clause B1.1.3(g));
- (v) all temporary / permanent services relocation and protection work;
- (vi) detailed excavation, backfill, retaining solutions (specifically retaining walls between the bioreactor and clarifiers and to along the western edge of the site adjacent to the transformer and inlet works), subsoil network and on-site disposal of excess material and associated works;
- (vii) Temporary shoring for excavations around structures and services;
- (viii) groundwater dewatering systems associated with open excavations as needed to complete the works;
- (ix) penstocks, stopboards, sluices, conveyors, davit lifting devices and associated works;
- (x) air valve and valve location, orientation/ location and associated works;
- (xi) shop drawings;
- (xii) aeration systems within bioreactor including offtakes, grids, diffusers, lifting frames, support structures and associated works;
- (xiii) UV disinfection equipment, roof structure, conduits, supports, foundation and associated works;
- (xiv) hot rolled portal frame buildings / awnings and roofs including:
 - Blower building;
 - Chemical dosing building; and
 - Biosolids bund awning / roof;
- (xv) chemical systems and dosing equipment/skids including storage tanks, site dosing pipework containment systems and associated works;
- (xvi) building fittings, finishes, compliance with Building Code of Australia including deemed to satisfy provisions, building services including HVAC for buildings including blower facility, electrical switchrooms; plumbing, vermin proofing, fire/ sound proofing and associated works;
- (xvii) BCA compliance and certification by private certifier for all buildings;
- (xviii) building security system for switchroom and blower buildings and associated works;
- (xix) site lighting for general access including building areas and associated works;
- (xx) direct strike lightning protection system for the site and associated works;
- (xxi) electrical pits and cabling/conduit runs and associated works;

- (xxii) cable ladder runs/tray from underground pits systems to, local control panel mounting, slab terminations, at roof structures, platforms and all final equipment terminations and associated works;
 - (xxiii) small diameter pipework and dosing lines <100mm diameter (not detailed in the Design) and associated works;
 - (xxiv) instrument mounting supports / brackets and associated works;
 - (xxv) detailed locations and levels of critical pipework beneath or near structures if not shown on drawings and associated works;
 - (xxvi) additional proprietary hose reels (min 20m) including support frame, connection pipework to site potable ring main, hose reel isolation valves and associated works;
 - (xxvii) provide all site wide signage and labelling and equipment tags and associated works; and
 - (xxviii) provision of any guarding of equipment to ensure compliance to Legislative Requirements, Australian Standards and WHS Act and WHS Regulation.
- (b) The Contractor must carry out its design responsibilities so that the Works are fit for the purposes required by the Contract and comply with the other requirements of the Contract.
- (c) Subject to clause B1.1.3(f), design or design development does not cause a Variation or reduce the Contractor's design responsibilities under clause B1.1.3.

Departures from the design provided by the Principal

- (d) Subject to clause B1.1.3(g), the Contractor must not depart from the design provided by the Principal unless instructed in writing by the Principal.
- (e) If the Contractor considers that some departure from the design provided by the Principal is desirable to ensure the effectiveness and efficiency of the Works, then the Contractor may propose a Variation under clause B1.2.3. Where a departure is necessary for the Works to be fit for the purposes required by the Contract, the Contractor must notify the Principal.
- (f) In carrying out the design and design development of the elements referred to clause B1.1.3(a)(iv), the Contractor may depart from the design provided by the Principal, but only:
- (i) to the extent that any such departure does not adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract;
 - (ii) provided that the Contractor has notified the Principal in writing of the proposed departures and the Principal has not notified the Contractor of any objection within 7 days after receiving the notification.

Design review

- (g) To the extent specified in the Contract, the Contractor must review its design in consultation with persons nominated by the Principal and develop the design and the Contractor's Documents allowing for any matters identified in the review.

Contractor's Documents

- (h) The Contractor must produce Contractor's Documents which:
- (i) will ensure that the Works are fit for the purposes required by the Contract; and
 - (ii) meet the requirements of all of the following:
 - 1. the Contract;
 - 2. Statutory Requirements;
 - 3. the Principal's instructions;
 - 4. the National Construction Code and relevant Australian Standards; and if no other standard is specified in the Contract, good industry standards applicable to the Works.
- (i) The requirements of clause B1.1.4 are not affected by any Variation.

B1.1.5 Submitting Contractor's Documents

- (a) Unless the Contract provides otherwise, the Contractor must submit Contractor's Documents to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. Contractor's Documents must be submitted progressively with sufficient detail to demonstrate what is proposed.
- (b) The Principal need not respond to the Contractor about the Contractor's Documents.
- (c) If the Principal objects to the Contractor's Documents, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any fault, error or omission in the Contractor's Documents.
- (d) Nothing the Principal does or omits to do in connection with the Contractor's Documents makes the Principal responsible for the Contractor's Documents or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.

B1.1.6 Innovation

- (a) The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or materials, which are likely to offer significant benefits (including long-term or repeated benefits) to the Principal. The proposal must include details of:
 - (i) the proposed change to the Works and the proposed change in the Contract Price;
 - (ii) potential risks to the Principal and the Contractor if the proposal is accepted;
 - (iii) any changes required to Contractual Completion Dates;
 - (iv) projected changes in operating and maintenance costs;
 - (v) projected changes in whole-of-life costs;
 - (vi) any other benefit the Principal will receive; and
 - (vii) any benefit the Contractor will receive.
- (b) The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.

