

Lump Sum

SHAPE

Subcontract AS 4906 - 2002 (Modified)

Parties

SHAPE
SHAPE Australia Pty Limited
ABN 70 003 861 765
Level 7
5 Queens Road
MELBOURNE VIC 3004
Facsimile: 03 9690 5999

Contract Date 18/12/2018 | 07:59 AEDT

SHAPE Contract No

Contractor

Contract and Project Details

Project Name 219115 - WEWORK 120 SPENCER ST

Trade Package 219115 Electrical & Comms , including all incidental labour, plant and materials.

Contract Sum

Contractor Workers Compensation and Liability Insurance Details

Type	Insurer	Policy No	Expiry Date	Value
Workers Compensation	XCHANGING	8759900	30/06/2019	Per legislation
Public Liability	LLOYDS	GARNECA0006551	01/07/2019	20,000,000.00

SHAPE and the *Contractor* agree that the documents listed in item 4A of the Annexure Part A (Attachment A) comprise the agreement between them in relation to the project described above.

Signatures

DocuSigned by:

F31738ABA322448

Signed by SHAPE

Adam Head

Name of person signing

General Manager

Capacity

DocuSigned by:

R9769464R4FD45A

Signed by the Contractor

Mark Power

Name of person signing

DIRECTOR

Capacity

The person signing for the Contractor personally warrants to SHAPE that s/he is authorised to do so.

Attachment A

AS 4906 Annexure Part A

Particulars

Item

- | | | |
|----|--|--|
| 1 | SHAPE
(clause 1) | See the first page of this document (referred to as the 'Face Sheet'). |
| 2 | SHAPE's address | See Face Sheet. |
| 3 | <i>Contractor</i>
(clause 1) | See Face Sheet. |
| 4 | <i>Contractor's</i> address | See Face Sheet. |
| 4A | <i>Contract</i> documents | <p>(1) The Face Sheet.</p> <p>(2) AS 4906-2002 (Minor works contract conditions - Principal administered), subject to the modifications referred to in the Annexure Part B, and incorporating:</p> <p>(3) Attachment A - AS 4906 Annexure Part A (Particulars);</p> <p>(4) Attachment B - AS 4906 Annexure Part B (Deletions, amendments and additions to AS4906 - 2002 contract conditions; and Special Conditions, if any.);</p> <p>(5) Attachment C - EHS Requirements for Subcontractors and other Service Providers;</p> <p>(6) Attachment D - Scope of Works and Clarifications, if any; and</p> <p>(7) Attachment E - Construction Program.</p> |
| 5 | a) <i>Date(s) for practical completion</i>
(clause 1)

OR
b) <i>Period(s) of time for practical completion</i>
(clause 1) | SP1 25/3/19, SP2 18/4/19, SP3 24/5/18

SP1 25/3/19, SP2 18/4/19, SP3 24/5/18 |

6 *Contractor's security*

- | | |
|--|---|
| a) Form
(clause 3) | Retention moneys/Bank guarantees in a form and from a financial institution reasonably acceptable to SHAPE and with no expiry date |
| b) Amount or maximum percentage of <i>contract sum</i>
(clause 3) | 0.00% of the contract sum.
(If the <i>Contractor</i> is required to provide bank guarantees, there will be two guarantees, each in the amount of 2.5% of the <i>contract sum</i> .) |
| c) If retention moneys, percentage of each payment certificate
(clause 3) | 0.00% until the limit in <i>Item 6(b)</i> |
| d) Time for provision (except for retention moneys)
(clause 3) | Not applicable for cash retentions.

If the <i>Contractor</i> is required to provide bank guarantees, these must be provided prior to the <i>Contractor's</i> commencement of <i>WUC</i> on <i>site</i> . |
- 7 Amount of limit of indemnity for damage to other property of SHAPE (subclause 10.1(a))
- There is no limit
- 8 The amount of contract works insurance cover
(clause 11)
- The *contract sum* plus 20%
- 9 The amount of public liability insurance cover in respect of any one occurrence shall not be less than
(clause 12)
- \$10 million
- 9A Professional Indemnity Insurance
(clause 12B)
- | | |
|--|---|
| a) Professional Indemnity Insurance | Professional indemnity insurance is not required. |
| b) Amount of Professional Indemnity Insurance | Not Applicable |
| c) Period of time after the final certificate is issued that Professional Indemnity Insurance must be maintained | Not Applicable |

10 The time for giving possession of the site to the Contractor (clause 17)	Within 14 days of signing the <i>Contract</i> or such other date(s) as agreed between SHAPE and the <i>Contractor</i> .
10A Additional qualifying causes of delay (clause 1 and subclause 20.2)	Not applicable
10B Additional compensable causes (clause 1 and subclause 20.6)	Not applicable
11 Liquidated damages (subclause 20.5 and clause 28)	
a) Rate (SHAPE's costs of running the project)	\$12,000 per day level
b) Limit (SHAPE's liquidated damages)	There is no limit
12 Delay damages, rate (subclause 20.6)	Subject to clause 1A.2, as reasonably assessed by SHAPE but in any event limited to the additional costs reasonably and necessarily incurred by the <i>Contractor</i> solely as a consequence of the delay
13 <i>Defects liability period</i> (clause 21)	12 months or if a longer period is specified elsewhere in this Contract, that period
14 Time for progress claims (subclause 23.1)	On the 25th day of each calendar month
15 The rate of interest on overdue payments (subclause 23.4)	Nil
16 Not used	
17 <i>Contract Sum</i>	See Face Sheet
18 As-built drawings to be supplied by <i>Contractor</i> (subclause 20.4(b))	Four hard copies and one electronic copy in a format reasonably acceptable to SHAPE
19 D&C Elements (clause 1 and clause 5)	

Attachment B

AS 4906 Annexure Part B

**Deletions, amendments and additions to AS4906 - 2002 contract conditions;
and Special Conditions, if any.**

The parties have agreed to be bound by an amended version of AS 4906-2002 (Minor works contract conditions - Principal administered), clean and marked up copies of which are contained in the supplement file 'AS4906-2002 (modified) - clean and marked up versions.pdf' included as part of the DocuSign envelope used for the creation of this contract, together with the Special Conditions included as part of this attachment, if any.

Attachment C

EHS Requirements for Subcontractors and other Service Providers

WHSE Requirements for Subcontractors and other Service Providers



The information below is to be read in conjunction with all relevant contract and tender documentation provided and forms part of our contract with all project subcontractors and service providers.

*This document sets out SHAPE's expectations of all of its **Contractors** in them providing a safe system of work for all of their staff, workers, labour hire, service providers and subcontractors involved in the **Contractor** performing its scope of work on the site.*

1 INTRODUCTION

1.1 Responsibility

Contractors have sole responsibility for providing safe systems of work for the performance of their scope.

SHAPE requires all of its **Contractors** at all times to provide a safe system of work for all Workers entering the site for the purposes of enabling the **Contractor** to perform its contractual obligations to SHAPE, including those entering the site on behalf of the **Contractor's** subcontractors and suppliers.

SHAPE only engages **Contractors** it considers are competent and experienced and able to develop, implement and supervise safe systems of work for the activities involved in performing their scope of work.

SHAPE relies on **Contractors** to properly control their systems of work. SHAPE does not supervise or control the day to day activities of the **Contractor's** Workers. SHAPE has neither the trade skill nor expertise to do so. It is fundamentally important that the **Contractor** controls their systems of work in an expert and competent manner.

If a **Contractor** considers the safe operation of their system of work is adversely impacted by anything being done or on the site for which it is not responsible, direction should immediately be sought from SHAPE and nothing done that might risk the health and safety of any Worker until direction has been obtained from SHAPE. Similarly, if a **Contractor** has any doubt about the area or scope of its responsibility, immediate direction should be sought from SHAPE. The default position is that the **Contractor** has total responsibility unless SHAPE confirms otherwise.

It is imperative that all Workers on site are in a position to fully comprehend all information, training, instruction and supervision provided. Where there is any doubt about a Worker's ability to fully understand and follow information, training, instruction and supervision provided, the **Contractor** must provide a permanent on-site Worker who is able to translate/interpret and explain all information, training, instructions and supervision provided. This Worker must certify in writing immediately on request that a true and accurate translation of the relevant information, training, instructions or supervision has been provided and that it appeared to be understood by the relevant Worker(s).

1.2 Golden Rules

SHAPE expects the following 'Golden Rules' to be followed at all times:

- Not put yourself or others at risk.
- Use an agreed safe system of work.
- Speak up if I see something unsafe.
- Stop work if I think it is not safe.
- Report all incidents, near misses and hazards immediately.
- Take measures to prevent pollution.
- Correctly use appropriate PPE.
- Treat all electrical components as live.
- Treat all suspicious material as asbestos.

2 DEFINITIONS

In this document, unless the context otherwise requires:

WHSE Requirements for Subcontractors and other Service Providers



- **Construction Work** has the same meaning as in the Model *Work Health & Safety Regulation* 2011.
- **Contractor** means any self-employed person or company and any person engaged by it or its agents, or subcontractors that provides a service to SHAPE and includes a subcontractor, consultant, labour hire and supplier.
- **Environmental legislation** is meant to include all relevant Federal and/or State/Territory legislation applicable to the specific issue referenced.
- **HIRAC** - hazard identification, risk assessment and control is a documented process designed to identify, assess and control what, within a defined scope of work, can harm or adversely affect people, property and/or the environment.
- **SHAPE Project Representative** is anyone nominated by SHAPE to fulfil its obligations on a specific project and could be more than one person.
- **Safe System of Work** is a documented process that defines how a task will be performed to eliminate or, if not possible, mitigate harm or adverse impact to people, property and the environment and can include safe work method statements, pre-start meeting forms, inspection and test plans, permits to work, isolations and/or personal risk assessments (ie Take 5).
- **Safety legislation** is meant to include all relevant Federal and/or State/Territory work health and safety (WHS) or occupational health and safety (OHS) legislation applicable to the specific issue referenced.
- **Worker** is any person engaged by the **Contractor** to carry out work, such as:
 - employee;
 - trainee, apprentice or work experience student;
 - outworker, contractor or subcontractor;
 - employee of a contractor or subcontractor; or
 - employee of a labour hire company.

3 MANDATORY PPE

SHAPE mandates on all project sites that the following personal protective equipment is worn, unless an approved risk assessment is provided, at all times:

- Workers (includes Supervisors, Project Managers, Delivery Personnel)
 - Safety helmet;
 - Safety footwear;
 - Safety eyewear;
 - Hi-visibility clothing/vest; and
 - Hand protection / Gloves.
- Corporate Visitors
 - Safety helmet;
 - Enclosed flat-soled footwear;
 - Safety eyewear; and
 - Hi-visibility clothing/vest.

All Workers attending a SHAPE workplace will also be required to wear any site or task specific PPE deemed appropriate for the scope of work being undertaken.

4 INDUCTIONS

4.1 Construction Industry Induction

Prior to commencement of construction work, it is mandatory that the **Contractor** and any Worker engaged by it, complete both the General Construction Induction Training (ie White Card) and the Work Activity Induction Training (ie SWMS) as specified in the Safety legislation relevant to the State/Territory in which they operate.

WHSE Requirements for Subcontractors and other Service Providers



4.2 *SHAPE Site Specific Induction*

It is the **Contractor's** responsibility to ensure that no Worker for whom it is responsible, including through its subcontractors and suppliers enters the site without completing the SHAPE Site Specific Induction training. SHAPE Site Specific Induction training is a mandatory requirement for all Workers wanting to enter the site.

Verification of completion of the General Construction Induction and task specific qualifications must be provided at the Site Induction.

It is further the contractor's responsibility to ensure that no Worker for whom it is responsible, including through its subcontractors and suppliers enters the site without completing any required client and or building management inductions.

4.3 *Evidence of Competency*

The **Contractor** must provide SHAPE, at or before the time of the Site Specific Induction, evidence satisfactory to SHAPE that the Worker being inducted onto the site is competent to perform the activities required on that Worker in performing the Contractor's scope of work.

5 MANAGEMENT OF RISK

Risk management is viewed as central to the SHAPE operational management processes. The **Contractor** will have access to all documentation SHAPE holds that is relevant to the defined scope of work.

These documents will include, as a minimum:

- Project Work Health Safety and Environmental Management Plan;
- Project Risk Register; and
- Contractual specifications and drawings.

6 SAFE SYSTEM OF WORK

The **Contractor** must prepare and provide to the SHAPE Project Representative a Safe System of Work. The Safe System of Work must identify the hazards and assess the risks relating to the scope of work to be undertaken, and must describe the control methods to be employed by the **Contractor** with respect to those risks.

The completed Safe System of Work must be submitted to the SHAPE Project Representative no later than three (3) business days prior to commencement of the work activity.

6.1 *Safe Work Method Statement*

SHAPE requires each **Contractor** to produce a project specific SWMS for each element of the construction work required to perform the scope of work.

Prior to issuing the SWMS/s to SHAPE the **Contractor** must review the content to ensure it addresses all contractual, legislative and project specific requirements.

6.2 *Pre-Start*

To ensure that risk assessments are site-specific, conditions-specific and time-specific SHAPE requires all **Contractors** to conduct and document a safe work review for each work activity being performed and provide it to SHAPE immediately following the review's completion.



WHSE Requirements for Subcontractors and other Service Providers

Pre-Start meetings must be consultative and are to be conducted in a manner ensuring that minor, temporary or day-to-day changes to the SWMS content are captured and communicated in a manner that may not require a change to the **Contractor's** SWMS.

7 EMERGENCY MANAGEMENT

Where there is the possibility of an emergency situation occurring (for example, burns or fires from hot work, suspension due to a fall from height, collapse in a confined space, entrapment in an excavation) to occur due the scope of work, the **Contractor** must include an emergency management plan within their safe system of work documentation. This must be communicated to all people who are required to engage in or impacted by the work being undertaken.

The **Contractor** must make themselves and their Workers aware of the site specific emergency requirements and where relevant include those requirements in their Safe System of Work.

The **Contractor** must comply with relevant legislation and regulatory requirements in regard to the non-disturbance of incident sites and preservation of evidence provisions.

The **Contractor**, irrespective of any other notification, must immediately report to the Regulator an injury and/or incident that is deemed 'Notifiable' or 'Dangerous' under relevant Safety and/or Environmental legislation.

8 NOTIFICATION OF INCIDENTS

The **Contractor** must immediately advise the SHAPE Project Representative of:

- any accident involving injury to any Worker resulting in first aid, medical treatment or lost time;
- near misses or unsafe condition/acts observed;
- any property damage;
- any environmental impact;
- any safety or environmental breaches issues by a Safety or Environmental Authority; and
- any safety dispute between the **Contractor** and its employees, agents or subcontractors.

If requested, the **Contractor** must furnish a written report in the form directed by the SHAPE Project Representative.

The **Contractor** must, as soon as practicable after notification of any safety or environmental breach or hazard, take all corrective actions necessary to remedy and/or minimise recurrence of the occurrence.

9 INJURY MANAGEMENT

All injuries must be reported, if not immediately then, prior to the injured Worker leaving site.

It is mandatory that, should an injury worsen (for example a first aid injury becomes worse and the Worker needs to go to the doctor, or the Worker cannot attend the site for the next shift, having continued to work the previous shift), the Worker or their manager must contact the nominated SHAPE site representative immediately.

All injuries occurring on site that require the Worker to attend a medical facility must be at a facility nominated by SHAPE. Where the Worker is off-site (ie after hours) and they need to attend a medical facility or doctor the Worker must immediately inform their manager of that need, who should arrange to attend the consultation with the Worker to inform the medical practitioner of 'return to work' options. The manager must, as soon as possible after being notified, contact SHAPE to inform them of the actions taken and arrangements made.

It is mandatory that a management representative of the **Contractor** (together with, whenever possible, a SHAPE representative) accompanies the injured Worker to the medical facility to inform the medical practitioner of the return to work / suitable duties arrangements available. Wherever possible the injured Worker should be returned to work on full or appropriate alternate duties at the earliest possible time.



WHSE Requirements for Subcontractors and other Service Providers

10 NON-COMPLIANCE

10.1 Minor Non-Conformance

In the event of a minor non-conformance, or with any direction of the SHAPE Project Representative in relation to safety and health or environmental harm, the SHAPE Project Representative will give the **Contractor** one written warning giving 24 hours notice to rectify the failure.

10.2 Major Non-Conformance

If, during the performance of work, SHAPE informs the **Contractor** that the **Contractor** is conducting the work in such a way as to endanger the environment, property and/or the health or safety of people, in or near the site, the **Contractor** must cease work and remedy that breach immediately or if not possible, as soon as practicable.

SHAPE at its discretion may have a Worker removed from site, if that Worker is deemed to be a risk to the health and safety of people in or near the site.

10.3 Suspension of Work

SHAPE may direct the **Contractor** to suspend work until such time as the **Contractor** satisfies SHAPE that the work will be resumed in conformity with applicable defined requirements.

11 INSPECTIONS AND TASK OBSERVATIONS

The **Contractor** will be required to conduct scheduled inspections of its activities to ensure that any Worker engaged by it or its agents or subcontractors are complying with its Safe System of Work.

The **Contractor** may be required to participate in any inspection, task observation or audit conducted by SHAPE staff.

All non-conformances identified during inspections, observations or audits will be allocated to a person with the appropriate level of control over the issue. Where this responsibility is assigned to the **Contractor** it will be the responsibility of the **Contractor's** Representative to identify and implement, in a timely manner, all necessary actions to eliminate, or if not possible, minimise the potential impact of the non-conformance.

12 SPECIFIC HEALTH AND SAFETY ISSUES

12.1 Asbestos

Where asbestos containing material is or may be present, SHAPE will make available to the **Contractor** a current copy of the Asbestos Register or equivalent documentation.

Where work is in relation to or near ACM the **Contractor** must adhere to the requirements of State/Territory legislation and the How to Manage and Control Asbestos in the Workplace and How to Safely Remove Asbestos (Codes of Practice SWA).

12.2 Confined Spaces

Where entry to locations defined as confined spaces the **Contractor** must adhere to the requirements of legislation and the Confined Spaces (Code of Practice SWA).

Where entry is required the **Contractor** must complete an SHAPE Confined Spaces Entry Permit and gain approval prior to commencing such work.

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12.3 Cutting/Coring

The necessity to cut or core into a surface that has limited visibility or there is a risk of exposure on the back/under side of the surface always presents the possibility of adverse consequences. This includes damaging cables and other services, falling objects or exposure to hazardous materials.

Where cutting or coring is required the **Contractor** must discuss the work with the SHAPE Project Representative and complete an SHAPE Cutting and Coring Permit prior to commencing such work.

An independent contractor must undertake scanning and investigation of cutting/coring locations unless approved by the **Site Representative**.

12.4 Demolition

Demolition work is defined by SHAPE as the removal of any existing structure or part thereof. This could include furniture, equipment, fixtures, ceilings, walls, wall cladding as well as significant parts of or complete structures or buildings.

Where demolition work is being carried out the **Contractor** must adhere, where relevant, to the requirements of State/ Territory legislation and the Demolition Work (Code of Practice SWA).

Note: In addition to SHAPE PPE requirements for demolition activities all demolition workers must wear long pants and long sleeve shirts.

12.5 Electrical Safety

The **Contractor** must, as a minimum, comply with the requirements of the project specific SHAPE Site Specific Induction and the Electrical Safety Procedure.

Where it is required to work on electrical components the **Contractor** must also adhere to the requirements of the project specific SHAPE Electrical Contractor and Electrical Energising Site Instructions.

Where work is in relation to or near electrical wiring or components the **Contractor** must adhere, as a minimum, to the requirements of State/ Territory legislation, AS/NZS 3000, AS/NZS 3012 and the Managing Electrical Risks in the Workplace (Code of Practice SWA).

12.6 Excavation

Where excavation work is being carried out the **Contractor** must adhere to the requirements of State/ Territory legislation and the Excavation Work (Code of Practice SWA).

Where excavation work is to be undertaken the **Contractor** must complete an SHAPE Excavation Permit and gain approval prior to commencing such work.

12.7 Hand Protection

SHAPE generally mandates, as a minimum, the use of full finger gloves.

