



GENERAL CONDITIONS OF CONTRACT
FOR
ROAD AND BRIDGE WORKS
1994

comprising

PART A1: General Conditions of Contract NPWC-RC

PART A2: Supplementary General Conditions of Contract RC

VERSION	DATE	AMENDMENT DESCRIPTION	APPROVED BY
Version 9	September 2019	Amendments to Clause S15 Principal Arranged Construction Risks Insurance	Director Procurement Services
Version 8	January 2008	Front page and amendment to S15	Manager Contract Services
Version 7a	February 2006	Security, Notices, Approval to Subcontract	Manager Contract Services
Version 7	March 2003	Security of Payment	Manager Contract Services
Version 6	November 2002	Approval to Subcontract	Manager Contract Services
Version 5	October 2002	Principal Arranged Insurance	Manager Contract Services
Version 4	May 2002	Privacy Clause	Manager Contract Services
Version 3	March 2002	Moral Rights Clause	Manager Contract Services
Version 2	June 1999	Amendments to S4	Manager Contract Services
Version 1	June 1994		Manager Contract Services

PART A1: GENERAL CONDITIONS OF CONTRACT NPWC-RC

PREAMBLE

These General Conditions of Contract NPWC-RC are based on the General Conditions of Contract NPWC Edition 3 (1981) published by the National Public Works Conference but include the following changes whereby particular Roads Corporation terminology has been substituted and particular expressions and provisions inappropriate to Roads Corporation practice and requirements have been deleted or adjusted. Contractors are advised to read the document in full and not rely upon the following notes as an accurate guide to the changes, or the effect of the changes, when read together with the General Conditions of Contract NPWC3.

Clause 2 : Interpretation

The following expressions have been deleted:

"Bill of Quantities" and "Priced Bill of Quantities"
"the Principal".

The words "and the marginal notes" have been inserted in the second paragraph.

The Contractor is referred to the Supplementary General Conditions of Contract RC for further definitions.

Clause 4 : Bill of Quantities

This clause has been deleted and the space reserved.

Clause 6 : Evidence of Contract

A new Sub-clause 6.3 has been added which sets out the precedence of documents.

Clause 8 : Documents Generally and Drawings and Specification

In Sub-clause 8.3, reference to Bill of Quantities has been deleted.

Clause 9 : Assignment and Subcontracting

In sub-paragraph (a) of Sub-clauses 9.2 and 9.3, the word "Principal" has been replaced, wherever appearing, by the word "Superintendent".

Clause 10 : Nominated Subcontractors

This clause has been deleted and the space reserved.

Clause 11 : Adjustment of Provisional Sums and Provisional Quantities

Sub-clauses 11.3 and 11.4, provisional sums related to nominated subcontractors, have been deleted.

Clause 12 : Contractor to Inform Himself

In sub-paragraph (a) of the first paragraph, reference to Bills of Quantities has been deleted.

Clause 13 : Royalties, Patent and Other Industrial Property Rights and Fees

The existing clauses have been re-numbered as 13.1. Sub-paragraph (b) of the third paragraph has been deleted. A new Clause 13.2 has been inserted covering intellectual property arising in the course of the Works. A new Clause 13.3 has been inserted covering moral rights.

Clause 17 : Insurance of the Works

The words "Unless otherwise provided in the Annexure," have been inserted at the start of the first paragraph. A new final paragraph has been included, regarding waiver of subrogation.

Clause 18 : Property Damage and Public Risk

This clause has been deleted and the space reserved. Property Damage and Public Risk are now included in S14.

Clause 19 : Public Liability Insurance

This clause has been deleted and the space reserved. Principal Arranged Construction Risks Insurance is now included in S15.

Clause 21 : Insurance of Employees

The last paragraph at the end of the clause has been amended to reflect the introduction of the Workplace Injury Rehabilitation and Compensation Act 2013 which replaces the Accident Compensation Act 1985.

Clause 22 : Evidence of Insurance

New Clause 22.2 has been added to cover further WorkCover obligations.

Clause 24 : Superintendent's Representatives

Paragraph three limiting delegation of a particular authority to one person has been deleted. A new third paragraph has been inserted to cover conflicting instructions by delegates.

Clause 25 : Contractor's Representatives

In the first paragraph, the word "Principal" has been replaced by the word "Superintendent".

Clause 31 : Examination and Testing of Materials and Work

This clause has been deleted and the space reserved. Quality System and Inspection of Materials and Work are now included in S8.

Clause 34.2 : Suspension by Superintendent

In the twelfth line, "shall" has been deleted and "may (but shall not be obliged to)" inserted. The clause now provides that the Superintendent "may (but shall not be obliged to)" order a suspension.

Clause 37.4 : Tests on Remedial Work

In the third line, reference to "Clause 31" has been deleted, and "Clause S8" inserted.

Clause 40 : Variations

In Sub-clause 40.2, references to Priced Bill of Quantities have been deleted. Reference is to Schedule of Rates or Schedule of Prices.

Clause 42 : Certificates and Payments

This clause has been deleted and the space reserved. Payment Claims and Payment Schedules are covered in Clause S17.

Clause 43: Payment of Workmen's Wages and Allowances

This clause has been deleted and the space reserved. Security of Payment is covered in Clause S18

Annexure :

The items relating to nomination of Principal (Clause 2) and of time for lodgement of the priced copy of the Bill of Quantities (Sub-clause 4.1) have been deleted.

In the item relating to nomination of the Superintendent, the reference to Clause 2 has been replaced by reference to Clause S2 of the Supplementary General Conditions of Contract RC.

The Annexure has been relocated to follow the Supplementary General Conditions of Contract RC.

General :

Wherever else appearing, the word and expression "Principal", has been replaced by the word and expression "Corporation".

Wherever appearing relative to the Principal, the words "he", "himself", "his" and "him" have been replaced by the words "it", "itself", "its" and "it" respectively relative to the Corporation.

Marginal notes have been added to indicate some of the relevant clauses of the Supplementary General Conditions of Contract RC but the Contractor should not rely on these marginal notes as indicating all of the relevant clauses.

The Table of Contents and Index have been changed to accord with the foregoing changes.

The Supplementary General Conditions of Contract RC are to be read as supplementary to these General Conditions of Contract NPWC-RC.

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See also
clause S1

1. CONSTRUCTION OF CONTRACT

The Contract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory named in the Annexure hereto.

All prices and sums of money and all payments made under the Contract shall be in Australian currency and payments shall be made at the place named in the Annexure hereto.

All communications between the Corporation, the Superintendent and the Contractor shall be in the English language.

All measurements of physical quantities shall be in Commonwealth legal units of measurement within the meaning of the Weights and Measures (National Standards) Act 1960 as amended from time to time.

See also
clause S2

2. INTERPRETATION

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

"clause" means clause of these General Conditions of Contract and "sub-clause" means the relevant sub-clause of the clause indicated by the context;

"Constructional Plant" means all plant, motor vehicles, appliances and things (including scaffolding, formwork and the like) of whatsoever nature used or in use in or about the execution of the work under the Contract but does not include materials, plant, equipment or other things intended to form or forming part of the Works;

"contract sum" means:

- (a) where payment is to be made on a Lump Sum basis, the sum which is stated in the Contract to be payable to the Contractor for the execution of the work by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (b) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the products of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (c) where payment is to be made on a Lump Sum and a Schedule of Rates basis, the aggregate of the sums referred to in paragraphs (a) and (b);

but excluding any additions or deductions which may be required to be made pursuant to the Contract;

"date of acceptance of tender" means the date which appears upon the notice in writing of acceptance of the Contractor's tender issued by the Corporation or upon the acceptance in writing by either party of an offer (including a counter-offer) for the execution of the work under the Contract and the performance of the obligations of the Contractor under the Contract;

"Drawings" means the drawings referred to in the Specification and any modification of such drawings notified to the Contractor by the Superintendent and includes such other drawings as may from time to time be supplied to the Contractor by the Superintendent, or the use of which has been permitted by the Superintendent, for the purposes of the Contract;

"final contract sum" means the total sum which, subject to the provisions of the Contract, will have become payable to the Contractor by the Corporation upon the completion of the work under the Contract and the performance of the obligations of the Contractor under the Contract;

"month" means calendar month;

"person" includes a firm or body corporate or unincorporated as well as an individual;

"Practical Completion" is that stage in the execution of the work under the Contract when:

- (a) the Works or a separable part of the Works, as the case may be, are complete except for minor omissions and minor defects -
 - (i) which do not prevent the Works or that separable part of the Works from being reasonably capable of being used for its intended purpose, and
 - (ii) in relation to which the Superintendent determines that the Contractor has reasonable grounds for not promptly rectifying them, and
 - (iii) rectification of which will not prejudice the convenient use of the Works or of that separable part of the Works, and
- (b) those tests which are required by the Contract to be carried out and passed before the Works or the separable part of the Works, as the case may be, are handed over to the Corporation have been carried out and passed, and
- (c) such 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 have been supplied;

"Schedule of Rates" means any schedule 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, contingency sums, other sums, quantities and prices;

"separable part of the Works" means a part of the Works specified in the Specification or Drawings as a separable part;

"site" means the lands and other places to be made available and any other lands and places made available to the Contractor by the Corporation for the purpose of the Contract;

"Specification" means the Specification for work to be carried out as existing at the date of acceptance of tender and any modification of such Specification thereafter directed or the use of which has been permitted by the Superintendent pursuant to his powers in that behalf contained in the Contract;

"Superintendent's Representative" means a person appointed in writing from time to time by the Superintendent pursuant to Clause 24;

"Temporary Works" means the works on the site (other than Constructional Plant) which are required for the execution of the work under the Contract but which do not form part of the Works to be handed over to the Corporation;

"the Contract" means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Corporation and the Contractor concerning the execution of the work under the Contract;

"the Contractor" means the person who as party to the Contract is bound to execute the work under the Contract in accordance with the Contract and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns;

"the Works" means the whole of the work to be executed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract are to be handed over to the Corporation;

"work under the Contract" means the work which the Contractor is or may be required to execute under the Contract and includes all variations, remedial work, Constructional Plant and Temporary Works.

The clause headings and sub-clause headings and the marginal notes in these General Conditions of Contract shall not be deemed to be part thereof and shall not be used in the interpretation or construction thereof or of the Contract.

Words in the singular shall include the plural and words in the plural shall include the singular, according to the requirements of the context.

Words importing the masculine gender shall include the feminine gender or the neuter gender, as the case may require.

The Contractor is referred to the Supplementary General Conditions of Contract RC for further definitions.

3. NATURE OF CONTRACT

3.1 Description

The Contractor shall be paid either on a Lump Sum basis or on a Schedule of Rates basis or partly on a Lump Sum basis and partly on a Schedule of Rates basis as stated in the Annexure hereto.

Sub-clause 3.2 shall apply to payments on a Lump Sum basis and Sub-clause 3.3 shall apply to payments on a Schedule of Rates basis.

Unless otherwise stated in the Contract, the Contract shall not be subject to adjustment for rise and fall in costs.

See also
clause S3

3.2 Lump Sum

- (a) Where payment is to be made on a Lump Sum basis the Contractor shall execute the work and perform his obligations under the Contract and the sum payable by the Corporation to the Contractor therefor shall be the lump sum accepted by the Corporation adjusted by any additions or deductions pursuant to the Contract.
- (b) A Bill of Quantities shall not form part of the Contract except to the extent provided for in the Contract.

See also
clause S10

3.3 Schedule of Rates

- (a) Moneys Payable

Where payment is to be made on a Schedule of Rates basis the Contractor shall execute the work and perform his obligations under the Contract and the Corporation shall pay the Contractor for the measured quantity of each section or item of work actually carried out under the Contract at the rate therefor set out in the Schedule of Rates as adjusted by any additions or deductions pursuant to the Contract.

The rates and lump sums in the Schedule of Rates are deemed to include the cost of the whole of the work under the Contract, services and other incidentals associated with or necessary for the execution of the work under the Contract and the performance of the obligations of the Contractor under the Contract. Where a section or item does not appear in the Schedule of Rates the cost thereof shall be deemed to be included in the rate or price for the section or item associated with that section or item but where there is no section or item associated with that section or item the cost thereof shall be deemed to be included in the rates or prices generally. Where any section or item in the Schedule of Rates is unpriced by the Contractor all costs applicable to that section or item shall be deemed to be included elsewhere in the Schedule of Rates.

An order shall not be required to be given by the Superintendent by reason of the actual quantity of a section or item being greater than or less than the quantity shown in the Schedule of Rates for that section or item.

- (b) Quantities

The quantities in the Schedule of Rates issued by the Corporation are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out.

- (c) Adjustment of Rate

When limits of accuracy are set out in the Contract, if the actual quantity of a section or item of work carried out proves to be greater than the upper limit or less than the lower limit of the limits of accuracy set out in the Contract either party to the Contract may notify the other party to the Contract in writing that he considers that in respect only of quantities greater than the upper limit or less than the lower limit of the limits of accuracy set out in the Contract an adjustment in the rate for that section or item should be made, setting forth his reasons therefor. Any adjustment to the rate shall be as agreed between the Contractor and the Superintendent or, in the event of failure to agree, as determined by the Superintendent PROVIDED HOWEVER that if the actual quantity is greater than the upper limit of the limits of accuracy set out in the Contract the Superintendent may direct that the portion of the section or item of work which is greater than that upper limit shall be carried out by the Contractor as Daywork and payment will be made as for Daywork under Sub-clause 40.3.

4. RESERVED

5. SECURITY RETENTION MONEYS AND OTHER PERFORMANCE UNDERTAKINGS

5.1 Purpose

Security, retention moneys and performance undertakings shall, when the same or any of them are required, be provided and given for the purpose of ensuring the due and proper performance of the Contract and of satisfying the obligations of the Contractor under the Contract.

5.2 Provision of Security

If security is required the Contractor shall provide it in accordance with this clause in the amount set out in the Annexure hereto.

5.3 Form of Security

See also
clause S3A

The security shall be in the form of cash, Government Bonds or Inscribed Stock, or an unconditional undertaking or certificate in a form approved in writing by the Corporation and given by a bank approved in writing by the Corporation.

If the security is not transferable by delivery it shall be accompanied by an executed transfer thereof to the Corporation and the costs and expenses (including all stamp or other duties) of and incidental to the said transfer shall be borne and paid by the Contractor.

5.4 Time for Lodgement of Security

The security shall be lodged by the Contractor with the Corporation within fourteen days after the date of acceptance of tender or within such further time as is approved in writing by the Corporation.

Failure on the part of the Contractor to lodge the security within the time so allowed is to be deemed to constitute a breach going to the root of the Contract so that notwithstanding anything to the contrary in the Contract:

- (a) if it so elects the Corporation may give to the Contractor a notice in writing that the Corporation treats itself as discharged from all further obligations on its part under the Contract; and
- (b) it may:
 - (i) institute proceedings in any court of competent jurisdiction to recover any damages that it may have sustained by reason of the breach;
 - (ii) exercise all or any other rights or remedies conferred on it whether at Common Law or under the provisions of the Contract.

5.5 Conversion of Security

If the Corporation becomes entitled to exercise all or any of its rights under the Contract in respect of the security the Corporation may convert into money the security that does not consist of money. The Corporation shall not be liable for any loss occasioned by such a conversion.

5.6 Retention Moneys

Any retention moneys will be retained by the Corporation from moneys due under progress certificates issued by the Superintendent pursuant to Sub-clause S17.1.

5.7 Reduction of Security and Retention Moneys

The Corporation may, at any time after the Superintendent has issued a Certificate of Practical Completion under Sub-clause S17.2 in respect of the Works or a separable part of the Works, make or allow a reduction of the amount of the security or the retention moneys by an amount which, in its opinion, is just and equitable PROVIDED HOWEVER that the reduction shall not reduce the amount of the security and retention moneys below fifty per centum of the security and retention moneys held by the Corporation at the time the reduction is made or allowed by it.

Any reduction under this sub-clause shall not operate so as to waive, prejudice, release or discharge any of the conditions of the Contract or any of the obligations imposed on the Contractor by the Contract.

5.8 Release of Security and Retention Moneys

The Corporation shall account to the Contractor for the security and any retention moneys as provided in Sub-clause S17.6, subject to the rights of the Corporation under the Contract.

5.9 Interest on Security

Interest will not be payable by the Corporation on any cash security or on the cash proceeds of any security converted into money pursuant to Sub-clause 5.5 or on any retention moneys.

5.10 Deed of Guarantee, Undertaking and Substitution

Where the Contractor is a corporation that is a subsidiary of another corporation or is a corporation that is related to another corporation, the Contractor shall, if so requested in writing by the Corporation, lodge with the Corporation at the time of execution of the Formal Instrument of Agreement a Deed of Guarantee, Undertaking and Substitution for the performance of the obligations and the discharge of the liabilities of the Contractor under the Contract in a form approved in writing by the Corporation, duly executed by the Contractor and that other corporation.

For the purpose of this sub-clause:

- (a) a corporation is a subsidiary of another corporation if, under the Act of the State or the Act or Ordinance of the Territory under which the first-mentioned corporation is incorporated or registered, it is to be deemed to be, for the purposes of that Act or that Ordinance, a subsidiary of that other corporation; and
- (b) a corporation is related to another corporation if, under the Act of the State or the Act or Ordinance of the Territory under which the first-mentioned corporation is incorporated or registered, it and the other corporation are to be deemed to be, for the purpose of that Act or that Ordinance, related to each other.

6. EVIDENCE OF CONTRACT

6.1 Contract in Absence of Formal Instrument of Agreement

Until the Formal Instrument of Agreement referred to in the next succeeding sub-clause is executed by the parties, the agreement in writing between the Contractor and the Corporation for the execution of the Works, including the documents or the parts of the documents to which reference may properly be made in order to ascertain the rights and obligations of the parties in relation to the work under the Contract, shall constitute the Contract between them.