- (c) The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal may accept the proposal subject to conditions. No claim will arise out of the Principal's consideration of, or failure to accept, any proposal.
- (d) The Contractor must not begin implementation of any proposal unless the Principal has accepted the Proposal, subject to any conditions imposed by the Principal, in writing.
- (e) The share of the financial benefit of any proposal to be paid to the Contractor must be as agreed between the parties.

B1.2 CONTRACTOR'S FURTHER DESIGN OBLIGATIONS

This clause only applies to the elements of the work under the Contract (including those referred to under clause B1.1.3 and B1.1.4) where the Contract (including the Specification) identifies that the Contractor is responsible for the design of those elements or where the contractor otherwise performs design works.

B1.2.1 Definitions

In this clause:

- (a) **Contractor Designed Works** means any work under the Contract or Works in respect of which the Contractor is required by the Contract to provide the Contractor's Design Work;
- (b) **Contractor's Design Documents** means all designs, drawings, specifications, surveys, reports, models, patterns, samples and other information required in connection with the Contractor's Design Work;
- (c) **Contractor's Design Work** means all work under the Contract relating to the design and specification of work under the Contract or the Works, including the preparation of drawings, specifications or the Design Documents for the construction of the Works; and
- (d) **Principal's Requirements** means the Requirements stated in the Specification summarising or outlining the Principal's requirements for the Contractor's Design Work or work under the Contract to which the Contractor's Design Work relates, as they may be developed or updated by the Contractor in accordance with the Contract and approved by the Principal.

B1.2.2 Acknowledgment by Contractor

The Contractor confirms that the description of the work under the Contract set out in the Contract is adequate for the Contractor to complete any Contractor's Design Work in accordance with the Contract and has satisfied itself as to the Principal's requirements.

B1.2.3 Contractor's Design Work

In respect of the Contractor Designed Works, the Contractor must carry out all Contractor's Design Work (including undertaking any design or redesign) required to give effect to any Variation or to ensure that the Works comply with the requirements of the Contract despite any Latent Conditions discovered after the Date of Acceptance and complete all Contractor's Design Documents required for the construction of the Works.

B1.2.4 Fit for Purpose

Without limiting any other obligation of the Contractor under the Contract, the Contractor must complete the Contractor's Design Work in respect of Contractor Designed Works so that:

- (a) the construction of the Works may be commenced within the time required by the Contract and so as to enable the Practical Completion to be reached by the Date for Practical Completion;
- (b) the Contractor's Design Work and all Contractor's Design Documents prepared by the Contractor comply fully with the Principal's Requirements and all other requirements for the Works including the Specification and Drawings and are fit for their purpose;

and shall execute and complete the work under the Contractor in accordance with the Contractor's Design Work and the Contractor's Design Documents.

B1.2.5 Design Completed

The Contractor will not commence any construction in connection with any part of the Contractor Designed Work until:

- (a) the Contractor's Design Work relating to that part has been completed in accordance with the Contract; and
- (b) Contractor's Design Documents relevant to the Contractor's Design Work have been submitted to the Superintendent and the Superintendent has consented to their use for the purpose of work under the Contract.

Within 30 days of receiving any of the Contractor's Design Documents, the Superintendent must, in writing:

- (c) Approve the Contractor's Design Documents; or
- (d) Reject the Contractor's Design Documents with reasons identifying in what respects the Contractor's Design Documents do not comply with the reasonable requirements of the Principal.

B1.2.6 Consent

The parties acknowledge that:

- (a) if the Superintendent refuses consent to Contractor's Design Documents submitted by the Contractor for consent pursuant to clause B1.2.5(d), the Contractor will resubmit the Contractor's Design Documents amended to take account of the Superintendent's comments and the provisions of clause B1.2.5 will apply again; and
- (b) if for any reason the Contractor wishes to amend any Contractor's Design Document after the Superintendent has consented to its use, the Contractor must resubmit the amended

Design Documents (indicating how it has been amended) for the Superintendent's further consent and clause B1.2.5 will apply again.

- (c) the Contractor's Design Work must be consistent with, and not deviate from:
- (i) any Contractor's Design Document submitted to the Principal as part of, or in connection with, the Contractor's tender;
 - (ii) any Contractor's Design Documents previously prepared and approved or taken to have been approved by the Superintendent for the purposes of the Contractor; and
 - (iii) the Contract and any Drawings and Specifications provided by or on behalf of the Principal;

except to the extent that:

- (iv) the Principal has notified the Contractor that any part of such Contractor's Design Documents are not accepted by the Principal or the Superintendent; or
 - (v) the Principal has agreed in writing to such inconsistency or deviation.
- (d) For the avoidance of doubt, this clause is not intended to limit the operation of clause B1.2.5 and the Principal may reject the Contractor's Design Documents in accordance with clause B1.2.5 any number of times."