Task specific gloves must be used as additional protection where the work activity involves any of the following:

- Hot work (ie gas cutting, welding, grinding);
- Manual cutting equipment (ie knives, snips, hand saws);
- Mechanical cutting equipment (ie shears, power saws);
- Moving or lifting materials/equipment;
- Placing hands in unobservable places;
- Placing concrete or screeds;
- Vibrating tools;

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- Handling of:
 - hot items,
 - chemicals,
 - sharp objects,
 - fuel, oil or grease,
 - flora or fauna,
 - biological material (ie blood, vomit, sewage),
- Wet or muddy objects; or
- Other activities that may sustain hand injuries.

Note: When undertaking hot work, of any kind, all hand protection must, as a minimum, be rated as class 2 heat and fire protection.

Variance to this mandatory policy can only be considered where the **Contractor** considers there is greater risk complying with it than not complying with it for example with activities involving:

- fine motor skills (ie cable termination); or
- power tools where safe operation would be adversely affected by wearing hand protection.

12.8 Hazardous Substances/Goods

Where there is evidence of hazardous materials being present within the site, SHAPE will provide all relevant information to the **Contractor**. This information must be taken into account when developing a Safe System of Work.

Where the **Contractor** will introduce hazardous substances or dangerous goods to a SHAPE workplace, the **Contractor** must provide all relevant information, within the relevant Safe System of Work, for the management of such materials and must provide a current (less than 5 years old) Safety Data Sheet (SDS).

12.9 Hot Work

The **Contractor** must include, within its Safe System of Work, controls for any activity that includes the following hot work:

- grinding;
- gas/electric heat gun;
- welding, soldering, brazing;
- thermal/oxy cutting;
- open flame;
- spark producing; or
- combustible chemicals or acids.

The **Contractor**, when conducting hot work must provide necessary equipment, including firefighting and first aid, to control any adverse outcomes.

Where hot work is to be undertaken the **Contractor** must complete an SHAPE Hot Work Permit and gain approval prior to commencing such work.

12.10 Procurement

If you intend to divert from any of the requirements of the project documentation or specification you must obtain approval from SHAPE.

Any diversion from the requirements of the project documentation or specification must be approved in writing by SHAPE in advance.

If you intend to use imported goods or materials in performing your scope of work (including specified imported goods), you must obtain from the importer(s)/supplier(s) evidence that the goods/materials are asbestos free and in are accordance with the performance evidence required as outlined in the National Construction Code 2016.

WHSE Requirements for Subcontractors and other Service Providers



An example of suitable evidence is an analysis certificate from an Australian NATA accredited laboratory accredited for the relevant test method (AS 4964 Method for the Qualitative identification of asbestos in bulk samples), or an equivalent international laboratory (listed at the NATA website: <http://www.nata.com.au/nata/>) certifying the product is asbestos-free and demonstrates its suitability for use in the construction.

This evidence must be made available to SHAPE immediately on request.

12.11 Manual Handling

SHAPE defines manual handling as any task that involves, but is not restricted to:

- lifting or lowering;
- pushing or pulling;
- holding or restraining;
- carrying or otherwise handling;
- throwing or rolling;
- grasping or manipulating; and
- striking an object with or without a tool;
- repetitive actions, with or without forces;
- sustained work postures; and
- exposure to whole body or hand-arm vibration.

Where any work includes manual handling the **Contractor** must adhere to the requirements of legislation and the Hazardous Manual Tasks (Code of Practice SWA).

12.12 Mechanical Lifting

SHAPE defines mechanical lifting as any task that involves the use of load shifting plant or equipment.

Where work involving mechanical lifting is being carried out the **Contractor** must adhere to the requirements of legislation and the Managing Risks of Plant in the Workplace and Cranes (Codes of Practice SWA).

Where work involving cranes is to be undertaken, the **Contractor** must complete a SHAPE Mechanical Lifting Permit and gain approval prior to commencing such work.

12.13 Medium Density Fibreboard (MDF)

It is preferred that all MDF is pre-cut or cut off site. If this is not practical, then the **Contractor** must include appropriate controls in the Safe System of Work, as follows:

- Implement the safety requirements contained in the SDS for the product being used;
- no MDF is to be cut onsite outside of an approved MDF cutting room;
- an enclosed MDF cutting room must be established for cutting MDF;
- the MDF room is to be sign posted and entry to the room restricted to the competent Worker cutting the MDF;
- the MDF cutting room is to be ventilated and the cutting fibres/dust to be collected; and
- Workers to always wear correct PPE (P1 or P2 respirator or dust mask, safety glasses or goggles, long sleeves and trousers and gloves) when inside the MDF cutting room.

12.14 Noise and Vibration

Personal hearing protectors, such as ear-muffs or ear-plugs, must be provided for use, by the **Contractor**, in the following circumstances:

- when the risks arising from exposure to noise (over 85dB) cannot be eliminated or minimised by other more effective control measures;
- as an interim measure until other control measures are implemented; or

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- where extra protection is needed above what has been achieved using other noise control measures.

Where work is being carried out involving excessive noise or vibration the **Contractor** must adhere to the requirements of legislation and the Managing Noise and Preventing Hearing Loss at Work (Code of Practice SWA) and AS 2436:2010 Guide to noise and vibration control on construction, demolition and maintenance sites.

12.15 Penetrations

All penetrations must be protected either by fencing or covers. The **Contractor** must gain approval from the SHAPE Project Representative prior to installing the protection.

12.16 Plant and Equipment

The operation of any equipment or plant (including vehicles with specialist fittings) shall be in accordance with the **Contractor's** Safe Systems of Work.

Prior to commencement of the works or services, the **Contractor** must comply with the specific requirements of SHAPE and provide a Safe System of Work, including the following:

- submission of inspection certificates for equipment;
- submission of operator certificate of competency and/or training;
- requirements for hazard identification, risk assessment and control of risk;
- submission of safe operating procedures; and
- **Contractor's** WHS duties with respect to plant, equipment and operators.

All plant and equipment must be included in the **Contractor's** Plant and Equipment Register and a Plant and Equipment Risk Assessment for each item must be completed and provided, with the register, to the SHAPE **Project Representative**.

Note: evidence of competency means – a certificate issued by a registered training organisation, high risk licence or ticket.

12.17 Task Specific PPE and Protective Clothing

Where there is still a possibility of personal injury after elimination, substitution, isolation, engineering and administrative controls have been implemented, task specific PPE must be used.

The use, maintenance and training requirements of each item of task specific PPE must be defined in the relevant Safe Systems of Work.

Task specific PPE must not be used to override mandatory PPE requirements.

The supply of such task specific PPE is the responsibility of the **Contractor**.

Note: Long pants are required for tasks or site environments where there is a risk of leg injury / lacerations through impact with sharp objects. Long sleeve shirts are required for tasks or site environments where there is a risk of arm injury / lacerations through impact with sharp objects.

12.18 Traffic Management

Where the management of traffic interfacing with other people is required the **Contractor** must include the site specific arrangements in the Safe System of Work.

Where traffic management is required on or near a public road the **Contractor** must contact the local road authority for the relevant traffic management requirements and guidelines.

Where work has a public/traffic interface the **Contractor** must adhere to the requirements of legislation and the Traffic Management Guide: General and Traffic Management Guide: Construction Work (SWA).

WHSE Requirements for Subcontractors and other Service Providers



12.19 Working at Heights

The **Contractor** must include appropriate controls to manage work that exposes a Worker, or other person while at or in the vicinity of a workplace, to a risk of a fall that is reasonably likely to cause injury to the Worker or other person.

This includes circumstances in which the Worker or other person is:

- in or on plant or a structure that is at an elevated level;
- in or on plant that is being used to gain access to an elevated level;
- in the vicinity of an opening through which a person could fall;
- in the vicinity of an edge over which a person could fall;
- on or in the vicinity of a surface through which a person could fall; or
- on or near the vicinity of a slippery, sloping or unstable surface.

The **Contractor** must manage the risks associated with an object falling on a person or property if it is reasonably likely to injure the person or damage the property. Adequate protection must be provided to minimise the risk and protect the person and/or property.

Where any work includes working at height the **Contractor** must adhere to the requirements of legislation and the Managing the Risk of Falls at Workplaces (Code of Practice SWA).

12.20 Transport and Logistics

The **Contractor** must include specific controls to manage transport and logistics risks in the Safe System of Work. The **Contractor** must communicate with and consult with any stakeholders in the supply chain (Chain of Responsibility) when relevant, to manage and monitor these risks. The Chain of Responsibility includes anyone responsible for consignment, packing, loading or receipt of goods.

The **Contractor** must make sure that their action or inaction does not contribute to or encourage breaches of the Heavy Vehicle National Law (HVNL). Among other requirements under the HVNL, the **Contractor** must ensure that The **Contractor's** delivery requirements do not require or encourage drivers to exceed the speed limits, exceed regulated driving hours, fail to meet minimum rest requirements, or drive while impaired by fatigue. The **Contractor** is also responsible for ensuring that loads do not exceed vehicle mass or dimension limits, and that goods carried on The **Contractor's** behalf are able to be appropriately secured.

The **Contractor** is required to notify SHAPE immediately on becoming aware of any known, new or increased hazards or risks associated with transport and logistics activities.

The **Contractor** must not commence and or cease transport and logistics activities until hazards and risk levels can be managed to an acceptable level.

13 ENVIRONMENTAL

13.1 Air Quality

The **Contractor** must, through adequate planning, eliminate or if not possible minimise the emission of dust and other air pollutants created by its scope of work.

Suggested treatment may include, but not be limited to, the following:

- dust and other emissions suppression measures such as:
 - watering external areas;
 - extraction/filtering systems;
 - limiting the use of exhaust emitting equipment;
 - banning excessively smoky vehicles and equipment; and



WHSE Requirements for Subcontractors and other Service Providers

- enclosed areas for dedicated dust generating activities;
- air quality monitoring; and
- conducting work out of normal hours.

13.2 Contamination of Stormwater

If contaminated stormwater enters a drainage line or stormwater drainage system, it will eventually discharge into an adjacent waterway and pollute it.

The **Contractor** must consider eliminating the potential for site runoff and discharge of hazardous materials into the site or adjacent stormwater systems, in the Safe System of Work.

13.3 Contaminated Material

Disposal methods adopted depend on the nature of the material. To obtain this information, the **Contractor** must implement or participate in SHAPE implemented comprehensive sampling and analysis programs so that the correct route for disposal can be determined.

Where any work includes disposal of asbestos or other prescribed materials the **Contractor** must adhere to the requirements of State/Territory legislation and the How to Safely Remove Asbestos, How to Manage and Control Asbestos in the Workplace and Managing Risks of Hazardous Chemicals (Codes of Practice SWA).

13.4 Land Disturbance

When considering land disturbance and its consequences, priority should be given to preventative rather than treatment measures.

The **Contractor** must consider measures to address the impact of land disturbance on the environment, in the Safe System of Work, before any land is cleared.

13.5 Waste

The **Contractor**, when choosing between waste minimisation options, should use the following hierarchy for waste management:

- waste avoidance and/or reduction;
- reuse;
- recycling.

Unless otherwise agreed, the **Contractor** must reuse, recycle or dispose of all unused materials and waste it generates.

The **Contractor** must adhere to the requirements of legislation and State/Territory regulations when disposing of all waste materials, in particular contaminated, scheduled and/or prescribed materials.

14 HEALTH SPECIFIC ISSUES

14.1 Alcohol and Other Drugs

SHAPE expects the **Contractor** to be providing and maintaining a working environment that is safe for anyone who enters it, and where people respect one another and behave accordingly.

The **Contractor** should be knowledgeable about the effects of alcohol and other drug abuse problems on safety and job performance and should include the management of such issues in their Safe System of Work.

The **Contractor** must apply a zero tolerance policy to all Workers on SHAPE sites.

WHSE Requirements for Subcontractors and other Service Providers



SHAPE considers there will be an issue, that must be dealt with by the **Contractor**, where:

- blood alcohol content in excess of minimal traces (greater than 0.000%); and/or
- any traces of an illicit drug via oral, urine or blood sampling; and/or
- evidence of coordination, vision, judgment, intellectual capacity and ability to act quickly is adversely affected by any stimulant (whether that be alcohol, drugs, prescribed medication or anything else).

The **Contractor** acknowledges all Workers and other persons entering the site at the instigation of the **Contractor** may be required to undergo testing by SHAPE or its nominees at any time they are on the site and a refusal by the person to do so will result in their immediate removal from the site.

14.2 Medical Conditions

The **Contractor** must ensure that any Worker or visitor, engaged by them, who has a medical condition or a requirement to take medication that may affect their ability to comply with all health and safety requirements applicable to the site (including emergencies), must provide the SHAPE Project Representative with all relevant and necessary information to enable adequate assistance to be provided to the Worker or visitor should it be required.

14.3 Fatigue

The **Contractor** must comply with site specific requirements for the management of fatigue, as a minimum, by complying with hours of work specified.

The **Contractor** and any Worker engaged by it or its agents, or subcontractors must notify the SHAPE Project Representative where any Worker has or intends to work hours in addition to those nominated by SHAPE.

Where fatigue may be a factor during the conduct of work the **Contractor** must adhere to the requirements of legislation and the Guide for managing the risk of fatigue at work and Fatigue management - a worker's guide (SWA).

14.4 Health Surveillance

Where required by regulations, if a heightened risk of exposure to conditions that may affect health is identified (ie asbestos or lead), the **Contractor** must initiate and define in the Safe System of Work, a regime of regular health monitoring during the term of the exposure. This will be in addition to the implementation of all controls to eliminate or reduce the risks to Worker health and safety.

The **Contractor** must ensure that any health monitoring required by legislation is undertaken when people are exposed or potentially exposed to:

- a notifiable carcinogenic substances or material such as Asbestos; and/or
- any other substance or material where the level of exposure constitutes or is likely to constitute a risk to health or safety of employees or subcontractors, (ie Lead, Legionella)

Information on health monitoring is to be provided, by the **Contractor**, to employees and Workers as required and is considered medical information and is treated as such.

14.5 Audiometric Testing

Where the **Contractor** identifies frequent noise exposure, above the exposure standard, for any Worker engaged by it or its agents, or subcontractors it must ensure that audiometric testing, for each such Worker, is conducted.

The **Contractor** must provide, to the SHAPE Project Representative, evidence that each affected Worker has been tested.

WHSE Requirements for Subcontractors and other Service Providers



14.6 Return to Work

The **Contractor** must recognise that there are substantial benefits to be gained from rehabilitation principles and practices and be committed to implementing them.

The **Contractor** should also recognise that the relevant State/Territory Workers Compensation and Rehabilitation Act and Regulations provide the legislative support for workplace rehabilitation activities.

Where a health assessment indicates a temporary or permanent medical impairment that disqualifies a Worker from carrying out their normal work, the **Contractor** must endeavour to return the Worker to full duties or find alternate duties.

15 DOCUMENTATION

The following documents must be provided to SHAPE prior to the commencement of work and the currency of each document must be maintained by the **Contractor**:

- Safe Work Method Statement (for each work activity being performed);
- Electrical Equipment & Testing Register;
- Plant & Equipment Register;
- Hazardous Substance Register (including a current SDS for each item);
- Downstream Subcontractor Register; and
- Personnel Register (including evidence of competencies).

Note: Where SHAPE at the request of a **Contractor** provides a draft template document to the **Contractor** to assist the **Contractor** to comply with its obligations with respect to health and safety, SHAPE takes no responsibility for the sufficiency of the draft template document for the site.

It is the **Contractor's** responsibility to develop, implement and supervise a safe system of work for the performance of its contracted scope of work. SHAPE in accepting the **Contractor's** documentation or making suggestions concerning its content expressly assumes no responsibility for the **Contractor's** system of work.

In addition to the above records, the **Contractor** must also provide, where relevant, the following:

- Incident Report (for each incident the **Contractor's** personnel are involved with);
- Emergency Management Plan/s (task specific);
- Health Surveillance Records; and
- Waste and Recycling Tracking Register.

Acknowledgement Declaration

On behalf of the company listed below and all of its employees, subcontractors and service providers, I have read, accept and will ensure compliance to the requirements listed in this document.

Company:

Trading/Business Name

ABN

Authorised Company Representative:

Name

Title

Date

Note: Nothing in this document limits or otherwise affects the **Contractor's** obligations arising out of the original Scope Documents.

Note to Contractor:

This document contains a number of changes to the standard provisions of AS 4906-2002. It is important that you understand these changes before signing the contract. All changes to the standard provisions are shown in the mark-up, except the replacement of 'the Principal' with 'SHAPE'.

The effect of some of the key changes is as follows:

- This contract is being used as a subcontract. Your obligations under this contract are back-to-back with SHAPE's obligations under the head contract.
- Your ability to make claims under this contract (eg for variations and EOTs) is limited by SHAPE's ability to make corresponding claims under the head contract.
- You may be back-charged by SHAPE in various circumstances, including if you fail to respond to a direction by SHAPE within the required time.
- Generally you may not make any claim for a variation unless you notify SHAPE of your intention to make that claim before you start work on the variation.
- For GST purposes, you will not issue tax invoices in relation to goods or services you supply under the contract. Instead, SHAPE will issue 'Recipient Created Tax Invoices'.
- The Commonwealth Government Code for the Tendering and Performance of Building Work 2016 may apply to the project. A copy of the Code is available at <https://www.legislation.gov.au/Details/F2016L01859>.
- The New South Wales Code of Practice for Procurement: Building and Construction and the Implementation Guidelines to the Code may apply to the project. See www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information-for-details.

By signing the contract or by commencing work on the project (including the commencement of off-site activities, such as ordering materials), you will be taken to have agreed to the terms of AS 4906-2002 subject to the modifications contained in this document. For the avoidance of doubt, this page forms part of the contract.

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STANDARDS AUSTRALIA

Australian Standard

Minor works contract conditions (Principal administered)

1A Back-to-back provisions

1A.1 Contractor's back-to-back obligations

- (a) This Contract is a subcontract. The Works form part of the works required of SHAPE under the Head Contract.
- (b) In addition to its other obligations under the Contract, the Contractor must:
 - (i) observe and comply with all of SHAPE's obligations under the Head Contract insofar as they relate to the Works, as if those obligations were expressly set out in this Contract (as obligations on the Contractor); and
 - (ii) do all things reasonably requested by SHAPE to ensure that SHAPE complies with (and is able to comply with) its obligations under the Head Contract.
- (c) In relation to the performance of WUC and all matters directly or indirectly associated with the performance of WUC, the Contractor makes the same warranties to SHAPE as SHAPE has made to the Client under the Head Contract.
- (d) The Contractor unconditionally and irrevocably indemnifies SHAPE from and against any loss SHAPE suffers as a result of the Contractor failing to satisfy its obligations under the Contract. This includes any loss suffered by SHAPE as a result of claims arising out of the Head Contract.
- (e) The Contractor acknowledges having been given a reasonable opportunity to inspect and familiarise itself with the terms of the Head Contract prior to entering into this Contract.
- (f) If the Head Contract requires SHAPE to incorporate particular terms or conditions into its subcontracts or to impose particular obligations on its subcontractors and suppliers, those terms, conditions and obligations are deemed to be incorporated into this Contract.

1A.2 Limitation on Contractor's ability to make claims

- (a) The value of any claim made by the Contractor against SHAPE cannot exceed the value of any claim SHAPE may have against the Client under the Head Contract arising from or in connection with the same work, facts or circumstances.
- (b) Without limiting (a), the Contractor is not entitled to make any claim against SHAPE unless SHAPE considers that it is entitled to make a corresponding claim against the Client under the Head Contract.
- (c) As a condition precedent to its ability to make any claim against SHAPE, the Contractor must do everything SHAPE considers necessary to enable SHAPE to make a corresponding claim against the Client under the Head Contract. This includes giving SHAPE sufficient notice of and information about the claim to enable SHAPE to comply with its notice obligations under the Head Contract.
- (d) This clause 1A.2 applies notwithstanding any other provision of the Contract.

