Offer of Services

**Civilex Australia Pty Ltd T/As Asbestex**

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**Customer Details: FREIGHTNET INTERNATIONAL PTY LTD (SYDNEY)**

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AUSTRALIA

**Contact Name:** Ms Maria Moskun

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**Proposal Date:** 27/04/2017

**Proposal Number:** ARQ12690

**Prepared By:** Michael Elkorr

**Authorised By:** Steve Warren

**Terms:** COD

**QM: 100000002266741** Agent Ref No.: OOLU9303094

Owner: MR JOHN GRIEVE Reg No: ACWYXA7XH

Ref No.: HBOL: NYC0049070 Group: PROGRAMMAED EXAMINATIONS – SEA

**ASBESTOS ANALYSIS SAMPLING AND TESTING - TROJAN BOND MATRAVILLE**

**Re: 1979 LINCOLN TOWN CAR ASBESTOS INSPECTION**

**Description Unit Price Qty Sub Total**

1. Asbestos Hourly Sampling Rate (ie. Travel time, onsite time, report) $210.00 1hr $210.00 [x]

2. Sample Rate (Standard NATA Laboratory TAT 4 business days) $155.00 1 $155.00 [ ]

3. Sample Rate (Priority NATA Laboratory TAT 2 business days) $175.00 1 $175.00 [ ]

4. Sample Rate (Urgent NATA Laboratory TAT 1 business day) $195.00 1 $195.00 [ ]

*Above prices above are for weekdays only. Additional charges will be made for any work conducted out of hours or weekends. This quote is a service agreement, should client accept offer of services please sign off and return with work order number. By signing this document you fully agree to our Terms and Conditions attached to this document. All Prices exclude GST unless otherwise indicated. All work is conducted in accordance with the Asbestex Standard Terms and Conditions. The above Fees are valid for 14 days from the date of this offer of services. In order to proceed with this offer of services, our quality procedures and terms of engagement require written confirmation by way of appropriately authorised company purchase order or written authority to proceed on company letterhead. Please provide this documentation at the time of engagement in order to avoid unnecessary delays.*

**Methodology**

Inspections and assessments are conducted in a conscientious and professional manner by a qualified asbestos competent technician. All analytical testing is undertaken in a NATA (National Association of Testing Authorities Australia) Laboratory. The inspection involves a visual inspection of the goods in custody and suspected asbestos containing materials are sampled for analysis under the instructions of the EO on the day.The client’s certificate will contain information such as Asbestex sample numbers in reference with Australian Border Force sample numbers, sample location, results of samples and photographic location of samples. Thus, while we carry out the work to the best of our ability, we totally exclude any loss or damages which may arise from services we have provided to the client and/or associated parties.

**Full Name:** Click here to enter text. **Company Name:** Click here to enter text.

**Date:** Click here to enter a date. **ABN:** Click here to enter text.

**Date of Examination:** Click here to enter a date.

 **1. DEFINITIONS AND INTERPRETATION**

1.1. Definitions

(a) **ACM** means Asbestos-Containing Material and includes any material or thing that, as part of its design, contains asbestos.

(b) **ACM Rate** means the rate charged by the Contractor to assess, sample, remove, encapsulate, excavate or dispose ACM.

(c) **Agreement** means this document.

(d) **Approval** means all permits, consents, certificates, licences and approvals required from any Authority to carry out the Works including planning and development approvals.

(e) **Authority** means any government or regulatory body created by statute or governance which has jurisdiction affecting the Works, the Site, the Principal, the Client, the Contractor’s Personnel or any person who will in any way be connected to the Works.

(f) **Business Day** means a day which is not, a Saturday or Sunday; or a public holiday or bank holiday in the State or Territory where the Site is located; or a day which is excluded pursuant to the SOP Legislation.

(g) **Claim** means any actual or contingent or potential claim, action, cause of action, potential cause of action, demand, suit, damage, debt, right, decree, expense, cost, lien, loan, loss, liability, order, proceeding, litigation (including, without limiting the generality of the foregoing, any claim for costs, interest, damages contribution or indemnity), investigation, verdict or judgement, howsoever arising out of, or in connection with, the subject matter of the Contract, including any claim for losses or an extension of time.

(h) **Commencement Date** means the date or dates stated in Item 5 of the Schedule.

(i) **Construction Plant** means plant equipment, appliances and things used in the carrying out of the Works but not forming part of the Works.

(j) **Contaminous Materials** means materials, including soil, which is contaminated whether by chemicals, lead or other substance or thing which does not call within the definition of ACM, Hazardous or Toxic Materials and which is listed at Part 1 of Schedule 1 of the *Protection* *of the Environment Operations (Waste) Regulation 2005*.

(k) **Contaminous Materials Rate** means the rate charged by the Contractor to dispose of Contaminous Materials specified in Annexure “D”.

(l) **Contractor** means Civilex Australia Pty Ltd t/as Asbestex (ACN 160 900 907).

(m) **Contractor’s Personnel** means the Contractor’s employees, subcontractors, consultants and suppliers.

(n) **Contract Sum** means the amount stated in the Item 9 of the Schedule, or as may be further described in Annexure B, or such other sum or sums as may become payable under this Agreement.

(o) **Competent Person** means a person, being an individual, who has acquired through adequate and proper training, licensing, qualification or experience the knowledge and skills to carry out any designated task associated with the Works or any aspect obligation provided for in this Agreement.

(p) **Day Works** means Works by the Contractor which are outside the scope of the Works and charged at the rates prescribed in the Day Works Schedule.

(q) **Day Work Schedule** means the schedule annexed and marked as Annexure E of this Agreement.

(r) **Deposit** means the amount referred to at Item 14 of the Schedule.

(s) **Dispose** means any disposal of Waste at a Landfill in accordance with Clause 11.

(t) **Dispute** means a dispute or difference arising out of, or in connection with either party performing their obligations pursuant to the Agreement, as specified at clause 18.

(u) **ENM** means excavated natural material however, with an allowance of no more than 2% of foreign material included.

(v) **ENM Rate** means the rate charged by the Contractor to excavate and Dispose of ENM specified in Annexure “D”.