6.2 Formal Instrument of Agreement

- (a) As soon as practicable after the date of acceptance of tender the Corporation shall prepare in duplicate a Formal Instrument of Agreement.
- (b) Within fourteen days after being requested in writing by the Corporation so to do the Contractor shall execute both copies of the Formal Instrument of Agreement at the place and in the manner directed in writing by the Corporation and shall return both copies to the Corporation duly executed by the Contractor.
- (c) On receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor the Corporation shall as soon as practicable execute both copies of the Formal Instrument of Agreement, and thereafter as soon as practicable shall have both copies duly stamped unless an exemption from such requirement applies by Act of Parliament or Act or Ordinance of a Territory, as the case may be, and shall forward one of such copies to the Contractor.
- (d) If the Contractor fails to duly execute the Formal Instrument of Agreement within the time and in the form prescribed in paragraph (b) of this sub-clause the Corporation shall be entitled to treat such failure as a default under Clause 44.

6.3 Precedence of Documents

The documents comprising the Contract are listed in the Formal Instrument of Agreement.

Any direction given by the Superintendent pursuant to Clause 23 shall not alter the respective obligations of the Corporation or the Contractor which obligations shall be determined by reference to the Contract documents which themselves shall unless otherwise expressly provided be accorded the following order of precedence:

- (a) The Formal Instrument of Agreement
- (b) Letter of Award of Contract
- (c) Form of Tender
- (d) Post Tender and Pre Award Correspondence
- (e) Schedules
- (f) Contract Specific Clauses
- (g) General Conditions of Contract
- (h) Standard Specifications
- (i) Drawings

except that where structural drawings are included in the contract, these drawings shall take precedence over contract specific clauses and all subsequently listed documentation.

Unless otherwise expressly provided, annexures and appendices shall be accorded the respective authority of the document incorporating the same into the Contract. In the event of any difference between any document and its annexure or appendix, the document shall prevail.

See also
clause S.13

7. SERVICE OF DOCUMENTS

7.1 Service of Documents on Contractor

Subject to Clause 25, any document which is to be or may be issued or given to or served upon the Contractor under the Contract shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is handed to the Contractor or is sent by prepaid post to or is left at the address of the Contractor stated in the tender of the Contractor for the Works or at such other address as is notified in writing by the Contractor to the Corporation.

7.2 Service of Documents on Corporation or Superintendent

Any document which is to be or may be issued or given to or served upon the Corporation or the Superintendent under the Contract shall be deemed to be sufficiently issued or given to or served upon the Corporation or the Superintendent, as the case requires, if it is handed to the Corporation or the Superintendent or is sent by prepaid post to or is left at the address of the Corporation or of the Superintendent stated in the Annexure hereto.

See also
clause S13A

7.3 Service by Post

Any document sent by prepaid post shall be deemed to have been issued or given to or served upon the Contractor or the Corporation or the Superintendent, as the case may be, at the time at which it would normally arrive in the ordinary course of the post at the address to which it is directed.

8. DOCUMENTS GENERALLY AND DRAWINGS AND SPECIFICATION

8.1 Discrepancies in Documents

The several documents which constitute or evidence the Contract shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all. Any ambiguity, discrepancy or inconsistency shall be explained by the Superintendent upon reference thereof in writing to him by the Contractor or on discovery thereof by the Superintendent, who shall thereupon direct the Contractor as to the interpretation to be followed. If the Contractor finds any such ambiguity, discrepancy or inconsistency he shall immediately refer it in writing to the Superintendent.

Minor items not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the work under the Contract shall be supplied and executed by the Contractor without adjustment to the contract sum.

8.2 Drawings and Specification

The Drawings, if any, and the Specification represent generally the forms, dimensions and descriptions of work to be carried out. The Contractor shall make allowance for slight variations in dimensions shown on Drawings which may be caused by unavoidable inequalities in the sizes of materials and any such variations shall be as agreed upon between the Contractor and the Superintendent or, failing such agreement, as decided by the Superintendent. Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

Drawings made to larger scales and those showing details of particular parts of any work shall be taken as correct in preference to those made to smaller scales and for more general purposes.

8.3 Documents to be Supplied by Corporation and Superintendent

Except as otherwise provided in the Contract, the Corporation shall issue, or cause to be issued, to the Contractor free of charge five copies of the Drawings, Specification and other written information required by the Contract to be supplied to the Contractor by the Corporation.

The Superintendent shall, if requested in writing by the Contractor at a reasonable point in the progress of the work under the Contract, supply to the Contractor such additional drawings and other written information as the Superintendent shall decide are necessary for the execution of such work and such additional drawings or other written information so supplied by the Superintendent to the Contractor shall be deemed to be part of the original documents which constitute or evidence the Contract.

All documents supplied to the Contractor under this clause shall remain the property of the Corporation and shall be returned by the Contractor to the Corporation on demand in writing. Such documents shall not, without the prior written approval of the Corporation, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

8.4 Documents to be Supplied by Contractor

The Contractor shall supply to the Superintendent free of charge five copies, or such other number as may be specified in the Contract, of such Drawings and other written information as he is required by the Contract to so supply, together with such further copies as the Contractor requires for his own use.

If the Superintendent considers that such Drawings and other written information are suitable for use for the purposes of the Contract, he shall give the Contractor permission so to use them and shall return the Contractor's copies to him. The copies supplied for retention by the Superintendent shall remain the property of the Corporation.

Notwithstanding the grant of permission to use any such Drawings or other written information referred to in the preceding paragraph of this sub-clause the Contractor shall be bound to carry out and complete the work under the Contract strictly in accordance with the Contract. Permission for the use of any such Drawings or other written information shall not relieve the Contractor from the full responsibility for the correctness of such Drawings or other written information except in so far as any error in or omission from such Drawings or other written information has been caused by an error in or omission from any document which the Corporation has issued, or caused to be issued, to the Contractor or which the Superintendent has issued to the Contractor for the purposes of the Contract.

8.5 Availability of Documents

During the execution of the work under the Contract one complete set of the Drawings, Specification and other written information issued or supplied by the Corporation, the Superintendent and the Contractor shall be kept by the Contractor at the site or other location approved in writing by the Corporation and shall be available at all times for reference by the Corporation, the Superintendent and any persons nominated in writing by either of them.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

The Contractor shall not, without the prior written approval of the Corporation and except on such terms and conditions as are determined in writing by the Corporation, assign, mortgage, charge or encumber the Contract or any part thereof or any benefit or moneys or interest thereunder.

See also
clause S4

9.2 Subcontracting

The Contractor shall not subcontract the whole of the work under the Contract. The Contractor shall not subcontract any part of the work under the Contract unless:

- (a) he has made prior application in writing to the Superintendent giving full particulars of the part of the work under the Contract he wishes to subcontract and of the proposed subcontractor and he has obtained the written approval of the Superintendent, which approval shall not be unreasonably withheld, to the application; or
- (b) he is specifically authorised by the Contract to subcontract that part of the work under the Contract.

9.3 Contractor's Responsibility

- (a) An approval to subcontract any part of the work under the Contract given by the Superintendent in pursuance of Sub-clause 9.2 shall not relieve the Contractor from any of his liabilities or obligations under the Contract.
- (b) Notwithstanding any such approval to subcontract the Contractor shall be liable to the Corporation for the acts, defaults and neglects of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

10. RESERVED

11. ADJUSTMENT OF PROVISIONAL SUMS AND PROVISIONAL QUANTITIES

11.1 Adjustment of Provisional Sums

In the event of the amount included in the Contract in respect of any provisional sum (whether so described or described as prime-cost sums or as prime-cost items or otherwise) not being expended or being greater or less than the amount directed in writing by the Corporation to be expended by the Contractor against the provisional sum, the amount unexpended or the amount of the difference, as the case may be, shall be certified by the Superintendent and shall be taken into account in determining the final contract sum.

Where any adjustment is made pursuant to the preceding provisions of this sub-clause, that adjustment, unless the Superintendent otherwise determines, shall not include any amount on account of profit to or attendance on the part of the Contractor. Any variation to the work to which the provisional sum relates shall be dealt with in accordance with Clause 40.

11.2 Adjustment of Provisional Quantities

If, in respect of any work for which a provisional quantity is included in the Contract, the Superintendent directs that a greater or lesser quantity than the provisional quantity shall be carried out, or that no work shall be carried out, the value of the difference between the provisional quantity and the quantity carried out pursuant to that direction, calculated at the rate for that work stated in the Contract, shall be certified by the Superintendent and shall be taken into account in determining the final contract sum.

See also
clause S5

12. CONTRACTOR TO INFORM HIMSELF

The Contractor shall be deemed to have:

- (a) examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Conditions of Tendering, these General Conditions of Contract and the Special Conditions (if any) and any other information made available in writing by the Corporation to the Contractor for the purpose of tendering; and
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on his tender and which is obtainable by the making of reasonable enquiries; and
- (c) examined the site and its surroundings; and
- (d) satisfied himself as to the correctness and sufficiency of his tender for the work and that his price covers the cost of complying with all his obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract.

Failure by the Contractor to do all or any of the things he is deemed to have done under this clause will not relieve the Contractor of his liability to perform and complete the Contract in accordance with the terms and conditions thereof.

13. ROYALTIES PATENT AND OTHER INDUSTRIAL PROPERTY RIGHTS AND FEES

13.1 Use of and Breach of Existing Intellectual Property Rights

Unless otherwise provided for in the Contract, all payments (whether or not accrued due and payable at the date of the Contract) for royalties and patent rights, registered designs, trade marks or names, copyright and other protected rights and all fees then or thereafter to become payable for or in connection with any land, matter or thing used or required to be used in performance of the Contract or to be supplied under the Contract, shall be the responsibility of the Contractor and shall be paid by him to those to whom and at the time at which they become payable.

The Contractor shall indemnify the Corporation against any action, suit, proceeding or claim or demand, in respect of all costs or expenses arising whether directly or indirectly from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, trade mark or name, copyright or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing of or working, or any arrangement used or fixed or supplied by the Contractor for the purposes of the Contract.

The indemnity shall not cover any infringement or alleged infringement of any letters patent, registered design, trade mark or name, copyright or other protected right due to the use of the Works or part thereof otherwise than in accordance with the Contract.

In the event of any claim or demand being made or action, suit or proceeding being brought against the Corporation in respect of any matters covered by the indemnity, the Corporation shall immediately notify the Contractor in writing thereof, and the Contractor shall, with the assistance of the Corporation, if he makes a request in writing for such assistance, but at the sole expense of the Contractor, conduct any litigation that may arise therefrom and all negotiations for the settlement of the claim, demand, action, suit or proceeding. The Contractor shall not make any settlement or consent to any judgment order or verdict against the Corporation without first obtaining the Corporation's written consent thereto.

The Corporation shall not make any admission in relation to any claim, demand, action, suit or proceeding against the Corporation with respect to any matter covered by the indemnity unless within seven days after the date of the receipt by him of the notification in writing from the Corporation referred to in the preceding paragraph of this clause the Contractor fails to open negotiations for the settlement of the claim, demand, action, suit or proceeding or to take all necessary and proper steps to defend any claim, demand, action, suit or proceeding.

The Superintendent may, before the issue of the Final Certificate pursuant to Sub-clause S17.7, direct the Contractor to furnish to the Superintendent a signed statement or a statutory declaration that all payments and all fees referred to in the first paragraph of this clause have been paid or satisfied.

13.2 Intellectual Property Created Pursuant to the Contract

Any Intellectual Property arising in the course of the works or the performance of the Contract shall be vested exclusively in the Corporation and the Contractor shall execute such notices, waivers or assignments as necessary to enable the Corporation to register or otherwise obtain title to the Intellectual Property. The Contractor shall deliver up all documents, data, models, designs, estimates, reports, calculations, computer software, specifications and drawings made in the course of the Contract to the Corporation upon termination or completion of the Contract or as requested.

This provision does not restrict the Contractor's ongoing rights to the use of original ideas, equipment, processes or systems created outside the terms of this Contract.

Where the work under the Contract is created or depends upon or functions better with the help of other material supplied by the Contractor (such as software), in its production, operation or use, the Contractor shall provide such other material to the Corporation either outright or upon perpetual licence and at no cost or nominal cost. The Contractor shall provide evidence satisfactory to the Corporation that such arrangements have been made for the lawful use of all such materials.

"Intellectual Property" for this clause includes but is not limited to copyright and rights in or to trademarks, patents, designs, circuit layouts, or confidential know-how.

13.3 Moral Rights

The Contractor warrants that:

- (a) it has obtained valid consents from all relevant authors in the creation of any copyright work under this contract so that the use by the Corporation or its assignees of such work will not infringe any copyright, including any author's moral rights under the Copyright Act 1968; and
- (b) the consents permit the Corporation in its absolute discretion, reproducing, publishing, copying, adapting, performing, communicating to the public, materially distorting or in any other way changing or using the work (or a substantial part of adaptation of it) –
 - (i) with or without attribution of authorship;
 - (ii) with no title, the same title or any other title; and
 - (iii) in any way it sees fit.

The Contractor indemnifies the Corporation and agrees to keep the Corporation indemnified in respect of any actual or threatened breach of any of the above warranties.

14. REQUIREMENTS OF STATUTES AND SUBORDINATE LEGISLATION

14.1 Complying with Statutory Requirements

The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State or Acts or Ordinances of the Territory in which the work under the Contract or any part thereof is carried out and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Act or Ordinance and with the lawful requirements of public and other authorities in any way affecting or applicable to the Works or the execution of the work under the Contract.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Superintendent specifying the departure from such provisions which he considers necessary to comply with such requirements and the reasons therefor, and applying for instruction thereon. The Superintendent shall, as soon as practicable after receiving the Contractor's written notice, give to the Contractor such lawful instructions as he thinks fit and the Contractor shall comply with those instructions.

14.2 Notices and Fees

The Contractor shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith.

14.3 Surrender of Documents Evidencing Approval of Authorities

Prior to the issue of the Certificate of Practical Completion for the Works, or upon demand in writing made by the Corporation or the Superintendent at any time and from time to time, the Contractor shall surrender to the Corporation any documents in his possession issued by or evidencing the approval of public or other authorities in connection with the work under the Contract.

14.4 Privacy

The Contractor agrees in respect of Personal Information held in connection with this Contract:

- (a) that it shall be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purpose of this Contract, in the same way and to the same extent as VicRoads would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by VicRoads; and
- (b) to immediately notify the Superintendent where it becomes aware of a breach of 14.4(a) above, by it or any of its agents or employees (past or present).

In this clause:

"Code of Practice" means a code of practice as defined in, and approved under, the Information Privacy Act (Vic) 2000;

"Information Privacy Principles" means the principles so identified and set out in the Information Privacy Act (Vic) 2000;

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

This Clause 14.4 shall continue to have effect after the termination or expiration of this Contract.

15. PROTECTION OF PERSONS AND PROPERTY

The Contractor shall provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and provide and maintain all watching and traffic flagging lawfully required by any public or other authority or necessary for the protection of the work under the Contract or of other property or for the safety and convenience of the public and others and shall remove the same when no longer required.

The Contractor shall avoid obstruction or damage to roadways and footpaths, drains and watercourses and public utility and other services on or adjacent to the site which are visible or the location of which can be ascertained by the Contractor from the appropriate authority or from the Contract and shall have any obstruction removed immediately and at his own cost shall have made good all damage caused by him, his employees, agents or subcontractors or the employees of any such agents or subcontractors. In the event of the Contractor's failure to do so, the Corporation may have the remedial work carried out and the cost incurred shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

The Contractor shall avoid interference with or damage to property on or adjacent to the site and shall provide temporary protection for and shall repair and reinstate all damage caused thereto by him, his employees, agents or subcontractors or the employees of any such agents or subcontractors, either directly or indirectly.

The Contractor shall prevent nuisance to the owners, tenants or occupiers of properties adjacent to the site and to the public generally.

16. CARE OF THE WORKS

16.1 Liability of the Contractor to Date of Practical Completion of the Works

From the commencement of the Contract to the Date of Practical Completion of the Works (as defined in Sub-clause S17.2) the Contractor shall be solely liable for the care of the Works, the Temporary Works and all materials, Constructional Plant and other things that are brought on to the site by or on behalf of the Contractor or any of his subcontractors for the purpose of carrying out the work under the Contract or that are entrusted to him by the Corporation for that purpose.

The Contractor shall at his own cost make good to the satisfaction of the Superintendent any loss of or damage to the Works, the Temporary Works or the aforesaid materials, Constructional Plant and other things resulting from any cause whatsoever (save and except the Excepted Risks as defined in Sub-clause 16.2) when such making good is necessary for the satisfactory completion of the Works. When so ordered by the Superintendent any such loss or damage caused by any of the Excepted Risks as defined in Sub-clause 16.2 shall be made good by the Contractor as a variation to the Contract and dealt with pursuant to Clause 40.

If a Certificate of Practical Completion is issued for a separable part of the Works pursuant to Sub-clause S17.2, then the Contractor's liability for the care of that separable part of the Works as defined above shall cease on the Date of Practical Completion of that separable part of the Works, except for his liability during the Defects Liability Period for that separable part of the Works, or for any Operational Maintenance Period specified in the Contract for that separable part of the Works, as stated in Sub-clause 16.3.

Nothing contained in this sub-clause shall relieve the Contractor of his responsibilities or liabilities under Clause S15.

16.2 Excepted Risks

The Excepted Risks are:

- (a) Any negligent act or omission of the Corporation, the Superintendent or the employees, professional consultants or agents of the Corporation.
- (b) Any risk specifically excepted in the Specification.
- (c) War, invasion, act 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.
- (d) 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 his employees or agents or subcontractors.