B1.2.7 Obligations Unaffected

The Contractor agrees that the requirement for it to obtain the Superintendent's consent to the use of any Contractor's Design Document is not to be taken to impose on the Principal any obligation in respect of the Contractor's Design Work and neither:

- (a) the Superintendent's consent to the use of any Contractor's Design Document; nor
- (b) the Superintendent's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any Contractor's Design Documents;

will relieve the Contractor from any of its obligations or liabilities under the Contract or entitle the Contractor to any Claim.

B1.3 CONSTRUCTION

The Contractor must construct the Works in accordance with the Contractor's construction documents, including, without limitation, the Primary Documents, and the documents specified in clause 1 of the Formal Instrument of Agreement. Without limiting the generality of that obligation, construction must satisfy the requirements of the Primary Documents using the degree of care, skill and diligence required of a reasonable person in the profession of the Contractor who represents that it is a specialist in specialist in civil engineering and the construction of decant mechanisms for sewage treatment plants and which satisfy the Contract in all respects.

B1.4 WARRANTIES

B1.4.1 Contractor Warranties and Acknowledgments

The Contractor warrants and acknowledges (in addition to any other warranties given in the Contract):

- (a) that it is a suitably qualified, experienced and competent specialist civil engineering contractor with relevant experience in civil engineering works, including the engineering and the construction of sewage treatment plants and similar works
- (a) that it will use all due skill, care and diligence in completing the Works and conducting any works under this Contract expected of a reasonable person in the profession of the Contractor who represents that it is a specialist in civil engineering and the construction of sewage treatment plants
- (c) that it has informed itself as to the nature of the Works, including materials, plant and equipment to be supplied;
- (d) that the part of the Works that it designs and constructs will be fit for purpose;
- (e) That, in respect of any part of the Works not referred to in clause B1.4.1(e), that part of the Works has been completed to the necessary standard set out in this Contract and constructed carefully, safely, to a high quality and accurately and correctly in accordance with the design."
- (f) that any personnel engaged by the Contractor to carry out works under the Contract (whether they are employees of the Contractor, sub-contractors or employees of sub-contractors) are competent and have qualifications and experience appropriate to the tasks they will perform under this Contract;
- (g) that any review or acceptance of the Works by the Principal or Superintendent does not relieve the Contractor from responsibility for errors, omissions or failure to comply with the Contract; and
- (h) that the Principal has relied on these representations in entering into the Contract and that the Principal would not have entered into the Contract in the absence of such representations and warranties.

B1.4.2 Express Warranty on Compliance

There will be deemed to be an express warranty by the Contractor that what the Contractor supplies or constructs will meet requirements of the documents specified in the Contract, unless the Contractor has **expressly warned** the Principal in the tender that what the Contractor offers will not meet some or any of these requirements.

B1.5 WORK METHOD

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

Otherwise, the work method is not part of the Contract and the Contractor is free to use any work method, at its own discretion. This is so even though, before or after acceptance of the tender, the Contractor made known to the Principal the Contractor's proposed work method and the Principal accepted or approved it.

If the work method is not part of the Contract, the fact that the proposed work method is impractical or impossible or the Contractor, with or without the approval of the Superintendent, uses another work method will:

- (a) Not entitle the Contractor to make a claim on the Principal;
- (b) Not be grounds for an extension of time for Practical Completion;
- (c) Not cause the Contract to be frustrated.

B1.6 SECURITY OF PAYMENT

B1.6.1 General

In this clause "subcontract" includes an agreement for supply of goods or services (including professional services and plant hire) or both and "subcontractor" includes a supplier of goods or services (including professional services and plant hire) or both.

The Contractor shall ensure that each subcontract, whether written or oral, entered into by the Contractor or any subcontractor in respect of the work under the Contract and which has a value of \$35,000 or more at the commencement of the subcontract, includes provisions in the form or to the effect of the form, as the case may be, of those contained in this clause, including the provisions of this subclause.

B1.6.2 Options as to Form of Security

Each subcontract which -

- (a) requires the subcontractor to provide a cash security to its principal;
- (b) Allows the subcontractor's principal to deduct retention moneys from any payment made by it to the subcontractor; or
- (c) Provides for both (a) and (b) of this subclause.

Shall allow the subcontractor the option at any time to provide an unconditional undertaking or unconditional undertakings in lieu of a cash security or retention moneys. To the extent that the subcontractor provides an unconditional undertaking or undertakings, the subcontractor's principal

shall not deduct retention moneys and shall forthwith release to the subcontractor any retention moneys or cash security then held.

B1.6.3 Trust for Cash Security and Retention Moneys

Each subcontract shall include a provision having the effect that:

- (a) When a party receives or retains security in cash or converts security to cash, that security is held in trust by the security holder from the time of receipt, retention or conversion, as the case may be, and the security holder must forthwith deposit the money into a trust account in a bank selected by that party;
- (b) the moneys shall be held in trust for whichever party is entitled to receive them until they are paid in favour of that party and the security holder shall maintain proper records to account for such moneys; and
- (c) Any interest earned by the trust account shall not be held in trust, and shall be owned by the party holding the security.

If the party holding security has a policy of insurance protecting subcontract payments due to the other party which is equivalent to the HIA Security of Payment Bond, then compliance with (a) to (c) of this subclause is not required.