(w) **Environmental Laws** means and statute, law, regulation, policy or guideline issued by a regulatory or governmental body regulating, controlling or otherwise relating to the environment or the protection of the environment, including but not limited to:

*Protection of the Environment Administration Act 1997;*

*Protection of the Environment operations Act 1997* (“POEO Act”)

*Protection of the Environment Operations (Waste) Regulation 2005;*

*Contaminated Land Management Act 1997;*

Department of Urban Affairs and Planning Contaminated Land Planning Guidelines 1998;

SEPP 55 – Remediation of Land

Environmental Noise Control Manual;

*Environmental Planning and Assessment Regulation 2000;*

Any requirements of New South Wales SafeWork Authorities;

Any Notice of Determination from an authority.

(x) **Estimated Date of Completion** means the date or dates as stated in Item 7 of the Schedule that the Works or a Stage is brought to Practical Completion, or as adjusted in accordance with the Agreement.

(y) **GST** has the same meaning as in *A New Tax System (*Goods *and Services Tax) Act 1999* (Cth).

(z) **Hazardous or Toxic Materials** means materials which, because they are toxic, corrosive, flammable, explosive or infectious or possesses some other dangerous characteristic, are potentially dangerous to the environment and people when stored or handled, or when any part of the environment or person is exposed to it, and Includes but is not limited to:

Synthetic mineral fibre;

Polychlorinated biphenyls; and

Lead.

(aa) **Hazardous or Toxic Materials Rate** means the rate charged by the Contractor to excavate and Dispose of the Hazardous or Toxic Materials specified in Annexure “D”.

(bb) **Head Contract** means any agreement, arrangement or Understanding between the Principal and the Contractor under which the Principal will complete the Project and of which the Works are a part.

(cc) **Indemnity Basis** means all costs, including fees, charges, disbursements and expenses incurred by the Contractor with respect to recovering, or attempting to recover, any amount owed to it under this Agreement.

(dd) **Landfill** means any place which specialises and is authorised to receive Waste, including a waste facility as defined in the POEO Act.

(ee) **Latent Conditions** means physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions and which should reasonably be identified by the Principal, prior to entering into this agreement.

(ff) **Liquidated Damages** means the damages payable by the Principal in accordance with Clause 15 and at the rate specified at Item 11 of the Schedule.

(gg) **Losses** include losses, claims, demands, costs, expenses and damages arising out of or in connection with either party breaching their obligations under this Agreement.

(hh) **Notice of Dispute** a notice issued under clause 18.

(ii) **Parties** means the Contractor and the Principal.

(jj) **Payment Claim** has the meaning given in clause 9.5.

(kk) **Payment Schedule** has the meaning given in clause 9.6.

(ll) **Person Conducting a Business of Undertaking** has the same meaning as prescribed at Section 5 of the *Work Health & Safety Act* *2011 (NSW)*

(mm) **Practical Completion** means when the Works or a Stage is completed which occurs on the date recorded on the Practical Completion Certificate in accordance with Clause 17 of this Agreement.

(nn) **Practical Completion Certificate** means the certificate described in Clause 17 of this Agreement.

(oo) **PPS Law** means the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time).

(pp) **PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).

(qq) **PPSA** means the *Personal Property Securities Act 2009* (Cth).

(rr) **Principal** means the party referred to in Item 3 of the Schedule.

(ss) **Principal Contractor** is a person by whom money is or becomes payable to the Principal for the Works carried out by the Contractor as is identified at Item 4 in the Schedule.

(tt) **Proportionate Liability Legislation** means Part IV of the *Civil Liability Act 2002 (NSW )* or any other Australian State or Territoryequivalent.

(uu) **Register** has the same meaning given in clause 10.6.

(vv) **Schedule** means the Schedule on page 1 of this Agreement, providing the details and particulars of the various items referred to in this Agreement.

(ww) **Scope of Work** means the scope of Works to be undertaken at the Site and as described in Annexure A.

(xx) **Site** means the land, structures or other places located at address specified in Item 6 of the Schedule and any other land, buildings or places which the Principal advises the Contractor form part of the Site for the purposes of this Contract.

(yy) **Site Conditions** means all matters concerning the Site and its surroundings, including but not limited to:

conditions in, upon, below the surface of, and surrounding, the Site artefacts;

conditions existing within structures situated upon, below the surface of, or surrounding, the Site;

conditions of access to, from, and within, the Site, for the

purposes of carrying out the Works; heritage, preservation or other orders affecting the Site;

Utilities servicing the Site; or

hydrological and climatic conditions; and Latent Conditions.

(zz) **SOP Legislation** means the *Building and Construction Industry Security of Payment Act 1999* (NSW) or any other Australian stateequivalent.

(aaa) **Stages** means the part or parts of the Works stated in the Scope of Works (if any), and as applicable under Item 8 of the Schedule.

(bbb) **Statutory Requirement** means:

(i) any legislation, including but not limited to, the Home Building Act 1989 (NSW), The Building and Construction Security of Payment Act 1999 (NSW), WH&S Legislation, ordinances, regulations, by-laws, codes, orders, awards or proclamations; or

(ii) any requirement by SafeWork NSW; and

(iii) any requirement by an Authority.

(ccc) **Temporary Works** means Works undertaken by the Contractor at the Site which are ancillary to the Works and of a non-permanent nature.

(ddd) **Underground Services** has the meaning given to it in clause 8.1

(eee) **Utilities** mean the provision of air conditioning, communications, compressed air, drainage, electricity, gas, hydraulics, sewerage, water and the like.

(fff) **Variation** means any change to the Works, including (but not limited to), any increase, decrease, or performance of additional works, in accordance with clause 12.

(ggg) **Variation Event** occurs when the Contractor discovers any Site Condition has not been disclosed by the Principal.

(hhh) **VENM** means virgin excavated natural material (e.g. clay, gravel, sand, soil, sandstone, sharol and/or rock) that is not mixed with any other waste and that:

(1) has been excavated from areas that are not contaminated, as a result of industrial, commercial, mining or agricultural activities, which manufacture chemicals and does not contain sulphidicores or soils;

Or;

(2) Consists of excavated natural materials (ENM) that has been approved by the Environmental Protection Authority.

(iii) **VENM Rate** means the rate charged by the Contractor to excavate and dispose of VENM specified in Annexure “D”.

(jjj) **Waste** means any Excavated Materials, ACM, Contaminous Materials, Hazardous and Toxic Materials, and includes waste as defined in the POEO Act.