16.3 Liability of the Contractor after Date of Practical Completion

- (a) After the Date of Practical Completion of the Works or a separable part of the Works the Contractor shall, subject to the provisions of paragraphs (b), (c) and (d) respectively in this sub-clause, indemnify and keep indemnified the Corporation against all loss or damage to the Works or the separable part of the Works or to the relevant Temporary Works arising out of or resulting directly or indirectly from any negligent act or omission of the Contractor or any subcontractor or any employee or agent of the Contractor or of any subcontractor or out of any default of the Contractor under the Contract; and for the purposes of this sub-clause the word "default" shall be construed, but without restricting its generality of meaning, as including faulty design, workmanship or materials.
- (b) If a Certificate of Practical Completion is issued for the Works and no Certificate of Practical Completion has been issued for any separable part of the Works the indemnity shall extend to the Works and the Temporary Works during the period commencing on the Date of Practical Completion of the Works and ending on the day on which the Defects Liability Period for the Works, or the Operational Maintenance Period specified in the Contract for the Works, as the case may be, expires.
- (c) If a Certificate of Practical Completion is issued for a separable part of the Works the indemnity shall extend to that separable part of the Works during the period commencing on the Date of Practical Completion of that separable part of the Works and ending on the day on which the Defects Liability Period for that separable part of the Works, or the Operational Maintenance Period specified in the Contract for that separable part of the Works, as the case may be, expires.
- (d) If a Certificate of Practical Completion is issued for the Works and a Certificate of Practical Completion has been issued for a separable part of the Works the indemnity shall, without limiting or affecting the indemnity applicable in relation to the separable part of the Works, extend to the Works and the Temporary Works other than the separable part of the Works.

17. INSURANCE OF THE WORKS

Unless otherwise provided in the Annexure, before commencing work under the Contract, the Contractor shall take out an insurance policy to cover his liabilities as set out in Clause 16 against any loss of or damage resulting from any cause whatsoever to the Works, the Temporary Works and all materials and other things that are brought on to the site by or on behalf of the Contractor or any of his subcontractors for the purpose of carrying out the work under the Contract or that are entrusted to him by the Corporation for that purpose; and for the purpose of this clause the expression "materials and other things shall be construed, but without restricting its generality of meaning, as including Constructional Plant (unless otherwise insured to the satisfaction of the Superintendent).

The insurance cover may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration but not the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but not the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but not loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete work;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the excepted risks (b) and (c) defined in Sub-clause 16.2.

The insurance cover shall extend to the Contractor's liabilities and obligations as set out in Sub-clause 16.3.

Unless otherwise specified elsewhere in the Contract, and subject to such reductions as are appropriate having regard to the next succeeding paragraph, the insurance cover shall be for an amount not less than the contract sum to which shall be added a further sum not less than the total of the respective amounts stated in the Annexure hereto for the value of materials to be supplied by the Corporation for the purpose of the work under the Contract and the assessments for insurance purposes of architects', engineers' and surveyors' fees and of costs of demolition and removal of debris relating to and necessarily incurred in the reinstatement of loss or damage to the Works.

The insurance policy shall be in the joint names of the Corporation, the Contractor and all subcontractors employed from time to time in relation to the Works for their respective rights, interests and liabilities and unless otherwise specified elsewhere in the Contract, shall be effected with an insurer or insurers approved in writing by the Corporation and in terms approved in writing by the Corporation, which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor's liabilities and obligations respectively stated in Sub-clause 16.3 cease.

The insurance policy shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that he may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

See also **18. PROPERTY DAMAGE AND PUBLIC RISK**
clause S14 Reserved

See also **19. PUBLIC LIABILITY INSURANCE**
clause S15 Reserved

20. ACCIDENT OR INJURY TO EMPLOYEES

The Contractor shall indemnify and keep indemnified the Corporation against liability for all loss or damage resulting from personal injury to or the death of (other than such injury or death resulting from any breach by the Corporation of any of the provisions of the Contract or any negligent act or omission of the Corporation, the Superintendent, or the employees, professional consultants or agents of the Corporation) the Contractor or any subcontractor or any employee or agent of the Contractor or of any subcontractor occurring during the currency of the Contract and arising out of or in connection with the execution of the work under the Contract or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at Common Law or under any statute.

21. INSURANCE OF EMPLOYEES

Before commencing work under the Contract, the Contractor shall ensure that a suitable insurance policy is taken out giving cover to himself and all subcontractors against any liability, loss, damage, claim, demand, action, suit or proceeding, costs and expenses whatsoever arising at Common Law or under any statute or other legislative provision, including any statute or such provision relating to workmen's compensation, as a result of personal injury to or the death of any person employed by the Contractor or by any subcontractor in or about the execution of the work under the Contract or the performance of the Contract.

Insurance effected by the Contractor pursuant to the last preceding paragraph of this clause shall be extended to cover all liabilities of the Corporation at Common Law and under any applicable statute or other legislative provision.

The insurance cover in respect of the liabilities of the Corporation at Common Law shall be for an amount not less than the sum stated in the Annexure hereto and, unless otherwise specified elsewhere in the Contract, the policy shall be effected with an insurer or insurers approved in writing by the Corporation, which approval shall not be unreasonably withheld. The policy shall be maintained during the currency of the Contract.

The Contractor shall ensure that every subcontractor is similarly insured.

For the avoidance of doubt, and without in any way limiting the generality of the other parts of Clause 21, the Insurance effected by the Contractor and any subcontractors must cover the obligations and liabilities of the Contractor and any subcontractor pursuant to the Workplace Injury Rehabilitation and Compensation Act 2013 as amended from time to time and any successor to that Act (hereinafter called "WorkCover Insurance").

See also
clause S16

22. EVIDENCE OF INSURANCE

22.1 Inspection and Provisions of Insurance Policies

Before commencing work under the Contract and whenever requested in writing at any time and from time to time thereafter so to do by the Corporation, the Contractor shall produce evidence to the satisfaction and approval in writing of the Corporation of the insurances effected and maintained by the Contractor and his subcontractors for the purposes of Clauses 17 and 21 or any of them.

If, after being requested in writing by the Corporation so to do, the Contractor fails to produce evidence of compliance with his insurance obligations under Clauses 17 and 21 or any of them which is to the satisfaction and approval of the Corporation, the Corporation may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46, or the Corporation may refuse payment upon any certificate until evidence of compliance with his insurance obligations under Clauses 17 and 21 or any of them is produced by the Contractor to the satisfaction and approval of the Corporation.

The Contractor shall ensure that each policy of insurance effected as required by Clauses 17 and 21 or any of them shall contain provisions acceptable to the Corporation that will:

- (a) require the insurer, whenever the insurer gives to or serves upon the Contractor or a subcontractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Corporation in writing that the notice has been given to or served upon the Contractor or the subcontractor; and
- (b) provide that a notice of claim given to the insurer by the Corporation or the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given to the insurer by the Corporation and the Contractor or by the Corporation and the subcontractor, as the case may require.

The Contractor shall, as soon as practicable, inform the Corporation in writing of the occurrence of an event that may give rise to claim under a policy of insurance effected as required by Clauses 17 and 21 and shall ensure that the Corporation is kept fully informed of subsequent action and developments concerning the claim. The Contractor shall take such steps as are necessary or appropriate to ensure that a subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the subcontractor, take in relation to the Corporation the like action to that which the Contractor is required to take under this paragraph.

The effecting of insurance as required by Clauses 17 and 21 or any of them shall not in any way limit the liabilities or obligations of the Contractor under other provisions of the Contract.

22.2 Further WorkCover Obligations

Evidence required to be produced by the Contractor of insurances for the purposes of Clause 22 (and any other clause of the Contract) shall include evidence that the Contractor and his subcontractors have complied with all requirements imposed on them by the Workplace Injury Rehabilitation and Compensation Act 2013 or any successors of that Act and, the requirements of this Contract and shall include evidence in a form satisfactory to the Corporation that either:

- A.
 - (i) they have effected WorkCover insurance policies with an Authorised Insurer; and
 - (ii) all levy payments or premiums required to be paid in relation to the WorkCover insurances have been paid up-to-date during the currency of the contract;

OR

- B. they were during the currency of the contract approved self-insurers as defined in the Acts referred to.

The words "the currency of the contract" includes the period from the date of acceptance of tender up to the time of issue of the Final Certificate pursuant to Clause S17.7.

Without limiting the generality of any other part of Clause 22 if the Contractor or any subcontractor defaults in relation to the requirements of Clause 21 (as amended) in relation to the requirements of the Workplace Injury Rehabilitation and Compensation Act or any successors thereof and as a result the Corporation incurs or suffers loss, expense or damage then the Contractor shall indemnify and reimburse the Corporation in respect of such loss, expense or damage as if it were a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

Loss, expense or damage for the purposes of this clause includes, but is not limited to:

- (i) compensation paid by the Corporation to any workers, or premiums paid by the Corporation to any insurer to remedy the default or any premium or other sums payable by the Corporation pursuant to the Workplace Injury Rehabilitation and Compensation Act 2013 or any statutory successor thereof or any legislation similar to, or which has a similar effect to that Act; and
- (ii) any increase in the Corporation's premium for WorkCover insurance or any other insurances; and
- (iii) any other consequential loss, expense or damage.

23. SUPERINTENDENT

See also
clause S6

The work under the Contract shall be executed in accordance with the Contract and in accordance with any directions of the Superintendent pursuant to the provisions of the Contract.

For the purposes of this clause the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Superintendent may make, give or issue pursuant to the provisions of the Contract.

Any direction which may be or is given to the Contractor by the Superintendent pursuant to the provisions of the Contract may, unless the Contract expressly provides otherwise, be given either orally or in writing. When any such direction is in the first instance given orally the Superintendent shall as soon as practicable after it is so given confirm it in writing addressed to and issued or given to or served upon the Contractor.

24. SUPERINTENDENT'S REPRESENTATIVE

The Superintendent may from time to time in writing appoint persons named by him to exercise such of the powers, duties, discretions and authorities vested in him as he may think fit and shall give notice to the Contractor of the name of each person so appointed and the extent of the powers, duties, discretions and authorities exercisable by that person.

Upon receipt of such notice, the Contractor shall recognise and accept each person so appointed as lawfully entitled to exercise for the purposes of the Contract the powers, duties, discretions and authorities referred to in the notice.

The Superintendent may at any one time appoint more than one person to exercise a particular power, duty, discretion or authority vested in him. If two or more persons may exercise a particular power, duty, discretion or authority and the Contractor believes that any such exercise gives rise to a conflict of directions then the Contractor must ask the Superintendent to decide which direction is to prevail and the decision of the Superintendent is conclusive.

An appointment under this clause does not prevent the exercise of a power, duty, discretion or authority by the Superintendent and the Superintendent may at any time revoke any such appointment by notice to the Contractor.

Where the word "Superintendent" is used in these General Conditions of Contract or elsewhere in the Contract, it shall, so far as concerns the powers, discretions and authorities exercisable by the Superintendent's Representative by virtue of his appointment under this clause, be deemed to include a Superintendent's Representative.

25. CONTRACTOR'S REPRESENTATIVES

The Contractor shall personally superintend the execution of the work under the Contract or have during the currency of the Contract a competent representative acceptable to the Superintendent present on the site at all times during which any activities relating to the execution of the work under the Contract are taking place and if required by the Superintendent at such other times and at such other places at or in which any activities relating to the execution of the work under the Contract are taking place.

The Contractor shall notify the Superintendent in writing of the name of his representative on the site and of the name of any other representative at any other place in which any activities relating to the execution of the work under the Contract are taking place, and of any subsequent changes. Any direction as defined in Clause 23 shall:

- (a) if given to the representative on the site in respect of the execution of the work under the Contract on the site be deemed to be a direction issued or given to or served upon the Contractor in respect of the execution of the work under the Contract on the site; or

- (b) if given to the representative at any other place in respect to the execution of part of the work under the Contract in that place shall be deemed to be a direction issued or given to or served upon the Contractor in respect to the execution of that part of the work under the Contract at that place.

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

In the absence from the site of the Contractor and his representative, the Superintendent may take such action as he considers necessary to prevent loss of or damage to the whole or any part of the work under the Contract or to any property or to prevent personal injury to any person. The cost of any action so taken by the Superintendent shall, if the Superintendent determines that the action is of a kind that the Contractor would have been liable to take at his own expense if he or his representative had not been absent, be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

Any action taken by the Superintendent under this clause shall not relieve the Contractor of any of his liabilities or obligations under the Contract.

26. CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Contractor shall employ and ensure that his subcontractors employ in connection with the work under the Contract only such persons as are careful, skilled and experienced in their respective trades and callings.

The Superintendent may object to and direct the Contractor to remove or have removed from the site or from any activity connected with the work under the Contract within such time as the Superintendent directs any person employed by the Contractor or by any subcontractor who, in the opinion of the Superintendent, misconducts himself or is incompetent or negligent in the performance of his duties; and the Contractor shall comply with such direction and any such person shall not be employed on the site or on activities connected with the work under the Contract without the prior approval of the Superintendent.

27. SITE

27.1 Possession of Site

The Corporation shall on or before the expiration of the time stated in the Annexure hereto give to the Contractor possession of sufficient of the site to enable him to commence work in accordance with Sub-clause 35.1, and thereafter to execute the work under the Contract in accordance with the requirements of the Contract.

Should any delay take place in giving the Contractor such possession of the site the delay shall be deemed not to constitute a breach of contract but shall be a ground for an extension of the time for completion pursuant to Sub-clause 35.4.

Possession of the site shall confer on the Contractor a right only to such use and control as shall be necessary to enable him to execute the work under the Contract in accordance with the Contract; but the Corporation may at any time after reasonable notice take possession of any portion of the site for the purpose of carrying out any other work or for any purpose whatsoever. The Contractor shall permit the execution of work by contractors, artists, tradesmen and other persons engaged by the Corporation or the Superintendent whose names have been previously notified to the Contractor by the Superintendent and shall fully co-operate with the contractors, artists, tradesmen and other persons so engaged by the Corporation or the Superintendent and with the Corporation and shall carefully co-ordinate his own work with that being carried out or to be carried out by such contractors, artists, tradesmen and other persons or by the Corporation.

27.2 Extra Land Required by Contractor

The Contractor shall procure for himself and at his own cost the occupation or use of or relevant rights over any land in addition to the site which he may deem requisite or necessary for the execution of the work under the Contract or for the purposes of the Contract and shall, as a condition precedent to the issue of the Final Certificate, if so required by the Superintendent, provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner or occupier of and from other persons having an interest in such land.

27.3 Access to Work

The Contractor shall at all reasonable times give to the Corporation and to the Superintendent and to any other persons authorised in writing by the Corporation or by the Superintendent access to the work under the Contract and shall provide every reasonable facility necessary for the supervision, examination and testing of any work or materials for the Contract at any place where any such work is being or is to be carried out or materials are being prepared.

27.4 Delivery of Materials to or Work on Site before Possession

Until possession of the site is given in accordance with Sub-clause 27.1, no materials shall be delivered to or work performed on the site by or on behalf of the Contractor unless approval is given by the Superintendent.

27.5 Use of Site by Contractor

The Contractor shall not without the prior written approval of the Corporation or unless the Contract so provides, use the site or permit or suffer the site to be used for camping or any residential purpose.

27.6 Finding of 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 during the execution of the work under the Contract shall as between the parties be and remain the property of the Corporation, and the Contractor, immediately upon the discovery thereof, shall take precautions to prevent the loss or removal of or damage to any such article or thing and notify the Superintendent of its discovery. The extra costs, if any, incurred by the Contractor in taking such precautions which the Superintendent determines were reasonable shall be borne by the Corporation.

28. SETTING OUT OF THE WORKS**28.1 Information to be Supplied to Contractor**

The Superintendent shall supply the information necessary to enable the Contractor to set out the Works and shall provide the Contractor with such survey marks as are specified in the Contract, or if not so specified, as the Superintendent determines to be necessary for setting out the Works.

28.2 Contractor to Set Out the Works

Subject to the last preceding sub-clause, the Contractor shall at his own expense set out the Works correctly in accordance with the Contract and shall provide all instruments and materials necessary for that purpose.

28.3 Care of Survey Marks

The Contractor shall preserve and maintain in their true positions all survey marks referred to in Sub-clause 28.1.

Should any survey mark be disturbed or obliterated, the Contractor shall immediately notify the Superintendent and shall, unless the Superintendent otherwise determines, rectify such disturbance or obliteration to the satisfaction of the Superintendent. Unless the disturbance or obliteration has been caused by the Corporation, its employees or agents, the cost of rectification shall be borne by the Contractor.

28.4 Errors in Setting Out

If at any time during the progress of the work under the Contract, any error is discovered in the position, level, dimensions or alignment of any part thereof, the Contractor shall immediately on his discovery of the error notify the Superintendent and shall, unless the Superintendent otherwise directs, rectify the error. Unless the error has been caused by incorrect data issued by the Superintendent, the cost of rectification shall be borne by the Contractor.

The Superintendent may check the setting out of the work under the Contract by the Contractor but the fact that the Superintendent may have carried out such checks shall not relieve the Contractor of any responsibility for the correct setting out of the work.

28.5 Survey Mark

The term "survey mark" used in this clause means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark used or intended to be used for the purpose of setting out, checking or measuring the work under the Contract.

See also
clause S7

29. MATERIALS LABOUR AND CONSTRUCTIONAL PLANT**29.1 Provision of Materials, Labour and Constructional Plant**

The Contractor shall, unless the Contract otherwise provides, supply at his own cost and expense everything necessary for the proper completion of the work under the Contract and the proper performance of his obligations under the Contract.

29.2 Constructional Plant

All Constructional Plant shall comply with the requirements in relation thereto of the relevant laws in operation in the State or Territory in which the work under the Contract is being carried out.

29.3 Contractor not to Remove Materials or Designated Constructional Plant

No Constructional Plant that is from time to time designated in writing by the Superintendent and no materials shall be removed from the site without the prior written approval of the Superintendent, which approval shall not be unreasonably withheld where they are no longer immediately required for the proper completion of the work under the Contract.

29.4 Manufacture and Supply of Materials

The Contractor shall give the Superintendent upon request full particulars of the mode and place of manufacture and source of supply and the performance capacities and such other information as the Superintendent considers necessary in respect of any of the material, machinery or other equipment to be used in connection with the Contract. The Contractor shall before he arranges manufacture off site of any works or fabricated material to be used in connection with the Contract give the Superintendent reasonable written notice of his intention to do so.