1— Interpretation and construction of Contract

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

Item means an *Item* in the Annexure Part A;

Approval includes any licence, permit, consent or certificate issued by a municipal, public or other statutory authority;

certificate of practical completion has the meaning in subclause 20.4;

Client means the person who has engaged SHAPE to carry out the *project* under the *Head Contract*;

compensable cause ~~means any act, default or omission of SHAPE or its consultants, agents or other contractors (not being employed by the Contractor);~~means:

a) any breach of *Contract* by SHAPE; or

b) those listed in *Item* 10B;

Consequential Loss means loss or damage arising from a breach of contract, tort, under statute or any other basis in law or equity including the following:

a) loss of profit;

b) loss of revenue;

c) loss of production;

d) loss or denial of opportunity;

e) loss of access to markets;

f) loss of goodwill;

g) loss of business reputation, future reputation or publicity;

h) damage to credit rating;

i) loss of use; and

k) indirect, remote, abnormal or unforeseeable loss,

or any similar loss whether or not in the reasonable contemplation of the parties as at the date of the *Contract*;

Construct Only WUC means all parts of *WUC* other than the *D&C Elements*;

construction program has the meaning in clause 19;

Contract means the agreement between SHAPE and the *Contractor*;

contract sum means:

a) ~~where SHAPE accepted a lump sum, the lump sum;~~

b) ~~where SHAPE accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates; or~~

c) ~~where SHAPE accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b);~~

means the amount stated in *Item* 17 (which includes the *provisional sums*) but excluding any additions or deductions which may be required to be made under the *Contract*, and for the avoidance of doubt excludes damages for breach of the *Contract*;

Contractor	means the person bound to carry out and complete <i>WUC</i> <u>and for the avoidance of doubt where the context allows, including in relation to the responsibility and liability of the Contractor, all subcontractors and agents of the Contractor and their agents and employees;</u>
date for practical completion	means the date stated in <i>Item 5(a)</i> or the last day of the period of time stated in <i>Item 5(b)</i> , but if any <i>EOT</i> for <i>practical completion</i> is directed or otherwise allowed, it means the date resulting therefrom;
date of acceptance of tender	means the date which appears on the written notice of acceptance of tender;
date of practical completion	means: <ol style="list-style-type: none"> the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
<u>D&C Elements</u>	<u>means:</u> <ol style="list-style-type: none"> <u>those parts of <i>WUC</i> that are identified as <i>D&C Elements</i> in <i>Item 19</i>;</u> <u>any other part of <i>WUC</i> that is expressly required to be designed by the Contractor; and</u> <u>any other part of <i>WUC</i> that is designed by the Contractor (whether before or after the date of the <i>Contract</i>), including where the Contractor nominates the use of specific materials or methods of working or where none are specified by the <i>Contract</i>;</u>
defects	has the meaning in clause 21 and includes omissions; <u>includes any defect, shrinkage, fault or omission in <i>WUC</i> and any aspect of <i>WUC</i> which is not strictly in accordance with the requirements of this <i>Contract</i>;</u>
<u>Design Problem</u>	<u>means any discrepancy, inconsistency, ambiguity, error, omission or other defect in any document prepared for the purposes of carrying out <i>WUC</i>;</u>
direction	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
dispute	has the meaning in clause 27;
<i>EOT</i> (from 'extension of time')	has the meaning in subclause 20.2;
<u>Fundamental Design Change</u>	<u>means an obvious and substantial departure from the intent of the design embodied in the <i>Contract</i> that could not reasonably have been anticipated by a competent and experienced contractor at the date of the <i>Contract</i>;</u>
<u>Head Contract</u>	<u>means the contract pursuant to which the <i>Client</i> has engaged SHAPE to carry out the <i>project</i>;</u>
<u>Head Contract PC</u>	<u>means the date SHAPE achieves practical completion of the <i>project</i> under the <i>Head Contract</i>.</u> <u>If the <i>Head Contract</i> divides the <i>project</i> into separable portions, <i>Head Contract PC</i> means the date SHAPE achieves practical completion of the relevant separable portion under the <i>Head Contract</i>;</u>

notice of claim

means a written notice setting out the general basis and quantum of a claim, which must contain sufficient information and be supported by sufficient evidence to enable SHAPE (acting reasonably) to properly understand and assess the claim;

PPSA

Personal Property Securities Act 2009 (Cth)

practical completion

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

- a) the Works are complete except for minor defects;
 - i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;
 - ii) which SHAPE determines the Contractor has reasonable grounds for not promptly rectifying; and
 - iii) the rectification of which will not prejudice the convenient use of the Works; and
- b) the requirements set out in clause 20.4 have been satisfied;

SHAPE project

means SHAPE stated in Item 1; means the entirety of the works to be performed by SHAPE at the site, part of which constitute the Works;

Procore

means the proprietary, internet-based platform known as 'Procore' at the date of the Contract that facilitates the centralised management of project-related communications and information;

provisional sum work

means any item of WUC:

- a) expressly described in the Contract as provisional sum, contingency sum or prime cost work (or which is described by another similar expression); or
- b) for which a provisional allowance has been included in the contract sum;

qualifying cause of delay

means:

- a) any act, default or omission of SHAPE or its consultants, agents or other contractors (not being employed by the Contractor); or
- b) other than:
 - i) a breach or omission by the Contractor; and
 - ii) industrial conditions or inclement weather occurring after the date for practical completion;
- b) those listed in Item 10A.

related body corporate

has the meaning given to that expression by the Corporations Act 2001 (Cth);

security

means the security provided for in clause 3;

SHAPE

means the entity described in Item 1;

site

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

the Works

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

unfinished prior work means any work that must be completed by someone other than the Contractor before the Contractor can carry out an element of WUC, but which has not been completed;

work includes the provision of materials;

WUC (from 'work under the Contract') means the work which the Contractor is or may be required to carry out and complete under the Contract and includes variations, remedial work, construction plant and temporary works, and like words have a corresponding meaning.

In the Contract:

- ~~a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;~~
- a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- b) time for SHAPE doing any act or thing under the Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the Contract; and
- d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- ~~e) any waiver, discharge or release by a party of the other party's obligations will not be effective unless it is confirmed in writing;~~
- f) a reference to any legislation or legislative provision includes statutory modifications, consolidations, amendments, re-enactments and replacements of or to it, as well as any subordinate legislation issued under it;
- g) a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- h) the meaning of general words is not limited by specific examples introduced by 'including', 'such as', 'for example' or 'even if', or other similar expressions.

2 Nature of Contract

2.1 Performance and payment

- (a) The Contractor ~~shall~~ must carry out and complete WUC in accordance with the Contract and directions authorised by the Contract ~~Contract~~, in such a manner so as not, either directly or indirectly, to injure or harm any person or to cause any damage or loss to property, including third party property.

~~SHAPE shall pay the Contractor:~~

- ~~(a) for work for which SHAPE accepted a lump sum, the lump sum; and~~
- ~~(b) for work for which SHAPE accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate accepted by SHAPE for the section or item;~~

- (b) ~~adjusted by any additions or deductions~~ SHAPE must pay the *contract sum* to the *Contractor* (subject to any adjustments made pursuant to the *Contract*) and any other amounts due to the *Contractor* in accordance with the *Contract*.

2.2 Quantities

Quantities in a schedule of rates are estimated quantities only.

SHAPE is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the schedule of rates.

~~If the schedule of rates omits an item which should have been included, the item shall be a deemed variation.~~

2.3 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* agrees and warrants to SHAPE that the *Contractor*:

- (a) prior to entering into the *Contract* satisfied itself as to the adequacy of the *site* for the purpose of performing the *WUC*, including conducting all tests, examinations and making all inquiries which a prudent contractor would ordinarily undertake prior to entering into a contract to perform the *Works* on the terms of the *Contract*;
- (b) is experienced and competent in assessing all risks associated with the carrying out of the *WUC* and in developing, implementing and managing a safe system of work for the *WUC* without supervision by SHAPE;
- (c) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completing *WUC*;
- (d) at all times not bring onto the *site*, allow to be brought onto the *site*, or incorporated into the *Works*, any equipment, plant or material that does not comply with all legislative requirements, the Building Code of Australia and Australian Standards; and
- (e) shall use workmanship of the standard prescribed in the *Contract* or to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the *Works*.

3 Security

3.1 Provision

~~*Security* shall be provided in accordance with Item 6. All delivered security, other than cash or retention moneys, shall be transferred in escrow.~~

Where *security* is provided by way of cash funds (including cash retention), the *Contractor* will have no entitlement to interest on those cash funds paid to, or held by, SHAPE.

3.2 Recourse

~~*Security* shall be subject to recourse by SHAPE who remains unpaid after the time for payment where at least 5 days have elapsed since SHAPE has notified the *Contractor* of intention to have recourse, at any time without notice where SHAPE in good faith considers that it has incurred, or might in the future incur, costs, damages or expenses as a consequence of any act or omission of the *Contractor*. The *Contractor* may not take any steps to restrain SHAPE from having recourse to *security*.~~

If SHAPE has recourse to *security*, the *Contractor* must provide additional *security* to replace the *security* that has been called upon. If the *Contractor* does not do so, SHAPE is entitled to withhold from any amounts otherwise payable to the *Contractor* an amount equal to the value of that additional *security*.

3.3 Cash retention trust account

If the Contractor's security is to be by way of cash retention, and there is a regulatory requirement for that cash retention to be held in a trust account – such as where the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW)* applies – SHAPE will hold and deal with the relevant cash retention in a manner satisfying that regulatory requirement.

Money will only be withdrawn such from a trust account to make payments in accordance with the Contract, including to SHAPE in respect of its entitlements under the Contract, or as the parties may otherwise agree in writing or in accordance with an order of a court or tribunal.

SHAPE and the Contractor agree that:

- (a) no fiduciary obligation arises for the benefit of the Contractor by virtue of the operation of the trust account;
- (b) all interest which accrues upon the trust account will belong to and vest absolutely in SHAPE, and SHAPE can withdraw the interest at any time;
- (c) the Contractor will not be entitled to, and shall have no claim in respect of, a specific portion of the trust account except strictly in accordance with clauses 3.4 and 3.5; and
- (d) where SHAPE becomes entitled to any money held in the trust account, such moneys may be paid out of the trust account without reference to the Contractor, and to the extent necessary the Contractor irrevocably appoints SHAPE its attorney to sign any document necessary to effect such payment.

3.4.3 Reduction and release of security at practical completion

Upon the issue of a certificate of practical completion, SHAPE's entitlement to security shall be reduced to 50 per cent thereof and the reduction shall be released and returned within 14 days to the Contractor.

SHAPE shall must release and return 50 percent of the balance of Contractor's security then held to the Contractor within 14 days of the final certificate, 28 days of a written request by the Contractor, provided:

- (a) WUC has reached practical completion and the project has reached practical completion under the Head Contract;

3.4 — Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of security (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the Contractor until SHAPE or the Contractor is entitled to receive them.

Interest earned on security not required to be held in trust shall belong to the party holding that security.

- (b) there are no known defects that have not been rectified;
- (c) the Contractor has provided to SHAPE, properly executed,
 - (i) All Supplier Warranty Deeds and the Contractor Warranty Deed required by clause 6.3(b); and
 - (ii) the Deed of Release required by clause 23.6(b);
- (d) the Client is obliged to release and return at least 50% of any security provided by SHAPE under the Head Contract; and
- (e) SHAPE does not have any unsatisfied claims against the Contractor, and SHAPE is not aware of any circumstances that may give rise to a claim by SHAPE against the Contractor; and

- (f) there are no unresolved claims or disputes between SHAPE and the Contractor which, if resolved in favour of SHAPE, would result in an amount being payable by the Contractor to SHAPE.

3.5 Release of the balance of security

SHAPE must release and return the balance of the Contractor's security within 28 days of a written request by the Contractor, provided:

- (a) the defects liability period has expired;
- (b) there are no known defects that have not been rectified;
- (c) the Client is obliged to release the balance of any security provided by SHAPE under the Head Contract;
- (d) SHAPE does not have any unsatisfied claims against the Contractor, and SHAPE is not aware of any circumstances that may give rise to a claim by SHAPE against the Contractor
- (e) SHAPE has received from the Contractor, properly executed
 - (i) All Supplier Warranty Deeds and the Contractor Warranty Deed required by clause 23.6(a); and
 - (ii) the Deed of Release required by clause 23.6(b); and
- (f) there are no unresolved disputes between SHAPE and the Contractor which, if resolved in favour of SHAPE, would result in an amount being payable by the Contractor to SHAPE.

4 Service of notices

- (a) SHAPE may serve notices on the Contractor by personal delivery, post, facsimile, email or through Procore.
- (b) The Contractor may only serve notices on SHAPE by personal delivery, post or facsimile. A notice served by the Contractor in any other way will be invalid and have no effect and will be taken not to have been served.
- (c) All notices must be sent to the relevant address notified in the Contract or to the last address communicated to the person giving the notice.
- (d) A notice (and other documents) shall A notice will be deemed to have been given and received: at the address and at the time shown:
 - (a) ~~if addressed or delivered to the relevant address in the Contract or last communicated in writing to the person giving the notice; and~~
 - (b) ~~on the earliest date of:~~
 - (i) ~~actual receipt;~~
 - (i) ~~(ii) confirmation of correct in the case of a facsimile, in a successful transmission of fax; or report produced by the sender, or~~
 - (ii) in the case of an email, in a report produced by SHAPE confirming that the email has been sent successfully.
 - (iii) ~~3 days after posting.~~
- (e) A document will be deemed to be in writing if it is sent in accordance with this clause 4.
- (f) SHAPE may give the Contractor access to Procore. If it does provide that access, it will be on the following basis:
 - (i) the Contractor must upload to Procore copies of all documents, notices or claims it provides under the Contract;

- (ii) any information uploaded by the Contractor to Procore will be for information purposes and convenience only;
- (iii) this subclause 4(f) remains subject to subclause 4(b) above;
- (iv) SHAPE will not have any liability to the Contractor arising in any way from the Contractor's use of Procore, such as in respect of the loss of any documents or their unauthorised use or disclosure to third parties; and
- (v) SHAPE at any time may direct that a new platform be used in place of Procore (in which case the provisions above will apply to the new platform), and SHAPE may direct the Contractor to cease using Procore (or its replacement) at any time for any reason.

5 — Discrepancies

5 Contractor's Design Obligations

A reference to 'design' includes design development and design detailing.

5.1 Overview

The Contractor carries certain risks and obligations in relation to the design of WUC, for both D&C Elements and Construct Only WUC. Although the extent of these risks and obligations varies depending on whether WUC (or the relevant part) involves D&C Elements or Construct Only WUC, many of these risks and obligations apply to both types of WUC.

5.2 Warranties

The Contractor warrants to SHAPE that:

- (a) the Contractor has carefully examined the drawings, specifications and other documents comprising the Contract; and
- (b) the contract sum makes adequate allowance for all inconsistencies, discrepancies and ambiguities within or between the documents contained in the Contract, and the Contractor has familiarised itself with all such inconsistencies, discrepancies and ambiguities.

5.3 Design Problems

- (a) The documents forming the Contract are intended to be read and interpreted as a whole. In the event of a Design Problem that arises from a matter of interpretation, the interpretation imposing the highest standard, greatest quantity or most onerous obligation on the Contractor will apply.
- (b) The Contractor must carefully examine and check any document or other information given to it for the purposes of carrying out WUC before carrying out WUC.
- (c) If either party is or becomes aware of a Design Problem:
 - (i) Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out WUC, that party shall give the other party written notice of it. SHAPE, thereupon, and upon otherwise becoming aware, shall direct the Contractor as to the interpretation and construction to be followed. —; and
 - (ii) SHAPE will direct the Contractor how to proceed.
- (d) To the extent the resolution of a Design Problem requires further design work to be performed, the Contractor must perform that further design work at its own cost unless:
 - (i) the issue relates to Construct Only WUC; and

- (ii) the further design work is not of a kind that would ordinarily be performed by an experienced and competent contractor in the position of the Contractor.
- (e) Where the Contractor is not required to perform the further design work under clause 5.3(d), SHAPE will provide the relevant design or direction to the Contractor. For the avoidance of doubt, the preparation of shop drawings and minor design detailing will always form part of the Contractor's obligations.
- (f) If a direction by SHAPE under clause 5.3(c)(ii) involves a Fundamental Design Change, that direction will be treated as a direction by SHAPE to vary WUC. Otherwise, the Contractor will not be entitled to claim an EOT or any adjustment to the contract sum arising from or otherwise in connection with a Design Problem.

5.4 Requirements for the Works, when completed

- (a) The Contractor must ensure that, when completed, the Works (and each part of them, including any WUC that is the subject of a variation):
 - (i) are fit for their intended purpose; and
 - (ii) comply with the Building Code of Australia, applicable Australian Standards and any relevant legislative requirements; and
 - (iii) comply with all other requirements of the Contract.
- (b) If, when completed, Construct Only WUC does not satisfy the requirements of clause 5.4(a) due to a defect in its design, the Contractor's liability under clause 5.4(a) will be reduced to the extent:
 - (i) SHAPE provided the design containing the defect to the Contractor; and
 - (ii) the defect in the design is of a kind that could not have been identified by a competent and experienced contractor before the relevant WUC was performed.
- (c) If, when completed, a D&C Element does not satisfy the requirements of clause 5.4(a) due to a defect in its design, the Contractor's liability under clause 5.4(a) will not be reduced or otherwise affected by:
 - (i) any direction, comment or approval by SHAPE or any failure to provide a direction, comment or approval; or
 - (ii) any document or information given to the Contractor by SHAPE or any other person.

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

6 Assignment and subcontracting

6.1 Assignment

- (a) ~~Neither party shall~~SHAPE may, without the ~~other's~~Contractor's prior ~~written~~ approval (including terms), ~~assign the Contract or any payment or any other right, benefit or interest thereunder.~~
- (b) The Contractor may not assign the Contract or the right to receive any payment or any other right, benefit or interest thereunder without SHAPE's prior written consent (which may be withheld for any reason).

6.2 Subcontracting and supply arrangements

The Contractor may subcontract part of WUC (but not the whole of the WUC) subject to SHAPE's prior written approval (which may not be unreasonably withheld). Any subcontract between the

Contractor and a subcontractor or supplier must contain provisions that are no less onerous on the subcontractor or supplier than the provisions imposing obligations on the Contractor in this Contract.
~~but~~ Any subcontracting ~~shall~~ or supply arrangement entered into by the Contractor will not relieve the Contractor from any liability or obligation under the Contract. For the avoidance of doubt, the Contractor is liable to SHAPE for all acts and omissions of all subcontractors and agents of, and suppliers to, the Contractor and each of their respective employees and agents.

6.3 Subcontractor and suppliers warranties

The Contractor will:

- (a) ensure that SHAPE, the Client and the Contractor have the joint and several benefit of any manufacturers' and suppliers' warranties for equipment, machinery and manufactured items incorporated into the Works and all other manufacturers' and suppliers' warranties required by the Contract; and
- (b) as a condition precedent to practical completion,
 - (i) procure and provide SHAPE with warranties for equipment, machinery and manufactured items incorporated into the Works in the form of the document in the Annexure Part C, called 'Supplier Warranty Deed', together with all other manufacturers' and suppliers' warranties required by the Contract; and
 - (ii) properly execute and deliver to SHAPE a document in the form set out in Annexure Part C called 'Contractor Warranty Deed'.

6.4 Novation

When directed by SHAPE, the Contractor, without being entitled to compensation, shall promptly execute a deed of novation in the form of the document in the Annexure Part G such deed being between SHAPE, the Contractor and the relevant supplier.

7 Legislative requirements

The Contractor shall satisfy all legislative requirements except where otherwise provided for under the Contract or directed by SHAPE to be satisfied by or on behalf of SHAPE.

The Contractor must:

- (a) apply for and obtain all Approvals that are required in conjunction with WUC or that are necessary for the use and occupation of the Works, unless SHAPE has agreed to obtain the relevant Approval elsewhere under the Contract;
- (b) give all notices and pay all fees which are necessary to carry out WUC; and
- (c) provide SHAPE with copies of any documents issued to the Contractor by any authorities in respect of WUC including, in particular, any Approvals.

If a change in a legislative requirement necessitates a change to the Works and causes the Contractor to incur more or less cost than would otherwise have been incurred, the difference shall be assessed by SHAPE and added to or deducted from the contract sum.