(kkk) **Waste Management Plan** in addition to the definition in Clause 11 , means a plan that addresses the excavation collection, transportation, processing, disposal, management and monitoring of Hazardous or Toxic Materials and any other waste at the Site, in accordance with any Statutory Requirement.

(lll) **WH&S Legislation** means all applicable work legislation and associated regulations, together with any directions or notices issued by any relevant Authority, or any code of practice or compliance code appropriate or relevant to the performance of work undertaken pursuant to, or associated performance of, the Works or the Project.

This includes but is not limited to the following:

*The Work Health & Safety Act 2011* (NSW)

*The Work Health & Safety Regulations 2011* (NSW)

*The Work Health & Safety Act 2011* (Cth)

*The Work Health & Safety Regulation 2011* (Cth)

(mmm) **Works** means the whole of the work to be undertaken by the Contractor as described in Annexure A, including any Variations provided for by the Agreement.

(nnn) **Worker** has the same meaning as prescribed at Section 7 of the *Work Health & Safety Act 2011 (NSW).*

**1.2. Interpretation**

In this Agreement, unless the context otherwise requires:

(a) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;

(b) reference to a person includes a corporation, a firm and any other entity;

(c) reference to a party includes that party's personal representatives, successors and permitted assigns;

(d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit to this Agreement;

(e) if a party comprises more than one person, each of those persons is jointly and severally liable under this Agreement;

(f) headings do not affect interpretation;

(g) a provision must not be construed against a party only because that party put the provision forward;

(h) a provision must be read down to the extent necessary to be valid; if it cannot be read down to that extent, it must be severed.

(i) Measurements of physical quantities must be on legal units of measurement of the jurisdiction where the Site is located.

(j) The words “includes” and “including” and any variation of these words will be read as if followed by the words “without limitation”.

(k) If the time for giving any notice, issuing any certificate, making any payment or doing any other act as required or permitted by this Agreement falls on a day that is not a Business Day, then the time for giving the notice, issuing the certificate, or doing the other act shall be deemed to be on the day next following which is a Business Day.

**2. ENGAGEMENT**

2.1. The Principal has engaged the Contractor to perform the Works at the Site in consideration for the Principal paying the Contract Sum to the Contractor, subject to the terms of this Agreement.

2.2. The Principal must, at its own cost, obtain all and any Approvals from any Authority necessary for the Contractor to commence and carry out the Works.

2.3. The Contractor shall use its reasonable endeavours to complete the Works by the Date for Practical Completion.

**3. SCOPE OF WORKS**

3.1. The Scope of Works under this Agreement is identified at Annexure A.

3.2. The Parties may agree to a Variation of the Scope of Works from time to time, subject to any Variation being:

(a) in writing; and

(b) in accordance with the provisions of clause 12 of this Agreement.

3.3. If the Parties agree in writing to vary the Scope of the Works, the Parties may also vary the Contract Sum.

3.4. Notwithstanding any other provision of the Agreement, the Parties may, at any time, agree in writing that the Works will be undertaken in Stages (or additional Stages).

**4. SITE CONDITIONS**

4.1. The Principal warrants that it has prior to the commencement of the Works:

(a) Examined and carefully checked all information relevant to the risks, contingencies and other circumstances which could affect the Works;

(b) visited and inspected the Site and its surroundings and done everything reasonably possible to inform itself as to the Site and Site Conditions at, near or relevant to the Site and obtained the necessary information as to risks, contingencies, Hazardous or Toxic Materials, Contaminous Materials, ACM and other circumstances which might affect the Contractor’s execution of the Works or the cost of executing the Works; and

(c) Obtained all appropriate and technical advice on all matters and circumstances concerning the Site and Site Conditions.

(d) Has disclosed to the Contractor all information, details and reports referred to in 4.1(a), 4.1(b) and 4.1(c) to enable the Contractor to calculate and prepare the Contract Sum.

Has provided all information referred to in clause 4.1(d) to the Contractor.

4.2. where the Principal has identified Hazardous or Toxic Material, Contaminous Material or ACM at the Site, the Principal must, as soon as practicable, notify the Contractor in writing of its presence on the Site.

**5. SITE ACCESS**

5.1. Access and use of the Site

(a) Subject to restrictions or obstructions on access to the Site:

(i) Referred to in the Agreement; or

(ii) Advised by the Principal, from time to time;

(b) The Contractor will be entitled to access as much of the Site as is necessary and use whatever Equipment or Material necessary to enable the Contractor to carry out the Works. Any delay by the Principal in providing access to the Contractor will be a breach of an essential term of this Agreement, and the Principal must indemnify the Contractor against any and all Losses caused by or contributed to by the Principal’s delay.

5.2. Other properties

Where the Works are to be executed upon, or in respect of, land, buildings or places other than those under the absolute control of the Principal, the Principal must obtain the appropriate permission, consents, approval and/ or Authority before the Works are commenced by the Contractor and provide written evidence of those permissions within seven (7) days of a request by the Contractor.

5.3. Access upon termination

The Principal irrevocably grants a licence to the Contractor to access to the Site on or after termination of this Agreement to enable the Contractor to remove all of its Construction, Plant, and machinery, materials, signage, Temporary Works or any other property owned by the Contractor which is on site. This Clause 4 does not merge upon termination.

**6. MONITORING & SUPERVISION**

6.1. During the course of the Works, the Principal may at its own cost employ a person to be stationed at the entry of the Site, for the purpose of maintaining and monitoring a register of all waste that has been removed from the Site.

6.2. For the purposes of facilitating the supervision and monitoring of the removal of the ACM, Contaminous Material and Hazardous or Toxic Materials from the Site, the Principal must ensure that it records the following information in the register referred to in Clause 5.1 above:

(a) Description of type of waste removed;

(b) Quantity of waste removed;

(c) Net weight of waste removed;

(d) Identification confirming the date and time the truck or vehicle entered the Site to remove waste;

(e) The date and time of exit of the truck or vehicle from the Site; and

(f) Registration number of the truck or vehicle that entered the Site.

6.3. In the event that the Principal does not elect to employ a person referred to in Clause 6.1 above, the Principal agrees that the records maintained by the Contractor shall be deemed to be accurate and the Principal covenants that it will not dispute the records maintained by the Contractor.