See also
clause S8

30. MATERIALS AND WORK**30.1 Quality of Materials and Work**

Materials used in the work under the Contract and standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of any such provision in the Contract in respect of any material or standard of workmanship that material or standard of workmanship, as the case may be, shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works.

Unless otherwise specified in the Contract, any materials to be incorporated in the Works shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant standard of the Standards Association of Australia.

30.2 Protection of Materials

The Contractor shall at his own cost provide adequate storage and protection for all materials so as to preserve their quality and fitness for the Works.

30.3 Materials or Work not Complying with the Contract

The Superintendent may, at any time before the issue of the Final Certificate pursuant to Sub-clause S17.7, reject any material or work which is not in accordance with the Contract and may direct its replacement, correction or removal whether it has been the subject of a payment or not and such rejection or direction shall be made or given as soon as practicable after the discovery by the Superintendent of its non-compliance with the Contract. If the Superintendent directs the Contractor to replace or correct any material or work, the Contractor shall commence the work of replacement or correction within seven days after the receipt by him of the direction and shall complete the work promptly and to the satisfaction of the Superintendent. If the Superintendent directs the Contractor to remove from the site any material which is not in accordance with the Contract, the Contractor shall do so promptly. All such replacements, corrections and removals shall be at the Contractor's cost.

If the Contractor fails to comply with the preceding paragraph of this sub-clause the Corporation may have the work of replacement, correction or removal carried out by other persons and the cost incurred by the Corporation in having the work so carried out shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

See also
clause S8

31. EXAMINATION AND TESTING OF MATERIALS AND WORK

Reserved

32. WORKING HOURS

Subject to the provisions of the third paragraph of this clause, no work outside the customary working hours or on other than ordinary working days, or outside such other working hours or working days as are provided in the Contract, will be allowed without the prior approval of the Superintendent.

All costs attributable to the supervision by or on behalf of the Corporation of work approved pursuant to the last preceding paragraph shall be borne by the Corporation.

If in the interests of safety of the Works or to protect life or property the Contractor finds it necessary to carry out, without the prior approval of the Superintendent, work outside customary working hours or on other than ordinary working days or outside such other working hours or working days as are provided in the contract, he shall inform the Superintendent in writing of the circumstances as early as possible.

For the purposes of this clause:

"customary working hours" means ordinary hours of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the Works are being carried out or, where hours of work are not so fixed, means the hours of work normally observed in the relevant trade or industry in that State or Territory;

"ordinary working days" means ordinary days of work fixed by or under any statute, ordinance or subordinate legislation or by any relevant award, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by any relevant industrial agreement that is in force in the State or Territory in which the Works are being carried out or, where days of work are not so fixed, means the days of work normally observed in the relevant trade or industry in that State or Territory but does not include a day that is a public holiday in that State or Territory.

33. PROGRAMMING OF THE WORKS

33.1 Construction Programme

If the Contract neither includes nor requires the Contractor to supply a construction programme showing the dates by which or the times within which the various stages or parts of the work under the Contract are to be executed or completed, the Superintendent may direct the Contractor to supply to him such a construction programme. The Contractor shall, within the time stated in the direction, supply to the Superintendent such a construction programme and the Contractor shall, subject to Clause 34, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to Sub-clause 33.2.

Where the Contract neither includes nor requires the Contractor to supply a construction programme and the Superintendent has not directed the Contractor to supply to him such a construction programme the Contractor may, within a reasonable time after the date of acceptance of tender, supply a construction programme showing the dates by which or the times within which the various stages or parts of the work under the Contract are to be executed or completed. If such a construction programme is supplied by the Contractor he shall, subject to Clause 34, adhere to that construction programme unless a deviation therefrom is directed by the Superintendent pursuant to Sub-clause 33.2.

33.2 Deviation from Construction Programme

The Superintendent may from time to time direct a deviation from a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under Sub-clause 33.1 and, in any such event, the Superintendent may direct the Contractor to supply to him a further construction programme. The Contractor shall, within the time stated in any such direction, supply such a further construction programme.

Any such further construction programme shall have effect and be subject to the same conditions as if it were a construction programme included in the Contract or supplied by the Contractor pursuant to a requirement of the Contract or a direction of the Superintendent under Sub-clause 33.1.

The supply of a construction programme or of a further construction programme under this clause shall not relieve the Contractor of any of his obligations under the Contract.

33.3 Order of Work

If a construction programme has not been provided pursuant to any preceding provision of this clause the Superintendent shall have full power to direct in what order and at what time the various stages or parts of the work under the Contract shall be performed.

33.4 Extra Costs

The Contractor shall not be entitled to any extra cost resulting from:

- (a) a deviation from a construction programme directed by the Superintendent pursuant to Sub-clause 33.2; or
- (b) a direction given by the Superintendent pursuant to Sub-clause 33.3;

unless the need for the deviation or the direction was due to an act, default or omission of the Corporation or the Superintendent.

34. PROGRESS AND SUSPENSION OF THE WORKS

See also
clause S9

34.1 Rate of Progress

The Contractor shall proceed with the work under the Contract at a rate of progress and in a manner satisfactory to the Superintendent.

34.2 Suspension by Superintendent

Where the suspension of the whole or any part of the work under the Contract becomes necessary:

- (a) because of an act, default or omission of:
 - (i) the Corporation or an employee or professional consultant or agent of the Corporation; or
 - (ii) the Contractor or an employee or agent of the Contractor; or
 - (iii) a subcontractor or an employee or agent of that subcontractor; or
- (b) for the protection or safety of:
 - (i) the employees or agents of the Contractor or of a subcontractor or the employees, professional consultants or agents of the Corporation or any other person concerned in the performance of the whole or any part of the work under the Contract; or
 - (ii) the executed work or any part of the executed work; or
 - (iii) the public or any property;

the Superintendent may (but shall not be obliged to) order the Contractor to suspend the progress of the whole or any part of the work under the Contract specified in the order for such time or times as the Superintendent may think fit.

34.3 Suspension by Contractor

See also
clause S.13
&S18

Should the Contractor wish to suspend the progress of the whole or any part of the work under the Contract he shall in writing notify the Superintendent and explain the reasons for the suspension. The Superintendent shall thereupon, if he thinks it necessary or reasonable so to do, grant permission for a suspension of the whole or any part of the work under the Contract for such time or times as he may think fit.

34.4 Recommencement of Work

The Superintendent shall, when the reason for any suspension no longer exists, direct the Contractor to recommence work on the whole or on the relevant part of the work under the Contract and the Contractor shall comply with the direction promptly.

34.5 Cost of Suspension

The extra cost, if any, of completing the Works incurred by the Contractor by reason of any suspension under Sub-clause 34.2 or Sub-clause 34.3 shall be borne and paid for by the Contractor PROVIDED HOWEVER that if the suspension is due to an act, default or omission of the Corporation or an employee, professional consultant or agent of the Corporation the Contractor shall be entitled to payment of the amount of any extra cost of completing the Works incurred by him that is attributable to such an act, default or omission.

34.6 Effect of Suspension

The suspension of the progress of the whole or any part of the work under the Contract under this clause shall not affect the obligation of the Contractor to execute the work under the Contract to Practical Completion of the Works or a separable part of the Works within the period or by the date stated in the Annexure hereto with reference to Sub-clause 35.2 or within any extended time allowed by the Superintendent pursuant to Sub-clause 35.4.

35. TIMES FOR COMMENCEMENT AND COMPLETION**35.1 Time for Commencement of Work on the Site**

Subject to Clause 27 and save as otherwise provided in the Contract, the Contractor shall commence work on the site within fourteen days after the Corporation has given to the Contractor possession of sufficient of the site for the commencement of such work by him, or within such further time as may be approved by the Superintendent, and thereafter the Contractor shall execute the work under the Contract in accordance with the Contract.

The Contractor shall before commencing work on the site give the Superintendent notice in writing of the commencement of not less than seven days or of such lesser period as may be acceptable to the Superintendent.

35.2 Time for Completion of the Works

The Contractor shall execute the work under the Contract to Practical Completion of the Works within the period or by the date stated in the Annexure hereto or within any extended time granted or allowed by the Superintendent pursuant to Sub-clause 35.4.

Where the Contract specifies that a separable part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date fixed by the Contract for Practical Completion of the Works the Contractor shall execute that separable part of the Works to Practical Completion within the period or by the date so specified or within any extended time granted or allowed by the Superintendent in relation thereto pursuant to Sub-clause 35.4.

Upon the Date of Practical Completion of the Works or a separable part of the Works the Contractor shall deliver up the Works or that separable part of the Works to the Corporation.

35.3 Use of Partly Completed Works

The Corporation shall have the right to use or occupy any part of the Works that the Superintendent certifies to be useable notwithstanding that part of the Works or some other part of the Works has not been completed. The use or occupation in a proper and normal manner of any part of the Works by the Corporation under this sub-clause shall not limit or affect the Contractor's rights and obligations under the Contract.

35.4 Extension of Time for Completion

Where the Contractor is delayed in the execution of the Works by any cause arising out of any breach of the provisions of the Contract or out of any other act or omission on the part of the Corporation, the Superintendent or the employees, professional consultants or agents of the Corporation or by any other cause (except a cause arising out of any breach of the provisions of the Contract or any other act or omission on his own part or on the part of his employees, agents or subcontractors or their employees or agents) which he considers to be such as to justify an extension of the time fixed by the Contract for Practical Completion of the Works, the Contractor shall, if he desires to claim an extension of time for Practical Completion of Works, give to the Superintendent not later than twenty eight days after the cause of delay arose notice in writing of his claim for an extension of time for Practical Completion of the Works, together with a statement of the facts on which he bases his claim.

If the Superintendent determines that the cause of the delay is such as to justify an extension of time for Practical Completion of the Works the Superintendent shall grant the Contractor such extension of time for Practical Completion of the Works as the Superintendent thinks fit and shall, as soon as practicable after he has granted that extension of time, notify the Contractor thereof.

If the Superintendent determines that the cause of the delay is not such as to justify an extension of time for Practical Completion of the Works, the Superintendent shall as soon as practicable thereafter notify the Contractor of that determination.

Notwithstanding that the Contractor has not given notice of a claim for an extension of time for Practical Completion of the Works pursuant to this sub-clause, the Superintendent may, at any time and from time to time and for any reason he thinks sufficient, by notice addressed to the Contractor extend the time for Practical Completion of the Works by nominating a date specified in the notice as the date for Practical Completion of the Works and the date so specified in the notice shall, for the purpose of the Contract, be deemed to be the date for Practical Completion of the Works.

Where the Contract specifies that a separable part of the Works shall be executed to Practical Completion within a period or by a date different from the period or date provided for Practical Completion of the Works the provisions of this sub-clause shall apply to and with respect to the extension of time for Practical Completion of that separable part of the Works; and for that purpose references in this sub-clause to the Works shall be read as references to that separable part of the Works.

Any extension or extensions of time granted or allowed by the Superintendent pursuant to this sub-clause may be granted or allowed at any time before the issue of the Final Certificate.

No claim for extra costs incurred by the Contractor by reason of or as a result of or arising from the exercise by the Superintendent of the power to grant or allow any extension of time under this sub-clause shall be entertained by the Corporation unless the need for the extension of time was due to any breach of the provisions of the Contract by or any other act or omission on the part of the Corporation, the Superintendent or the employees, professional consultants or agents of the Corporation.

35.5 Liquidated Damages for Delay in Completion

If the Contractor fails to reach Practical Completion of the Works or of a separable part of the Works, as the case may be, within the relevant time referred to in Sub-clause 35.2 or within any extended time granted or allowed pursuant to Sub-clause 35.4, the Contractor shall be liable to the Corporation, by way of pre-estimated and liquidated damages and not as a penalty, for the amount or amounts stated or referred to in the Annexure hereto for every week and a proportionate part of that amount or of those amounts for every part of a week that shall elapse after that time or the extended time until the whole of the Works or the separable part of the Works, as the case may be, has been executed to Practical Completion or taking over or cancellation under Sub-clause 44.1 occurs, whichever is the sooner and that amount or those amounts shall be respectively a debt or debts due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

Where the Corporation has used or occupied any part of the Works pursuant to Sub-clause 35.3, the amount of pre-estimated and liquidated damages for which the Contractor is liable to the Corporation by virtue of this sub-clause may be reduced to an amount determined by the Superintendent and notified by him to the Contractor.

36. CLEANING UP BY CONTRACTOR

The Contractor shall keep the work under the Contract clean and tidy as it proceeds, and regularly remove from the site rubbish and surplus material arising from the execution of the work under the Contract including any work performed during the Defects Liability Period for the Works or during any Operational Maintenance Period for the Works specified in the Contract. Within fourteen days after the Date of Practical Completion of the Works, including tests on completion, the Contractor shall remove all buildings, workshops, Temporary Works, Constructional Plant and equipment which he may have constructed or brought on the site for carrying out the work under the Contract except such as are required by the Contractor for the purpose of performing work during the Defects Liability Period for the Works or during any Operational Maintenance Period for the Works specified in the Contract, and which with the approval of the Superintendent remain on the site. All buildings, workshops, Temporary Works, Constructional Plant and equipment required by the Contractor for the purpose of performing work during the Defects Liability Period for the works or during any Operational Maintenance Period for the Works specified in the Contract shall be removed by the Contractor on completion of that work and he shall ensure that, within fourteen days after the completion of that work, the site is left clean and tidy and free of rubbish and surplus material.

If the Contractor fails to comply with any obligation imposed on him by this clause the Corporation may, after giving notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the cost incurred by the Corporation in having the work so carried out shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

37. DEFECTS LIABILITY

37.1 Times of Commencement and Periods

If a Certificate of Practical Completion is issued for the Works and no Certificate of Practical Completion has been issued for any separable part of the Works, the Defects Liability Period for the Works shall commence on the Date of Practical Completion of the Works and shall end on the day on which the Defects Liability Period for the Works set forth in the Annexure hereto expires.

If a Certificate of Practical Completion is issued for a separable part of the Works, the Defects Liability Period for that separable part of the Works shall commence on the Date of Practical Completion of that separable part of the Works and shall end on the day on which the Defects Liability Period for that separable part of the Works specified in the Annexure hereto expires.

If a Certificate of Practical Completion is issued for the Works and a Certificate of Practical Completion has been issued for a separable part of the Works, the Defects Liability Period for the Works shall extend to those parts of the Works other than that separable part of the Works referred to in the last preceding paragraph.

If, pursuant to Sub-clause 35.3, the Corporation has used or occupied a part of the Works, the Defects Liability Period for that part of the Works shall commence on the day on which the Corporation commenced to use or occupy that part of the Works.

37.2 Contractor's Responsibility

Any minor omissions and minor defects of the kind referred to in the definition of Practical Completion in Clause 2 which existed at the commencement of a Defects Liability Period shall be rectified by the Contractor as soon as possible.

Any omissions and defects referred to in the preceding paragraph of this sub-clause that are not rectified by the Contractor and any other defects which become apparent during a Defects Liability Period under normal use of the Works or of a separable part of the Works and which are due to any cause, including design, workmanship or materials for which the Contractor is responsible shall be rectified by the Contractor when directed to do so by the Superintendent who, in that direction, shall state the minor omissions or minor defects or in what respect the Works or the separable part of the Works are otherwise defective and the date by which rectification shall be completed, but no such direction shall be given by the Superintendent later than fourteen days after the expiration of that Defects Liability Period.

If any omission or defect is not rectified within the time stipulated in the direction given by the Superintendent the Corporation may rectify the omission or defect at the Contractor's expense but without prejudice to any other rights that the Corporation may have against the Contractor in respect of that omission or defect and the cost incurred by the Corporation in so rectifying the omission or defect shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

Notwithstanding the provisions of this sub-clause, the Contractor shall not be responsible for the effects of fair wear and tear during a Defects Liability Period.

37.3 Remedial Work by Contractor

If it becomes necessary for the Contractor under Sub-clause 37.2 to execute any remedial work the provisions of the Contract relating to the Works shall apply to the remedial work as if it were the Works and the Defects Liability Period for such remedial work shall be the Defects Liability Period that applies, by virtue of Sub-clause 37.1, to the Works or, as the case may be, to the separable part of the Works on which the remedial work was executed and shall commence on the day on which the remedial work is completed, but the Superintendent may approve, in respect of any remedial work, a shorter Defects Liability Period.

37.4 Tests on Remedial Work

If any remedial work is of such a character as may affect the efficiency of the Works the Superintendent may, within one month after completion of that remedial work, notify the Contractor that further tests are to be made in accordance with Clause S8. The costs of such further tests shall be borne by the Contractor.

37.5 Contractor's Rights of Entry and Test

Until the Final Certificate is issued in accordance with Sub-clause S17.7 the Contractor and each of his duly authorised representatives whose names have been previously communicated in writing to the Superintendent shall for the purposes of carrying out any remedial work or making any tests or inspecting the working records of the Works and taking notes therefrom and subject to the approval and requirements of the Superintendent have the right of entry in so far as it may be necessary for all or any of those purposes at his own risk and cost and at all reasonable times to the Works.

Any action taken by the Contractor for any of the purposes expressed in this sub-clause shall not disrupt or inconvenience the normal activities of the occupants of the Works.

37.6 Use of the Works by Corporation

Subject to Sub-clauses 37.5 and 44.3 and to any restrictions on the use of the Works that the Superintendent may determine to be necessary for the execution of remedial work by the Contractor, the Corporation and any person or persons authorised by the Corporation in that behalf shall have the full, free and unrestricted use of the Works without interference on the part of the Contractor during a Defects Liability Period or during any Operational Maintenance Period specified in the Contract and such use of the Works by the Corporation and any person or persons so authorised by it shall not relieve the Contractor from any liability or obligation under the Contract.

38. WARRANTIES

The Contractor shall obtain warranties as specified in the Contract and shall ensure that the Corporation will have the benefit of the warranties. The Contractor shall ensure that the Corporation will have the benefit of any warranties specified in the Contract that are obtained by the subcontractors of the Contractor.