Whenever requested by the Principal to provide evidence verifying that the Contractor is holding in trust an amount which the Contractor should be holding in trust, the Contractor shall provide evidence to the reasonable satisfaction of the Principal that the amount is held in trust. If the Contractor fails to do so then, in addition to any other remedy which the Principal may have against the Contractor, the Principal may withhold an equivalent amount from payments to the Contractor.

B1.6.4 Payments

- (a) Each subcontract shall include:
 - (i) an obligation for the subcontractor's principal to pay the subcontractor regular progress payments of 100% of the value of work, goods or services provided by the subcontractor less only retention moneys, if any, paid into the trust account referred to in subclause TRUST FOR CASH SECURITY AND RETENTION MONEYS.
 - (ii) An entitlement to progress payments within a period not exceeding,
 - In the case of the Contractor's subcontractors, 35 days;
 - In the case of all other subcontractors, 42 days,After the date upon which a progress claim, which includes work, goods or services provided under the subcontract, is lodged by the Contractor with the Superintendent.
 - (iii) Provisions equivalent to the next two paragraphs of this subclause.

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- (b) Nothing in this subclause shall be read so as to prevent the Contractor from paying a subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in (b) of this subclause.
- (c) If any provision of the first paragraph of this subclause is inconsistent with any other provision in a subcontract, the provisions of the first paragraph shall prevail to the extent of the inconsistency.

B1.6.5 Interest on Overdue Payments

Each subcontract shall include provisions equivalent to Clause 42.7 of the General Conditions of Contract and shall prescribe a rate on interest which is not less than the rate prescribed pursuant to that clause.

B1.6.6 Alternative Dispute Resolution

- (a) Subject to clause B1.6.6(b), each subcontract shall include provisions incorporating the dispute resolution procedures outlined in the Contract except that, in each case, it shall not be mandatory for the subcontractor to pursue the contractual dispute resolution mechanism if the only remedy sought by the subcontractor is an order that the subcontractor's principal pay to it an amount which is not disputed to be due and payable under the subcontract.
- (b) The parties agree that, to the extent of any subcontract entered into by the Contractor, the "alternative required in proceeding with dispute resolution" (as specified in Clause 47.2 of the General Terms and Conditions and located on page 7 of Part A to the General Terms and Conditions) will be Alternative 1 for any subcontract entered into by the Contractor.

B1.6.7 Documents to be provided to Subcontractors

Each subcontract shall include a provision which requires the Contractor to provide to the subcontractor, before the subcontractor commences work under the subcontract, a copy of the following provisions of the Contract between the Contractor and the Principal:

- The provisions equivalent to this clause SECURITY OF PAYMENT.
- The clauses relating to proof of payment of subcontractors, times for payment claims and payment, interest on overdue payments and alternative dispute resolution.

B1.7 TERMINATION FOR THE PRINCIPAL'S CONVENIENCE

The Principal may terminate the Contract by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons. The Contractor must leave the Site by the date stated in the termination notice and remove all plant, equipment and amenities it has brought onto the Site for the construction of the Works.

After termination for the Principal's convenience, the Principal must pay the Contractor:

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- the value of all work carried out (as determined in clause 42) to the date the termination notice takes effect, after taking into account previous payments and any deductions under clause 42
- the cost of materials reasonably ordered by the Contractor for the Works which it is legally liable to accept, but only if on payment the materials become the property of the Principal, free of any encumbrance
- the reasonable, direct costs of removal from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs
- an amount of 2% of the unpaid portion of the Contract Price and
- Costs reasonably incurred by the Contractor in the expectation of completing the Works and not included in any other payment by the Principal.

The Principal must return the security, subject to its rights under the Contract.

The payments to the Contractor referred to in this clause are full compensation for termination under this clause, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

The Contractor must, wherever possible, include in all subcontracts and supply agreements an equivalent provision to this clause.

B1.8 LATENT CONDITIONS

For the purposes of the definition of "Latent Conditions" in clause 12.1, the following conditions will not be considered as Latent Conditions:

- I. Ground Water,
- II. Known Underground services that have been identified in the Contract Documents, on the drawings or are as shown WAE drawings.

B1.9 PRELIMINARIES

For the avoidance of all doubt, the Preliminaries contained in clauses 2 – 8 (inclusive) of the *"Part 1A Tender Requirements and Preliminaries"* are incorporated as special conditions to the General Conditions of Contract.

B1.10 WITNESS AND HOLD POINTS

For the avoidance of doubt, the follow applies to the Witness and Hold Point process described in *"Part 1A Tender Requirements and Preliminaries"*:

- (a) The Principal will be entitled to carry out any inspection or testing as it may require to determine whether or not the Works, or any part thereof, that are the subject of a Hold Point have been constructed in a proper and workmanlike manner and are compliant with the Specifications and Contract.