**7. CONTRACTOR’S OBLIGATIONS IN PERFORMING THE WORKS**

7.1. All Works, where reasonably practicable, will be carried out by the Contractor in accordance with the National Code of Practice for the Safe Removal of Asbestos (NOHSC: 2018 (2005)), WH&S Legislation and any other Statutory Requirement.

7.2. If the Contractor is reasonably unable to carry out any part of the Works in accordance with clause 7.1 above, the Contractor will engage an appropriate third party to undertake those works.

7.3. The Principal indemnifies the Contractor in relation to any costs, claims and Losses which may arise from the Contractor performing the Works.

**8. UNDERGROUND LOCATIONS**

8.1. Prior to executing this Agreement, the Principal must, at the Principal’s cost and expense:

(a) provide the Contractor with documentation showing the precise location of all underground services on the Site; and

(b) clearly mark the precise location of all underground services on the Site, (**“Identification of Underground Services”**).

8.2. The Identification of Underground Services must include the identification of the location of:

(a) electrical services;

(b) gas services;

(c) sewer services;

(d) pumping services;

(e) sewer connections;

(f) sewer sludge mains;

(g) water mains;

(h) irrigation pipes;

(i) Telstra cables;

(j) fibre optic cables;

(k) drainage easements;

(l) oil pumping mains; and

(m) any other services that may be located on or within the Site,

**(“Underground Services”).**

8.3. The Principal agrees to indemnify the Contractor against any Losses which may result from the Principal’s failure to properly and/or precisely identify the location of the Underground Services.

8.4. If the Principal does not provide the Identification of Underground Services in accordance with this Clause, then the Contractor may obtain same at the Principal’s costs and expenses.

**9. CONTRACT SUM AND PAYMENT**

9.1. In consideration of the provision of the Works in accordance with this Agreement, the Principal will pay the Contractor the Contract Sum or any other sums payable under this Agreement.

9.2. If applicable, the Deposit must be paid prior to the commencement of the Works which shall be credited against the first Payment Claim.

9.3. The Contractor shall provide the Principal with a tax invoice in accordance with the GST Law in relation to fees payable under this clause9, and the due date for payment by the Principal to the Contractor is seven-(7) days (or as otherwise directed by the Contractor) after the date of the Contractor’s invoice.

9.4. If the Principal does not make a payment by the due date stated in a tax invoice or as otherwise provided for in the Agreement, the Contractor shall be entitled to do any of the following:

(a) charge interest on the outstanding amount at the rate of 5% per year above the cash rate target as set from time to time by the Reserve Bank of Australia, accruing daily;

(b) require the Principal to pay, in advance, for any Works (or any part of the Works) which have not yet been performed; and

(c) not perform any further Works (or any part of the Works) and terminate the Agreement in accordance with clause 18. 18.

9.5. Payment Claims

(a) the Contractor may submit claims for payment to the Principal (“**Payment Claim**”).

(b) a Payment Claim will be for:

(i) the relevant percentage of the original Contract Sum

(ii) the value of the work carried out pursuant to any Variation under clause 12.

(c) The Contractor may submit one Payment Claim per week.

9.6. Within 5 Business Days of receipt of a Payment Claim the Principal must assess the Payment Claim and issue a payment schedule to the Contractor identifying the Payment Claim to which it relates and stating the amount (if any) which is to be paid by the Principal to the Contractor including reasons for withholding payment (“**Payment Schedule**”) .

9.7. On the due date for payment of a Payment Claim, the Principal must pay to the Contractor the amount specified in the Payment Claim or the amount set out in the Payment Schedule (whichever is lesser).

9.8. If there are any disputes or claims regarding the Works then the provisions of the SOP Legislation will apply.

9.9. Nothing in this Agreement is intended to have the affect of contracting out of any applicable provisions of the SOP Legislation, except to the extent permitted by the SOP Legislation where applicable.

9.10. Set off - The Principal must not:

(a) deduct from, or set off against, any amounts due to the Contractor under the Agreement or otherwise at law in respect of the Works, or under any other agreement (whether in relation to the Works or otherwise); or

(b) have recourse to any retention monies or security provided by the Contractor under the Contract, or provided by the Contractor under any other agreement (whether in relation to the Works or otherwise).

**10. STATUTORY REQUIRMENTS**

10.1. Authorisations

(a) The Principal must comply with, and give all notices (including providing copies to the Contractor, upon request) required by, all Statutory Requirements.

(b) The Principal must pay all fees and charges legally demandable or required in accordance with all Statutory Requirements and provide all notices to the Contractor, as requested under clause 10.1.

10.2. Compliance with industrial requirements

(a) The Principal must make itself aware of all Statutory Requirements relating to industrial matters, which may apply to the Works or the Site, including all relevant enterprise agreements, codes of practice and implementation guidelines.

10.3. Work Health and Safety (WH&S) Requirements

(a) The Principal acknowledges and agrees that the overall coordination of safety and environmental matters relating to the Site, including those affecting the Contractor’s Personnel, will be exercised by the Principal. The Principal must also implement appropriate work practices and operating procedures and exercise due diligence to ensure the safety of all persons on the Site, members of the public who may be affected by the Works, and the protection of the environment.

(b) Without limiting this clause the Principal must also comply with all the legislation and environment standards including any policies, procedures, codes of practice, Site regulations and equipment operating manuals pertaining to the Works.

10.4. The Principal must ensure that it does not, or omit to do, anything which if done or omitted to be done by the Principal would constitute a breach of this clause 10.

10.5. The Principal hereby acknowledges and warrants as an essential term of this Agreement that it has made proper investigation and undertaken its due diligence as to its Statutory Requirements.

10.6. The Principal agrees to and hereby indemnifies the Contractor, its officers, directors, employees and agents from all and any Losses, arising out of, connected with, or resulting from the Principal’s breach of any provision, representation, obligations or warranties in this Agreement in respect to any Statutory Requirements.

10.7. The indemnity provided for in this clause 10 is a continuing indemnity and does not merge upon completion of this Agreement. The indemnity continues indefinitely as a separate independent obligation of the Principal.

**11. OBLIGATIONS OF PRINCIPAL IN RELATION TO ACM, CONTAMINOUS MATERIAL AND HAZARDOUS OR TOXIC MATERIALS**

11.1. The Parties acknowledge that the Principal is the Principal Contractor as defined at Rule 293 of the *Work Health & Safety Regulation 2011 (NSW).*

11.2. The Principal must ensure, so far as is reasonably practicable, that all ACM (or anything reasonably believed by the Contractor or assumed to be ACM), Contaminous Material or Hazardous or Toxic Materials at the Site is identified by a Competent Person.