39. URGENT REPAIRS

If, at any time during the currency of the Contract, the Superintendent determines that any remedial, protective, repair or other like work is urgently necessary to prevent loss of or damage to the work under the Contract or to any property or to prevent personal injury to or the death of any person the Superintendent shall, as soon as practicable thereafter, notify the Contractor of that determination and the Contractor shall carry out the work immediately on receipt of that notice and if the Contractor is unable or unwilling at once to do the work the Corporation may, by its own or other workmen, do such work as the Superintendent may determine to be necessary. If the work so done by the Corporation is work which the Superintendent determines to be work that the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Corporation in doing the work shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

40. VARIATIONS

40.1 Variations to the Work

If, at any time during the progress of the work under the Contract, the Superintendent determines that the form, quality or quantity of the work under the Contract should be varied, the Superintendent may order the Contractor to do all or any one or more of the following things:

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the work under the Contract;
- (d) execute additional work.

No variation shall be made by the Contractor without an order by the Superintendent.

No variation shall invalidate the Contract, but the value of the variation shall be taken into account in determining the final contract sum. Each variation shall be valued in accordance with Sub-clause 40.2 and, unless otherwise directed by the Superintendent, such valuation shall be determined before the work to which the variation relates is commenced.

See also
clause S10

40.2 Valuation of Variations

A variation shall be valued in accordance with the rates included in the Schedule of Rates or in a Schedule of Prices if and in so far as the Superintendent determines that those rates are applicable to the variation. Where the Superintendent determines that the rates included in the Schedule of Rates or in a Schedule of Prices do not apply to a variation, the rate or price payable for the variation shall be determined by agreement between the Contractor and the Superintendent, but if the Contractor and the Superintendent fail to agree on the rate or price the Superintendent shall determine such rate or price as he considers reasonable or he may direct that the variation shall be carried out as Daywork.

40.3 Daywork

If the Superintendent directs that any work be carried out as Daywork, the Contractor shall record each day in a manner to be approved by the Superintendent the particulars of all resources used by the Contractor for the execution of the Daywork. At intervals of one month or at such shorter intervals as the Superintendent directs the Contractor shall furnish to the Superintendent his claim for payment in writing, together with these records and all time sheets, wages sheets, invoices, receipts and other vouchers that are necessary to support his claim. The Superintendent shall determine the amount to be paid to the Contractor in respect of each claim and in making his determination shall have regard to the following:

- (a) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under paragraph (a);
- (c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed upon between the Superintendent and the Contractor or, in the absence of such an agreement, in accordance with such rates and conditions as may be determined by the Superintendent;
- (d) the amounts paid for services, subcontracts and professional fees;
- (e) the actual cost to the Contractor at the site of all materials supplied and required for the work;
- (f) a charge agreed upon between the Superintendent and the Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of such an agreement, a charge determined by the Superintendent.

The amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

41. RESPONSIBILITY FOR AND NOTICE OF MEASUREMENT

The measurement of work as required for the purposes of the Contract shall be the responsibility of the Superintendent. The Superintendent shall give reasonable notice to the Contractor of his intention to measure work and the Contractor shall, if so directed by the Superintendent, be represented at and assist in the taking of measurements. If the Contractor is not represented at the time appointed by such notice for the taking of measurements the Superintendent may proceed in his absence and the measurements taken by the Superintendent shall be binding on the Contractor.

A record of the measurements shall be kept by the Superintendent and shall, on request by the Contractor, be made available to him.

See also
clause S11
& S17

42. CERTIFICATES AND PAYMENTS

Reserved

See also
clause S18

43. PAYMENT OF WORKMEN'S WAGES AND ALLOWANCES

Reserved

44. DEFAULT OR BANKRUPTCY OF CONTRACTOR

44.1 Procedure on Default of Contractor

If the Contractor defaults in the performance or observance of any covenant, condition or stipulation in the Contract or refuses or neglects to comply with any direction as defined in Clause 23 but being one which either the Corporation or the Superintendent is empowered to give, make, issue or serve under the Contract and which is issued or given to or served or made upon the Contractor by the Corporation in writing or by the Superintendent in accordance with Clause 23, the Corporation may suspend payment under the Contract and may call upon the Contractor, by notice in writing, to show cause within a period specified in the notice why the powers hereinafter contained in this clause should not be exercised.

The notice in writing shall state that it is a notice under the provisions of this clause and shall specify the default, refusal or neglect on the part of the Contractor upon which it is based.

If the Contractor fails within the period specified in the notice in writing to show cause to the satisfaction of the Corporation why the powers hereinafter contained should not be exercised the Corporation, without prejudice to any other rights that it may have under the Contract against the Contractor, may:

- (a) take over the whole or any part of the work remaining to be completed and for that purpose and in so far as it may be necessary exclude from the site the Contractor and any other person concerned in the performance of the work under the Contract; or
- (b) cancel the Contract, and in that case exercise any of the powers of exclusion conferred by sub-paragraph (a) of this paragraph.

If the Contractor notifies the Superintendent in writing that he is unable or unwilling to complete the Works, or to remedy the default, refusal or neglect stated in the notice in writing referred to in the first paragraph of this sub-clause, the Corporation may act in accordance with the provisions of sub-paragraph (a) or sub-paragraph (b) of the last preceding paragraph, as it thinks fit.

44.2 Duration of Suspension of Payment

If the Corporation suspends payment under Sub-clause 44.1 the suspension of payment may be continued until the default, refusal or neglect stated in the said notice has been remedied or the direction has been complied with.

44.3 Engagement of Others

If the Corporation elects to exercise the power conferred on it by sub-paragraph (a) of the third paragraph of Sub-clause 44.1 it may complete the whole or any part of the work remaining to be completed and for that purpose may let a contract or contracts for the work remaining to be completed or, as the case may be, for any part of that work or may employ any person or persons other than the Contractor to carry out that work or, as the case may be, the part of that work.

The Corporation may take possession of and permit other persons to use any materials, Constructional Plant and other things on or about the site which are owned by the Contractor and as are requisite and necessary for the purposes of any such contract or any such employment.

The Contractor shall have no right to any compensation or allowance for any action taken by the Corporation pursuant to this sub-clause other than a right to require the Corporation to maintain in good working order the Constructional Plant referred to in the preceding paragraph.

On completion of the work all Constructional Plant and the surplus of the materials and other things so taken possession of will be handed over to the Contractor, but without payment or allowances for the fair wear and tear they may have sustained in the meantime PROVIDED HOWEVER that if there is a deficiency as referred to in Sub-clause 44.4 and if the Contractor fails to make good that deficiency, the Corporation may retain in its possession the said Constructional Plant, materials and other things until the deficiency is made good pursuant to the provisions of Sub-clause 44.4.

44.4 Adjustment of Costs on Completion of the Works

On completion of the work in accordance with the Contract the Superintendent will ascertain the cost of the Works to the Corporation, comprising payments to the Contractor and all losses, costs, charges and expenses incurred by the Corporation in carrying out the whole or any part of the Works completed by it pursuant to Sub-clause 44.3 and any sum or sums payable or due to the Corporation as liquidated damages under the Contract and he will certify such amount to the Corporation. A certificate signed by the Superintendent stating the cost of the Works to the Corporation shall be prima facie evidence of the matters stated in the certificate.

Should the amount so certified be greater than the amount which would have been paid to the Contractor if the whole of the Works had been completed by him, the difference between the two amounts shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

44.5 Preservation of Rights of Corporation

No action taken by the Corporation under Sub-clause 44.2 or Sub-clause 44.3 shall invalidate the Contract or prejudice any of the rights, powers and remedies of the Corporation, whether under the provisions of the Contract or otherwise.

44.6 Cancellation of Contract

If the Contract is cancelled under Sub-clause 44.1 or under any other provision of the Contract it shall be deemed cancelled as from the date when notice of cancellation in writing under the hand of the Corporation is served upon the Contractor, or upon any Official Receiver, Trustee in Bankruptcy, Liquidator, Official or Provisional Liquidator, Official Manager, or Receiver or Receiver and Manager of the Contractor or of the business of the Contractor.

On such cancellation of the Contract all or any sums of money which may be in the hands of the Corporation in respect of the Contract and are not then payable to the Contractor under or pursuant to any provision of the Contract, and the whole or part of any security, including cash lodged or retained for the due and proper performance of the Contract and all or any sums of money named in the Contract as liquidated damages which have accrued due to the Corporation may be declared by the Corporation to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in the Corporation.

On such cancellation of the Contract all moneys which have been previously paid together with all moneys then payable under or pursuant to any provision of the Contract to the Contractor shall be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of the Contract.

44.7 Bankruptcy of Contractor

If the Contractor:

- (a) being a person, commits an act of bankruptcy or presents against himself or has presented against him a petition in bankruptcy or a sequestration order is made against him or he enters into any Scheme of Arrangement or any composition with his creditors or executes as a debtor a deed of arrangement or a deed of assignment; or
- (b) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory which has as an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver and Manager is appointed to carry on its business for the benefit of its creditors or any of them;

the Corporation may exercise the power conferred on it by sub-paragraph (a) or (b) of Sub-clause 44.1 as it may elect.

45. SETTLEMENT OF DISPUTES

Notwithstanding the succeeding provisions of this clause, the Contractor shall if the work under the Contract has not been completed, at all times (subject as otherwise provided for in the Contract) proceed without delay to continue to execute the work under the Contract and perform his obligations under the Contract and in so doing shall comply with all directions as defined in Clause 23 issued or given to or served or made upon the Contractor under or pursuant to the provisions of the Contract either by the Corporation in writing or by the Superintendent in accordance with Clause 23.

All disputes or differences arising out of the Contract or concerning the performance or the non-performance by either party of its obligations under the Contract whether raised before or after the execution of the work under the Contract shall be decided as follows:

- (a) the Contractor shall, not later than fourteen days after the dispute or difference arises, submit the matter at issue in writing, specifying with detailed particulars the matter at issue, to the Superintendent for decision and the Superintendent shall, as soon as practicable thereafter, give his decision to the Contractor;
- (b) if the Contractor is dissatisfied with the decision given by the Superintendent, he may, not later than fourteen days after the decision of the Superintendent is given to him, submit the matter at issue in writing, specifying with detailed particulars the matter at issue, to the Corporation for decision and the Corporation shall, as soon as practicable thereafter, give its decision to the Contractor in writing.

If the Contractor is dissatisfied with the decision given by the Corporation pursuant to the last preceding paragraph, he may, not later than twenty-eight days after the decision of the Corporation is given to him, give notice in writing to the Corporation requiring that the matter at issue be referred to arbitration and specifying with detailed particulars the matter at issue, and thereupon the matter at issue shall be determined by arbitration. If, however, the Contractor does not, within the said period of twenty-eight days, give such a notice to the Corporation requiring that the matter at issue be referred to arbitration, the decision given by the Corporation pursuant to the last preceding paragraph shall not be subject to arbitration.

Where a notice is given by the Contractor to the Corporation pursuant to the last preceding paragraph requiring that the matter at issue be referred to arbitration no proceedings in respect of that matter at issue shall be instituted by either the Corporation or the Contractor in any court unless and until the arbitrator has made his award in respect of that matter at issue.

Arbitration shall be effected:

- (i) by an arbitrator agreed upon in writing by the parties within twenty-eight days after the said notice is received by the Corporation; or
- (ii) in the absence of that agreement, by one of at least three persons, none of whom shall be an employee of the Corporation or of the Contractor or have had any association with the work under the Contract, whose names are submitted in writing by the Corporation for selection by the Contractor within a further period of twenty-eight days after expiry of that last mentioned period, being the person whose selection as arbitrator is notified in writing by the Contractor to the Corporation within twenty-eight days after the names are so submitted; or
- (iii) in the absence of that selection, by an arbitrator appointed in accordance with the provisions of the laws relating to arbitration in force in the State or Territory named in the Annexure hereto.

A reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the laws relating to arbitration in force in the State or Territory named in the Annexure hereto and the arbitration proceedings shall be conducted in that State or Territory. The arbitrator shall have all the powers conferred by those laws and it shall be competent for him to enter upon the reference without any further or more formal submission than is contained in this clause.

Moneys that are or become due and payable by the Corporation in respect of work carried out under the Contract shall not be withheld because of arbitration proceedings but the Corporation may, at its discretion, and pending the award of the arbitrator withhold payment of moneys in respect of any matter that is the subject of arbitration proceedings.

46. RIGHT OF CORPORATION TO RECOVER MONEYS

Without limiting the Corporation's rights under any other provision in the Contract, any debt due from the Contractor to the Corporation under or by virtue of any provision of the Contract may be deducted by the Corporation from any moneys which may be or thereafter become payable to the Contractor by the Corporation, including any retention moneys then held by the Corporation, and, if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Corporation to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

47. WAIVER OF CONDITIONS

Except as provided elsewhere in the Contract, none of the General Conditions or Special Conditions (if any) of the Contract shall be varied, waived discharged or released either at law or in equity except with the prior consent in writing of the Corporation in each instance.

48. NOTIFICATION OF CLAIMS

The Corporation shall not be liable upon any claim by the Contractor in respect of any matter arising out of the Contract unless the claim together with full particulars thereof, is lodged in writing with the Corporation not later than twenty-eight days after the date of the occurrence of the events or circumstances on which the claim is based or written notice of intention to make the claim specifying the nature of the claim is lodged with the Corporation within that time and the claim, together with full particulars thereof, is lodged in writing with the Corporation before the issue of the Final Certificate.

PART A2: SUPPLEMENTARY GENERAL CONDITIONS OF CONTRACT RC**CONTENTS**

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S1 APPLICATION

These Supplementary General Conditions of Contract RC shall be read as supplementary to the General Conditions of Contract NPWC-RC and any reference to the General Conditions of Contract shall include these provisions.

The provisions herein contained shall take precedence over any corresponding provisions to the contrary contained in the General Conditions of Contract NPWC-RC.

References herein to the Annexure and to particular clauses other than Clauses S1 to S13 are references to the Annexure and to clauses of the General Conditions of Contract NPWC-RC.

S2 INTERPRETATION

In the Contract the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

“bank” means a bank authorised under Section 8 of the Banking Act 1959 (Cmmlth) or authorised State bank approved by the Corporation.

“business day” means any day other than a Saturday, Sunday or a wholly or partly observed as a public holiday throughout Victoria;

“day” means calendar day;

"Defects Liability Period" means that period of time, stated in the Annexure, commencing on the Date of Practical Completion of the Works or any separable part of the Works during which it is the Contractor's responsibility to make good at his own cost any omissions and defects which exist at the Date of Practical Completion or which become apparent during that period;

“Excluded Claim” for the purpose of making a progress payment claim has the meaning in Clause S17.1.1;

"Nominated Subcontractor" means any person who, pursuant to the terms of the Contract, is nominated by the Corporation or the Superintendent on its behalf to be engaged as a subcontractor by the Contractor;

"operational maintenance period" means that period during which the Contractor is required to maintain the Works or to carry out such other work or function as is specified in the Specification;

"order" means any instruction, direction or requirement pursuant to the Contract issued to the Contractor in writing by the Corporation, the Superintendent or a Superintendent's Representative or orally by the Superintendent or a Superintendent's Representative and subsequently confirmed in writing;

“progress claim” shall mean payment claim in accordance with the Contract and the Security of Payment Act.

“progress certificate” shall mean payment schedule in accordance with the Contract and the Security of Payment Act.

"provisional quantity" means a quantity of work nominated by the Corporation in the Schedule of Prices (for a Lump Sum contract) or the Schedule of Rates (for a Schedule of Rates contract) for an item of work to be provided by the Contractor, the nature but not the quantity of which is specified in the Contract when entered into and which is specified in the Contract to be a provisional quantity item. The amounts obtained by extending provisional quantities at the rates set out in the Schedule of Prices for a Lump Sum Contract or the Schedule of Rates for a Schedule of Rates Contract form part of the Contract Sum but provisional quantity items shall be paid for in accordance with Sub-clause 11.2;

"provisional sum" means a sum of money nominated by the Corporation to be included in the Schedule of Prices or the Schedule of Rates for an item of work to be carried out by the Contractor which is not specified in detail in the Contract when entered into and which is specified in the Contract to be a provisional sum item. A provisional sum item includes any item, whether described as a prime cost sum item or otherwise, to be supplied to or incorporated into the Works which is not fully specified in the Contract when entered into. Provisional sums form part of the Contract Sum but Provisional Sums shall be adjusted in accordance with Sub-clause 11.1;

"Security of Payment Act" means the Building and Construction Industry Security of Payment Act 2002 (Vic) upon proclamation and as amended from time to time;

"Schedule of Prices" means the schedule included in a Lump Sum Contract showing prices for items of work to be done and materials to be supplied including any prime cost sums, provisional sums and provisional quantities, and may also include quantities and rates;

"Schedule of Quantities and Prices" means the schedule submitted in respect of Lump Sum contracts only by the Contractor showing the Contractor's estimated quantities of work to be done and materials to be supplied together with prices for items of work to be done and materials to be supplied;

"separable part of the Works" means, further to the meaning contained in Clause 2, a part of the Works which has been declared a separable part during the currency of the Contract by the Superintendent with the written agreement of the Contractor and so notified to the Contractor by the Superintendent in writing, such declaration including the date for Practical Completion of that separable part;

"subcontractor" means any person engaged by the Contractor to execute a portion of the work under the Contract (but does not include an employee of the Contractor) and for the purpose of Clauses 9, S4, S17 and S18 includes any person who provides services, materials, plant, equipment or advice in respect thereof;

"the Corporation" means the Roads Corporation established by the Transport Act 1983 as amended and continued under the Transport Integration Act 2010 of the State of Victoria and includes its successors and assigns;

"the Superintendent" means the person appointed to the position named in the Annexure or in his absence such other person acting in that position or such other person for the time being or from time to time during the currency of the Contract appointed by the Corporation and notified in writing to the Contractor to act as Superintendent for the purpose of the Contract. When no such position has been nominated in the Annexure nor such other person appointed by the Corporation and notified to the Contractor, the word "Superintendent" shall mean the relevant Director of the Corporation;

"variation" means any alteration to or substitution for any part of the Works or work required for the execution of the Works as defined in the Drawings and Specification at the date of acceptance of tender which is ordered by the Superintendent at any time and from time to time up until the issue of the Final Certificate.