- (b) Upon the Contractor achieving a Hold Point identified in the Contract, the Contractor will provide the Principal with notice of that event. Within 3 days of the contractor issuing such notice, the Principal must inspect the work subject of the Hold Point and provide written notice ("**Hold Point Notice**") to the Contractor that will contain the following information:
 - (i) whether or not the relevant Hold Point has satisfied the requirements of the Contract;
 - (ii) if the Hold Point has satisfied the requirements of the Contract, confirmation that the Contractor can proceed to the next stage of the Works;
 - (iii) if the relevant Hold Point has not satisfied the requirement of the Contract, particulars of the non-conformance and details of any rectification works that need to be completed by the Contractor in order to satisfy the Hold Point;
- (c) If the Hold Point Notice requires further rectification works to be completed, the Contractor will have a period of 30 days from the date of the Notice to complete those works.
- (d) If the Contractor does not complete the rectification works in accordance with the Hold Point Notice, the Principal may suspend the Works.
- (e) The Contractor will not proceed to the next stage of the Works until it has received the Hold Point Notice from the Principal confirming that the relevant Hold Point has been satisfied.
- (f) If Works are carried out prior to the Principal issuing a Hold Point Notice confirming that approval has been granted, the Principal will be entitled to suspend the Works and require that the Contractor rectify the Works in order to satisfy the Hold Point.
- (g) Any approval provided to the Contractor by the Principal to proceed to the next stage of Works following satisfaction of a Hold Point under this Agreement does not:
 - (i) prevent the Principal from directing the Contractor to conduct rectification works to items that have been compliant under an earlier Hold Point Notice; or
 - (ii) lessen or otherwise affect the Contractor's obligations under the Contract or otherwise according to law; or
 - (iii) in any way impose any obligation or responsibility on the Principal for any error, omission or failure on behalf of the Contractor to comply with the requirements of this Contract or any other law.

B1.11 MANUFACTURER'S WARRANTIES

Prior to the issue of the Certificate of Practical Completion, the Contractor will prepare a list and supply details of the manufacturer or supplier warranties or guarantees provided in respect of the items of mechanical or electrical equipment and any other ~~all~~ guarantees or warranties which have been incorporated into the Works, including guarantees and warranties that are obtained by sub-

contractors of the Contractor. The Contractor must ensure that these guarantees and warranties are assigned by the supplier to the Principal or that the Principal will have the benefit of these guarantees and warranties, from the Date of Practical Completion and end no earlier than the expiration of the Defects Liability Period, or any other minimum statutory period. The issue of a Certificate of Practical Completion is subject to the Contractor satisfying the requirements of this clause.

B1.12 WORKPLACE HEALTH AND SAFETY

For the avoidance of all doubt, the Contractor will be responsible for Workplace Health and Safety in relation to the Works and the Site and will comply with all relevant legislation, industry codes of practice, safety standards and guidelines and the Contractor will be liable for and indemnify the Principal in relation to any failure to comply or breach of its obligations.

B1.13 ACCESS

The Contractor shall ensure the Principal, the Superintendent and their agents and anyone else nominated by the Superintendent are allowed to access any place where any part of the Works is situated or any of the Work under the Contract is being carried out (including at a location other than the Site), for the purposes of inspection, testing and operation of the Sewage Treatment Plant.

B1.14 INTELLECTUAL PROPERTY

- (a) Title to and ownership of all Intellectual Property Rights in relation to the Works or all other Contract material, Drawings and Specifications in connection with the Works will, upon its creation, vest in the Principal.
- (b) For the purpose of this clause B1.15, **Intellectual Property (IP) Rights** means all rights, including copyright, in all inventions, models, designs, drawings, plans, specifications, software, reports, proposals and other materials created or generated by either Party under this Contract (whether alone or otherwise, its other employees or contractors) for use in relation to, or in any way connected to, the project or the Works;

B1.15 PRECEDENCE OF CONTRACT DOCUMENTS

- (a) Notwithstanding any other term of this Contract, the priority or precedence of the Contract Documents will be set out in the Formal Instrument of Agreement.
- (b) For the avoidance of doubt, to the extent any conflict exists within or between parts of the Contract Documents in relation to quality standards including legislation, codes or standards applicable to the Contractor's performance of the Works, the most stringent provision of such contract term, legislation, codes or standards will prevail.

B1.16 CERTAIN CONTRACT RISKS, DELAY AND PAYMENT

- (a) The parties acknowledge and agree that the works under the Contract, and the Site, include the following specific risks:

[INSERT]

- (b) Despite any other provision of this Contract, an event arising from, or in connection with, a risks specified in the preceding subclause B1.16(a) will not permit or authorise the Contractor to claim: a Variation; any extension of time including under clause 35; or a claim for additional payment or costs including under clause 36, whether or not the Contractor have evidence that the event was beyond its reasonable control.
- (c) In addition, for the purposes of clauses 35.5 and 36 of the Contract, despite any provision to the contrary, the Contractor may only make a claim in connection with an event which causes delay to an activity or activities on the critical path of the then current Contract Program and provided that works under the Contract are proceeding in accordance with this Program.