11.3. The Principal must ensure, so far as is reasonably practicable, that:

(a) the presence and location of ACM, Contaminous Material or Hazardous or Toxic Materials identified at the Site is clearly indicated, and

(b) if it is reasonably practicable to do so, indicate the presence and location of the ACM, Contaminous Material or Hazardous or Toxic Materials by a label.

11.4. Transportation Procedures

(a) The Principal directs and authorises the Contractor to transport from the site Waste for the purpose of disposing the Waste at a Landfill;

(b) The Principal must give to the Contractor a certificate in the form annexed at Annexure F to this Agreement, for all Waste that is transported from the Site to a Landfill, prior to the Waste being transported from the Site; and

(c) The Principal acknowledges that the Contractor will rely upon the certificate in obtaining from the Landfill operator an approved notice under Section 143 of the POEO Act.

11.5. The Principal must provide the Contractor with the Register and/or the Waste Management Plan upon request at the Principal’s own cost.

11.6. The Principal agrees to indemnify the Contractor against any Losses which may result from the Principal’s failure to comply with its obligations under clause 11 and which may arise from the disposal of Waste at a Landfill.

**12. VARIATIONS**

12.1. Timing and scope of requests

(a) The Principal may, upon written notice, request in writing a Variation prior to the Date of Completion of the Works, and the Contractor may at its sole discretion agree to that request, within the time specified by the Contractor.

(b) If the Contractor considers that a request or direction issued by the Principal, although not stated to be a Variation, constitutes or involves a Variation, the Contractor may give notice to the Principal that it considers the request or direction to constitute or involve a Variation, before commencing work in relation to the request or direction and in any case within five-(5) Business Days from the receipt of such request or direction.

(c) If the Contractor considers a variation to the scope of the works is necessary to reach Completion of the Works by the Practical Completion Date, the Contractor may make a written request for a variation to the Contract and the Principal must not unreasonably withhold consent to that variation.

12.2. Measurement of Variations

(a) As soon as practicable, after receipt of a Variation request or direction, the Principal must provide the Contractor with measurements sufficient to enable the Contractor to value a Variation including all details, revised plans, revised Geotechnical Report, description of addition or reduced Works, description of the type of waste to be excavated, an estimate of the volume of waste; and the dimensions of the additional or reduced Works.

(b) If the Contractor is not satisfied with the details provided by the Principal, acting reasonably, it may arrange for further details to be obtained, at the Principal’s cost, which the Contractor may use to value the Variation.

12.3. Valuation of Variations

(a) Variations will be valued as follows:

(i) Where the Variation relates to part of the Works, the Variation will be determined by the prices, rates and amounts set out in Annexure B;

(ii) Where the prices, rates and amounts set out in Annexure B cannot be applied reasonably to the Variation, the Contractor at its sole discretion will determine a fair valuation of the Variation;

(iii) and the Contract Sum will be increased or decreased by the value of the Variation, as applicable.

(b) Notwithstanding Clause 12.3, the Contractor, if instructed by the Principal, may carry out a Variation as Day Works at the Day Work Rates specified at Annexure “E” to this Agreement. If the Principal instructs the Contractor to carry out a Variation as Day Works, the Contractor must provide its daily record of labour, plant and equipment hours worked and the quantity of Materials used, on the day when the hours are worked and the Materials are used (“**Contractor’s Day Work Sum’**) and the Contract Sum will be increased or decreased by the Contractor’s Day Work Sum.

**13. SUSPENSION OF WORKS**

13.1. Suspension of the Works

The Contractor may, upon written notice to the Principal, suspend the performance of part, or all, of the Works if the Principal:

(a) fails to pay any amount of the Contract Sum, including any Variation in accordance with this Agreement;

(b) fails to pay a Payment Claim or any other amount due to the Contractor;

(c) fails to advise the Contractor promptly of any requirement of or notice from an Authority, if any, that affects the Works or any Hazardous or Toxic Materials that may effect the Works;

(d) denies the Contractor or the Contractor’s employees, servants and agents access to the Site so as to prevent the Works from proceeding, or otherwise prevents the Contractor from carrying on the Works; fails to approve a Variation in accordance with Clause 12 of this Agreement;

13.2. If the Principal rectifies a cause of suspension under clause 130, the Contractor may recommence the works within ten-(10) Business Days or as otherwise stipulated in this Agreement.

13.3. The Principal indemnifies the Contractor for, and against, any Claims or Losses suffered or incurred by the Contractor, arising out of, or in connection with, any suspension by the Contractor in circumstances referred to in this clause 13.

**14. TIME AND DELAYS**

14.1. Claim for extension of time for Delay

If it appears to the Contractor that the progress of the Works (or a part thereof) may be delayed for any reason whatsoever, the Contractor will:

(a) take all reasonable steps to minimise or avoid the delay and its effects;

(b) give written notice to the Principal, providing details of:

(i) the cause(s) of the delay and the likely effect (if any) on the progress of the Works and the Estimated Date for Completion; and

(ii) the steps that the Contractor has taken, or proposes to take, to minimise the delay and its effects.

14.2. If the Contractor requires an extension to the Estimated Date for Completion, it will give further written notice to the Principal of the period of extension of time claimed within a reasonable period. Where it is not practicable to give this reasonable notice, the Contractor may advise the Principal, in writing, on a weekly basis of the estimated period of extension of time to be claimed.

14.3. Entitlement to extension of time

(a) If the Contractor requires an extension for the Estimated Date for Completion, the Principal must extend the Estimated Date for Completion by the number of days by which, as a result of the delay, the Contractor will be delayed in achieving Practical Completion.

(b) The Principal will have no Claim with respect to, or in connection with, any delay or cause of delay.

14.4. Extension of time due to Variation after the Estimated Date for Completion

14.5. If the Principal instructs a Variation after the Estimated Date for Completion which is likely to delay the achievement of Practical Completion, the Contractor will, within seven-(7) days of receipt of the instruction, give the Principal written notice of the likely period of delay. The Principal must extend the Estimated Date for Completion by the number of days by which Practical Completion is likely to be delayed as a result of the execution of the Variation.