8 Protection

Insofar as compliance with the requirements of the Contract permits, the Contractor shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, ~~the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.~~ SHAPE shall be entitled to:

(d) direct the *Contractor* to promptly rectify the whole or part of the damage; and/or

(e) rectify the whole or part of the damage itself,

at the cost of the *Contractor*. SHAPE shall certify the cost incurred by it as moneys due from the *Contractor* to SHAPE.

~~If urgent action is necessary. If action is required to protect *WUC*, or other property or people and the *Contractor* fails to take the action, in addition to any other remedies of SHAPE, SHAPE may take the necessary that action. If the action was action which should already have been taken by the *Contractor* should have taken at the *Contractor's* cost~~ at its own expense, SHAPE shall certify the cost incurred as moneys due from the *Contractor* to SHAPE.

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

9 Care of the work and reinstatement of damage

9.1 Care of WUC

Except as provided in subclause 9.3, the *Contractor* shall be responsible for the care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* ~~until 4:00 pm on the date of practical completion~~ Head Contract PC, at which time the responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to SHAPE; and
- (b) outstanding work and items to be removed from the *site* by the *Contractor* ~~after 4:00 pm on the date of practical completion~~ Head Contract PC until completion of outstanding work or compliance with the *Contractor's* obligations under clause 21.

9.2 Reinstatement

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

9.3 Excepted risks

~~The~~ For the purposes of clauses 9.1 and 9.2, the excepted risks causing loss or damage, for which SHAPE is liable, are:

- (a) any negligent act or omission of the *Client*, SHAPE or others for whom it is responsible (and for the avoidance of doubt, where there is no negligence, breach of contract or other fault on the part of the *Client*, SHAPE or others for whom it is responsible there is no liability in them despite there being a contributory act or omission by them);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (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) ionizing 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 those for whom it is responsible;
- (e) use or occupation of any part of *WUC* by the *Client*, SHAPE or others for whom ~~it~~ SHAPE is responsible where the loss or damage is caused by the *Client*, SHAPE or others for whom SHAPE is responsible; and

- (f) defects in the design of *WUC*, other than design provided by the *Contractor*; or to the extent any other provision of the *Contract* imposes design obligations on the *Contractor*; and
- (g) any *Design Problem* that is notified by the *Contractor* to SHAPE in writing prior to the commencement of any *WUC*.

10 Damage to persons and property other than *WUC*

10.1 Indemnity by *Contractor*

- (a) Insofar as ~~this~~ the indemnity in subclause 10.1(b) applies to property, it applies to property other than *WUC*.
- (b) The *Contractor* shall indemnify SHAPE against claims in respect of:
 - (i) ~~(a)~~ loss of or damage to SHAPE's property of the *Client*. (The limit of indemnity under this paragraph, in respect of such property, shall be the amount stated in *Item 7*); and
 - (ii) ~~(b)~~ claims in respect of personal injury or death, or loss of, or damage to, any other property, property of third parties (including SHAPE),
directly or indirectly arising out of or as a consequence of, or in connection with the carrying out of *WUC* by the *Contractor*, or the carrying out of that *WUC* providing the occasion for the liability in SHAPE to arise, or the selection by SHAPE of the *Contractor* to perform *WUC*, or the coordination by SHAPE of *WUC* by the *Contractor* with work on the project by other contractors to SHAPE, or SHAPE's responsibility for the management and control of the site, or SHAPE's responsibility for the management and control of the performance of *WUC* by the *Contractor*.
- (c) The indemnity in subclause 10.1(b) extends to and includes all costs and expenses of SHAPE in respect of the claim and the circumstances giving rise to the claim, which for the avoidance of doubt includes costs and expenses incurred prior to the claim being made.
- (d) For the avoidance of doubt, where there is no negligence, breach of contract or other fault on the part of SHAPE there is no liability in SHAPE despite there being a contributory act or omission by it.

~~arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of SHAPE or others for whom it is responsible may have contributed to the injury, death, loss or damage.~~

- (e) ~~This subclause~~ The indemnity in subclause 10.1(b) shall not apply to:
 - (i) ~~(a)~~ the extent that the *Contractor*'s liability is limited by another provision of the *Contract*;
 - (ii) ~~(b)~~ exclude any other right of SHAPE to be indemnified by the *Contractor*; and
 - (iii) ~~(c)~~ things for the care of which the *Contractor* is responsible under subclause 9.1; and

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- (d) ~~claims in respect of the right of SHAPE to have *WUC* carried out.~~

10.2 Indemnity by SHAPE

~~SHAPE shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 10.1.~~

—Insurance of the Works

Before the *Contractor* commences *WUC*, the *Contractor* shall insure all things referred to in subclause 9.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 9.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall only if the wording of the consequential loss exclusion is approved by SHAPE (in its absolute discretion) and the policy does not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (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; and
- (f) loss or damage resulting from the excepted risks referred to in paragraphs ~~(b) 9.3(b)~~ and ~~(c) of subclause 9.3.3(c)~~.

The insurance cover shall—

- (g) be for an amount not less than the sum stated in Item 8;
- (h) have an excess of no more than \$20,000 per occurrence;
- (i) provide indemnity for 'hold harmless' agreements entered into by the insured. and
- (j) be with an insurer and otherwise in terms both approved in writing by SHAPE (which approvals shall not be unreasonably withheld).

Insurance ~~shall be in the joint names of the parties and~~ shall cover the parties and all subcontractors whenever engaged in *WUC* for their respective rights, interests and liabilities, with SHAPE's interest noted on the policy.

12 Public liability insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a public liability policy.

The policy shall:

~~(a) be in the joint names of the parties;~~

(a) (b) cover the:

- (i) respective rights and interests; and
- (ii) liabilities to third parties,

of the parties and the Contractor's subcontractors from time to time, whenever engaged in *WUC*;

(b) either be in the joint names of the parties or, if the policy is not in joint names, ensure that SHAPE is covered by the policy and that SHAPE's interest is expressly noted on the policy;

(c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 11) and the death of or injury to any person (other

than liability which the law requires to be covered under a workers compensation insurance policy);

- (d) be endorsed to cover the use of any construction plant not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum stated in *Item 9*, ~~and~~, and have an excess of no more than \$20,000 (per occurrence);
- (f) provide indemnity for 'hold harmless' agreements entered into by the insured, and
- (g) ~~(f)~~ be with an insurer and otherwise in terms both approved in writing by SHAPE (which approvals shall not be unreasonably withheld).

12A Product liability insurance

If the Contractor has a product liability insurance policy that covers (or will cover) goods or services supplied by the Contractor in connection with the Contract, the Contractor must ensure that SHAPE's interest is noted on that policy.

For the avoidance of doubt, nothing in this clause 12A obliges the Contractor to effect a new product liability policy if it does not already have a policy in place.

12B Professional indemnity insurance

This clause applies when *Item 9A(a)* indicates that the Contractor is to effect and maintain professional indemnity insurance or where the Contract includes any *D&C Elements*.

If this clause applies, before commencing WUC, the Contractor shall effect and maintain professional indemnity insurance

- (a) for an amount not less than stated in *Item 9A(b)*,
- (b) having an excess on no more than \$20,000,
- (c) including at least one automatic reinstatement, and
- (d) be with an insurer and otherwise in terms both approved in writing by SHAPE (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until all of the Contractor's security has been returned and thereafter for the period as stated in *Item 9A(c)*.

The Contractor shall ensure that any consultant engaged by the Contractor effects and maintains professional indemnity insurance to the same cover levels.

13 Insurance of employees

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

Where permitted by law, such insurance shall be extended to provide indemnity for the Client's and SHAPE's statutory liability to the Contractor's employees where such liability arises from a negligent act or omission of the Contractor.

The Contractor shall ensure that all subcontractors have similarly insured their employees.

14 Insurance-General insurance related provisions

14.1 Proof of insurance

Before the Contractor commences WUC and whenever requested in writing by SHAPE, the Contractor shall provide satisfactory evidence of such insurance effected and maintained.

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

14.2 Cross liability

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

14.3 Excess payments

The *Contractor* shall bear the cost of any excess payable in respect of a claim made under a *Contractor's* insurance policy including claims by persons constituting the insured other than the *Contractor*.

14.4 Relevance of SHAPE's insurance

The parties acknowledge that SHAPE may have insurance in connection with the *project* that potentially extends cover to the *Contractor*. The *Contractor* may not make any claim against SHAPE or on SHAPE's insurance in relation to any insurable matter unless and until the *Contractor's* rights under its own insurance have been exhausted.

14.5 Relationship between insurance obligations and other provisions

The *Contractor's* obligations in respect of insurance do not limit, reduce or otherwise affect any of the *Contractor's* other obligations, responsibilities and liabilities in connection with the *Contract*.

Nothing elsewhere in the *Contract* may be construed to limit the *Contractor's* obligations in respect of insurance (as set out in clauses 11 to 14, inclusive).

15 SHAPE's direction

Except where the *Contract* otherwise provides, SHAPE may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests SHAPE to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until SHAPE does so. Otherwise, the *Contractor* must comply with the *direction* immediately upon receipt (unless the *direction* expressly requires compliance at a later point in time).

16 Representatives

SHAPE may appoint a ~~SHAPE's~~ representative to exercise delegated ~~SHAPE's~~ functions. ~~The name and functions of each SHAPE's representative shall be notified to the *Contractor* in writing.~~

The *Contractor* shall superintend *WUC* personally or by a competent and fluent English speaking representative.

If the *Contractor* appoints a representative, the *Contractor* shall forthwith give SHAPE written notice of the representative's name.

17 Site

SHAPE shall, on or before the expiry of the time stated in *Item 10*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If SHAPE has not given the *Contractor* possession of the whole of the *site*, SHAPE shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC*.

~~The Contractor shall at all reasonable times give SHAPE access to WUC.~~

17.1 Contractor will not have exclusive possession

The Contractor must ensure at all times that SHAPE is not hindered in accessing the site because of any action or inaction by the Contractor, and the Contractor acknowledges that it will not have exclusive possession of the site.

The Contractor acknowledges that it will be performing WUC concurrently with other contractors engaged by SHAPE and/or the Client and that it has made a full and sufficient allowance in the contract sum for achieving practical completion by the date for practical completion for delays potentially caused to its progress of WUC by those other contractors and/or the Client. The Contractor must coordinate WUC with the work of those other contractors, and SHAPE will not be liable for any claim resulting from the Contractor's failure to do so.

17.2 Site conditions

- (a) SHAPE will make available to the Contractor all documents and information about the site available to SHAPE that are relevant to the performance of WUC.
- (b) SHAPE does not warrant or otherwise represent that the documents or information it has provided to the Contractor about the site are accurate.
- (c) The Contractor warrants to SHAPE that it has, and it will be deemed to have:
 - (i) fully informed itself in relation to the site and all conditions that are relevant to the performance of WUC; and
 - (ii) verified the locations of any underground cables, pipes or other facilities or services which the Contractor may potentially encounter in the performance of WUC to the extent possible by making appropriate inquiries with and obtaining documented evidence from relevant public authorities (including 'Dial Before You Dig').

17.3 Site cleanliness

The Contractor shall keep the site and WUC clean and tidy and shall regularly remove rubbish and surplus material.— (at least on a daily basis).

If SHAPE is not satisfied with the cleanliness of the site, SHAPE may direct the Contractor to cease work and clean up. If within 2 hours of that direction the Contractor has not commenced cleaning the site, SHAPE may engage others to do so and the costs of that action will be immediately due and payable by the Contractor to SHAPE.

17.4 Removal of persons from site

SHAPE may direct the Contractor to have removed from the site or from any activity connected with the WUC, within such time as the SHAPE directs, any person involved by the Contractor in connection with the WUC. The person shall not thereafter be employed on the site or on activities connected with the WUC without the prior written approval of SHAPE.

18 Materials and work

18.1 Quality of material and work

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

The Contractor acknowledges and warrants to SHAPE that the contract sum makes sufficient allowances for, and the Contractor will provide as part of the contract sum;

- (a) all necessary materials, labour, plant and equipment to execute and complete the Works by the date for practical completion including any incidental materials, labour, plant or equipment that may be inferred as being necessary for the completion of the Works by the date for practical completion (even if they are not expressly identified in the Contract); and
- (b) integrating the Works with existing features of the site and other works being performed by separate contractors as part of the project, and in this respect the Contractor will be responsible for ensuring that it co-ordinates the performance of the WUC with the work to be performed by all other contractors on the site so as not to cause, either directly or indirectly, injury or harm to any person or any damage or loss to any property including third party property.

If the Contract requires the Contractor to provide prototypes or samples:

- (c) the provision of the prototypes or samples will be at the Contractor's expense;
- (d) approval of any prototype or sample will not relieve the Contractor from its obligations under the Contract; and
- (e) SHAPE may require the Contractor to provide evidence to SHAPE's satisfaction that any prototype or sample satisfies the requirements of the Contract. This may include a statutory declaration to that effect by a responsible officer of the Contractor.

If requested by SHAPE, the Contractor must (at its own expense) provide evidence to SHAPE's reasonable satisfaction that work performed by the Contract accords with the requirements of the Contract. That evidence may include photographs, product data sheets, test results and other technical information. If the Contractor is unable to provide evidence to SHAPE's reasonable satisfaction, the work will be deemed to be defective.

18.2 Defective work

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

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

If the Contractor fails to comply with such a direction—and that failure has not been made good within 5 days after the Contractor receives written notice that SHAPE intends to—SHAPE may have the subject work rectified by others, SHAPE may have the work so rectified, and this will not affect any warranties given or required to be given by the Contractor under the Contract. The cost thereby incurred shall be moneys due to SHAPE and the Contractor will be liable for any defects in the rectification work as if the Contractor had performed the rectification work itself.

SHAPE may give a *direction* pursuant to this subclause at any time before the expiry of the defects liability period.

Instead of a direction to do one or more of the things described in sub-clauses (a) to (d) above, SHAPE may accept the defective work. If SHAPE does so, the Contractor will be liable to pay SHAPE an amount (reasonably determined by SHAPE) to compensate SHAPE for any cost, loss, liability or expense incurred by SHAPE because of the defective work. These losses could relate to:

- (e) any extra resources SHAPE is required to commit to the project as a result of the Contractor's defective work (for example, additional administration, labour or supervision);

- (f) claims made against SHAPE in respect of the defective work, including claims in respect of any associated delay; and/or
- (g) any decrease in value of the *Works* caused by the defective work.

18.3 Quality assurance

The Contractor must:

- (a) plan, establish and maintain a quality system that is acceptable to SHAPE;
- (b) provide SHAPE with a copy of the Contractor's quality management plans prior to commencing any *WUC* on *site*; and
- (c) ensure that SHAPE has access to the Contractor's quality system so as to enable monitoring and quality auditing for the duration of the project.

The purpose of the Contractor's quality system is to aid the Contractor in achieving compliance with its obligations under the Contract and to document that compliance. It will not relieve or otherwise affect any of the Contractor's other obligations under the Contract.

18.4 Salvaged materials

The Contractor will have no entitlement to any goods or materials on the *site* which were not brought onto the *site* by the Contractor and will deal with all salvaged and salvageable goods and materials as directed by SHAPE. Any salvaged goods or materials removed from the *site* by the Contractor other than at the written direction of SHAPE will be held by the Contractor as bailee for SHAPE.

18.5 Work Methods

The Contractor:

- (a) must, prior to commencing *WUC*, assess all risks associated with the performance of the *WUC* at the *site*, determine and use the method of work it considers most suitable and appropriate for the *WUC* having regard to those risks, and use that method of work to perform the *WUC* unless either the Contract requires a specific method of work, or SHAPE expressly directs the method of work to be adopted for a particular task, in which case that method of work will be adopted unless the Contractor establishes to SHAPE's reasonable satisfaction that the method specified in the Contract or directed by SHAPE is not possible.
- (b) warrants that prior to commencing *WUC* it will have undertaken all necessary investigation and inquiry to satisfy itself that the method of work to be used for the performance of *WUC* is suitable and appropriate for the purposes of the Contract in the light of the risks of performing the *WUC* at the *site* without SHAPE supervising the performance of the system of work by which it will be performed;
- (c) acknowledges that it will be solely responsible for the supervision and management of all persons performing the *WUC*; and
- (d) acknowledges that SHAPE in entering into the Contract has relied on the Contractor's representations that it has experience and competence in assessing risks and developing and supervising safe systems of work for work similar to the *WUC* at sites similar to the *site* without supervision by others of those safe systems of work, and that SHAPE would not have entered into the Contract without those representations having been made to it.

If the Contractor considers there is a lack of clear delineation between the *WUC* it is to perform and the work to be performed by any other contractor on the *site*, or that coordination is required between the Contractor and any other contractor on the *site* in the performance of their respective packages of work, or that there is some other issue SHAPE could deal with in connection with the *site* that might otherwise adversely impact on the Contractor's ability to provide a safe system of work for the performance of the *WUC*, the Contractor will immediately notify SHAPE in writing of the issue, and seek a direction as to how to proceed.

Unless the Contractor seeks such a direction it will be taken for all purposes to have accepted that there is a clear delineation between the WUC and the work to be performed by all other contractors on the site, that no other coordination is required to enable the WUC to be performed in accordance with the requirements of the Contract, and that there is nothing SHAPE could or should have done in its management and control of the site which would have prevented the Contractor from providing and implementing a safe system of work for the performance of the WUC.

The review or acceptance by SHAPE of the Contractor's Safe Work Method Statement (SWMS) does not in any way reduce the Contractor's total responsibility for the suitability and appropriateness of method of work used in performing the WUC.

18.6 Testing

At any time prior to the expiry of the defects liability period, SHAPE may require WUC to be tested. The Contractor must give such assistance and samples and make accessible such parts of WUC as may be required by SHAPE. Tests will be conducted by SHAPE or any person nominated by SHAPE.

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

The cost of any tests and the cost of making good any WUC affected by tests will be borne by SHAPE, unless the tests reveal a defect in WUC. In that event, those costs will be borne by the Contractor (as a debt due and payable immediately to SHAPE).

18.7 The Contractor's intellectual property

The Contractor warrants to SHAPE that the use by the Contractor of all designs, materials, documents and methods of working developed independently of the project do not infringe the intellectual property rights of any person. SHAPE will not have any rights in respect of that intellectual property except to the extent necessary for:

- (a) the enjoyment of the full benefit of SHAPE's rights under the Contract;
- (b) the full use and enjoyment of the Works, including their maintenance and alteration; and
- (c) the performance of SHAPE's obligations under the Head Contract.

If any part of the Works comprises computer software or is reliant upon computer software supplied by or through the Contractor, the Contractor must provide SHAPE whatever information, code, data or documents it may reasonably require to maintain, enhance, customise or otherwise modify that software. The Contractor acknowledges that this may include source code.

18.8 Contract intellectual property

The Contractor acknowledges that it will have no rights of ownership in any intellectual property created for the purposes of or otherwise in connection with the project, including any intellectual property created as a result of the Contractor performing its obligations under the Contract ('Contract intellectual property'). This applies whether Contract intellectual property is created by the Contractor alone or jointly with SHAPE or with any other person.

All right, title and interest in or to Contract intellectual property is the property of, and vests on creation in, SHAPE. By entering the Contract, the Contractor unconditionally and irrevocably assigns all right, title and interest in Contract intellectual property (including future copyright) to SHAPE. The Contractor must execute all documents and do all things otherwise requested by SHAPE to ensure ownership of the Contract intellectual property vests in or otherwise passes to SHAPE.

The Contractor warrants that:

- (a) the rights granted and assigned to SHAPE under clauses 18.7 and 18.8; and
- (b) the performance by the Contractor of its obligations under the Contract.

do not and will not infringe the intellectual property rights of any person.

18.9 Removal of plant, materials and equipment from site

The Contractor will ensure that no plant, materials or equipment used, or for use, in performing WUC will be removed from the site prior to the date of practical completion without the express approval of SHAPE, which approval will not be given if SHAPE considers the plant, materials or equipment may be required to complete the WUC, whether by the Contractor, SHAPE or a third party.