B1.17 NO FETTER OF DISCRETION OR REGULATORY POWERS

- (a) The Principal is a county council and enters into this Contract in its services capacity and not in exercise of any regulatory function or power. If the Principal exercises a regulatory function or power, it will be taken to be a third party to this Contract.
- (b) This Contract, will not preclude or pre-empt the exercise by the Principal of any regulatory function or power.
- (c) This Inspection Agreement will not fetter, in any way, any discretion that the Principal is entitled to exercise as a regulatory authority.
- (d) The Principal will not be responsible to the Contractor for any loss that the Contractor suffers, including consequential loss and loss of profits, as a result of any exercise, or proposed exercise of the Principal's regulatory powers or discretion.

B1.18 RELEASE AND INDEMNITY

- (a) To the extent permitted by law, except as provided at subclause (b) below:
 - (i) the Contractor's liability to the Principal arising out of or in connection with this Contract or the subject matter of this Contract shall be the amount of the Contract Sum;
 - (ii) the Principal's liability to the Contractor arising out of or in connection with this Contract or the Subject matter of this Contract shall be the amount of the Contract Sum;
- (b) Nothing in subclause (a) excludes or limits a party's liability in in respect of the following (whether by an act or omission of that party or its employees, agents or subcontractors):
 - (i) the death or personal injury of any person;
 - (ii) third-party property damage;
 - (iii) breach of an Intellectual Property Right;
 - (iv) fraud or willful default;

- (v) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of the loss sustained or liability incurred; or
- (vi) the Contractor's liability for any breach of a Workplace Health and Safety law; and
- (vi) liability out of which at law the Contractor cannot contract.

B1.19 Inclement weather

For the avoidance of doubt, "inclement weather" will:

- (a) Only permit the Contractor to make a claim for an extension of time for Practical Completion of a Separable Portion under clause 35.5, if the Contractor is able to provide evidence that such inclement weather reasonably has caused a delay to an activity or activities on the critical path of the then current Construction Program and work is proceeding in accordance with this Program; and
- (b) Not permit any claim for a Variation or any extra payment under clause 36 or otherwise.

B1.20 COVID-19

B1.20.1 Definitions

- (a) **Change in COVID-19 Law** means a COVID-19 Law which:
 - (i) comes into effect, or ceases to be in effect, after the day being 14 days prior to the Contract Date.
 - (ii) necessitates, or results in, a change in the Works or the Contractor's method of working; and
 - (iii) directly results in an increase or decrease in the Costs incurred by the Contractor in carrying out the Works.
- (b) **Costs** means costs necessarily incurred excluding corporate overhead and profit.
- (c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or other variant or strain.
- (d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.
- (e) **COVID-19 Law** means in relation to New South Wales or the Commonwealth of Australia:
 - (i) an act of parliament or statute; and
 - (ii) any subordinate legislation, rules, regulations, directions or by-laws, made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and
 - (iii) any document or policy issued under such legislation or delegated legislation which is made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Contractor is legally required to comply.

- (f) **COVID-19 Relief Event** means:
- (i) a Change in COVID-19 Law;
 - (ii) a suspension by the Principal under clause B1.20.5; or
 - (iii) a delay arising after the day being 14 days prior to the Contract Date caused as a direct result of COVID-19 which:
 - A. has an adverse effect on the supply of Labor, equipment, or materials required for the Works; and
 - B. is not related to a COVID-19 Law.
- (g) **Works** means the works to be carried out under the Contract, including temporary works.

B1.20.2 COVID-19 EFFECTS

- (a) The parties acknowledge and agree that the Contractor is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known) as at the day being 14 days prior to the Contract Date.
- (b) The Contractor must:
- (i) proactively monitor potential COVID-19 Effects and give monthly reports to the Principal on the potential or actual COVID19 Effects and the steps being taken by the Contractor to avoid or reduce those effects irrespective of whether the Contractor intends to make a claim;
 - (ii) use its reasonable endeavours and take reasonable steps to mitigate COVID-19 Effects;
 - (iii) where an entitlement to time or Costs arises under this clause B1.20, provide all supporting documentation reasonably requested by the Principal (including programming and costing information) on an open and transparent basis; and
 - (iv) include in all subcontracts relief for COVID-19 Effects that is equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subcontractors have been duly paid by the Contractor to the relevant subcontractors.
- (c) The Contractor must promptly give notice to the Principal if the Contractor becomes aware of any potential or actual COVID-19 Effects which may:
- (i) delay or disrupt the Works;
 - (ii) increase or decrease the costs of carrying out the Works; or
 - (iii) otherwise have an adverse effect on the Contract, including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.
- (d) To the extent the Contractor is entitled to relief under this clause B1.20, relief applies only from the date notice is given by the Contractor under clause B1.20.2(c) (other than relief for the period between the day being 14 days prior to the Contract Date).

- (e) If there is a Change in COVID-19 Law, the Principal must pay the Contractor, or the Contractor must pay the Principal, as the case may be, the amount of the increased or decreased Costs (as applicable) in carrying out the Works which directly resulted from the Change in COVID-19 Law.
- (f) The Contractor's entitlement to be paid increased Costs under this clause B1.20 is reduced by the extent to which:
 - (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under clause B1.20.2(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (g) The Superintendent will determine the amount payable under clause B1.20.2(e), acting reasonably.
- (h) The Contractor must provide all supporting documentation reasonably requested by the Superintendent (including costing information) to enable a determination to be made under this clause B1.20.