14.6. The Principal accepts the risk of all increased costs and other Losses resulting from any delay or disruption in the execution of the Works, whether caused by a breach of the Agreement by the Principal, or however otherwise caused.

**15. LIQUIDATED DAMAGES**

15.1. If the Works are not completed by the Estimated Date of Completion and the Principal has contributed to the cause of delay, the Principal will then be indebted to the Contractor for Liquidated Damages at a rate stated in Item 11 of the Schedule for every day during which the Works or the relevant stage or stages shall remain incomplete.

15.2. A failure by the Contractor at any time to demand payment of the Liquidated Damages will not amount to a waiver of or otherwise affect the Contractor’s rights and entitlements to recover Liquidated Damages.

15.3. The Principal acknowledges that the rate for Liquidated Damages set out in Item 11 of the Schedule represents a genuine and reasonable pre-estimate of the amount of loss or damage, as calculated at the date of this Agreement which the Contractor is likely to suffer in the Principal causes a delay in Practical Completion.

15.4. The Principal acknowledges and accepts that the calculation of Liquidated Damages comprises of but is not necessarily limited to the matters contained in Annexure D to this Agreement. The Principal covenants that it will not challenge the rate for Liquidated Damages as being in the nature of a penalty.

15.5. Liquidated Damages may be calculated and claimed prior to Practical Completion.

**16. INDEMNITY AND INSURANCES**

16.1. The Principal must indemnify and keep indemnified the Contractor against:

(a) loss of or damage to property of the Contractor, including existing property in or upon which the Works are being carried out;

(b) claims by any person against the Contractor in respect of personal injury or death or loss of or damage to property arising out of or as a consequence of the carrying out by or on behalf of the Principal at the Site. The Contractor’s liability to indemnify the Principal shall be reduced proportionately to the extent that the act or omission of the Contractor or employees, consultants or agents contributed to the loss, damage, death, or injury; and

(c) any breaches of Environmental Laws.

16.2. To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise. Without limiting the general nature of the above, the rights, obligations and liabilities of the parties relating to proportionate liability are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

16.3. Before the commencement of the Works the Principal must:

(a) effect a public liability policy of insurance of not less than the amount referred to in Item 12 of the Schedule, in the joint names of the Contractor and the Principal which covers the Contractor, all consultants, all Subcontractors and other persons employed or with an interest in the Site in respect of personal injury to or death arising by accident of any person whomsoever (not being a person who at the time of the accident is defined as a worker of the insured under any statute relating to workers compensation insurance) and in respect of any injury, loss or damage whatsoever arising by accident to any property, real or personal, including property (other than the Works) belonging to the Principal or in which it is interested and where the accident arises out of or is caused by the execution of the Works. The public liability policy shall be for an amount in respect of any one occurrence not less than the amount referred to in Item 12 of the Schedule. The policy must be maintained until Practical Completion of the Works.

(b) effect a workers compensation insurance policy which will insure against liability for death of or injury to persons employed or contracted by the contractor including liability by statute and at common law. The insurance cover must be maintained until all Works, including remedial work is completed. Where permitted by law, the insurance policy shall be extended to indemnify the Principal for the Principal’s statutory liability to persons employed by the Contractor. If Workers Compensation cover cannot be legally obtained, insure under a personal accident policy of insurance to cover personal accidents and related liability.

(c) obtain Home Warranty Cover pursuant to the Home Building Act 1989 (NSW) (applicable if the Home Building Act 1989 (NSW) applies to the Project);

(d) obtain Construction Risk Insurance which must be maintained during the entire course of the Works. Such insurance must cover the Contractor, the Principal, all consultants, all Subcontractors and other person’s employed or with an interest in the Site. The value of the Construction Risk Insurance must be for at least the full reinstatement value of the Works and include all fixed and unfixed materials stored on Site which relate to the Works.

16.4. Before the Contractor commences the Works and in accordance with the provisions of this Agreement and whenever requested in writing by the Contractor, a party liable to effect or maintain insurance must produce evidence to the satisfaction and approval of the Contractor of the insurance effected, is kept current and maintained.

16.5. If this Agreement requires the Principal to take out additional insurance, all such policies must:

(a) require the insurer to notify the Contractor at the same time as the insurer receives or gives any notice consenting to the policy must provide the Contractor at least 14 days’ notice before any proposed cancellation of a policy;

(b) provide that a notice of claim given to the insurer by the Principal, the Contractor, supplier or consultant will be accepted by the insurer as a notice of a claim given by all of the insured; and

(c) be effected and maintained at the Principal’s cost.

16.6. If the Principal fails to comply with this Clause 16 , where possible, the Contractor may do any of the following at its absolute discretion:

(a) effect and maintain that insurance and pay the necessary premiums. If required to do so, the Contractor may recover from the Principal as a Liquidated Debt the cost of the premiums and the Contractor’s reasonable costs of effecting and maintaining the insurance; or

(b) terminate this Agreement without notice and without penalty.

16.7. The Principal must bear all excesses under the policies of insurance taken out by the Principal which relate to the Works.

16.8. Whenever insurance is to be effected in joint names, the policy of such insurance shall provide that in so far as the policy may cover more than one insured all insuring agreements and endorsements with the exception of limits of liability shall operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured. Such policy shall provide that the insurer waives all rights, remedies and relief to which it might become entitled by subrogation against any other parties comprising the insured and that failure by any insured to observe and fulfill the terms of the policy shall not prejudice the insurance in regard to any other insured.

16.9. The effecting of insurance shall not limit the liabilities and obligations of any of the Parties under other provisions of this Agreement.

16.10. Upon settlement of a claim of insurance:

(a) the Contractor is entitled to receive monies paid as a payment or allowance by the Principal to the Contractor;

(b) to the extent the Works to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from monies received, the cost of effecting the reinstatement, including the supply of goods and materials on Site whether or not incorporated into the Works; and

(c) the Principal must authorise and directs payment of a claim directly to the Contractor.

**17. PRACTICAL COMPLETION**

17.1. The Contractor is to use reasonable endeavours in order to commence works on the Commencement Date.

17.2. The Contractor is to use reasonable endeavours in order to bring the Works to Practical Completion by the Estimated Date for Practical Completion, stated in Item 13 of the Schedule.

17.3. Once the Owner is of the opinion that the Works have reached Practical Completion, the Contractor may in its absolute discretion issue a Practical Completion Certificate to the Principal.