18.10 PPSA Security Interest

The Contractor grants to SHAPE a PPSA Security Interest over its interest in all plant, materials and equipment used, or for use, in performing WUC as security for the payment of all moneys owing by the Contractor to SHAPE any time now or in the future under the terms of the Contract, including in respect of payments in advance for goods to be incorporated into the WUC not yet delivered to the site.

If requested by SHAPE, the Contractor will take all steps necessary, including executing any documents requested by SHAPE, for the purposes of perfecting the security interest. SHAPE may at any time register a financing statement or financing change statement in respect of the security interest and the Contractor waives its right receive notice of a verification statement in relation to any such registration.

The Contractor expressly waives, and contracts out of, its rights under the following sections of the PPSA in relation to the PPSA Security Interest: 95, 96, 121(4), 125, 129(2) & (3), 130, 132(3)(d), 132(4), 135, 142 and 143.

19 Programming and suspension

19.1 Programming

Prior to the Contractor commencing work on site, SHAPE will provide the Contractor with a program relating to WUC ('construction program'). If a construction program is included in the Contract, that program is the construction program.

SHAPE may require the Contractor to prepare a detailed program ('Contractor's Program') in relation to WUC, at no additional cost to SHAPE. The Contractor's Program must be consistent with the construction program and contain such additional information as SHAPE reasonably requires.

SHAPE may update the construction program, and it may direct the Contractor to give SHAPE a construction program within the time and in the form directed. SHAPE may update the Contractor's Program, from time to time. The Contractor shall not, without reasonable cause, depart from a construction program.

If SHAPE issues an updated construction program, or if it reviews, approves or comments on a Contractor's Program, or if it fails to do any of the foregoing, that will not:

- (a) affect the Contractor's obligations under this Contract (particularly its obligation to ensure WUC reaches practical completion by the date for practical completion); or
- (b) evidence or constitute the granting of an EOT, a direction to accelerate, disrupt, prolong or vary WUC.

19.2 Suspension

SHAPE may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as SHAPE thinks fit, if SHAPE, acting reasonably, is of the opinion it is necessary.

If the suspension is due to an act or omission of SHAPE or others for whom it is responsible and the suspension causes the Contractor to incur more or less cost than would otherwise have been incurred

~~but for the suspension, the difference shall be assessed by SHAPE and added to or deducted from the contract sum.~~

19.3 Working hours

Site hours will be as notified by SHAPE to the Contractor from time to time. The Contractor warrants to SHAPE that it has dedicated sufficient resources to the project to ensure practical completion will be achieved by the date for practical completion, taking SHAPE's site hours into account.

If the Contractor is not maintaining the rate of progress implicit in a construction program or Contractor's program:

- (a) SHAPE may require the Contractor to work overtime to remedy the position; and
- (b) the Contractor will be liable to pay SHAPE an amount (reasonably determined by SHAPE) to compensate SHAPE for:
 - (i) any extra resources SHAPE is required to commit to the project as a result of the Contractor's default (for example, additional administration, labour or supervision); and
 - (ii) any other additional costs, losses or expenses incurred by SHAPE.

To minimise any disturbance to any occupants of the building at the site, the Contractor must perform any noisy and disruptive works outside normal working hours, or as otherwise directed by SHAPE from time to time. The Contractor will not be entitled to an EOT or any additional cost arising from the scheduling or re-scheduling of noisy works in accordance with this clause 19.3.

20 Time and progress

20.1 Progress

The Contractor shall proceed with WUC with due expedition and without delay so as to complete each element of the WUC at the earliest practicable time.

The Contractor shall ensure that WUC reaches

- (a) each milestone and critical date, if any, set out in Annexure Part F by the date stated; and
- (b) practical completion by the date for practical completion.

~~Each party shall promptly notify the other of delay to WUC.~~

The Contractor must immediately (and in any event within 24 hours of becoming aware, or from when it ought reasonably to have become aware as a competent and experienced contractor, of any delay or potential delay to WUC) give written notice to SHAPE of any delay or potential delay to WUC.

The Contractor acknowledges that any delay by the Contractor may have a flow-on effect to other contractors engaged by SHAPE and/or the Client. Consequently, the date for practical completion may be earlier than Head Contract PC.

If, before the date of practical completion, the progress of WUC is delayed by an event that is not a qualifying cause of delay and that delay results in:

- (c) SHAPE being required to direct the re-sequencing, re-scheduling or acceleration of work by other contractors; or
- (d) claims being made against SHAPE by other contractors or the Client,

the Contractor indemnifies SHAPE in respect of all cost, expense or damage incurred or suffered by SHAPE as a result.

If the Contractor is failing to maintain the rate of progress expressly or impliedly required by this Contract in circumstances where the Contractor is not entitled to, and unable to claim, an EOT;

- (e) SHAPE may notify the Contractor of that failure and give the Contractor at least 24 hours' written notice of SHAPE's intention to exercise the right under clause 20.1(f); and
- (f) unless within 24 hours of receiving the notice under clause 20.1(e) the Contractor has given a written undertaking to SHAPE to accelerate WUC, including particulars of how WUC will be accelerated (such as the names of the Contractor's workers and the times and dates they intend to work) and evidence to SHAPE's reasonable satisfaction that the acceleration will be successful, SHAPE may take such action as it considers necessary to facilitate an acceleration of WUC, including by providing additional labour, materials and supervision (whether during our outside normal working hours). SHAPE's costs of any action taken under this clause 20.1(f) will, upon certification by SHAPE, become a debt due and payable immediately by the Contractor to SHAPE.

The Contractor will be taken to have admitted that it has failed to maintain the rate of progress expressly or impliedly required by the Contract unless it provides written evidence demonstrating its compliance with the required rate within 24 hours of receiving SHAPE's notice under clause 20.1(e).

SHAPE's rights under clause 20.1(e) and 20.1(f) do not prejudice any other rights SHAPE has under the Contract or under the general law in connection with the Contractor's failure.

20.2 Claim

If-If, and only if, the Contractor satisfies the conditions precedent that:

- (a) the Contractor is or will be delayed-, or is or will be likely to be delayed, in reaching practical completion or a milestone or a critical date set out in Annexure Part F by a qualifying cause of delay; and
- (b) gives-the Contractor has given SHAPE, within 28-4 days of when the Contractor should reasonably have become aware of the causation-occurring first fact, event or circumstance causing the delay, a detailed written claim for an EOT that, at a minimum, identifies:
 - (i) the relevant fact, event or circumstance on which the claim is based;
 - (ii) the time at which the relevant fact, event or circumstance occurred;
 - (iii) the EOT sought by the Contractor;
 - (iv) when the delay commenced or will commence;
 - (v) the duration of the delay;
 - (vi) the activities on the critical path of the then current construction program or Contractor's Program that have been or will be affected by the delay, and this is demonstrated by the Contractor through a time-impacted analysis of the relevant program or such other analysis methodology as SHAPE in its absolute discretion approves (which must be attached to the claim); and
 - (vii) all steps taken by the Contractor to prevent the occurrence of the delay or to mitigate its effect;
- (c) according to a time-impacted analysis, the delay affects activities on the critical path of the then current Contractor's Program, or if there isn't one then the construction program;
- (d) the Contractor could not have avoided the delay;
- (e) the Contractor has taken all reasonable steps to mitigate the effect of the delay;
- (f) the delay is not (or will not be) concurrent with any cause of delay that is not a qualifying cause of delay;
- (g) the Contractor promptly provides SHAPE with any additional information relating to its claim requested by SHAPE; and

- (h) in respect of a delay of more than 7 days, the Contractor updates the claim in subclause 20.2(b) every 7 days while the delay continues and notifies the Contractor of the end of the delay within 7 days of that occurring,

the Contractor shall be entitled to such EOT for carrying out WUC (including reaching to the date for practical completion, milestone or critical date (as applicable) as SHAPE, acting reasonably, assesses. The Contractor acknowledges that any entitlement to an award of an EOT is conditional upon the strict and timely satisfaction of the conditions precedent above and that this clause, together with any other relevant parts of this clause 20, comprises a code of the Contractor's rights and entitlements in relation to facts and circumstances comprising qualifying causes of delay.

The Contractor is only entitled to an EOT for delays occurring on days on which the Contractor usually carries out WUC.

20.3 Extension of time

Within 28 days after receiving such claim for EOT, SHAPE shall use all reasonable endeavours to give to the Contractor a written direction evidencing the EOT so assessed. If SHAPE does not do so, there shall be a deemed assessment and direction for an EOT as claimed within 28 days of all the conditions precedent in subclause 20.2 being satisfied. If SHAPE fails to do so, this will not set time or the date for practical completion at large (without prejudice to any right the Contractor may have in respect of SHAPE's delay.

Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, SHAPE may at any time and from time to time before issuing the final certificate direct an EOT returning the last of the Contractor's security direct an EOT. SHAPE's discretion is unfettered and is not required to be exercised for the benefit of the Contractor or reasonably or at all. SHAPE is not required to provide any reasons in respect of any EOT directed under this paragraph. Nothing in this paragraph confers any rights or expectations on the Contractor, and SHAPE's exercise (or failure to exercise) this discretion may not be the subject of complaint or review. The Contractor is not entitled to any delay costs or other compensation in respect of an EOT granted by SHAPE in the exercise of this discretion.

20.3A Acceleration

SHAPE may, at any time and for any reason, direct the Contractor to accelerate WUC by written notice. The direction may include a direction to apply additional labour or to work outside normal working hours. The Contractor will be entitled to be paid any additional costs it reasonably incurs as a consequence of such a direction, provided:

- (a) the direction is not given to mitigate or overcome a delay for which the Contractor is not entitled to and unable to claim an EOT; and
- (b) before the Contractor incurs any additional costs in respect of the acceleration, it gives SHAPE a written estimate of the costs it is likely to incur and notifies SHAPE of its intention to claim them.

The Contractor is not entitled to claim acceleration costs in any other circumstance.

20.4 Practical completion

Within 14 days after receiving a request by the Contractor for the issue of a certificate of practical completion, SHAPE shall give to the Contractor either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.

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

Without limiting any other provisions of this Contract, WUC will not have reached practical completion unless:

- (a) any tests which are required by the Contract to be carried out and passed before the Works reach practical completion have been carried out and passed;

- (b) the Contractor has provided SHAPE with as-built drawings in accordance with Item 18;
- (c) the Contractor has provided SHAPE with any documents or other information that is required in relation to the Works pursuant to legislative requirements, Approvals, the Contract, or which the Client requires (including warranties) or which in SHAPE's opinion, is essential for the use, operation and maintenance of the Works. These documents will include Approvals and operational manuals;
- (d) all services and facilities have been permanently connected and certified by the relevant consultants and approved by the Client;
- (e) the Works and the site are clean and free from materials, plant, tools and equipment and refuse and rubbish;
- (f) the Contractor has provided SHAPE a program for handing over the Works and for the rectification of any defects which is to SHAPE's reasonable satisfaction; and
- (g) any other thing required by the Contract to be done by the Contractor to achieve practical completion has been done by the Contractor.

~~20.5 — Liquidated damages~~

20.5 Contractor's liability for delay

If WUC does not reach *practical completion* by the *date for practical completion*, liquidated damages in Item 11(a) shall be due and payable immediately to SHAPE without demand or certification having been made, for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the Contract or SHAPE taking WUC out of the hands of the Contractor. The parties agree that the amount stated in Item 11(a);

- (a) represents a genuine pre-estimate of SHAPE's costs of running the project for one day, including labour, supervision and administration costs, facilities costs (electricity, water, gas, telephone etc) and other preliminaries expenses; and
- (b) does not include any allowance for:
 - (i) any liabilities SHAPE may incur to the Client or to other contractors or suppliers engaged by SHAPE;
 - (ii) any hire, storage and/or cancellation costs that may be incurred as a result of the delay;
 - (iii) the cost of any additional management, supervision or administration resources that are applied to the project to mitigate the effects of the delay (over and above the resources committed to the project by SHAPE independently of the delay); or
 - (iv) any other loss, liability or expense that does not fall within the scope of clause 20.5(a).

SHAPE hereby waives that part of liquidated damages exceeding the Item 11(b) amount.

If WUC does not reach practical completion by the date for practical completion, in addition to its liability for liquidated damages above, the Contractor indemnifies SHAPE against any loss, liability or expense of the kind described in clause 20.5(b).

The Contractor's liabilities under this clause 20.5 are a debt due and payable immediately by the Contractor to SHAPE and SHAPE may at any time set off such debt against any security or any amount due or which becomes payable to the Contractor by SHAPE.

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

~~SHAPE hereby waives that part of liquidated damages exceeding the Item 11(b) amount.~~

If Item 11(a) indicates that no liquidated damages apply, or if it is silent on the matter or if SHAPE is otherwise unable to recover liquidated damages from the Contractor for any reason, then in the event

of any delay SHAPE may recover from the Contractor any loss or damage SHAPE suffers as a result of the delay in accordance with the principles established at common law.

SHAPE may make a claim against the Contractor and set off amounts under this clause 20.5 before the date of practical completion. If SHAPE does so, that will not prejudice its ability to make further claims or off sets after the date of practical completion.

20.6 Delay damages

If, and only if, the Contractor satisfies the conditions precedent that:

- (a) there is an EOT for a day of delay that is the subject of a compensable cause;
- (b) For every day the subject of an EOT for a compensable cause and for which the Contractor gives SHAPE a claim for delay damages, damages in accordance with Item 12 shall be due and payable to the Contractor costs at the same time as claiming an EOT under clause 20.2; and
- (c) the Contractor's claim includes sufficient detail and evidence to enable SHAPE to properly consider and assess the claim.

delay costs in accordance with Item 12 shall be due and payable to the Contractor in an amount determined by SHAPE, acting reasonably. SHAPE will provide its assessment of the Contractor's claim at the same time as its assessment of the EOT to which it relates.

21 Defects liability

21.1 The defects liability period(s)

The defects liability period stated in Item 13 shall commence on the date of practical completion at 4:00 pm at Head Contract PC. If the Contractor becomes responsible for the rectification of any defect in accordance with this clause 21, there will be a separate defects liability period for the rectification works (enduring for the period stated in Item 13, commencing on the date the rectification works are completed).

Neither SHAPE's rights nor the Contractor's liability (whether under this Contract or otherwise according to law) will be limited or otherwise affected by the operation of this clause 21.

21.2 Timing of defects rectification

The Contractor shall carry out rectification of defects at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

As soon as possible after the date of practical completion, the Contractor shall rectify all If there are any defects existing at the date of practical completion, the Contractor must ensure that its project team remains on site until all of those defects are rectified to SHAPE's satisfaction.

During If any defects become apparent to SHAPE prior to the expiry of the defects liability period, SHAPE may give the Contractor a direction to rectify a the defect. Theat direction shall must include sufficient information to enable the Contractor to identify the defect and state reasonable dates for commencement and completion of its rectification.

The Contractor shall carry out rectification of defects in accordance with SHAPE's directions, at times and in a manner causing as little inconvenience to the occupants or users of the Works as possible.

Any defect that adversely affects the use of the Works or the operation of the Client's business must be rectified within 24 hours of a written direction by SHAPE. All other defects must be rectified within 7 days of a written direction by SHAPE or as otherwise directed by SHAPE.

21.3 Contractor's liability to compensate SHAPE

If the rectification of any defect in WUC results in SHAPE:

- (a) incurring any additional costs, losses or expenses; or
- (b) having to commit extra resources to the project, (for example, additional administration, labour or supervision).

the Contractor must pay SHAPE an amount (determined by SHAPE) to compensate SHAPE for having to incur or apply those additional costs, losses, expenses or resources.

In addition to the above, if the rectification of any defect has not commenced or is not completed within the time required by this clause 21 or as otherwise reasonably required by SHAPE, the Contractor will be liable to SHAPE for an amount determined by SHAPE to be equivalent to the cost of having the rectification work carried out by others (irrespective of whether the work is actually carried out).

If SHAPE rectifies a defect itself or by engaging other contractors after a failure by the Contractor to rectify the defect in accordance with this clause 21:

- (c) that will not affect any warranties given or required to be given by the Contractor under the Contract; and
- (d) the Contractor will be liable for any defects in the rectification work as if the Contractor had performed the rectification work itself.

21.4 Disputes in relation to defects liability

If the Contractor disputes liability for the rectification of any defect:

- (a) it must notify SHAPE of that fact in writing, giving reasons, prior to commencing any rectification work;
- (b) it must carry out rectification of the defect in accordance with SHAPE's direction, even though liability for the defect is disputed; and
- (c) if the Contractor completes rectification work in relation to defects for which the Contractor was not responsible, subject to (a) above, the Contractor will be entitled to recover the cost of those works from SHAPE (determined as if those works were a variation).

~~If the rectification is not commenced or completed by the stated dates, SHAPE may have the rectification carried out by others but without prejudice to any other rights and remedies SHAPE may have. The cost thereby incurred shall be moneys due and payable to SHAPE.~~

22 Variations

22.0 Proposed variations

SHAPE may at any time before the date of practical completion give notice of a proposed variation and request the Contractor's written estimate of the:

- (a) effect on the construction program (including the date for practical completion); and
- (b) cost of the proposed variation.

SHAPE may direct the Contractor to give a detailed quotation of the proposed variation, supported by measurements or other evidence of cost.

The Contractor must comply with SHAPE's requests within the time nominated by SHAPE. The Contractor's costs for compliance with this clause 22.0 will be borne by the Contractor.

For the avoidance of doubt, a direction by SHAPE under this clause 22.0 does not constitute a direction to vary WUC or to otherwise perform a variation.

22.1 Directing variations

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

SHAPE, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* or execute additional work but such variation shall be of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*. SHAPE's right to direct a variation exists regardless of whether SHAPE has made a request under clause 22.0.

If the *Contractor* considers that any *direction* by SHAPE constitutes or involves a variation, the *Contractor* must, if it wishes to make a claim against SHAPE arising out of or in connection with the *direction*, give written notice to SHAPE within 3 days of receiving the *direction* (or such shorter timeframe as may be required by SHAPE) and in any event before commencing work on the subject matter of the *direction*:

- (a) stating that it considers the *direction* constitutes or involves a variation; and
- (b) containing a quote for carrying out the works the subject of the *direction*, including a detailed breakdown of how the quote is calculated and any further information requested by SHAPE. (The provision of the quote and additional information will be at the cost of the *Contractor*.)

If the *Contractor* is directed to perform urgent work and it is unreasonable to expect the *Contractor* to give the notice referred to above prior to commencement, the fact that the *Contractor* commences the work will not prevent the *Contractor* from making a claim for a variation in relation to that work, provided:

- (c) the *Contractor* gives SHAPE the notice referred to above within 24 hours of commencing the work; and
- (d) the *Contractor*'s failure to give the notice prior to commencing the work does not prejudice SHAPE's ability to make a claim in respect of that work against the *Client* under the *Head Contract*.

Any failure by the *Contractor* to comply with this clause 22.1 will bar and invalidate any claim the *Contractor* may otherwise have had arising out of or in connection with the *direction*.

If SHAPE directs a variation omitting work, SHAPE may carry out the work itself or by engaging other contractors.

22.2 Pricing

SHAPE shall, as soon as possible, price each variation using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a schedule of rates or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, being rates that are consistent with the rates generally charged for comparable goods or services, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

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

23 Payment

23.0 Conditions to payment

Notwithstanding anything else in this *Contract*, the *Contractor* will not be entitled to any payment under the *Contract* if the *Contractor* has failed to provide SHAPE with:

- (a) a signed copy of this *Contract*;
- (b) security in accordance with clause 3.1, unless the security is to be by way of cash retentions;

- (c) evidence of its insurances in accordance with clause 14.1;
- (d) evidence of the payment of moneys due and payable to workers of the *Contractor* and others in accordance with clause 24.1;
- (e) if requested by SHAPE, a statutory declaration in a form prescribed by SHAPE that the *Contractor* has satisfied itself after due and careful inquiry, that it, and all of its subcontractors and suppliers, have complied, and are continuing to comply, with the obligations on the *Contractor* in relation to their actions set out in clause 2.3(c);
- (f) if clause 33 applies, evidence to SHAPE's reasonable satisfaction (which may include a statutory declaration in a form prescribed by SHAPE) that the *Contractor* complies and will comply with the *Code* and *Guidelines* and that its workplace arrangements comply with those instruments; and
- (g) if clause 34 applies, evidence to SHAPE's reasonable satisfaction (which may include a statutory declaration in a form prescribed by SHAPE) that the *Contractor* complies and will comply with the *NSW Code* and *NSW Guidelines*.