B1.20.3 Extension of Time

- (a) If:
 - (i) the Contractor is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;
 - (ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and
 - (iii) the Contractor gives the Principal a claim for an extension of time within 14 days of when the Contractor became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay, the Contractor will be entitled to an extension of time for Practical Completion equal to the period of delay.
- (b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under clause B1.20.3(a)(iii), the Contractor may submit further claims every 14 days.
- (c) The Contractor's entitlement to an extension of time is reduced by the extent to which the Contractor could have avoided or reduced the delay by taking reasonable steps under clause B1.20.2(b)(ii).
- (d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.
- (e) The Principal will determine the period of the extension of time under this clause B1.20.3, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this B1.20.

B1.20.4 Delay Costs

- (a) Subject to clause B1.20.4(b), the Contractor will be entitled to the additional Costs that it has incurred in respect of the period of the extension of time granted under clause B1.20.
- (b) The Contractor will only be entitled to the Costs incurred in demobilising and remobilising the Contractor's personnel, subcontractors and equipment if there is a suspension under clause B1.20.5.
- (c) The Contractor's entitlement to be paid Costs under clauses B1.20.4(a) or B1.20.4(b) is reduced by the extent to which:
 - (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under clause B1.20.2(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (d) The Principal will determine the amount of Costs payable under this clause B1.20.4, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this clause B1.20.4.

B1.20.5 Suspension for COVID-19

- (a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Contractor to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.
- (b) As soon as the reason for any suspension no longer exists, the Principal must notify the Contractor in writing.
- (c) Upon notice from the Principal, the Contractor must recommence performance of the Works as soon as reasonably possible.
- (d) The Contractor must ensure that its subcontracts contain a suspension clause on the same terms as this clause B1.20.5.

B1.20.6 Limit to Contractor's Rights

- (a) The Contractor's entitlements under this clause B1.20 are the Contractor's sole remedy in respect of COVID-19 Effects and under no circumstances will the Contractor be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any

- redundancies or any other economic loss.
- (b) Except for a breach of this clause by the Principal, the Contractor is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Contractor against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID-19 Effects.

B1.20.7 Application in the event of another pandemic

- (a) The parties acknowledge and agree that the terms of this clause will apply in circumstances where the World Health Organisation declares that a pandemic is in existence and in that case the words "COVID19" in this clause will be replaced with the name of that other virus and the clause will operate accordingly.

B1.21 Manuals, Approvals and Warranties required for Practical Completion

The parties agree to amend **Clause 42 (Certificates and Payments)** by adding the following new **Clause 42.5A** immediately after the existing **Clause 42.5 (Certificate of Practical Completion)**:

"42.5A Matters to be attended to for Practical Completion

- (a) Notwithstanding any term of the contract and in addition to any other items that must be delivered prior to a Certificate of Practical Completion being issued, the Contractor shall deliver to the Principal the following:
- (i) Originals of complete operating and maintenance manuals for all plant and equipment forming part of the Works;
 - (ii) completed process control, automation, instrumentation documentation in accordance with the requirements of the Primary Documents, including any required circuit diagrams, PLC, HMI and SCADA software;
 - (iii) all notices, permits, approvals and certificates required to be obtained from relevant authorities;
 - (iv) all shop drawings and as built drawings as required by the Contract or requested by the Superintendent;
 - (v) all original warranties;
 - (vi) evidence of compliance with all relevant aspects of the quality assurance system including, but not limited to, having undertaken all final inspections and testing of the Works required by that system and completed inspection and test plans and test results; and

- (vii) any other documents or items required in the Primary Documents or this Contract.
- (b) The parties acknowledge and agree that:
 - (i) A Certificate of Practical Completion will not be issued unless each of the items at Clause 42.5A(a) are delivered to the Principal; and
 - (ii) Each of the items at clause 42.5A(a) are 'documents and other information required under the Contract which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the works' in accordance with clause 2 of the General Conditions of the Contract.
 - (iii) For the avoidance of doubt, this clause is not intended to limit any other clauses or obligations of the contract to deliver items or to complete or commission the works.

B1.22 Security and Retention

B1.22.1 Amendments to contract terms

The parties agree to amend the contract terms as follows:

- (a) Clause 5.2 is deleted and replaced with the following:

"5.2 Provision of Security

- (a) The parties agree that the Contractor will pay the retention moneys as provided in Annexure A, to be progressively deducted by the Principal from moneys otherwise due to the Contractor under each payment claim pursuant to clause 42.3.
- (b) The Contractor must maintain any retention moneys and immediately restore any amount claimed after an amount has been paid to the Principal following a claim, conversion or demand under this Contract.
- (c) On or before 28th February 2024 the Contractor must deliver to the Principal two (2) unconditional undertakings given by an approved financial institution or insurance company in a form approved by the Principal to each be for 2.5% of the Contract Sum ("bank guarantees"), so that the total bank guarantees will be equal to 5% of the Contract Sum.
- (d) Within 7 days of receiving satisfactory bank guarantees, the Principal will release the retention moneys to the Contractor, less the amount of any retention or security that has been claimed or converted prior to that date.
- (e) The parties acknowledge and agree that this clause does not, in any way, limit or affect the Principal's rights to claim or convert security or retention moneys under this Contract."