17.4. Practical Completion occurs on the date recorded on the Practical Completion Certificate.

**18. TERMINATION**

18.1. Preservation of other rights

(a) If a party breaches or repudiates the Agreement, nothing in this clause 18 will prejudice the right of the other party to recover damages, or exercise any other right or remedy.

18.2. Termination by frustration

If the Agreement is frustrated:

(a) The Contractor shall issue a Payment Claim for Works carried out to the date of frustration, evidencing the amount which would have been payable had the Agreement not been frustrated and had the Contractor been entitled to and made a progress claim on the date of frustration;

(b) The Principal shall pay the Contractor:

(i) The amount due to the Contractor;

(ii) The cost of materials and equipment reasonably ordered by the Contractor for the Works and which the Contractor is liable to accept.

(iii) The costs reasonably incurred with respect to:

(A) Removing Temporary Works and Construction Plant;

(B) Returning to their place of engagement the Contractor, consultants, subcontractors and their respective employees engaged in the Works at the date of frustration; and

(C) By the Contractor in expectation of completed the Works and not included in any other payment.

(c) For the purpose of this sub-clause and without limiting the ordinary common law definition of the principle of “frustration”, this Contract shall be frustrated where its performance is rendered wholly impossible or becomes essentially and fundamentally different from that contemplated by the Agreement, as a result of circumstances which are not within the control of any party and which are not foreseen by the parties at the time of the Agreement.

18.3. Default by the Principal

(a) If the Principal defaults in one or more of the following respects:

(i) fails to make payment of any tax invoice, Payment Claim in accordance with clause 9, or any other amounts due to the Contractor under the Agreement;

(ii) fails to rectify a cause of suspension under clause 13.

(iii) obstructs the Contractor from preforming the Works;

(iv) fails to effect or maintain insurance required under Clause 15 the Agreement; or

(v) wholly or partly suspends the Works, not in accordance with Clause 13 of this Agreement.

(vi) fails to agree on the estimated value of any Variation in accordance with Clause 12 of this Agreement;

(vii) fails to comply with any of the Statutory Requirements;

(viii) unreasonably delays any action, approval, direction, determination or decision which is required by the Contractor;

(ix) commits an Insolvency Event;

(x) takes any part of the Works out of the hands of the Contractor;

(xi) suspends Works under the Head Contract;

(xii) terminates the Head Contract, for any reason;

(xiii) breaches any Environmental Laws;

(b) the Contractor may, by written notice to the Principal:

(i) if possible, remedy the Principal’s breach at its own cost and recover all actual costs as a liquidated debt from the Principal; or

(ii) suspend the Works until such time as the breach has been remedied; or

(iii) terminate this Agreement.

(c) If the Principal defaults in one or more of the respects outlined in clause 18.3 and the Contractor has previously issued a notice to the Principal under clause 18.3, the Contractor may, by written notice to the Principal terminate the Agreement

18.4. Insolvency Event

(a) For all purposes the Principal is deemed to have committed an Insolvency Event if the Principal does any of the following:

(i) stops or suspends payment of its debts, or if the Contractor suspects, on reasonable grounds, that the Principal is unable to pay its debts as they fall due; or

(ii) ceases, or threatens to cease, carrying on its business; or

(iii) commits an act of bankruptcy, becomes the subject of a bankruptcy petition, or is declared bankrupt; or

(iv) calls a meeting of creditors, or the Principal proposes to enter into a composition or scheme of arrangement for the benefit of its creditors (except for the purposes of reconstruction to which the Contractor has consented); or

(v) has a mortgagee seek to exercise a right of possession, management or control over the whole or a part of the Principal‘s property; or

(vi) has execution or other processes levied against it by creditors; or

(vii) fails to comply with a statutory demand (within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth)); or

(viii) has a winding up order made against it or (except for the purposes of reconstruction to which the Contractor has consented) passes, or attempts to pass, a resolution for winding up; or

(ix) takes, or has taken, or instituted against it, an action or any Court or Tribunal proceedings, whether voluntary or compulsory, which has the object of, or which may result in, the winding up of the Principal (except for the purposes of reconstruction to which the Contractor has consented); or

(x) is a party to the appointment of, or has an Official Manager, Receiver, Receiver and Manager, Trustee, Administrator, Liquidator, Provisional Liquidator or other Controller (as defined in the *Corporations Act 2001* (Cth)) or similar appointee appointed to the whole, or a part of, its property or undertaking;

(xi) is the subject of anything analogous, or with a substantially similar effect, to any of the events specified in clauses 18.5(c) to clause (viii); or

(xii) provides a statement to the Contractor, which is incorrect or misleading in any respect, makes a representation, or provides any statement or declaration to the Contractor as to any matter connected with the Principal’s financial status or solvency, which is incorrect or misleading in any respect.

18.5. Provisions on termination

(a) If the Contract is terminated under clause 18.3, or the Contractor has terminated the Contract due to repudiation by the Principal, without prejudice to any other rights or remedies the Contractor may have:

(i) The Principal must pay any money due and payable under the Contract to the Contractor immediately including but not limited to:

(A) The value of any unpaid Works and the costs of the Materials properly ordered and intended for the incorporation in the Works for which the Contractor has paid, or is legally bound to pay; and

(B) The reasonable cost of removal from the Site of the Contractor’s tools, temporary buildings, plant and Materials.

(ii) The Principal indemnifies the Contractor against all Losses suffered or incurred by the Contractor arising out, of or connected with, such termination.

(b) This clause 18 survives termination or expiration of the Agreement.

**19. SETTLEMENT OF DISPUTES**

19.1. Notice of Dispute

If a Dispute arises between the Principal and the Contractor, either party may issue a Notice of Dispute, in writing, to the other party. The Notice of Dispute must identify the particulars of the Dispute.

19.2. The Parties agree that Clause 19 does not apply to:

(a) disputes relating to payment obligations of the Principal which arise under Clause 9 of this Agreement; and

(b) Any notice issued under Clause 18 of this Agreement.

19.3. Conference

Within ten-(10) Business Days after receiving a Notice of Dispute under clause 19, representatives of the Parties must confer at least once, in an effort to resolve the Dispute. All aspects of such conference(s) will be privileged and without prejudice to each Parties’ rights under this Agreement, other than the fact that such conference(s) occurred.