23.1 Progress claims

The *Contractor* shall claim payment progressively for the value of WUC done through the SHAPE subcontractor portal at <http://subcontractor.shapegroup.com.au/Claim.aspx>, and in accordance with Item 14.

An early progress claim shall be deemed to have been made on the date for making that claim. A progress claim may not be made more than 14 days after the date the claim is due to be made.

Each progress claim shall be given in writing to SHAPE and shall include details of the value of the WUC done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*. shall include details of the WUC claimed to have been done and the value of that WUC. The progress claim must contain sufficient information to enable SHAPE to assess the claim. If there is insufficient information to enable SHAPE to assess the claim, this will be a valid reason for SHAPE certifying that no money is owing to the *Contractor* in respect of that progress claim.

The amount of any progress payment to which the *Contractor* is entitled must be calculated and assessed as follows:

- (a) the value of WUC performed by the *Contractor* to the date of the claim, calculated as a percentage of the *contract sum* to reflect the amount of WUC completed to that date, less
- (b) the amount previously paid to the *Contractor* in respect of WUC done, less
- (c) the amount of any entitlement SHAPE may have, or that SHAPE considers that it may in the future have, to withhold, deduct, off-set or back-charge moneys against the *Contractor* under the terms of the *Contract*. The *Contractor* acknowledges that the value of SHAPE's future entitlement need not be capable of precise calculation before such a deduction can be made.

For the avoidance of doubt, any entitlement the *Contractor* may have under this *Contract* that does not directly relate to WUC performed by the *Contractor* may not be taken into account in calculating the value of a progress payment.

If any WUC is defective at the time of valuing WUC under clause 23.1(a), the value of that WUC is to be calculated as the value of the WUC as if it had been completed without any defects, minus a reasonable amount to reflect the cost of rectifying that WUC and any other work that may be affected by the defective WUC. The *Contractor* acknowledges that this valuation methodology may result in defective WUC having a negative value for the purposes of assessing the value of a progress payment.

23.2 Certificates

SHAPE shall, within 14 days after receiving such a progress claim, assess the claim and shall issue a progress certificate stating the moneys due to the *Contractor* or SHAPE, as the case may be, taking

into account any cash retentions. SHAPE is entitled to withhold under the *Contract*. SHAPE shall set out in the progress certificate the calculations employed to arrive at the amount certified and, if the amount is more or less than the amount claimed by the *Contractor*, the reasons for the difference.

Within 21 days after receipt by SHAPE of such a progress claim, SHAPE or the *Contractor*, as the case may be, shall pay:

(a) the amount certified, if SHAPE has issued. Without being under any obligation to do so either reasonably or at all, SHAPE may issue a progress certificate with respect to the at any time, even if the *Contractor* has not issued a progress claim; or,

If SHAPE issues a progress certificate stating that moneys are owing to the *Contractor*, SHAPE will process an electronic transfer of the funds into the *Contractor*'s nominated bank account on the first business day of the second month after the *Contractor*'s claim for payment is made. For example, if the *Contractor*'s payment claim is made on 25 July, SHAPE will process the electronic transfer on 1 September (or the next business day if 1 September is not a business day). However, SHAPE may deduct from any moneys due to the *Contractor* any moneys due from the *Contractor* to SHAPE (including liquidated damages), and if that money is insufficient, SHAPE may have recourse to security under the *Contract*.

(b) the amount of the progress claim, if SHAPE has not so certified.

Neither a progress certificate nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than a progress claim shall be payment on account only. In any progress certificate, SHAPE may modify or correct any errors in any previous progress certificates.

23.3 Unfixed plant and materials

Except as provided elsewhere in the *Contract*, SHAPE shall not be obliged. Unfixed goods or materials will not be included in a progress claim and SHAPE will not be liable to pay for unfixed plant and materials, unless:

(a) SHAPE is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the *Contractor* to comply with its obligations under the *Contract*; and

(b) the *Contractor* gives SHAPE with its progress claim under clause 23.1:

(i) additional security, in a form approved by SHAPE, equal to the payment claimed for the unfixed goods and materials;

(ii) such evidence as may be required by SHAPE that title to the unfixed goods and materials will pass to SHAPE upon payment;

(iii) the unfixed goods and materials are clearly marked as the property of SHAPE and are on the *site* or, if not on the *site*, stored separately and capable of immediate delivery to the *site*; and

(iv) the unfixed goods and materials are properly stored in a place approved by SHAPE.

Upon payment of a progress claim which includes amounts in respect of unfixed goods and materials, title in the unfixed goods and materials will pass to SHAPE.

23.3 Final payment claim and certificate

Within 28 days after the expiry of the defects liability period, the *Contractor* shall give SHAPE a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the defects liability period, SHAPE shall issue to the *Contractor* a final certificate evidencing the moneys finally due and payable between the *Contractor* and SHAPE on any account whatsoever in connection with the subject matter of the *Contract*.

~~These moneys certified as due and payable shall be paid by SHAPE or the Contractor, as the case may be, within 7 days after the debtor receives the final certificate.~~

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

- ~~(a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the final certificate;~~
- ~~(b) any defect or omission in the Works or any part thereof which was not apparent at the end of the defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final certificate;~~
- ~~(c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or any arithmetical error in any computation; and~~
- ~~(d) unresolved issues the subject of any notice of dispute pursuant to clause 27, served before the 7th day after the issue of the final certificate.~~

23.4 Interest

Interest in Item 15 shall be due and payable after is payable by way of damages for breach of contract at the rate per annum set out in Item 15 or at the rate of 0.1% per annum, whichever is the higher, calculated on a daily basis from the date of default in payment until the payment is made.

23.5 Claim after practical completion (Final progress claim)

At the first time for making a progress claim after the date of practical completion, the Contractor shall give SHAPE a progress claim that includes all amounts the Contractor considers may be payable by SHAPE in connection with WUC, the Contractor's activities and the Contract. The Contractor acknowledges that this claim is the final progress claim the Contractor is entitled to make under the Contract.

If the Contractor is barred from making a claim pursuant to any provision of this Contract, the Contractor may not include that claim in this progress claim.

Any claim arising from or otherwise in connection with the Contract that could have been included in this progress claim, that is not included, shall be barred and the Contractor unconditionally and irrevocably releases SHAPE from all such claims.

23.6 Deed of Release

SHAPE must respond to a progress claim given under clause 23.5 in the manner described in clause 23.2. However, SHAPE will not be obliged to pay any amount in respect of the progress claim until the Contractor has given SHAPE:

- (a) properly executed Supplier Warranty Deeds and the Contractor's Warranty Deed required by clause 6.3; and
- (b) a properly executed Deed of Release in the form of the document in the Annexure Part D.

24 Payment of workers and subcontractors

24.1 Workers and subcontractors

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

- (a) workers of the Contractor and of the subcontractors; and
- (b) subcontractors,

in respect of *WUC* the subject of that claim. Unless SHAPE agrees otherwise, documentary evidence will be in the form of the documents contained in the Annexure Part E, duly executed by the Contractor, supplemented by any other information reasonably requested by SHAPE.

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

~~Documentary evidence, except where the Contract otherwise provides, shall be to SHAPE's reasonable satisfaction.~~

24.2 Withholding payment

Subject to the next paragraph, SHAPE may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 24.1.

SHAPE shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 24.1 as due and payable to workers and subcontractors.

25 Default or insolvency

25.1 Preservation of other rights

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

25.2 Contractor's default

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

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) provide evidence of insurance;
 - (iii) comply with a *direction* of SHAPE, including pursuant to subclause any of subclauses 18.2, 20.3A or 21.2; or
 - (iv) use the materials or standards of work required by the *Contract*;
- (b) wrongful suspension of work;
- (c) substantial departure from a *construction program* without reasonable cause or SHAPE's approval;
- (d) where there is no *construction program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 24, knowingly providing documentary evidence containing an untrue statement.

25.3 SHAPE's notice to show cause

A notice under subclause 25.2 shall state:

- (a) that it is a notice under clause 25 of these *Contract Conditions*;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why SHAPE should not exercise a right referred to in subclause 25.4;

- (d) the date and time by which the *Contractor* must show cause (which shall not be less than ~~7~~one clear ~~days~~calendar day after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

25.4 SHAPE's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, SHAPE may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the work remaining to be completed and ~~suspend payment until it becomes due and payable pursuant to no further payment of money or release of security to the Contractor will take place until subclause 25.6 applies; or~~
- (b) terminate the *Contract*.

25.5 Take out

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

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

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

If SHAPE takes possession of construction plant or other things, SHAPE shall reasonably maintain them and, subject to subclause 25.6, on completion of the work, shall return such of them as are surplus.

SHAPE shall keep records of the cost of completing the work.

25.6 Adjustment on completion of work taken out

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

If the *Contractor* is indebted to SHAPE, SHAPE may retain construction plant or other things taken under subclause 25.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, SHAPE may sell the construction plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

25.7 SHAPE's default

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

~~It will be a substantial breach es include, but are not limited to if SHAPE failings to make a payment due and payable pursuant to the Contract; and~~

~~(b) SHAPE not giving a certificate of practical completion or reasons as referred to in subclause 20.4.~~

25.8 Contractor's notice to show cause

A notice given under subclause 25.7 shall state:

- (a) that it is a notice under clause 25 of these *Contract* Conditions;
- (b) the alleged substantial breach;
- (c) that SHAPE is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 25.9;
- (d) the date and time by which SHAPE must show cause (which shall not be less than ~~7~~28 clear days after the notice is received by SHAPE); and
- (e) the place at which cause must be shown.

25.9 Contractor's rights

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

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

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

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

The *Contractor* shall be entitled to recover damages incurred by the *Contractor* by reason of the suspension.

25.10 Termination

If the *Contract* is terminated pursuant to subclause 25.4(b) or 25.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

25.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;

- (iii) a controller or administrator is appointed;
- (iv) an application is made to a court for its winding up and not stayed within 14 days;
- (v) a winding up order is made in respect of it;
- (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
- (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (A) SHAPE, SHAPE may, without giving a notice to show cause, exercise ~~the right~~ either of its rights under ~~subclause clause~~ 25.4(a); or
- (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, ~~exercise the right under subclause 25.9~~ terminate the *Contract*.

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

25.12 SHAPE's additional rights

SHAPE may, at any time and for any reason:

- (a) terminate this *Contract*, or
- (b) take out of the *Contractor's* hands the whole or part of *WUC* not yet completed by the *Contractor*, in which case clause 25.5 will apply.

Either right referred to above may be exercised with immediate effect by written notice to the *Contractor*.

25.13 Consequences of SHAPE's exercise of additional rights

If SHAPE gives a notice under clause 25.12:

- (a) the *Contractor* shall demobilise from the *site* or such parts of the *site* as directed by SHAPE;
- (b) the *Contractor* is only entitled to be paid:
 - (i) for *WUC* performed by the *Contractor* before receiving the notice, calculated in the same manner as described in clause 23.1;
 - (ii) any amounts that had become due and payable to the *Contractor* before receiving the notice;
 - (iii) the cost of any materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they were not ordered prematurely and they will become SHAPE's property upon payment; and
 - (iv) a reasonable amount to compensate the *Contractor* for the cost of removing its plant and equipment from the *site*;
- (c) for the avoidance of doubt, the *Contractor* may not make any claim against SHAPE for the cost of any labour committed by the *Contractor* to the *project* (irrespective of whether the labour can be redeployed elsewhere), demobilisation expenses, recovery of overheads, loss of profit, loss of opportunity or any other form of *Consequential Loss* arising from the exercise by SHAPE of its rights under clause 25.12;
- (d) if the *Contractor* has performed any *WUC*, SHAPE will be entitled to retain and deal with any security held by SHAPE in accordance with the *Contract*. Otherwise, SHAPE must return all security within 14 days of giving the notice; and

- (e) SHAPE may, at its absolute discretion, complete any uncompleted part of WUC, either itself or by engaging another contractor, and the Contractor will not be entitled to make any further claims against SHAPE in relation to that WUC.

26 Notification of claims

26.1 Communication of claims

- (a) Where another provision of the Contract requires the Contractor to give notice of a claim within a prescribed timeframe, that notice must be given within that timeframe and in the manner prescribed by the relevant provision of the Contract.
- (b) As soon as practicable after a party becomes aware of—Where sub-clause (a) does not apply, if the Contractor wishes to make any claim in connection with the subject matter of the Contract the communication of which is not required by another provision of the Contract, that party shall give to the other party a written—it must give SHAPE a notice of claim with particulars or a notice of dispute under subclause 27.1 within 7 days of the Contractor becoming aware of the circumstances giving rise to the claim, or within 7 of when the Contractor should reasonably have become aware of those circumstances, whichever is earlier.

26.2 Liability for failure to communicate

The failure of a party—If the Contractor fails to comply with the provisions of this clause or to 26.1, or if it fails to give a notice or communicate a claim in accordance with the relevant provision of the Contract shall, inter alia, entitle the other party to damages for breach of the Contract but shall neither bar nor that failure will bar and invalidate the Contractor's claim.

26.3 Resolution

If the claim has not been resolved within 21–28 days of giving the notice of claim, that notice of claim shall be deemed to be a notice of dispute under subclause 27.1.

27 Dispute resolution

27.1 Notice of dispute

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

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

or like claim available under the law governing the Contract,

then either party shall, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties shall, subject to clause 25 and subclause 27.4, continue to perform the Contract.

27.2 Conference

Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so, which may include mediation or independent expert evaluation. At every such conference each party shall be represented by a person having authority to

agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

~~If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to arbitration. the dispute has not been resolved or the parties have been unable to agree on a method for resolving the dispute either party may commence proceedings in a Court of competent jurisdiction.~~

27.3 Not Used

~~If within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in Item 16(a). The arbitration shall be conducted in accordance with the rules in Item 16(b).~~

~~27.3 Arbitration~~

27.4 Summary relief

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

ANNEXURE to the Australian Standard Minor works contract conditions (SHAPE administered) AS 4906—2002

Part A

~~This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to these Minor works contract conditions and shall be read as part of the Contract.~~

Item

1 ~~SHAPE (clause 1)~~

ACN.....ABN.....

2 ~~SHAPE's address~~

Phone.....Fax.....

3 ~~Contractor (clause 1)~~

ACN.....ABN.....

4 ~~Contractor's address~~

Phone.....Fax.....

- 5 a) ~~Date for practical completion (clause 1)~~ day of 20.....
OR
b) ~~Period of time for practical completion (clause 1)~~ days* / weeks* after date of acceptance of tender
- 6 Contractor's security
a) ~~Form (clause 3)~~ Retention moneys* / Bank guarantee*
If neither deleted, retention moneys
b) ~~Amount or maximum percentage of contract sum (clause 3)~~ \$ OR % of the contract sum
If nothing stated, 5% of the contract sum
c) ~~If retention moneys, percentage of each payment certificate (clause 3)~~ %, until the limit in Item 6(b)
If nothing stated, 10%, until the limit in Item 6(b)
d) ~~Time for provision (except for retention moneys) (clause 3)~~ within days after date of acceptance of tender
If nothing stated, 28 days
- 7 Amount of limit of indemnity for damage to other property of SHAPE (subclause 10.1(a)) \$
If nothing stated, the amount of the public liability insurance cover in Item 9
- 8 The amount of contract works insurance cover (clause 11) \$
If nothing stated, the contract sum plus 20%
- 9 The amount of public liability insurance cover in respect of any one occurrence shall not be less than (clause 12) \$
If nothing stated, \$10 000 000
- 10 The time for giving possession of the site to the Contractor (clause 17) within days after date of acceptance of tender
If nothing stated, 14 days
- 11 Liquidated damages (subclause 20.5)
a) ~~Rate~~ \$ per day
b) ~~Limit~~ \$ OR % of the contract sum
If nothing stated, there is no limit
- 12 Delay damages, rate (subclause 20.6) \$ per day
If nothing stated, as reasonably assessed by SHAPE
- 13 Defects liability period (clause 21) weeks
If no period stated, 26 weeks

*Delete one.

- 14 Time for progress claims(subclause 23.1) on the day of each month
If no time stated, then on the last day of each month
- 15 The rate of interest on overdue payments(subclause 23.4)% per annum
If no rate stated, 18% per annum
- 16 Arbitration(subclause 27.3)
- a) The person to nominate an arbitrator
.....
.....
.....
If no one stated, the President of the Institute of Arbitrators & Mediators Australia
- b) Rules for arbitration
.....
.....
.....
If nothing stated, Rules 5-18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations

A1

28 Annexure – Separable portions

28.1 Application of this clause

This clause 28 applies if:

- (a) Item 5 specifies more than one date for practical completion;
- (b) the Head Contract divides the project into separable portions or otherwise requires separate elements of the work to be completed by defined completion dates, and the Works include one or more of those elements;
- (c) it is implicit in any construction program provided to the Contractor on or prior to the date of the Contract that there will be more than one date for practical completion; or
- (d) SHAPE directs that the Works be divided into separable portions at any time before the final date of practical completion, identifying for each:
 - (i) the area or portion of the Works affected;
 - (ii) the date for practical completion; and
 - (iii) respective amounts for security and liquidated damages (provided that these amounts may not exceed the amounts in the Contract).

28.2 Contractor's obligations in respect of separable portions

If this clause 28 applies:

- (a) the provisions of clauses 9.1, 9.2, 17 and 20 apply separately to each individual portion of WUC ('separable portion'). This means (among other things) that the Contractor must ensure that each separable portion reaches practical completion by the date for practical completion specified (or implied) for that separable portion;

- (b) for the purposes of clause 3.4 (Reduction of security at practical completion) and clause 23.5 (First claim after practical completion), WUC will not have reached practical completion until the last separable portion has reached practical completion; and
- (c) the defects liability period for each separable portion will continue until the expiry of the defects liability period for the last separable portion to have reached practical completion.

29 Provisional sums

If the contract sum makes allowance for any provisional sum work:

- (a) the Contractor will not carry out that work unless directed by SHAPE;
- (b) if the Contractor is directed to carry out provisional sum work and the value of the work (determined as if it was a variation) exceeds the allowance included for that work in the contract sum, the contract sum will be adjusted for the amount of the difference; and
- (c) if the Contractor is not directed to carry out provisional sum work:
 - (i) the provisional sum work will be deleted from the Contract;
 - (ii) the contract sum will be reduced by the allowance originally included for that work in the contract sum; and
 - (iii) SHAPE will not be liable for any claim by the Contractor in relation to that work or the deletion of that work.

If an adjustment is to be made under clause 29(b), that adjustment will not include any further allowance for profit or overhead.

30 GST

30.1 General

- (a) Words and expressions that are given specific meanings in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meanings in this clause 30.
- (b) The Contractor warrants to SHAPE that it holds the Australian Business Number (ABN) notified to SHAPE.

30.2 Amounts are exclusive of GST unless otherwise stated

To the extent that a party makes a taxable supply under this Contract, except where express provision is made to the contrary:

- (a) any amount expressed as payable in consideration for a taxable supply represents the value of the taxable supply and not the price for that supply; and
- (b) the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

30.3 Recipient-Created Tax Invoices ('RCTI's')

SHAPE and the Contractor agree that:

- (a) SHAPE will issue tax invoices in respect of all supplies made by the Contractor to SHAPE under or otherwise in connection with the Contract;
- (b) the Contractor will not issue tax invoices in respect of those supplies;
- (c) the Contractor is registered for GST and it will notify SHAPE if it ceases to be registered; and

- (d) SHAPE is registered for GST and it will notify the *Contractor* if it ceases to be registered or if it ceases to satisfy any of the requirements of the Commissioner of Taxation for the issue of RCTI's.