"week" means seven consecutive days;

"works instruction" means any instruction issued by the Superintendent or a Superintendent's Representative in writing, or orally and later confirmed in writing, relating to the execution of the work under the Contract. A works instruction shall not of itself constitute a variation.

S3 LUMP SUM CONTRACT

In a Lump Sum Contract the Schedule of Prices forms part of the Contract only for the application of Clauses 3, 11, 40 and S3 and may also, at the discretion of the Superintendent, be used as a basis for calculating other payments to be made under the Contract.

The contract sum shall be deemed to include the cost of all works, services and incidentals associated with or necessary for the proper execution of the Works whether or not such works, services and incidentals are specifically referred to in the Contract. The cost of such works, services and incidentals shall be included as appropriate in the rates shown for the relevant particular items or in the rates shown for associated items or in the rates and prices shown in the Schedule of Prices generally.

Any errors in extension or addition or both discovered by the Authority or the Contractor in the Schedule of Prices shall be corrected at the time of execution of the Contract, or subsequently if not at that time discovered, in a manner agreed to between the Contractor and the Superintendent or, in the event of failure to agree, in the manner determined by the Superintendent so that in any event the total of all items in the Schedule of Prices continues to equal the contract sum.

Provisional quantities shall be adjusted and paid for in accordance with Clause 11.

S3A FORM OF SECURITY

Further to Clause 5.3, security may also be in the form of an approved unconditional undertaking given by a financial institution or insurance company approved by the Corporation, or other form approved by the Corporation.

The Principal shall have discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The unconditional undertaking in the form of Appendix B is approved by the Corporation.

S4 APPROVAL TO SUBCONTRACT

Notwithstanding the provisions of Clause 9.2 of the General Conditions of Contract, the Contractor is not required to obtain the Superintendent's approval of any proposed subcontractor. The Contractor shall not engage as a subcontractor any business entity that has been excluded from tendering for Victorian Government contracts. VicRoads reserves the right to exclude as a subcontractor any business entity that, in its reasonable opinion, has been guilty of misconduct, or has been incompetent or negligent on VicRoads' works.

To obtain approval to subcontract any part of the work under the Contract, the Contractor shall submit to the Superintendent a "Request to Subcontract Work/Service" pro forma (refer Appendix A to these Conditions), supplying details of the work to be subcontracted, proposed subcontractor(s) and conditions of subcontracting, no less than ten working days prior to the commencement of such work under the Contract.

"Subcontractor" includes suppliers and consultants.

The Contractor shall ensure that all subcontracts, from time to time for work under the Contract with the same subcontractor with a value of \$20,000 or more in aggregate, or such other value as the Superintendent may determine and notify in writing from time to time, shall contain the following provisions *mutatis mutandis* (i.e. with only such amendments as are necessary to apply to the Contractor and subcontractor relationship) and such other terms as the Superintendent considers reasonable or necessary:

- (a) the provisions of the Contract, insofar as they are applicable to the work comprised in the subcontract. The subcontract payment provisions shall be to the form or effect of the Contract payment provisions, and where the Contract is subject to price adjustment for rise and fall, identical rise and fall provisions shall be included in the subcontract documentation;
- (b) a provision for the Contractor to promptly rescind the subcontract if the Superintendent is not satisfied with the manner in which the subcontracted work is being or may be carried out and requires such subcontract to be rescinded by the Contractor;
- (c) a provision under which the subcontractor shall afford right of access for the Superintendent, or any person authorised by the Superintendent, at all reasonable times to the site and other places where work for the Contract is being carried out by the subcontractor;
- (d) a provision under which the subcontractor's management system plans shall be required to meet all requirements of this Contract for the subcontracted work;
- (e) an obligation on a party who is late in paying money under the subcontract to pay interest on the overdue money at the rate that is imposed for overdue payments under this Contract;
- (f) dispute resolution provisions similar to those set out in this Contract;
- (g) an acknowledgement that a party is not required to comply with the dispute resolution procedures if the only remedy sought is an order for payment of money which is not disputed to be due and payable under the contract;
- (h) an obligation to provide the subcontractor (before the subcontractor prices the work) with copies of all provisions of this Contract which relate to the security of payment, time for payment and other matters set out above.

If the Contractor or any subcontractor fails to expressly include the above provisions in any subcontract or subcontracts with a value of \$20,000 or more in aggregate (or such other sum as the Superintendent from time to time directs in writing) these provisions shall be deemed to be included in the subcontract for the benefit of the Contractor's subcontractors and, to the extent legally possible, for the benefit of all other subcontractors. Non-compliance with this Clause S4 is a substantial breach for the purpose of Clause 44.2 of these General Conditions of Contract.

Approval to subcontract the work shall not be deemed to be approval of the subcontractor.

The Contractor shall prepare an audit schedule for each subcontractor, which shall be submitted to the Superintendent for review prior to the commencement of work by each subcontractor. The Contractor shall conduct regular surveillance and audits of all on-site subcontractors.

S5 LATENT CONDITIONS

The Corporation does not unless otherwise provided in the Contract warrant the completeness of the information or the correctness of the designations of rock or other materials, or the interpretations, deductions or conclusions which are given in the Specification or Drawings or in any reports, maps, drawings, diagrams or other information available to the Contractor from the Corporation or otherwise.

Should the Contractor encounter during the progress of the work under the Contract physical conditions at the site, other than climatic conditions or conditions arising from climatic conditions, which he considers:

- (a) materially differ from those shown on the Drawings or indicated in the Specification and which, if known at the time of tendering, would have substantially affected the Contract Sum; and
- (b) materially differ from the conditions generally recognised as likely to be encountered in the performance of work of the character provided for in the Drawings and Specification and to be executed in the area of the site; and
- (c) could not reasonably be anticipated by the Contractor after he has carefully and fully informed himself pursuant to Clause 12; and
- (d) could not be overcome by the Contractor in the ordinary course of work by the application of good engineering practice and proper construction procedure,

the Contractor shall before these conditions are disturbed give to the Superintendent immediate written notice detailing the conditions encountered.

The Superintendent will then promptly investigate the conditions to satisfy himself whether or not they do so materially differ and could not reasonably be so anticipated and could not be so overcome and give to the Contractor written notification of his determination.

If the Superintendent determines that latent conditions exist he may request the Contractor to supply within a stipulated time a statement in writing detailing:

- (a) the additional work and additional construction plant equipment and labour which he considers necessary to do and use to overcome such latent conditions;
- (b) his estimate of the time required to remove, rectify or remedy such latent conditions; and
- (c) his estimate with quantities and rates of the cost of remedying or overcoming such latent conditions.

In respect of these proposals the Superintendent will notify the Contractor in writing within a reasonable time of his approval or rejection of the proposals or his approval subject to any modifications specified by him and will also inform the Contractor of the method of measurement and payment for the work.

Any variations to the Contract made under the provisions of this clause shall be deemed to have been accepted by the Contractor unconditionally in full satisfaction of any claim, loss or damage suffered by the Contractor in respect of such variations unless the Contractor advises the Superintendent in writing, within fourteen days from the date of the Superintendent's notification, of his non-acceptance of the variations and his reasons for such non-acceptance in which case the matter shall be settled as provided in Clause 45.

S6 SUPERINTENDENT

The Contractor acknowledges and agrees that the Corporation has nominated the Superintendent to receive the Contractor's payment claims and delegated to the Superintendent its power to provide payment schedules to the Contractor in compliance with the Security of Payment Act. The Corporation accepts service of payment claims upon the Superintendent under Section 14 of the Security of Payment Act in lieu of service on the Corporation and the Contractor agrees that the provision of payment schedules by the Superintendent complies with the Corporation's obligation under Section 15 of the Security of Payment Act.

Further to the provisions of Clause 23:

- (a) in respect of proposals or requests or other matters submitted by the Contractor to the Superintendent for approval, the granting of any such approval by the Superintendent will not relieve the Contractor of his responsibilities for satisfactory execution or performance of the work to which such approval relates;
- (b) in respect of all matters which pursuant to the Contract are left to the determination of the Superintendent, including the granting or withholding of Certificates, the Superintendent if required so to do by either party to the Contract will give in writing to both parties to the Contract his determination;
- (c) the Contractor accepts that the Superintendent, when performing his functions under the Contract may be required by internal delegations or policies to obtain the consent of the Minister, Chief Executive or other officer or employee of the Corporation or to give effect to particular policies or internal directions.

S7 CONSTRUCTIONAL PLANT

S7.1 Rejection of Constructional Plant

The Superintendent may reject any Constructional Plant that he may consider unsuitable for the purpose for which the Contractor proposes to use it, even though it may comply with the requirements of Sub-clause 29.2, and any Constructional Plant so rejected shall not be used for the purpose proposed, and shall, if the Superintendent so directs, be removed from the site.

S7.2 Hire, Hire Purchase or Lease of Constructional Plant

The Contractor shall upon request by the Superintendent, notify the Superintendent in writing within seven days of the name and address of the owner of any Constructional Plant used on the work under the Contract and held by the Contractor under an agreement for hire, hire-purchase or lease. In order to retain such Constructional Plant on hire, hire-purchase or lease the Corporation may, with the written agreement of the Contractor, pay to the owner the amount of any overdue instalment or other sums payable under the hire, hire-purchase or lease agreement. In the event of so doing the Corporation may recoup such amount or amounts pursuant to Clause 46.

S8 QUALITY SYSTEM AND INSPECTION OF MATERIALS AND WORK

S8.1 S8.1.1 For the purpose of this Clause 8 the following words shall have the following meaning unless the context otherwise requires:

"Accredited laboratory" or "accredited method" means -

- (i) for all inspections (other than for material which is supplied from outside Australia) a laboratory or method (as the case requires) accredited by the National Association of Testing Authorities (NATA) for those inspections or inspection methods;
- (ii) for all inspections for all material which is supplied from outside Australia, a laboratory or method accredited by NATA for those inspections or inspection methods or by another laboratory or method accredited by a recognised accreditation body approved in the contract or, if the contract does not provide such approval, then by a recognised accreditation body approved by the Superintendent.

"Hold point" has the meaning provided in the specification provided that the meaning may, with the written approval of the Superintendent, be modified in any Quality Plan prepared and approved for the purposes of this contract.

"Inspection" means and incorporates measuring, testing or otherwise examining goods and services or works or materials (including, where appropriate, raw materials, components and intermediate assemblies) for determining conformity with the specified requirements.

"Measuring" includes checking for line, level, dimensional accuracy and quantity.

"Permanent Work" means the work executed or to be executed in accordance with the Contract which is to be handed over to the Corporation.

"Quality Plan" means the Quality Plan required in the Specification and approved by the Superintendent pursuant to Sub-clause S8.1.2.

"Test" includes taking of samples and specimens and preparation of materials and work for testing.

S8.1.2 Quality System

The Contractor shall plan, develop, maintain and submit to the Superintendent for his approval a documented Quality Plan in accordance with the Specification. This plan shall, if approved by the Superintendent be the Quality Plan adopted for the Works and shall be adhered to by the Contractor.

S8.2 Materials and Work Subject to Inspection and Tests

S8.2.1 The Contractor shall:

- (a) carry out to the Superintendent's satisfaction (and in his presence if he so wishes) any inspections which he is required under the Contract to perform and such other inspections as the Superintendent may at any time direct the Contractor to perform;
- (b) provide to the Superintendent upon demand any test or measurement or other inspection certificates or results together with such additional information which the Superintendent may require to satisfy the Superintendent that the Contractor is complying with his obligations under the Contract;
- (c) grant free access to the Superintendent to enter the Contractor's places of work to inspect any work at any stage, giving such assistance as the Superintendent may reasonably require for those purposes including access to all relevant drawings or documents;
- (d) provide as required, free of charge, for the Superintendent samples from the materials used in the Work, made to standard test piece dimensions, which shall thereupon become the property of the Corporation, which shall be forwarded at the Contractor's cost and expense to the places of inspection selected by the Superintendent or as provided otherwise in the Contract;
- (e) perform the work in compliance with the Contract and the Quality Plan;
- (f) carry out inspections in accordance with any applicable Corporation codes of practice or test methods or, where no codes of practice or test methods are applicable, in accordance with applicable Australian Standard test methods as current at the date of acceptance of tender;
- (g) ensure that inspections required by the Contract to be carried out in an accredited laboratory or by any accredited laboratory or accredited method are in fact carried out in that manner and are certified by the laboratory or tester as having been so carried out.

S8.2.2 The Contractor shall ensure that the terms of any subcontract contain provisions in the same terms as Sub-clause S8.2.1 substituting the word "subcontractor" (or such other term as is used therein to describe that party) for the term "Contractor" where herein appearing.

S8.3 Inspection of Work before Covering Up and Notice of Work Ready for Inspection

S8.3.1 Where a hold point is specified for any inspection or is created by a non-conformance (either with the contract or any Quality Plan) the Contractor shall give at least 24 hours notice to the Superintendent prior to inspection and release of the hold point.

S8.3.2 The Contractor shall not cover up or put out of view any parts of the Work until the works comply with all of the requirements of the contract, or, in the event of a hold point, until the Superintendent has given the Contractor his written approval to proceed.

S8.4 Cost of Testing

S8.4.1 Unless otherwise provided in the Contract, the Contractor shall at the Contractor's own cost carry out all inspections of materials and work under the contract in accordance with the requirements of the contract and the Quality Plan. Where the Contractor is required by the Contract to carry out inspection of any part or component of the work he shall, at his own cost and expense supply all necessary labour, material, apparatus, facilities and power and carry out such inspection completely.

S8.4.2 Any inspection shall, if reasonably required by the Superintendent, be repeated within a reasonable time. If the repeat inspection substantially confirms the original inspection result, all costs of and incidental to the repeat inspection shall be borne by the party requiring it. Otherwise such costs shall be borne by parties bearing the costs of the original inspection.

S8.4.3 If during an inspection any part of the component of the Work fails to fulfil the requirements of the Contract, inspections on the remedial work on that part or component and inspection on all other parts or components of the work related to the remedial Work shall be carried out again in accordance with the requirements of the contract and the costs of and incidental to such additional inspections shall be borne by the Contractor.

S8.4.4 The Superintendent may direct the Contractor to carry out an inspection or inspections in substitution for an inspection which the contract requires the Contractor to carry out, in which event the Superintendent may, if he believes that the substitute inspection is a variation, value the extra cost of the substitute inspection, above what would have been incurred for the original inspection, as a variation in accordance with Clause 40.2.

S8.5 Opening up for Inspection or Testing

S8.5.1 The Superintendent may from time to time and at any time before the issue of the Final Certificate direct the Contractor to open up or pull down for inspection any part of the work.

S8.5.2 The Contractor shall comply promptly with such a direction and, when the Superintendent has completed his inspection the Contractor shall reconstruct and make good to the satisfaction of the Superintendent the part of the work so opened up or pulled down.

S8.5.3 If the part of the work referred to in Sub-clause S8.5.1 has been covered up or put out of view without the approval of the Superintendent or if it is found to be not in accordance with the contract, the whole of the cost of providing access, opening up, pulling down, inspection, reconstruction and making good and any other consequential costs shall be borne by the Contractor.

S8.5.4 If the part of the work referred to in Sub-clause S8.5.1 has been covered up or put out of view with the approval of the Superintendent and it is found to be in accordance with the contract, the whole of the cost of providing access, opening up, pulling down, inspection, reconstruction and making good shall be borne by the Corporation.

S8.6 Retention of Improper Materials or Work and Hold Points

S8.6.1 Any materials supplied or work executed which is not in accordance with the Contract or the Quality Plan shall be replaced or rectified by the Contractor.

S8.6.2 If the Contractor supplies any material or executes any work which is not in accordance with the Contract or the Quality Plan and if the Superintendent expressly elects not to require the Contractor to replace, correct or remove any part of such material or work, the Superintendent may issue an order to make such addition to or deduction from the Contract Sum as the Superintendent considers fit to compensate the Corporation for the consequences generally which may result to the Corporation from the incorporation of such material or work into the Work, and also to allow for any savings which the Superintendent considers that the Contractor may have effected to itself by supplying any material or executing any work which is not in accordance with the Contract.

S8.6.3 Where the Contract allows for the substitution of materials or standards of workmanship which are "equal to" or "the equivalent of" those specified, the question of their equality or equivalence shall be determined initially by the Contractor who shall then submit details of any such assessment to the Superintendent for review and approval by the Superintendent prior to the Contractor adopting the substituted materials or workmanship. Where the Superintendent approves such substitute materials or workmanship but believes they are not equal or equivalent to those specified he may exercise the powers conferred on him by Clause S8.6.2 as if the Contractor had supplied material or executed work which is not in accordance with the contract. Nothing contained in this clause relieves the Contractor of his liability for defective materials or workmanship in relation to the substitute material or work.

S8.7 Breach of this Special Condition

S8.7.1 A breach of any part, or sub-clause of this Clause S8 by the Contractor or any subcontractor is an act, default or omission of the Contractor or an employee or agent of the Contractor for the purpose of Clause 34.2 and is also a default by the Contractor in the performance of observance of any covenant, condition or stipulation for the purpose of Clause 44.

S8.7.2 Notwithstanding the provisions of Clause S8.7.1 or any other clause or sub-clause of this agreement, if the Contractor fails to carry out or complete inspections as required by the Contract, or within a reasonable time in response to the Superintendent's direction to do so in accordance with this Clause S8, the Corporation may carry out any inspection (including an inspection of completed works which is required to be carried out by the Contractor and which is a precondition to the issue of a Certificate of Practical Completion under the Contract whether for the whole of the works or of a separable part of the works) and may take samples and specimens and prepare materials and work for testing or give the Contractor 7 days notice in writing of its intention to use the Works.