- (b) Clause 5.6 is deleted and replaced with the following:

“5.6 Substitution of Security for retention moneys

Subject to the prior written consent of the Principal (which consent shall not be unreasonably withheld), the Contractor may, at any time provide the bank guarantees in accordance with clause 5.2(b). Within 7 days of receiving satisfactory bank guarantees, the Principal will release the retention moneys to the Contractor, less the amount of any retention or security that has been claimed or converted prior to that date.”

- (c) Clause 5.9 is deleted and replaced with the following:

“5.9 Interest on Security and Retention Moneys

The Principal does not hold any Security, or any retention moneys on trust. The Principal is permitted to hold any retention money as part of its general unallocated cash reserves or in any similar manner. The Principal will own any interest earned on retention moneys.

If the Principal converts any Security into money, any interest earned on those moneys will be retained by the Principal, except that if the Principal is required to repay any of those moneys to the Contractor, the Principal will also pay to the Contractor, any interest earned by the Principal on the repaid moneys.”

- (d) Clause 42 (Certificates and Payments) is amended by adding the following new **Clause 42.3A** immediately after the existing Clause 42.3 (Retention Moneys):

“42.3A Interest in Retention Moneys

Despite any other provision of the Contract:

- (a) the Contractor has no right, title or interest in or in respect of retention moneys or other amounts withheld by the Principal under the Contract;
- (b) the Contractor must not register any security interest (including under the Personal Property Securities Act 2009) in respect of the retention moneys or Security; and

- (c) the retention moneys or other moneys withheld comprise amounts of consideration under the Contract in respect of which the Principal has no payment or other obligations,

until those retention moneys or other amounts withheld are required to be paid to the Contractor pursuant to this Contract.”

B1.23 Suspension for Separable Portions

Without limiting the Principal’s rights under special condition B1.7 (Termination For The Principal’s Convenience), if the Superintendent is not satisfied, in respect to a Separable Portion, that the Contractor will not be able to complete the works required under that Separable Portion 2 before the Date for Practical Completion for that Separable Portion, the Superintendent may direct the Contractor to suspend the progress of the whole or part of the work under that Separable Portion for such time as the Superintendent thinks fit, to a maximum period of 12 months. In respect of such suspension, the provisions of clause 34 (Suspension of the Works) apply, with necessary changes to that clause 34 being made to suit the current context of this clause.

B1.24 Urgent Protection

Notwithstanding any other provision of this Contract, considering that the works under this Contract are being undertaken to the “Hawks Nest Sewerage Treatment Plant”, if any circumstances arise where the Hawks Nest STP require protection to maintain its operation in the public interest and/or legislative requirement, and the Contractor fails or is unable to take the action required, the Principal may take the necessary action on the same basis as an “urgent protection” under clause 39.

B1.25 Workers Compensation Insurance

Clause 20 (Insurance of Employees) is deleted and replaced with:

“Before starting work in connection with the Contract, the Contractor must effect any insurance required in accordance with the Annexure Part A, including as follows:

Workers compensation and related liability insurance in accordance with the requirements of the Workers Compensation Act 1987 (NSW) and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;

The Contractor must ensure that every Subcontractor, Supplier and Consultant is insured for workers compensation and related liability in accordance with the requirements of the Workers Compensation Act 1987 (NSW) at all times.

B1.26 Motor vehicle insurance

If any work in connection with the Contract includes the use of motor vehicles of any kind, third party property damage policies of insurance, or policies of insurance that include cover for third party property damage, to cover the use of such vehicles by the Contractor as specified in the Annexure Part A.

Insurance against any injury to third party or third parties under a Compulsory Third Party insurance as required by the *NSW Motor Accidents Act 1988*.

Insurance against loss of or damage to any property whatsoever caused by the use of the vehicle when being driven by the Contractor, its employees or any person not employed by the Contractor. The policy shall have a limit of indemnity of the amount specified in the Annexure Part A and shall be extended to include "Bodily Injury Gap: cover and shall note the interest of the Principal as insured.

Any damage arising as a result of the plant being used as a "tool of trade" is to be covered by either an extension of the Contractor's Comprehensive Motor Vehicle Insurance or the liability endorsed onto the Contractor's Public Liability Insurance.

B1.27 Professional Indemnity Insurance

Professional Indemnity Insurance for a limit for any one claim of not less than the amount indicated in the Annexure Part A. The policy shall be maintained from the completion of the Contract for a period of seven (7) years from the completion of the Contract.

The policy shall include the following extensions:

- Unlimited retroactive date
- Automatic reinstatement clause
- Libel and slander
- Consultant's clause
- Cross liability clause
- Principal's clause
- *Trade Practices Act* (Commonwealth) and Equivalent Fair Trading Acts (State) Clause.

B1.28 Fidelity Insurance

Insurance against the loss of monies or other property belonging to the Principal because of dishonesty or fraud of the Supplier or any other entity or persons for whose actions the Supplier is liable.

**END OF SECTION - GENERAL CONDITIONS OF CONTRACT
AND ANNEXURE**