31 Security of payment legislation

31.1 Operation of clause

This clause 31 applies where the *Contract* or *WUC* is subject to security of payment legislation (*'SOP Legislation'*), including:

Building and Construction Industry (Security of Payment) Act 2009 (ACT);

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

Construction Contracts (Security of Payments) Act 2004 (NT);

Building and Construction Industry Payments Amendment Act 2014 (Qld);

Building and Construction Industry Security of Payment Act 2009 (SA);

Building and Construction Industry Security of Payment Act 2002 (VIC); and

Construction Contracts Act 2004 (WA).

31.2 Reference date after practical completion

For the purposes of the *SOP Legislation*, only one 'reference date' arises after the *date of practical completion*, being the date on which the *Contractor* is entitled to make the claim in clause 23.5 and a payment claim made in respect of this reference date is the final payment claim in respect of the *WUC*.

A payment claim in respect of the 'reference date' following the *date of practical completion* must be made within three (3) months of the *date of practical completion*.

31.3 Reference date after termination

For the purposes of the *SOP Legislation*, if the *Contract* is terminated for any reason, only one 'reference date' arises after the date of termination. That date is the first date on which the *Contractor* would have been able to make its next payment claim, had the *Contract* not been terminated.

A payment claim in respect of the 'reference date' following termination of the *Contract* must be made within three (3) months of the date of termination.

32 WHS and Environmental Protection

- (a) In relation to the performance of *WUC* and any other matters relating to or arising out of this *Contract*, the *Contractor* must:

- (i) comply with all applicable laws concerning occupational/workplace health and safety and environmental protection or preservation, including the protection of heritage items (*'WHSE legislation'*),
- (ii) do all things necessary to ensure that SHAPE is able to discharge its obligations under WHSE legislation,
- (iii) not do or omit to do anything which would cause SHAPE to breach its obligations under WHSE legislation,
- (iv) take all action necessary to protect and preserve the *site* and the environment at large from harm or damage, and

- (v) obtain all Approvals required for the carrying out of WUC and pay and indemnify SHAPE against all fees, fines or other amounts payable under all environmental protection or preservation legislative or regulatory requirements (including in connection with any required Approvals).
- (b) The Contractor indemnifies SHAPE and agrees to keep SHAPE indemnified from and against all claims against SHAPE directly or indirectly arising out of the failure by the Contractor to comply with its obligations pursuant to this clause 32 or any failure on the part of the Contractor to comply with any provisions of WHSE legislation.
- (c) The Contractor acknowledges:
 - (i) its obligations set out in the document titled 'EHS Requirements for Subcontractors and Suppliers' issued by SHAPE and agrees that the terms of that document form part of this Contract, and
 - (ii) it is a condition of access to the site that the person granted access is, and will remain, at all times while on the site, fit for work. Further, at any time while a person is on the site they may be required to undergo drug and/or alcohol testing, and a refusal by the person to undergo that testing will result in the person's immediate removal from the site.
- (d) The Contractor must comply with SHAPE's directions and requirements concerning occupational/workplace health, safety and environmental issues, as communicated to the Contractor from time to time. The Contractor will remain solely responsible for assessing the risks of performing the WUC at the site. SHAPE will have no responsibility in connection with any such directions or requirements conveyed to the Contractor unless the sole cause of the injury, loss or damage was the Contractor carrying out those express directions or requirements in the manner required by SHAPE. Compliance with this clause 32(d) will not entitle the Contractor to claim any additional remuneration or an EOT.

33 National Code for the tendering and Performance of Building Work

33.1 Operation of this clause

This clause 33 will not apply unless the Code for the tendering and Performance of Building Work 2016 (Cth) as updated from time to time applies to the project.

33.2 Definitions

In this clause 33:

<u>ABCC</u>	<u>means the body referred to in subsection 29(2) of the Act.</u>
<u>ABC Commissioner</u>	<u>means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.</u>
<u>Act</u>	<u>means the Building and Construction Industry (Improving Productivity) Act 2016 (Cth).</u>
<u>Building Code</u>	<u>means the Code for the Tendering and Performance of Building Work 2016 (Cth), which is available at https://www.legislation.gov.au/Details/F2016L01859.</u>
<u>Building Contractor</u>	<u>has the same meaning as in the Act.</u>
<u>Building Industry Participant</u>	<u>has the same meaning as in the Act.</u>
<u>Building Work</u>	<u>has the same meaning as in subsection 3(4) of the Building Code.</u>
<u>Commonwealth Funded</u>	<u>means Building Work in items 1-8 of Schedule 1 of the Building</u>

<u>Building Work</u>	<u>Code.</u>
<u>Enterprise Agreement</u>	<u>has the same meaning as in the <i>Fair Work Act 2009</i>.</u>
<u>Exclusion Sanction</u>	<u>has the same meaning as in subsection 3(1) of the Building Code.</u>
<u>Related Entity</u>	<u>has the same meaning as in subsection 3(2) of the Building Code.</u>
<u>Subcontractor</u>	<u>means a Building Contractor or Building Industry Participant who the <i>Contractor</i> has entered, or proposes to enter, into a subcontract with to undertake any of the Works.</u>
<u>Works</u>	<u>means Commonwealth Funded Building Work that is the subject of the <i>Contract</i>.</u>

33.3 The Contractor's obligations

The Contractor:

- (a) declares as at the date of commencement of the *Contract* in relation to the Works; and must ensure that during the term of the *Contract* in relation to the Works that it and its subcontractors:**
 - (i) comply with the Building Code as updated from time to time;**
 - (ii) are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;**
 - (iii) are not subject to an Exclusion Sanction;**
 - (iv) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;**
 - (v) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;**
 - (vi) unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a state or territory government; and**
 - (vii) where:**
 - (A) the Commonwealth's contribution to the project that includes the Works is at least \$5,000,000 and represents at least 50% of the total construction project value proportion of that project; or**
 - (B) the Commonwealth's contribution to the project that includes the Works is at least \$10,000,000 (irrespective of its proportion of the total construction project value),**
- (b) Without limiting and notwithstanding clause 33.3(a)(i), the *Contractor* will ensure that remedial action is taken to rectify any behaviour on the part of it and its subcontractors that is non-compliant with the Building Code.**
- (c) The *Contractor* must not less frequently than every six months during the term of the *Contract* advise SHAPE whether:**
 - (i) it has in the preceding 6 months or since it last advised SHAPE, whichever is the earlier, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or**
 - (ii) it or its Related Entities have in the preceding 6 months or since it last advised SHAPE, whichever is the earlier;**

- (A) been required to pay an amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant;
or
- (B) been required to pay a judgement debt to a Building Contractor or Building Industry Participant.
- (d) Compliance with the Building Code does not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
- (e) The Contractor must notify SHAPE and the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working day after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (f) The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (g) The Contractor must only enter into a subcontract for any of the Works where:
 - (i) the subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the subcontract with the subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- (h) The Contractor must ensure that it and its subcontractor comply with clauses contained in the subcontract referred to in clause 33.3(g)(ii).

33.4 Consent to use and disclosure

The Contractor unconditionally and irrevocably gives its consent and warrants to SHAPE that:

- (a) its related entities give their consent; and
- (b) its subcontractors and suppliers will give their consent.

to disclosure by SHAPE to the Commonwealth, its agencies and Ministers of any information reasonably requested by any of them concerning the Contractor's, the Contractor's related entities' and/or the Contractor's subcontractors' and suppliers' compliance with the Building Code. The Contractor acknowledges and agrees that the Commonwealth, its agencies and ministers may use and disclose this information to others for the purposes of facilitating compliance with the Building Code and the exercise of their statutory and portfolio responsibilities.

33.5 Additional warranties in relation to the Building Code

- (a) The Contractor warrants to SHAPE that:
- (b) it complies, and all of its related entities comply, with the Building Code;
- (c) it will comply with the Building Code in the performance of its obligations under the Contract;
- (d) neither it nor have any of its related entities have been sanctioned under the Building Code.; and

- (e) neither it nor any of its subcontractors have at any time during the six month period prior to commencement of the Contract:
 - (i) had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958 (Cth); or
 - (ii) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - (iii) been required to pay any judgement debts to a Building Contractor or Building Industry Participant.

33.6 Effect of this clause

- (a) Compliance with the Building Code will not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
- (b) The Contractor acknowledges and agrees that a sanction may be applied against it if the Contractor or any of its subcontractors, suppliers or related entities breaches any of its obligations arising out of the Building Code.
- (c) Any breach by the Contractor of the obligations set out in this clause 33 regarding the Building Code is:
 - (i) deemed to be a default by the Contractor entitling SHAPE to exercise its rights under clause 25.4 with immediate effect by written notice to the Contractor, and
 - (ii) a breach of an essential term of the Contract.

34 NSW Code of Practice for Procurement: Building and Construction

34.1 Operation of this clause

This clause 34 will not apply unless the New South Wales Code of Practice for Procurement: Building and Construction ('NSW Code') and the Implementation Guidelines to the NSW Code ('NSW Guidelines') apply to the project.

34.2 The Contractor's obligations

- (a) The Contractor must comply with the NSW Code and NSW Guidelines as updated from time to time. Those documents are available at [http://www.industrialrelations.nsw.gov.au/oirwww/About NSW IR/Building and Construction Industry.page?](http://www.industrialrelations.nsw.gov.au/oirwww/About%20NSW%20IR/Building%20and%20Construction%20Industry.page?), or www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information
- (b) The Contractor must notify SHAPE, the Construction Compliance Unit ('CCU') and the NSW Government department or public sector agency (as defined in the Public Sector Employment Management Act 2002 (NSW)) and a State Owned Corporation (as defined in the State Owned Corporations Act 1989 (NSW)) ('Client Agency' and 'Client Agent') of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a subcontractor or consultant, the Contractor must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 34.
- (d) The Contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

34.3 Access and information

- (a) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including by not limited to the project site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to personnel; and
 - (vi) interview any person;as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its subcontractors, consultants, and related entities.
- (c) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

34.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligations imposed by the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

34.5 Compliance

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Client Agency of the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the Contract, or from liability for any defects in the works or for any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

- (c) Where a change in the *Contract* or works is proposed, that change may, or may be likely to affect compliance with the *NSW Code* and *NSW Guidelines*, the *Contractor* must immediately notify SHAPE and the *Client Agency* (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the *NSW Code* and *NSW Guidelines* will be, or is likely to be, affected by the change; and
 - (iii) what steps the *Contractor* proposes to take to mitigate any adverse impact of the change; and

the *Client Agency* will direct the *Contractor* as to the course it must adopt within 10 Business Days of receiving notice. The *Contractor* must notify SHAPE of the *Client Agent's* directions.

35 Industrial relations

The *Contractor* indemnifies SHAPE against any liability, loss, damage, cost, expenses arising out of, or in any way connected with any industrial disputes caused by or contributed to by the *Contractor*. The *Contractor* acknowledges and agrees that it may not claim an *EOT* or any other compensation in connection with any industrial dispute.

36 Operation of proportionate liability legislation

- (a) If the parties' rights, obligations or liabilities arising out of or otherwise relating to this *Contract* are subject to legislation that apportions liability for apportionable claims between concurrent wrongdoers in a way that might apportion liability for an apportionable claim to SHAPE – for example, Part 4 of the *Civil Liability Act 2002* (NSW) – to the extent permitted, that legislation is excluded and does not apply in respect of that liability to SHAPE.
- (b) If the *Contractor* breaches any of its obligations under this *Contract*, and the operation of any legislation results in SHAPE being unable to recover some part of the consequent loss or damage from the *Contractor* ('*Apportioned Loss*'), as a separate obligation under this *Contract* the *Contractor* indemnifies SHAPE in respect of the *Apportioned Loss* and must pay SHAPE the amount of the *Apportioned Loss* immediately on demand by SHAPE.
- (c) The *Contractor* must ensure that its subcontracts, including contracts with material suppliers, include provisions that are functionally equivalent to this clause 36.
- (d) The *Contractor* undertakes to SHAPE, and to the *Client*, in respect of the *project* to
 - (i) exercise reasonable care and skill in carrying out the *Works*; and
 - (ii) ensure that all goods and services supplied by the *Contractor*, and those for whom it is responsible, are free of defects, satisfy any warranties the *Contractor* is required to provide under the *Contract* and are fit for their intended purpose.
- (e) The *Contractor* acknowledges that it owes concurrent duties to SHAPE and to the *Client* and that, in the event of a breach, SHAPE and/or the *Client* may enforce the undertakings contained in clause 36(d).
- (f) The *Contractor* acknowledges and agrees that clauses 36(d) and 36(e) are intended to operate for the benefit of SHAPE and also the *Client* and its execution of the *Contract* for the purposes of these clauses is operates as an execution by way of deed poll.

37 Record-keeping

The *Contractor* must give SHAPE access to the *Contractor's* premises, any of its documentation and data (including documents stored in electronic form) and allow SHAPE to interview any of its personnel as may be necessary for SHAPE to assess, verify, monitor and/or audit:

- (a) the *Contractor's* compliance with the *Contract*; and

- (b) any claims (by either party) for an EOT, an adjustment to the contract sum or for any other amount arising from or otherwise in connection with the Contract.

38 Miscellaneous

38.1 Confidentiality and Non-disparagement

The Contractor must not, and must ensure that its employees agents and subcontractors do not:

- (a) without SHAPE's express approval in writing, disclose to third parties any information or documents not in the public domain relating to:
- (i) the Contract,
 - (ii) WUC,
 - (iii) SHAPE, the Client, and their respective businesses and activities;
 - (iv) the obligations secured by any PPSA Security Interest under the Contract, or the terms of payment or performance in respect of any obligation under the Contract at any particular time; and without limitation to the above, any information of the kind described in section 275(1) of the PPSA, or
- (b) make any disparaging or derogatory comment concerning SHAPE, the Client, any other subcontractor, consultant or advisor of either of them in any way involved with the project, or concerning any of their respective employees.

This clause 38.1 survives termination of the Contract.

38.2 Retrospective application

The parties agree that the terms of this Contract apply to any work or related services performed by the Contractor in connection with the Works, including any work or services performed prior to the date of the Contract. Any payments by SHAPE to the Contractor prior to the date of the Contract are on account only and form part of the contract sum.

38.3 Evidence of communications

A written record of any communication, event or circumstance issued by SHAPE (for example, minutes of a site meeting or correspondence confirming a conversation) will be deemed to be a true and correct record and conclusive evidence of the relevant communication, event or circumstance unless the record is disputed by the Contractor in writing within two days of the record being issued by SHAPE.

38.4 SHAPE's rights are cumulative

The rights, powers and remedies available to SHAPE under this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Contract.

38.5 SHAPE's ability to deduct amounts

Without limiting any other right SHAPE may have, SHAPE:

- (a) will, in calculating the amount of any progress payment to which the Contractor may entitled under the Contract, and
- (b) may, in relation to the payment of any moneys due to the Contractor,

deduct the amount that SHAPE considers may be necessary to satisfy any claim SHAPE or any of its related bodies corporate may have against the Contractor or its related bodies corporate. This applies regardless of:

- (c) the nature or basis of the claim;

- (d) whether the claim is for a liquidated or unliquidated amount (including a claim for damages);
- (e) whether SHAPE has a present right to make the claim, or whether the claim relates to circumstances that may give rise to a claim in the future;
- (f) whether the quantum of the claim is capable of precise calculation; or
- (g) whether the circumstances giving rise to the claim are related to this *Contract* in any way.

Any deduction by SHAPE under this clause 38.5 will not prejudice any other rights SHAPE may have.

Any deduction made by SHAPE under this clause 38.5 for an amount claimed to be owing to any of SHAPE's *related bodies corporate* will be taken to reduce the amount of any claim that entity may have against the *Contractor* or its *related body corporate*.

If the *Contractor* disputes any claim in respect of which a deduction under this clause 38.5 has been made, SHAPE is entitled to retain the relevant amount (as additional security) pending the final determination of the claim.

This clause 38.5 will survive termination of the *Contract*.

38.6 Amounts owing by Contractor to SHAPE

For the avoidance of doubt, any amount due and payable, or certified as due and payable, by the *Contractor* to SHAPE is payable immediately, which where certification is required is the date of certification.

38.7 Certification by SHAPE

SHAPE is entitled to amend, modify or withdraw any certificate it issues under the *Contract* at any time and for any reason. SHAPE is not obliged to give reasons for exercising the right in this clause 38.7.

38.8 Delays and waiver

Any delay by SHAPE in exercising a right or remedy in connection with this *Contract* does not constitute a waiver of that right or remedy.

38.9 Execution of documents

If the *Contractor* fails to execute or deliver any document within the time required by the *Contract* (such as a Contractor Warranty Deed required by clause 6.3(b)(i) or the Deed of Release required by clause 23.6(b)), the *Contractor* unconditionally and irrevocably appoints SHAPE as its agent and attorney to execute the relevant document on the *Contractor*'s behalf.

SHAPE may act as the *Contractor*'s agent and attorney under this clause 38.9 even if there is any perceived or actual conflict of interest. The *Contractor* unconditionally and irrevocably ratifies any action taken by SHAPE in accordance with this clause 38.9. If any further action is required of the *Contractor* to ratify any action taken by SHAPE under this clause 38.9, the *Contractor* must perform that action immediately upon demand by SHAPE.

38.10 Severance

If any provision of the *Contract* is void, illegal or unenforceable, it will be read down. If the provision is incapable of being read down, it may be severed from the *Contract* without affecting the enforceability of the remainder of the *Contract*.

38.11 Counterparts

The *Contract* may be executed in a number of counterparts. If each party has been given a duly executed counterpart of the *Contract*, the counterparts taken together constitute one and the same instrument.

38.12 Entire Agreement

The *Contract* constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior representations, negotiations, arrangements, agreements and understandings of the parties in connection with it.

The *Contractor* acknowledges and agrees that it has not entered into this agreement relying on any representations made by or on behalf of SHAPE, other than those expressly set out in the *Contract*.

38.13 Governing law

This *Contract* is subject to and is to be construed in accordance with the laws of the State or Territory in which the *site* is located.

38.14 Limited liability of SHAPE

Notwithstanding any other provision of the *Contract*, SHAPE will not be liable for any *Consequential Loss* suffered or incurred by the *Contractor* under any circumstance. This clause 38.14 survives termination of the *Contract*.

ANNEXURE to the Australian Standard
Minor works contract conditions (~~SHAPE~~
Principal administered) AS ~~4906—2002~~4906 –
2002
Lump sum subcontract

~~Part B~~ Part A

See separate document.

ANNEXURE to the Australian Standard
Minor works contract conditions (Principal
administered) AS 4906 – 2002
Lump sum subcontract

Part B

Deletions, amendments and additions

The following changes have been made to AS 4906—2002

This image shows a full page of blank handwriting practice paper. It features multiple sets of horizontal lines designed to guide letter formation. Each set consists of three lines: a solid top line, a dashed middle line, and a solid bottom line. These sets are repeated vertically down the entire page, providing ample space for practicing letter height and placement. The paper is otherwise completely blank, with no text or markings other than the ruling lines.

See separate document

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ANNEXURE to the Australian Standard
Minor works contract conditions (Principal
administered) AS 4906 – 2002
lump sum subcontract

Part C

Supplier Warranty Deed

(Clause 6.3(b)(i))

dated

DETAILS

Supplier [Insert name and ABN]

Client [Insert name and ABN]

SHAPE [Insert relevant SHAPE entity eg SHAPE Australia Pty Limited ABN 70 003 861 765]

Works [Insert description of the project].

<u>Item and Warranty Period</u>	<u>Item</u>	<u>Warranty Period</u>
		<u>[Insert] years from the date of practical completion of the Works</u>

1. BACKGROUND

- a) The Client has engaged SHAPE to perform the Works.
- b) The Supplier has supplied the Item(s), which have been incorporated into the Works.
- c) The Supplier has agreed to give warranties to SHAPE and the Client in respect of each Item on the terms of this deed.

2. WARRANTIES

2.1 The Supplier warrants to each of SHAPE and the Client that each Item:

- a) is capable of safe and reliable operation;
- b) is of merchantable quality and fit for its intended purpose;
- c) is free from defects or faults in its design, composition and manufacture;

- d) conforms with any samples provided by the Supplier to either the Client or SHAPE in connection with the Works;
- e) conforms with the terms of the contract pursuant to which the Supplier was engaged to supply the Item(s) and meets any performance specifications in that contract;
- f) conforms with any relevant legislative requirements; and
- g) is free from all liens, charges and encumbrances of any kind.