Any costs expended by the Corporation in carrying out the inspection shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46. Further, at the expiration of 7 days notice referred to in this sub-clause, the Corporation may use the Works and, provided it uses the Works for the purpose for which they were constructed, the Works shall remain at the Contractor's risk until the expiration of the Defects Liability Period or any Operational Maintenance Period, whichever is the longer. Such use by the Corporation shall not relieve the Contractor of any obligation pursuant to this Contract.

S9 PROGRESS AND SUSPENSION OF THE WORKS

S9.1 Progress of the Works

Further to the provisions of Sub-clause 34.1, the Contractor shall proceed with the work under the Contract at a rate of progress and in a manner which is in accordance with the construction programme where applicable. The capacity of the Contractor's Constructional Plant, his sequence of activities and method of operation and the other resources applied by him shall at all times during the continuance of the Contract be such as to ensure the completion of the Works or any separable part of the Works in accordance with the dates for completion specified in or fixed under the Contract.

If the Contractor fails to maintain progress in accordance with Sub-clause 34.1 or this sub-clause the Contractor shall take such action as may be directed by the Superintendent to ensure the completion of the Works or any separable part of the Works in accordance with the construction programme.

If the Contractor fails to act in accordance with a direction given under this sub-clause such failure will be deemed a default pursuant to Clause 44.

Any acceptance, direction or approval given by the Superintendent under this sub-clause shall not relieve the Contractor of his obligations under the Contract.

Should the Contractor become aware of any circumstances which are likely to affect the date of completion of the Works or any separable part of the Works he shall immediately notify the Superintendent of such circumstances and provide an estimate of the extent of any resulting delay and his proposed remedial action.

S9.2 Suspension of the Works

A Superintendent's Representative may by issue of a works instruction suspend the whole or any part of the work under the Contract if, in his judgment, the emergence of any of the circumstances set out in Sub-clause 34.2 renders such suspension urgent and necessary. Upon receipt of such works instruction, the Contractor shall suspend work as directed but may recommence work if the suspension is not confirmed in writing by the Superintendent within seven days.

S10. VALUATION FOR VARIATIONS, DIFFERENCES IN QUANTITIES AND DAYWORKS**S10.1 Valuation of Variations**

This clause, when applicable, shall take precedence over Sub-clauses 3.3 and 40.2 in the event of inconsistency or conflict.

If payment is to be made on a Schedule of Rates basis for any section or item of work and the Contractor has performed that section or item of work and the actual work performed is more or less than the quantity for that section or item of work provided in the Schedule of Rates and the Contractor alleges or the Superintendent determines that the rate provided in the Schedule of Rates for that section or item of work should not be applied as the basis for payment but that some other basis of payment should apply then provided that:

- (a) the section or item of work is not stated in the Schedule of Rates to be a provisional quantity; and
- (b) any extra quantity which is the result of a variation or variations ordered by the Superintendent is excluded for the purposes of applying this clause;

the following principles shall be applied in determining what rate is applied in relation to the section or item of work in question.

Where the "net total" for the quantity of work actually required to be carried out by the Contractor in the normal course of work in relation to that section or item of work is within 20% (or such other percentage as may be stipulated in the specification) above or below the quantity originally provided in the contract at the date of acceptance of tender - then the rate stated in the Schedule of Rates shall be applied.

Where the net total for the quantity of work actually required to be carried out by the Contractor in the normal course of work in relation to that section or item of work exceeds 20% (or such other percentage as may be stipulated in the specification) above or below the quantity originally provided in the contract at the date of acceptance of tender - then that part of the quantity of work carried out by the Contractor which is outside the percentage limit (and only that part) shall not necessarily be subject to the rates provided in the Schedule of Rates but shall be valued as a variation with the rate payable for the part outside (and only the part outside) to be agreed between the Contractor and the Superintendent but if they fail to agree a rate then the Superintendent shall determine such rate as he considers reasonable. Nothing contained in this clause precludes the Superintendent from deciding that the original rates are reasonable if he believes that to be the case.

For the purposes of this clause the "net total" for the quantity of work is the total of all work carried out in relation to that section or item of work calculated at the Date of Practical Completion of the Works.

S10.2 Daywork

Further to the provisions of Sub-clause 40.3, to substantiate claims for payment for work performed as Daywork the Contractor shall, during the currency of such work, render submissions daily in duplicate to the Superintendent or Superintendent's Representative showing details of the Daywork performed during the previous day. Such submissions shall include:

- (a) the identity of, classification and number of workmen together with the hours worked by each workman;
- (b) the hours of operation of each item of plant and identifying each item of plant;
- (c) the quantities of each category of materials incorporated into the Works.

On receipt of the Contractor's submission the Superintendent or the Superintendent's Representative will check the details and, if satisfied with their accuracy, certify them as prima facie correct. If the Superintendent or Superintendent's Representative disagrees with any details in the submission he will make any necessary adjustments after consultation with the Contractor. If agreement cannot be reached the Superintendent can decide how, if at all, the submission will be corrected.

A copy of the certified submission will be returned to the Contractor.

S11 INTEREST ON OVERDUE PAYMENTS**S11.1 Rates of Interest**

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, interest shall be payable thereon, up to and including the date payment is made, at the rate set out in the Annexure, or if no rate is set out, at 8% per annum calculated on a simple interest basis.

S11.2 Dates from which Interest is Payable

Interest on overdue payments shall be paid after the expiration of the following periods:

- (a) for progress payments made pursuant to Sub-clauses S17.1 or S17.3, 20 business days after the Superintendent receives the Contractor's statement or 10 business days after the Superintendent issues a payment schedule, whichever date is the later;
- (b) for final payments pursuant to Sub-clause S17.6 or S17.7, except for any disputed portion of a claim, 20 business days after the issue of a final certificate;
- (c) for disputed portions of a claim subsequently determined by the Superintendent or Corporation or ascertained by negotiation or arbitration, 90 days after lodgement by the Contractor of the full and final particulars of the claim.

Interest on moneys owing as overdue payments, delay costs, breach of contract terms or otherwise shall be computed on a simple interest basis and not as compounding interest.

S11.3 The provisions of Sub-clauses S11.1 and S11.2 and any other clauses of the Contract dealing with interest on moneys owing constitute a code which covers the field in respect of compensation for wrongfully caused loss of the use of money and compound interest rates shall not be used. Any common law principle as to damages which would provide for compensation for wrongfully caused loss of the use of money shall not be applied in this contract.

S12 PAYMENT FOR MATERIALS NOT INCORPORATED IN WORKS**S12.1 Materials**

In this clause, "materials" means plant and/or materials or any part thereof which have not been incorporated into the Works.

S12.2 Security

The Corporation will not make payment for any materials unless the Contractor first provides additional security in respect of the materials to the same amount as set out in the Annexure for the Works, by way of an unconditional bank undertaking in a form as required by Clause 5 of the General Conditions of Contract. This security will be returned once the materials are incorporated into the Works.

If the Contractor breaches any requirement of this clause then the Corporation may convert into money the security that does not consist of money. The Corporation shall not be liable for any loss occasioned by such a conversion. The money may then be used to reimburse the Corporation for any loss, expense or damage which it may have suffered as a result of the breach of any of the requirements of this clause by the Contractor including any consequential losses.

Interest will not be payable by the Corporation on any cash security or on the cash proceeds of any security converted into money.

S12.3 Contractor to Meet Certain Requirements Prior to Payment

If the Contract specifies payment should be made for materials to be incorporated into the Works but not yet incorporated, or if in the Superintendent's opinion payment for such materials should be made, the Contractor shall satisfy the Superintendent of the following prior to payment under the Contract in respect of such materials:

- (a) that unencumbered ownership of the materials will pass to the Corporation upon the Corporation making payment in respect of the materials; and
- (b) that the materials are suitably identified and labelled as the property of the Corporation and are properly stored and will continue to be properly stored at no cost to the Corporation until incorporation into the Works;
- (c) that the materials will not be removed from their place of storage without prior permission from the Superintendent;
- (d) that the Contractor has at its expense insured the materials for full replacement value in the names of both the Corporation and the Contractor under a policy suitable to the Superintendent against any loss or damage of whatsoever type until incorporated into the Works. The policy, or such other evidence of insurance as the Superintendent may from time to time require, must be lodged with the Superintendent before payment is made. Such policy shall be in addition to and not derogate from the insurances to be provided pursuant to Clauses 17 and S15 of the General Conditions of Contract. Such policy shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that he may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby);
- (e) a declaration by the Contractor in a form approved by the Corporation that the materials are the sole and unencumbered property of the Contractor at the time when the unencumbered ownership of the materials is to pass to the Corporation;
- (f) documentary evidence that the materials conform in all respects with the specification;
- (g) that if the materials are not stored on the Contractor's premises, or on site, a written undertaking in a form approved by the Corporation from the person in possession of the materials confirming that the materials are unencumbered and being stored at no cost to the Corporation, and giving the Corporation access to the materials and the site; and
- (h) that the materials will be delivered by the Contractor to the place required for their incorporation into the Works at no cost to the Corporation and will be replaced if damaged.

S12.4 Value of Payment for Materials

The value of the payments shall be determined by agreement between the Contractor and the Superintendent, but if the Contractor and the Superintendent fail to agree on the value of the materials, the Superintendent may determine such rate or price as he considers reasonable having regard to the Schedule of Quantities and Prices if and in so far as the Superintendent determines that the rates apply to the materials.

The payments made for materials not yet incorporated into the works shall be credited against the amount owing to the Contractor in respect of the Contract Sum and any progress payments due will be adjusted to reflect moneys already paid for such materials.

S12.5 Payment Not Acceptance of Quality or Quantity

Payment in relation to the materials shall not be taken as evidence against or as an admission by the Corporation that the materials are of the nature and quantity required by the Contract or are in accordance with the Contract.

S12.6 Application of Materials to Remain the Responsibility of Contractor

Notwithstanding payment made and the passing of property in the materials:

- (a) the materials shall be entrusted to the Contractor for the purpose of carrying out the work and the Contractor shall be solely liable for their care; and
- (b) the application of the materials in accordance with the Contract shall remain the responsibility of the Contractor and the Contractor shall do everything necessary for the proper carrying out of its remaining obligations under the Contract in respect of the materials at no cost to the Corporation.

S12.7 Materials in Excess of Contractual Requirement

The property in any material in excess of the quantity required for the Works shall revert to the Contractor if the Superintendent, at any time up to the time of issuing a Final Certificate, also issues to the Contractor a written notice that the Corporation does not require the excess material for any other purpose and that the property in the material is to revert to the Contractor.

S13 NOTICES AND SUSPENSION OF WORK UNDER THE CONTRACT UNDER THE SECURITY OF PAYMENT ACT

S13.1 The Contractor shall ensure that a copy of any written communication it delivers or arranges to deliver to the Corporation of whatever nature in relation to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time.

S13.2 Notice of Intention to Suspend

The Contractor shall first give the Superintendent as the Corporation's nominee for this purpose at least two business days notice of its intention to suspend works under the Security of Payment Act.

S13.3 Suspension by Subcontractor

If the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor shall promptly and without delay give to the Superintendent any written communication of whatever nature that the Contractor receives from the subcontractor pursuant to the Security of Payment Act.

S13.4 Suspension under the Security of Payment Act**S13.4.1 Suspension of Work under the Contract by the Contractor under the Security of Payment Act**

Further to Clause 34.3, the Contractor may suspend the work under the Contract pursuant to the Security of Payment Act if –

- (a) no payment schedule is issued, and the payment claim becomes due and is not paid pursuant to Clause S17;
- (b) the Corporation fails to pay the payment schedule in accordance with Clause S17; or
- (c) the Corporation fails to pay the amount of an adjudication, or provide security, under the Security of Payment Act or similar applicable legislation until payment of the claim, or payment of the payment schedule, or payment or provision of security in accordance with the adjudication, as appropriate, is made.

The Contractor shall first give the Superintendent and the Corporation at least two business days notice of its intention to suspend part or the whole of the work under the Contract under this sub-clause.

S13.4.2 Suspension of Work under the Contract by a Subcontractor under the Security of Payment Act

If the subcontractor under its subcontract for work under the Contract suspends the whole or part of its subcontract work pursuant to the Security of Payments Act affecting the Contractor's performance under this Contract:

- (a) the suspension shall not of itself affect the Date for Practical Completion of this Contract but may be a ground for an extension of time for the Contractor under Clause 35.4;
- (b) the Corporation shall not be liable for any costs, expenses, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of that suspension;
- (c) the circumstances of that suspension is a substantial breach of this Contract to which Clause 44.1 applies.

S13.4.3 Contractor's Further Indemnity

Except for a payment default by the Corporation, the Contractor indemnifies and shall keep indemnified the Corporation against all damage, expense (including legal costs and VicRoads region or project and head office costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Corporation arising out of:

- (a) a wrongful suspension by the Contractor, or a suspension pursuant to the Security of Payment Act by a subcontractor of work under the Contract; or
- (b) a failure by the Contractor to comply with Clause S13. Such sum shall be a debt due by the Contractor to the Corporation to which Clause 46 of the Contract applies.

S13A SERVICE OF NOTICES BY FACSIMILE

Without limiting the generality of "notice", it includes a document but excludes electronic communication other than facsimile transmission.

Notices may be served by facsimile transmission. A facsimiled notice shall be deemed to have been given or served on the party to whom it was sent:

- (a) at the day of dispatch if dispatched after midnight and before 5.00 p.m. Monday to Friday inclusive provided that day is a business day; or
- (b) on the next day which is a business day after dispatch if dispatched after 5.00 p.m. or on a weekend or on a day which is not a business day;

provided that following transmission the sender receives a transmission confirmation report.

S14 PROPERTY DAMAGE AND PUBLIC RISK INDEMNITY

The Contractor shall fully indemnify and keep indemnified the Corporation against all loss of or damage to the property of the Corporation (other than the Works and the Temporary Works or a separable part of the Works but including existing property in or upon which the work under the Contract is being carried out) and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Corporation, the Superintendent or the employees, professional consultants or agents of the Corporation or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of or in any way in connection with the carrying out, the construction and maintenance of the Works by the Contractor or its employees, agents or subcontractors and also from any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding.

The indemnity by the Contractor pursuant to this Clause S14 shall apply notwithstanding any act or omission (whether negligent or otherwise) by the Corporation, the Superintendent or the employees, professional consultants or agents of the Corporation.

S15 PRINCIPAL ARRANGED CONSTRUCTION RISKS INSURANCE

The Corporation has effected, and will maintain, a Principal Arranged Construction Risks Insurance Policy, for not less than the liability set out in the Policy, in the names of the Corporation, the Contractor and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests. The Contractor acknowledges that prior to entering into this Contract, it was informed of the location of a publicly available electronic copy of the Policy.

The Principal Arranged Construction Risks Insurance Policy arranged by the Corporation with the Victorian Managed Insurance Authority (VMIA) under this Clause S15 will be maintained by the Corporation until 4.00 p.m. on the day of the expiration of the Defects Liability Period for the Works or any extension thereof, or any specified Maintenance Period for the Works or any extension thereof (whichever is the later).

The Contractor shall treat the relationship with the VMIA as a relationship of “utmost faith”. Accordingly, the Contractor shall promptly notify the VMIA of all relevant Incidents as the VMIA may require, and shall respond promptly and with full disclosure to every request by the VMIA for information and shall cooperate with the VMIA in the management and defence of any insurance claim.

The Contractor is responsible for payment of any excess under the Policy. Any excess payable but unpaid by the Contractor shall be treated as a debt due from the Contractor to the Corporation. The Contractor shall also maintain full and appropriate records of incidents relevant to any insurance claim.

The Contractor's liabilities and obligations pursuant to Clause S14 or as otherwise under the Contract shall not be reduced, varied or otherwise affected by the Corporation obtaining a Policy of Principal Arranged Construction Risks Insurance, or by the amount of cover provided under that Policy. If the Contractor considers that the Insurance Cover taken out by the Corporation is not sufficient to cover the Contractor's liabilities, then the Contractor shall take out and pay at its own cost for additional insurance as the Contractor considers necessary. Although the Contractor is responsible for meeting the amount of any excess payable under the policy, the Contractor may at its own cost effect its own insurance to cover the amount of any excess, or potential losses beyond the limit of insurance.

S16 FURTHER INSURANCE REQUIREMENTS

S16.1 Inspection of Insurance Policies

Before commencing work under the Contract, and whenever requested in writing to do so, the Contractor shall produce evidence to the satisfaction and approval in writing of the Superintendent of all insurances required to be effected and maintained by the Contractor pursuant to the Contract.

If, after being requested in writing by the Corporation so to do, the Contractor fails to produce evidence of compliance with each or any of the Contractor's insurance obligations under the Contract which is to the satisfaction and approval of the Corporation, the Corporation may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Contractor to the Corporation which may be deducted or recovered by the Corporation pursuant to Clause 46.

In addition to any other rights the Corporation may have, if the Contractor breaches its obligation to insure or fails to provide information to the VMIA as required under Clauses S15 or S16, or to the Corporation as otherwise required, the Corporation may refuse payments of any amount due to the Contractor, whether due upon a payment schedule or otherwise, until the Contractor shows to the satisfaction and approval of the Superintendent that it has remedied its breach.

S16.2 Terms of Insurance Policies

The Contractor shall ensure that each policy of insurance effected as required by Clauses 17 and 21, and as otherwise required in relation to motor vehicle third party property damage, or any of them, shall contain provisions acceptable to the Corporation that will:

- (a) require the insurer, whenever the insurer gives to or serves upon the Contractor or a subcontractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Corporation in writing that the notice has been given to or served upon the Contractor or the subcontractor; and
- (b) provide that a notice of claim given to the insurer by the Corporation or the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given to the insurer by the Corporation and the Contractor or by the Corporation and the subcontractor, as the case may require.

The Contractor shall, as soon as practicable, inform the Corporation in writing of the occurrence of an event that may give rise to claim under a policy of insurance effected as required by Clauses 17, S15 and 21 and shall ensure that the Corporation is kept fully informed of subsequent action and developments concerning the claim.