19.4. Expert Determination

If the Dispute is not resolved within twenty-(20) Business Days of service of the Notice of Dispute issued under clause 19, the Dispute may be determined by a Court of competent jurisdiction.

19.5. Court

Nothing will prejudice the right of a party to institute proceedings in a Court of competent jurisdiction to enforce a payment, which is due under the Agreement, or seek urgent or injunctive relief.

19.6. The Parties must continue to perform all of their obligations under this Agreement whilst any dispute resolution is on foot, including payment of monies and (if applicable) following any direction which may be the subject of the dispute.

19.7 The principal must not

**20. CHARGE OVER PROPERTY OF THE PRINCIPAL**

20.1. To the extent that any monies remain outstanding between the Principal and the Contractor, that indebtedness shall constitute a charge over any personal or real property held by the Principal and such charge may be registered by the Contractor as a charge and constitutes for the Contractor a caveatable interest and/or an interest under the *Personal Property Security Act*. The Principal shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where the Contractor registers such interest pursuant to this Agreement. This chargeable interest accrues and is applicable under the Real Property Act 1900 (NSW) and applicable interstate land registration statute and under the Common Law.

**21. PPSA**

21.1. The Contractor agrees that the terms of this Contract may constitute one or more Security Interests for the purpose of the PPSA and that:

(a) to perfect any such Security Interest the Contractor may register a financing statement(s) on the Personal Property Securities Register;

(b) the Contractor shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135 142 and 143 of the PPSA;

(c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA;

(d) the Principal waives its right to receive notice of a verification statement under section 157 of the PPSA; and

(e) the Principal must, promptly on request by the Contractor, provide any such information and execute and deliver any such documents as the Contractor may reasonably require to protect the Security Interests granted to the Contractor by the Principal under or in relation to this Contract.

**22. ASSIGNMENT, CONTRACTING AND NOVATION**

22.1. The Contractor may sub-contract, assign its rights and benefits under the Contract and the Principal must do all things necessary to effect an assignment of the Contractor’s rights.

22.2. To the extent that any provision of the Contract provides for the Contractor carrying out or completing any part of the Works, the Contractor may have that work carried out by a third party.

**23. ERRORS, OMISSIONS, AMBIGUITIES OR DISCREPANCIES**

23.1. If either party becomes aware of an error, omission, ambiguity or discrepancy in the Agreement it must give written notice to the other party of the error, omission, ambiguity or discrepancy, as soon as possible. The Principal must issue written instructions to the Contractor explaining, determining or correcting any such errors, omissions, ambiguities or discrepancies.

23.2. If the Contractor becomes aware of an error, omission, ambiguity or discrepancy in the Agreement, the Contractor must not commence the affected Works until the Principal has issued written instructions to the Contractor in accordance with this clause 230.

**24. GST**

24.1. GST

(a) If a taxable supply is made under, or in connection with, the Agreement, the consideration payable for that supply, unless expressly stated to include GST, will be increased by an amount equal to the GST payable and, subject to clause 24.10 (b) the supplier must issue a tax invoice to the recipient.

(b) A party will not be obliged to pay any amount in respect of GST to the other party unless and until a tax invoice that complies with the GST legislation has been issued in respect of that GST. Each party agrees to do all things, including providing invoices or other documentation that may be necessary and desirable to:

(i) Enable or assist the other party to claim input tax credits to the maximum extent possible; or

(ii) Itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Agreement.

24.2. For the purposes of this Agreement, GST means the tax payable on taxable supplies under the GST legislation which is referrable to the *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax. Any terms defined in GST legislation will have the meaning given to them in GST legislation.

**25. RETENTION OF TITLE CLAUSE**

25.1. Where any Works or Materials have been or are to be supplied by the Contractor, title in the Works or Materials shall remain in the Contractor until such time as full payment for the Works or Materials is received.

25.2. The equipment supplied to the Site by the Contractor shall always remain the property of the Contract and shall title in the equipment supplied to the Site by the Contractor shall never pass to the Principal.

25.3. The Contractor’s staff or agents may enter any premises where Works or Materials are located in order to take possession of those at any reasonable time after the due date for payment for the particular Works or Materials or any Works or materials has passed.

25.4. The Principal must pay all costs associated with recovery and/or reception of unpaid Works or Materials.

25.5. This retention of title clause shall constitute a chargeable security interest in favour of the Contractor pursuant to the PPSA and a purchase monies securities interest (PMSI) pursuant to the PPSA.

**26. NOTICES**

26.1. A notice (and other documents) shall be deemed to have been given if addressed or delivered by hand, mail, electronic mail or facsimile to the relevant address or last communicated in writing to the person giving the notice.

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

(a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

 (b) in the case of posting, 3 Business Days after dispatch;

(c) in the case of facsimile, when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily;

(d) in the case of electronic mail, the earlier of a human-generated response acknowledging receipt of the email or the expiration of 12 hours after sending the email.

26.3. The Principal and the Contractor will each notify the other in writing of a change of address as soon as practicable.

**27. APPLICABLE LAW / JURISDICTION**

27.1. The Agreement is to be governed by and construed in accordance with the law of New South Wales mentioned in the Details.

27.2. The Parties submit to the exclusive jurisdiction of the Courts of New South Wales and the Courts of Appeal from them.

**28. SPECIAL CONDITIONS**

This Agreement may only be amended in writing and any such amendments shall be attached to this Agreement as Special Conditions at Annexure G to this Agreement.

**29. WAIVER**

29.1. Except as provided at law or in equity or elsewhere in the Agreement, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Contractor in each instance.

29.2. No waiver of a breach of any provision of this Agreement constitutes a waiver of any other breach or any other provision.

**30. FORCE MAJEURE**

30.1. Where an event of *force majeure (i.e. an act of god)* occurs, the party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other party giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing that party from, or delaying that party in performing its obligations under this Agreement and that party must use its reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance of the Agreement and to fulfill its obligations under the Agreement.

30.2. An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event.

**31. FURTHER ASSURANCE AND GOOD FAITH**

31.1. Each party must promptly at its own cost do all things (including but not limited to executing all documents) necessary or desirable to give full effect to this Agreement.

31.2. Each Party must act in good faith, honestly and reasonably in the performance of its obligations under this Agreement with the object of achieving the commercial efficacy intended under this Agreement.