2.2 The above warranties are in addition to and do not derogate from any warranty implied by law in respect of each Item.

3. OBLIGATIONS

3.1 If, within the Warranty Period, any Item:

- a) is found to be of a lower quality or standard than that referred to in clause 2; or
- b) shows deterioration of such extent that in the opinion of SHAPE or the Client the Item ought to be made good or replaced, whether on account of utility, performance, appearance or otherwise;

the Supplier must make good or replace the Item (as directed by SHAPE or the Client) at the Supplier's sole cost.

3.2 The Supplier will be liable for the cost of any work necessary to any part of the Works to enable the requirements of clause 3.1 to be carried out or to make good the Works afterwards.

3.3 If the Supplier does not, within 14 days of SHAPE giving the Supplier notice to do so, make good or replace each Item as required by clause 3.1, then:

- a) without limiting any other rights or remedies which SHAPE or the Client may have against the Supplier, either SHAPE or the Client may do so; and
- b) the costs, expenses, losses and damages suffered or incurred by the Client and/or SHAPE in making good or replacing each Item will be a debt due from the Supplier to the Client and/or SHAPE (as applicable).

4. INDEMNITY

4.1 The Supplier will indemnify each of SHAPE and the Client against all costs, expenses, losses and damages suffered or incurred by each of them arising out of or in connection with any breach by the Supplier of:

- a) the warranties given by it under this deed; or
- b) its other obligations under this deed.

4.2 Each of SHAPE and the Client may assign the benefits and rights accrued under this deed at any time and in its absolute discretion. Any other person having those benefits and rights from time to time may assign them in its absolute discretion.

4.3 The Supplier must not assign or deal with any right or obligation under this deed without the prior written consent of both the Client and SHAPE.

EXECUTED BY THE SUPPLIER AS A DEED POLL**Instructions for signing**

Two signatures are required. These are referred to as the First Signatory and Second Signatory, as follows:

	<u>First Signatory</u>	<u>Second Signatory</u>
<u>Company with more than one director or secretary</u>	<u>A director</u>	<u>A director or secretary</u>
<u>Natural person</u>	<u>A natural person who is a party to this deed</u>	<u>A witness over 18, who must witness the First Signatory sign</u>
<u>Sole Director/Secretary Company</u>	<u>The sole director/secretary</u>	<u>A witness over 18, who must witness the First Signatory sign</u>

Signature of First Signatory

Signature of Second Signatory

Name of First Signatory

Name of Second Signatory

Party/Director/Sole Director

Witness/Director/Secretary

Capacity (delete as applicable)

Capacity (delete as applicable)

Contractor Warranty Deed

(Clause 6.3(b)(ii))

dated

DETAILS

Contractor [Insert name and ABN of Contractor]

Client [Insert name and ABN]

SHAPE [Insert relevant SHAPE entity eg SHAPE Australia Pty Limited ABN 70 003 861 765]

Contract The contract between the Contractor and SHAPE regarding [insert].

Warranty Details The items to which the warranties in this document apply ('Warranty Items'), and the relevant time periods for those warranties ('Warranty Periods'), are set out in the Contract.

In this deed, capitalised words and expressions have the same meanings as in the Contract. Additionally, 'Claim' means any claim, action, damage, loss, liability, cost, charge, entitlement or expense (including legal costs) whether arising under, arising out of, or in any way in connection with the Contract, at law, in tort (including negligence), under statute, in equity, for restitution or otherwise. The rules of interpretation in the Contract apply to this deed.

1. BACKGROUND

The Contractor has agreed to give warranties to SHAPE and the Client in respect of each Warranty Item on the terms of this deed.

2. WARRANTIES

The Contractor warrants to each of SHAPE and the Client that:

2.1 the Works (as a whole) and each component of them are and will during the Warranty Period remain:

- a) of merchantable quality and fit for their intended purpose;
- b) compliant with all applicable codes (including the Building Code of Australia), standards (including Australian Standards) and legislative requirements;
- c) in good and safe working order and condition.
 - (i) provided the Client has properly and prudently maintained the Works and each component of them during that period as required by any relevant manufacturers or suppliers recommendations; and
 - (ii) excluding damage done to the Works and/or relevant component other than by persons for whom the Contractor is responsible;
- d) free from all liens, charges, encumbrances and security interests of any kind;

- e) free from defects or faults in their design, composition, manufacture and installation;
- f) compliant with any samples provided to SHAPE in connection with the Works; and
- g) compliant with the requirements of the Contract, including any performance specifications contained in the Contract;

and

- 2.2 the Contractor has otherwise completed the Works in accordance with the Contract and has complied with, and will continue to comply with, all of its obligations arising from or otherwise in connection with the Contract.

The above warranties are in addition to and do not derogate from any warranty implied by law.

3. OBLIGATIONS

- 3.1 If, within the relevant Warranty Period, any Warranty Item:

- a) fails to satisfy the requirements of clause 2; or
 - b) shows deterioration of such extent that in the opinion of SHAPE or the Client the Item ought to be made good or replaced, whether on account of utility, performance, appearance or otherwise;
- (i) the Contractor must make good or replace the relevant part of the Works (as directed by SHAPE or the Client) at the Contractor's sole cost.

- 3.2 For the avoidance of doubt, the Contractor's liability under clause includes:

- a) the alteration or making good of any other property or works that are affected by the rectification works; and
- b) the provision of appropriate supervision and any other preliminaries that may be required to ensure the rectification works are performed safely and with a minimum of nuisance and inconvenience to the Client.

- 3.3 If the Contractor does not, within 14 days of SHAPE or the Client giving the Contractor notice to do so, make good or replace each Warranty Item as required by clause 3, then:

- a) without limiting any other rights or remedies which SHAPE or the Client may have against the Contractor, either SHAPE or the Client may do so; and
- b) the costs, expenses, losses and damages suffered or incurred by each of the Client and SHAPE in performing the rectification work will be a debt due from the Contractor to the Client and/or SHAPE (as applicable).

4. INDEMNITY

The Contractor agrees to indemnify and hold harmless each of SHAPE and the Client and their respective officers, employees, agents and representatives against all costs, expenses, losses and damages suffered or incurred by each of them (including legal costs on a solicitor-Client basis) arising out of or in connection with:

- a) any breach by the Contractor of the warranties given by it under this deed, its other obligations under this deed and its obligations under the Contract; and
- b) any claims against any of those persons by any other person in connection with the Works or the Contract.

5. ASSIGNMENT

Each of SHAPE and the Client may assign the benefits and rights accrued under this deed at any time and in its absolute discretion. Any other person having those benefits and rights from time to time may assign them in its absolute discretion.

EXECUTED BY THE CONTRACTOR AS A DEED POLL

Instructions for signing

Two signatures are required. These are referred to as the First Signatory and Second Signatory, as follows:

	<u>First Signatory</u>	<u>Second Signatory</u>
<u>Company with more than one director or secretary</u>	<u>A director</u>	<u>A director or secretary</u>
<u>Natural person</u>	<u>A natural person who is a party to this deed</u>	<u>A witness over 18, who must witness the First Signatory sign</u>
<u>Sole Director/Secretary Company</u>	<u>The sole director/secretary</u>	<u>A witness over 18, who must witness the First Signatory sign</u>

Signature of First Signatory

Signature of Second Signatory

Name of First Signatory

Name of Second Signatory

Party/Director/Sole Director

Witness/Director/Secretary

Capacity (delete as applicable)

Capacity (delete as applicable)

ANNEXURE to the Australian Standard
Minor works contract conditions (Principal
administered) AS 4906 – 2002
Lump sum subcontract

Part D

Deed of Release

(Clause 23.6(b))

dated

DETAILS

Contractor [Insert name and ABN of Contractor]

Client [Insert name and ABN]

SHAPE [Insert relevant SHAPE entity eg SHAPE Australia Pty Limited ABN 70 003 861 765]

Contract The contract between the Contractor and SHAPE regarding [insert].

Final Adjusted Contract Sum [Insert final adjusted contract sum] including GST

In this deed, capitalised words and expressions have the same meanings as in the Contract. Additionally, 'Claim' means any claim, action, damage, loss, liability, cost, charge, entitlement or expense (including legal costs) whether arising under, arising out of, or in any way in connection with the Contract, at law, in tort (including negligence), under statute, in equity, for restitution or otherwise. The rules of interpretation in the Contract apply to this deed.

1. DEFECTS

The Contractor acknowledges the existence of the Defects identified in the Schedule and undertakes to SHAPE and the Client that it will rectify those Defects immediately in accordance with the SHAPE's requirements so that those items comply with the requirements of the Contract.

2. FINAL ADJUSTED CONTRACT SUM

The Contractor agrees that the final amount paid or payable by SHAPE to the Contractor under, arising from or otherwise in connection with the Works, the Contract and the Project, is the Final Adjusted Contract Sum. For the avoidance of doubt, the Final Adjusted Contract Sum includes any cash retentions which SHAPE may at any time be (or have been) entitled to hold as security under the Contract.

3. RELEASE

3.1 The Contractor unconditionally and irrevocably releases SHAPE from all Claims the Contractor may have in connection with the Contract and the Works, apart from any claims it may have for:

a) payment of any unpaid part of the Final Adjusted Contract Sum; or

b) the return of any security in accordance with the Contract.

3.2 The release in clause 3.1:

- a) extends to any Claims the Contractor may have in connection with any negligence, breach of contract or other obligation by SHAPE;
- b) applies irrespective of whether the Contractor is aware of the claim or the circumstances which would, but for the execution of this deed, give rise to the claim; and
- c) applies in respect of all types of loss or damage, including any direct, indirect or consequential loss or damage.

4. INDEMNITY

The Contractor agrees to indemnify and hold harmless each of SHAPE and the Client and their respective officers, employees, agents and representatives against all costs, expenses, losses and damages suffered or incurred by each of them (including legal costs on a solicitor-Client basis) arising out of or in connection with the Works or the Contract.

5. ASSIGNMENT

Each of SHAPE and the Client may assign the benefits and rights accrued under this deed at any time and in its absolute discretion. Any other person having those benefits and rights from time to time may assign them in its absolute discretion.

6. NO ADMISSION

The Contractor acknowledges that nothing in this deed, or the provision of any draft by SHAPE to the Contractor or any payment by SHAPE following the provision of this deed by the Contractor, constitutes an admission by SHAPE as to the accuracy of the Contractor's assessment of the Final Adjusted Contract Sum, the accuracy of the warranties contained in this document or as to the compliance by the Contractor of its obligations under the Contract.

SCHEDULE

[Insert list of known defects, if any, to be rectified]

EXECUTED BY THE CONTRACTOR AS A DEED POLL

Instructions for signing

Two signatures are required. These are referred to as the First Signatory and Second Signatory, as follows:

	<u>First Signatory</u>	<u>Second Signatory</u>
<u>Company with more than one director or secretary</u>	<u>A director</u>	<u>A director or secretary</u>
<u>Natural person</u>	<u>A natural person who is a party to this deed</u>	<u>A witness over 18, who must witness the First Signatory sign</u>
<u>Sole Director/Secretary Company</u>	<u>The sole director/secretary</u>	<u>A witness over 18, who must witness the First Signatory sign</u>

Signature of First Signatory

Signature of Second Signatory

Name of First Signatory

Name of Second Signatory

Party/Director/Sole Director

Witness/Director/Secretary

Capacity (delete as applicable)

Capacity (delete as applicable)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)
- (f) I am not aware of anything that would contradict the statements made in the subcontractors statements provided to the Subcontractor by its subcontractors.
- (g) All subcontractors who are or at any time have been engaged on the work under the Contract have been paid in full all wages and allowances which have become payable to them by virtue of their subcontract with the Subcontractor.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at _____ (place where declaration made)

on _____ (date of declaration) by

Signature of person making the declaration

Name, position and title of person making the declaration _____
(please print)

before me: _____

Justice of the Peace/Solicitor of the Supreme Court of New South Wales
[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW)]

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

NOTES

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relations Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the subcontractor) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this declaration, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the Industrial Relations Act 1996 defines remuneration as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the Industrial Relations Act 1996 states to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the declaration, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the declaration have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the declaration, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the declaration, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain statements or declarations from your subcontractors.

Declaration Retention

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

Offences in respect of a false declaration or statement

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

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

In terms of s17513 of the Workers Compensation Act and clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, please visit the SafeWork NSW website www.safework.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Finance, Services & Innovation website www.finance.nsw.gov.au. Copies of the Workers Compensation Act 1987, the Pay-roll Tax Act 1971 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au.

****STATES AND TERRITORIES OTHER THAN NSW: STATUTORY DECLARATION**

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I, _____

of _____

do solemnly and sincerely declare that:

1. I am a director or senior manager of _____ ('Contractor').

2. I am in a position to know the truth of the matters contained in this declaration.

3. The Contractor has a contract with [Insert relevant SHAPE entity eg SHAPE Australia Pty Limited ABN 70 003 861 765] to carry out certain works involving:

('Contract')

4. As at the date of this statutory declaration:

- (a) all of the Contractor's employees who are or who at any time have been directly or indirectly involved in work under the Contract have been paid in full all wages and allowances due and payable to them in connection with that work;
- (b) all of the Contractor's subcontractors who are or who at any time have been directly or indirectly involved in work under the Contract have been paid in full all amounts which have become payable to them in connection with that work;
- (c) to the best of the Contractor's knowledge, all employees and workers who at any time have been directly or indirectly involved in work under the Contract, including employees and workers of third parties (such as the Contractor's subcontractors or their subcontractors), have been paid in full all wages and allowances due and payable to them in connection with that work.

5. If the Contractor has subcontractors, the Contractor has received from each of those subcontractors a statutory declaration in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).

6. I am not aware of anything that would contradict the statements in the statutory declarations provided to the Contractor by its subcontractors.

7. The Contractor is not, under any law, insolvent or unable to pay its debts as and when they fall due.

8. The Contractor continues to have in force each of the insurances required by the Contract.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959* (Cth), and I believe that the statements in this declaration are true in every particular.

Declared at _____
Place where declaration made

on _____
Date of declaration

by _____
Signature of person making the declaration

before me: _____
Signature of witness

(Full name, qualification and address of person
before whom the declaration is made (in printed letters))

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*

ANNEXURE to the Australian Standard
Minor works contract conditions (Principal
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Part F

MILESTONES AND CRITICAL DATES

<u>Milestone</u>	<u>Date</u>

ANNEXURE to the Australian Standard
Minor works contract conditions (Principal
administered) AS 4906 – 2002
Lump sum subcontract

Part G

Novation Deed

dated

PARTIES

SHAPE

[Insert relevant SHAPE entity eg SHAPE Australia
Pty Limited ABN 70 003 861 765]

[insert address]

Contractor

[Insert]
ABN [insert]

[insert address]

Supplier

[Insert]
ABN [insert]

[insert address]

PARTICULARS

Balance Payable by SHAPE [Insert]

Supply Contract The contract between the SHAPE and the Supplier for the supply of
[insert].

Works Contract The contract between SHAPE and the Contractor for [insert].

Effective Date[The date of this deed.]**INTRODUCTION**

- A. SHAPE and the Contractor are parties to the Works Contract.
- B. SHAPE and the Supplier are parties to the Supply Contract.
- C. The parties have agreed to novate the Supply Contract from SHAPE to the Contractor on the terms of this deed.

OPERATIVE PART**1. Definitions**The following words and expressions have these meanings in this deed:

Claim Any claim, debt, allegation, suit, action, demand, cause of action, claim for account or proceeding of any kind or nature howsoever and whensoever arising. This includes claims that:

- (a) are in respect of Losses or in respect of a breach of trust or of a fiduciary duty or other duty or obligation;
- (b) arise under any statute; and
- (c) are actual or contingent.

Loss Includes costs, expenses, damages and other liabilities.

2. InterpretationUnless it is inappropriate in the context:

- a) the singular includes the plural and vice versa;
- b) a reference to an individual or person includes a corporation, firm and government body and vice versa;
- c) a reference to 'dollars' or '\$' is to an amount in Australian currency;
- d) a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- e) the meaning of general words is not limited by specific examples introduced by 'including', 'such as', 'for example' or 'even if', or other similar expressions;
- f) a reference to an agreement (including this deed) includes the agreement as modified from time to time and any agreement replacing it; and
- g) headings are included for convenience and do not affect interpretation.

3. NovationFrom the Effective Date:

- a) the Supply Contract is novated from SHAPE to the Contractor;
- b) the Contractor is substituted for SHAPE under the Supply Contract, as if the Contractor was the original party to the Supply Contract (in lieu of SHAPE);
- c) each reference in the Supply Contract to SHAPE is to be read as if it were a reference to the Contractor; and

d) the Supplier must continue to perform its obligations under the Supply Contract.

4. Balance Payable by SHAPE

4.1 SHAPE must pay the Balance Payable by SHAPE within the time required by the Supply Contract.

4.2 The parties acknowledge that from the Effective Date, the Balance Payable by SHAPE is SHAPE's sole liability to the Supplier in connection with the Supply Contract.

5. Supplier Warranties to the Contractor

The Supplier warrants to the Contractor that, up to and including the Effective Date, each of SHAPE and the Supplier has satisfactorily performed each of its obligations under the Supply Contract.

6. Release by the Supplier

Subject to clause 4.1, the Supplier unconditionally and irrevocably releases SHAPE from:

- a) SHAPE's obligations under the Supply Contract; and
- b) any Claims the Supplier may have (or allege to have) against SHAPE in connection with the Supply Contract.

7. Additional warranties and indemnities by the Supplier

7.1 The Supplier warrants to SHAPE that the Supplier's goods and services have been, or will be, supplied in accordance with the Supply Contract and with due care, skill and diligence.

7.2 The Supplier acknowledges that any breach of the warranty in clause 7.1 will likely result in Losses being incurred by SHAPE.

7.3 The Supplier unconditionally and irrevocably indemnifies (and agrees to keep indemnified) each of the Contractor and SHAPE from and against:

- a) any Claims brought against either of them; and
- b) any Losses either of them might incur.

arising out of or otherwise in connection with any breach of the Supply Contract by the Supplier, any breach of the Supplier's warranties in this deed, or any other act or omission (including negligence) of the Supplier.

7.4 For the avoidance of doubt, the warranty in clause 7.1 and the indemnity in clause 7.3 will apply to all goods and services performed by the Supplier, whether before, on or after the Effective Date.

8. Contractor's responsibility for acts of the Supplier

The Contractor acknowledges and agrees that:

- a) from the Effective Date, the Contractor will be responsible to SHAPE for acts or omissions of the Supplier, including acts and omissions occurring before the Effective Date; and
- b) the Supplier's indemnity in favour of SHAPE in clause 7 will not diminish or otherwise affect any rights SHAPE may have independently of this deed, including any rights it may have against the Contractor arising from a breach of the Contract.

EXECUTED AS A DEED**Instructions for signing**

For each party to this deed, two signatures are required. These are referred to as the First Signatory and Second Signatory (except in the case of SHAPE), as follows:

	<u>First Signatory</u>	<u>Second Signatory</u>
<u>Company with more than one director or secretary</u>	<u>A director</u>	<u>A director or secretary</u>
<u>Natural person</u>	<u>A natural person who is a party to this deed</u>	<u>A witness over 18, who must witness the First Signatory sign</u>
<u>Sole Director/Secretary Company</u>	<u>The sole director/secretary</u>	<u>A witness over 18, who must witness the First Signatory sign</u>

Executed by
[Insert relevant SHAPE entity
eg SHAPE Australia Pty Limited]
in accordance with
the Corporations Act 2001:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

Executed by
the Contractor:

Signature of First Signatory

Signature of Second Signatory

Name of First Signatory

Name of Second Signatory

Party/Director/Sole Director

Witness/Director/Secretary

Capacity (delete as applicable)

Capacity (delete as applicable)

Executed by
the Supplier:

Signature of First Signatory

Signature of Second Signatory

Name of First Signatory

Name of Second Signatory

Party/Director/Sole Director

Witness/Director/Secretary

Capacity (delete as applicable)

Capacity (delete as applicable)