The Contractor shall take such steps as are necessary or appropriate to ensure that a subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the subcontractor, take in relation to the Corporation the like action to that which the Contractor is required to take under this paragraph.

The effecting of any insurance as required under the Contract shall not in any way limit the liabilities or obligations of the Contractor under any provisions of the Contract.

S16.3 Contractor's Additional Obligations in Respect of Insurances

The Contractor shall ensure that in respect of each insurance required to be effected or taken out as required by the insurance clauses or any of them by the Contractor or any subcontractor, or any insurance effected by the Corporation, it:

- (a) does not do anything which prejudices any insurance;
- (b) rectifies anything which may prejudice any insurance;
- (c) reinstates any insurance policy (other than insurance effected by the Corporation) if it lapses;
- (d) does not cancel, vary or allow any insurance policy (other than insurances effected by the Corporation) to lapse without the prior written consent of the Superintendent;
- (e) immediately notifies the Superintendent of any event which may result in an insurance policy being cancelled;
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

S17 PAYMENT CLAIMS AND PAYMENT SCHEDULES**S17.1 Payments****S17.1.1 Payment Claims**

Unless otherwise provided in the Contract, the Contractor shall submit to the Superintendent a payment claim stating that it is made under the Security of Payment Act, in a form satisfactory to the Superintendent, every month, at a date to be agreed at the first site meeting, (the reference date for the purpose of the Security of Payment Act), showing the contract value of the work carried out in performance of the Contract and incorporated in the Works together with the requisite statutory declarations. If the date for a payment claim falls due on a day which is not a business day, the Contractor shall submit the payment claim on the next business day following that date.

The payment claim must comply with the Contract and the Security of Payment Act and must be marked as a claim under that Act, and must not include Excluded Claims.

"Excluded Claims" for the purpose of making a progress payment includes -

- (a) claims for materials not incorporated into the Works (unless the Contract otherwise provides), and
- (b) claims which are made pursuant to other clauses of the Contract, including, without limitation latent conditions, ambiguities in Contract documentation, adjustments for rise and fall in costs, provisional sums and/or quantities of work, testing, variations, time related claims (including delay costs, acceleration and/or prolongation costs), practical completion payment claim and final payment claim unless these claims have been both agreed to and valued by the Superintendent and/or the Corporation.

S17.1.2 Payment Schedule

Within ten (10) business days after the receipt by the Superintendent of a payment claim complying with S17.1.1, or, if the Contractor fails to submit any payment claim, at such time as the Superintendent thinks fit, the Superintendent may determine the value of the work for which a progress claims under S17.1.1 could have been made and issue a payment schedule stating the amount of the payment (the scheduled amount) which, in the Superintendent's opinion, is to be made by the Corporation to the Contractor or by the Contractor to the Corporation.. The payment schedule will, where it is issued in response to a claim under S17.1.1, comply with the Security of Payment Act.

In the payment schedule the Superintendent shall also set out such of the following allowances or deductions as are appropriate to such Payment Schedule:

- (a) the value of the work carried out by the Contractor to the date of the Payment Claim;
- (b) amounts otherwise due from the
 - (i) Corporation to the Contractor; and
 - (ii) Contractor to the Corporation;
- (c) amounts assessed under Clause 45(a) and/or (b) and not duly disputed;
- (d) amounts previously paid under the Contract;
- (e) amounts (if any) previously deducted for retention money under the Contract;
- (f) retention moneys to be deducted under the Contract, arising out of the Contract resulting in the balance due to the Contractor or the Corporation as the case may be; and
- (g) any amount paid to the Contractor as security or sum assessed pursuant to the Security of Payment Act or any other amount that the Corporation may be entitled to deduct from the moneys due under that payment schedule.

The scheduled amount (if any) set out in a payment schedule is, for the purposes of the Security of Payment Act, the amount of the progress payment calculated in accordance with the Contract which the Contractor is entitled to be paid under the Contract.

Failure by the Superintendent to set out in any payment schedule (including under Clause S17.3 and S17.6) an amount which the Corporation is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Corporation will not prejudice the Corporation's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

S17.1.3 Payment of Payment Schedule under the Security of Payment Act

The Corporation will pay the moneys due under a payment schedule within twenty (20) business days after the receipt of a payment claim.

The payment of moneys under a payment schedule, or as adjudicated under the Security of Payment Act, shall not be taken as evidence against, or as an admission by, the Corporation that any work or item of work included in a payment schedule has been constructed or executed in accordance with the Contract, but shall be taken as payment on account only.

S17.2 Certificates of Practical Completion

When the Superintendent is satisfied that Practical Completion of the Works or of a separable part of the Works has been reached he shall issue to the Contractor a Certificate of Practical Completion for the Works or for that separable part of the Works which shall state the date of practical completion of the Works or of that separable part of the Works, which date shall, for the purposes of the Contract, be known as the Date of Practical Completion of the Works or of that separable part of the Works.

S17.3 Practical Completion Payment Claim and Payment

Within fifty-six (56) days of the issue of the Certificate of Practical Completion, or where there is more than one, the last to be issued, the Contractor shall provide the Superintendent with a Practical Completion Payment Claim and endorse it "Practical Completion Payment Claim".

In addition to claims for payment required to be included in a payment claim under Clause S17.1.1, the Contractor shall include in the Practical Completion Payment Claim all claims for moneys that the Contractor considers to be due from the Corporation arising out of any alleged breach of the Contract. Subject to the following paragraph, all claims which could have been made under Clause S17.1 or this Clause S17.3 or any other clause of the Contract, which have not already been barred, shall be barred after the expiration of the period for lodging a Practical Completion Payment Claim.

During the Defects Liability Period the Contractor may make further claims for payment but (other than the Practical Completion Payment Claim) solely in respect of work required to be performed during the Defects Liability Period.

Within forty (40) business days of receipt of the Contractor's Practical Completion Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in this Clause S17.3 for the lodgement of the Practical Completion Payment Claim by the Contractor, the Superintendent will provide to the Contractor a payment schedule which complies with the Security of Payment Act and is endorsed "Practical Completion Payment Schedule".

In issuing the payment schedule the Superintendent shall certify the amount which, in the Superintendent's opinion is finally due from the Corporation to the Contractor or from the Contractor to the Corporation arising out of the Contract or any alleged breach thereof.

In such Practical Completion Payment Schedule the Superintendent shall also set out such of the following allowances or deductions as set out in S17.1.2 hereof as are appropriate to such Practical Completion Payment Schedule together with amounts assessed in respect of minor defects or minor omissions of the kind referred to in the definition of Practical Completion in Clause 2.

Where the Corporation deducts moneys in respect of minor defects and omissions as at Practical Completion, as and when an omission or defect is rectified by the Contractor, the Superintendent will issue a payment schedule in respect of the omission or defect.

The Practical Completion Payment Schedule shall itself be evidence that all the Contractor's claims under the Contract or otherwise in respect of all work under the Contract at or before Practical Completion have been made by the Contractor and that there are no other claims outstanding as at the date of the claim.

S17.4 Correction of Certificates

The Superintendent may, by any certificate or payment schedule, correct any error which has been discovered in any previous certificate or payment schedule, or may modify any previous certificate or payment schedule, other than a Certificate of Practical Completion or the Final Certificate, which has been issued by him.

S17.5 Effect of Certificates

The issue of a payment schedule or a Practical Completion Payment Schedule issued pursuant to this clause shall not constitute approval of any work or other matter in respect of which it is issued nor shall it be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Superintendent, nor shall any such certificate negate or prejudice any of the rights, powers and remedies of the Corporation or the Superintendent.

The issue of the Final Certificate issued pursuant to Sub-clause S17.7 shall constitute prima facie evidence that all work under the Contract has been finally and satisfactorily executed by the Contractor except in so far as it is proved in any proceedings in a court of competent jurisdiction or in an arbitration under the provisions of Clause 45 or any other dispute resolution procedure that the said Final Certificate is, in any particular, erroneous by reason of:

- (a) fraud, dishonesty or deliberate concealment, on the part of the Contractor or any of his subcontractors or of any of the employees or agents of the Contractor or of any of his subcontractors, relating to the Works or any part thereof or to any matter dealt with in the said Final Certificate; or
- (b) any defect, including any omission, in the Works or any part thereof; or
- (c) any accidental or erroneous inclusion or exclusion of any work, materials, goods or figure in any computation, or any arithmetical error in any computation.

S17.6 Final Payment Claim and Schedule, Return of Security

Within 20 business days of the expiry of the Defects Liability Period, or where there is more than one, the last to expire, the Contractor shall provide the Superintendent with a final payment claim and endorse it "Final Payment Claim". The Contractor shall include in the Final Payment Claim all claims (other than those time barred, including those time barred after the expiration of the period for lodging a Practical Completion Payment Claim) for moneys which the Contractor considers to be due from the Corporation pursuant to or arising out of any alleged breach of the Contract or from or related to the performance of the Works. All claims which could have been made and which have not already been barred, shall be barred after the expiration of the period for lodging a Final Payment Claim.

Within 20 business days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in this Clause S17.6 for the lodgement of the Final Payment Claim by the Contractor, the Superintendent shall deliver to the Contractor and to the Corporation the final payment schedule endorsed "Final Payment Schedule". In providing the payment schedule the Superintendent shall certify the amount which, in the Superintendent's opinion, is finally due from the Corporation to the Contractor or from the Contractor to the Corporation arising out of the Contract or any alleged breach thereof. In such Final Payment Schedule the Superintendent shall also set out such of the allowances or deductions in Clause S17.1.2 as are appropriate to such Final Payment Schedule.

When issuing any Final Payment Schedule pursuant to the Contract the Superintendent may assess that a sum of money may be deducted by the Corporation from any amounts then held by the Corporation, including any retention moneys or other security then held by the Corporation to compensate the Corporation for any work which the Contractor has not, under the Contract, finally and satisfactorily executed or for any obligation which the Contractor has not fulfilled, but any such deduction by the Superintendent shall not prevent the Corporation from claiming any other sums in relation to work which has not been finally and satisfactorily executed or obligations which have not been fulfilled.

The Final Payment Schedule shall itself be conclusive evidence that all the Contractor's claims under the Contract or otherwise in respect of all Work executed under the Contract to that time have been made by the Contractor and that there are no other claims outstanding as at the date of the claim, whether under the Contract or otherwise.

If the Final Payment Schedule shows money owing:

- (a) from the Corporation to the Contractor, the Corporation will within 28 days after the date of delivery of the Final Payment Schedule;
 - (i) pay the Contractor the scheduled amount assessed; and
 - (ii) subject to any other right the Corporation may have in respect of any security, release all security then held for the Contract; or
- (b) from the Contractor to the Corporation;
 - (i) the Contractor shall pay to the Corporation, within 28 days of the delivery of the Payment Schedule, the amount certified by the Superintendent as payable by the Contractor; and
 - (ii) subject to any other right the Corporation may have in respect of any security, the Corporation has no obligation to release security held for the Contract until the Contractor has paid the money due.

S17.7 Final Certificate

Prior to issuing a Final Certificate the Superintendent may require the Contractor to provide evidence satisfactory to the Corporation that all insurances effected by the Contractor, and his subcontractors for the purposes of Clauses 17 and 21 or any of them (and including any WorkCover insurance) have at all times been effected and maintained as required by the Contract.

When all work under the Contract has been finally and satisfactorily executed and the Contractor has fulfilled all his other obligations under the Contract, or if the Superintendent believes in all of the circumstances of the Contract that it is desirable to do so, the Superintendent shall issue to the Contractor a Final Certificate.

S18 SECURITY OF PAYMENT**S18.1 Contractor to Ensure Payment of Workers and Subcontractors**

The Contractor shall ensure that all subcontractors and workers are fully paid, in accordance with relevant awards, contracts and enterprise agreements, money properly due and payable to them for work under the Contract.

In this Clause S18 “worker” means any person who does work in connection with the Contract and is employed by the Contractor or a subcontractor.

S18.2 Statutory Declarations

With each payment claim, and at other times as requested by the Superintendent, the Contractor shall lodge a statutory declaration as to payment of subcontractors and, where directed, as to payment of workers. The statutory declarations shall be in the form required by the Superintendent. The statutory declaration must include the details required, be made by a person who is in a position to know the facts attested and properly sworn in compliance with the requirements of the Evidence Act 1958 (Vic) or the equivalent legislation applicable in the place where the declaration is made.

S18.3 Corporation may Withhold Payment

If a statutory declaration properly completed in accordance with Clause S18.2 indicates that:

- (a) money due and payable to a worker, or claimed by a subcontractor, is unpaid, the Corporation may withhold payment to the Contractor of an amount equal to the unpaid amount;
- (b) benefits to which a worker is entitled have not been received by or accrued to that worker, the Corporation may withhold payment to the Contractor of an amount which reasonably approximates the value of the benefits;
- (c) a subcontractor has failed to comply with an obligation to provide a statutory declaration in equivalent terms to the statutory declaration lodged by the Contractor, the Corporation may withhold payment to the Contractor of an amount equal to the amount due to that subcontractor by the Contractor.

Payment may be withheld from any money then payable or which may thereafter become payable until such time as the Contractor supplies a further statutory declaration that all such moneys or benefits have been paid, or all relevant statutory declarations have been lodged, as the case may be.

S18.4 Direct Payments**S18.4.1 Corporation May Make Direct Payments**

At the Contractor’s written request and out of moneys due and payable to the Contractor, the Corporation may pay money on the Contractor’s behalf to workers and subcontractors.

S18.4.2 If the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Contractor shall immediately give written notice of same to the Corporation, and the Corporation may (in its absolute discretion) pay to the subcontractor such amount that is, or may be, due to the subcontractor in respect of that work.

S18.4.3 If the Corporation is given satisfactory evidence of a court judgment or order in respect of moneys payable to a worker or subcontractor in respect of an award, enterprise agreement or subcontract for work, services, materials, plant and equipment or advice supplied for the work under the Contract, together with a statutory declaration detailing the moneys still due under that order or judgment, the Corporation may pay the amount so owing, including any costs awarded, to the workman or subcontractor concerned.

S18.5 Concurrence of External Administrator

If the Corporation becomes aware that an external administrator (within the meaning of Part 5 of the Corporations Act or any provision equivalent thereto) is appointed to the Contractor, the Corporation will not make any payment to a worker or subcontractor under this Clause S18 without the concurrence of the external administrator.

S19 ADJUDICATION UNDER THE SECURITY OF PAYMENT ACT**S19.1 Nominating Authority for an Adjudication Application**

The authorised nominating body for an adjudication application under the Security of Payment Act shall be the Institute of Arbitrators and Mediators Australia (Victorian Division).

S19.2 Conduct of Adjudication

In adjudicating an application made by the Contractor under the Security of Payment Act the adjudicator shall:

- (a) have no power to open up, review or revise any certificate or payment schedule not the subject of the adjudication issued under the Contract by the Superintendent;
- (b) at all times act impartially between the parties, in accordance with the law; and
- (c) include in the determination the reasons for the determination and the basis on which any amount or date has been decided.

S19.3 Security to be Provided under the Security of Payment Act.

If the adjudicator determines an adjudication application made by the Contractor under the Security of Payment Act by determining that the Corporation must pay any amount to the Contractor:

- (a) the Corporation may give security of payment of that amount pending the final determination of matters in dispute between the Corporation and the Contractor in the adjudication;
- (b) such security shall be in the form described in Section 25(4) of the Security of Payment Act; and
- (c) such security shall, pending the final determination of matters in dispute, be in lieu of payment and in full satisfaction of any liability for that amount under the Contract.

S19.4 Dispute Under the Contract

An adjudication response served by the Corporation under the Security of Payment Act shall be deemed to be a notice of a dispute under the Contract for the purpose of Clause 45 of the General Conditions of Contract. When the Contractor receives the adjudication response, the Contractor shall within thirty (30) business days (or such other period as may be agreed in writing between the parties) submit the detailed particulars of the matter at issue to the Corporation to be the subject of a mediation the terms of which (including the appointment of the mediator) shall be agreed in writing between the parties within ten (10) business days, failing which the mediation, but not the dispute process, shall be at an end.

For the purpose of this Clause S19.4 and Clause 25 of the Security of Payment Act, the determination of matters in dispute between the Corporation and the Contractor in the adjudication becomes final:

- (a) in the case of a determination from which there is no right of appeal or review, when the determination is made; or
- (b) in the case of a determination from which there is a right of appeal or review, when a right of appeal or review expires or (if the determination becomes subject to appeal or review proceedings) when those proceedings have finally been disposed of.



**APPENDIX A
REQUEST TO SUBCONTRACT WORK/SERVICE (NPWC3)**

Contract No.:

Description:

Contractor:

1. Details of Work/Service to be Subcontracted

2. Conditions of Subcontract

The General Conditions forming the basis of the subcontract will be:

- SC-NPWC3 (amended as per VicRoads supplementary clauses)
- AS4122 (Design Consultants only)
- Other *(please indicate below or in an attachment)*

3. Details of Proposed Subcontractor

Name: _____

Address: _____

4. Contractor's Declaration

I declare that the subcontract payment provisions are to the form or to the effect of the payment provisions of the Contract and that the General Conditions forming the basis of the subcontract will be as stated above.

Signature: _____ Date: / /

Name: _____

Position in Company: _____

APPENDIX B

**APPROVED FORM OF UNCONDITIONAL UNDERTAKING
(Clause 5.3 and S3A)**

At the request of ACN ('the Contractor')
and in consideration of the Roads Corporation ('the Corporation') accepting this undertaking in respect of the contract for
.....
.....
..... ('the Project')
..... ACN ('the Financial Institution')
unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the
Corporation to a maximum aggregate sum of \$
(.....)

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

Should the Financial Institution be notified in writing purporting to be signed for and on behalf of the Corporation that the
Corporation 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 Corporation 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 Corporation 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 Corporation and thereupon the liability of the Financial Institution hereunder shall immediately cease.

DATED at this day of (year)

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