

## 1. Parties

**Orora Ltd ABN 55 004 275 165** of 109 Burwood Road Hawthorn VIC 3122 (**Orora**) and its subsidiaries, affiliates and related bodies corporate; and **Contractor** as detailed in the Contract Particulars.

## 2. Definitions

**Chain of Responsibility Legislation** means any Commonwealth, State or Territory law based on or adapted from the model *Road Transport Reform (Compliance and Enforcement) Bill 2003* (Cth) as in force in the Commonwealth or in any Australian State or Territory.

**Commencement Date** means the date specified in the Contract Particulars.

**Contract** means this document together with any documents listed in the Contract Particulars. In the event of inconsistency, the order of priority specified in the Contract Particulars shall apply.

**Contract Manager** means the person named in the Contract Particulars or any replacement nominated by Orora.

**Contract Particulars** means the particulars set out at the end of this document.

**Contract Sum** means:

- (a) where there is a lump sum in the Contract Particulars, that lump sum;
- (b) where there are rates in the Contract Particulars, the sum ascertained by multiplying those rates by the quantity of work properly performed in accordance with this Contract; or
- (c) where there are both rates and lump sums in the Contract Particulars, the aggregate of the sums referred to in paragraph (a) and (b),

as adjusted under this Contract.

**Defects Liability Period** means the period specified in the Contract Particulars.

**Dispute** is defined in clause 26.1.

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

**Site** means the location(s) specified in the Contract Particulars or as otherwise notified by Orora from time to time.

**Taxes** means any present or future tax, withholding tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) imposed by any government or other taxing authority in respect of any payment under this Contract, but does not include GST.

**Termination Date** means the date specified in the Contract Particulars.

**Services** means the services specified in the Contract Particulars and all work, products/equipment, delivery, installation, commissioning, testing and documentation which is necessary or incidental to those Services.

## 3. Appointment and term

- 3.1 Orora has agreed to appoint the Contractor to provide the Services on the terms set out in this Contract, with effect from the Commencement Date.
- 3.2 This Contract shall terminate on the Termination Date, unless terminated earlier, or extended by mutual agreement of the parties in writing.

## 4. Performance of Contract

- 4.1 The Contractor must perform the Services in accordance with this Contract to the satisfaction of the Contract Manager.
- 4.2 The Contractor must:

- (a) comply with the requirements of all laws (including ordinances, regulations and by-laws) and of all authorities in any way relating to the Site or the Services;
- (b) obtain all permits and pay all fees required for the performance of the Services and keep Orora indemnified against all fines, penalties, losses or damages incurred by reason of a breach of clause 4.2(a); and
- (c) comply with all relevant codes and standards, including Australian Standards.

- 4.3 Where there is a procedure for obtaining accreditation in relation to provision of the Services, then the people providing the Services must be accredited and the Services must be provided to the standard required by the accreditation body.
- 4.4 The Contractor will have no entitlement as a consequence of any change in the requirement of any thing or body referred to in clause 4.2.
- 4.5 The Contractor must not subcontract any of the Services without the written approval of the Contract Manager. The Contractor will:
  - (a) be liable for the acts and omissions of subcontractors as if they were the acts and omissions of the Contractor; and
  - (b) not, by subcontracting the Services, be relieved of any of its obligations or liabilities under this Contract.
- 4.6 The Contractor may only work on the Site during the working hours identified in the Contract Particulars unless the Contract Manager agrees otherwise in writing.
- 4.7 The Contractor must promptly advise in writing whether it considers that providing the Services in accordance with this Agreement would involve a breach of the Chain of Responsibility Legislation and, if so, any amendments required so as not to breach that law.

## 5. Liability

- 5.1 Subject to clause 5.2, the Contractor indemnifies Orora and its officers, employees, agents and contractors against:
  - (a) any cost, loss, damage or expense arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against Orora, the Contract Manager or any officer, employee, contractor or agent of Orora; or
  - (b) any cost, loss, damage or expense suffered or incurred by Orora in respect of personal injury to or death of any person; or loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property),
 arising directly or indirectly out of or as a consequence of the performance or non-performance of the Services by the Contractor, its employees, agents or subcontractors.
- 5.2 The indemnity in clause 5.1 does not apply to the extent that the cost, loss, damage, expense, injury, or death is caused by any breach by Orora of any provision of this Contract or any negligent act or omission of Orora, the Contract Manager or any employee, contractor or agent of Orora.

## 6. GST and taxes

- 6.1 Unless otherwise stated, all prices and other amounts specified in this Contract (other than in the calculation of Consideration) are exclusive of GST but inclusive of all other Taxes. Where GST is payable in respect of any such amount, the parties must comply with this clause 6.
- 6.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

- 6.3 No payment is required until the Contractor has provided a valid Tax Invoice or Adjustment Note as the case may be to Orora.
- 6.4 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- 6.5 Where the Contractor makes or gives Contractor Allowances and other Adjustment Events occur in respect of amounts paid or payable by Orora under this Contract, the Contractor must promptly issue any Adjustment Notes that may be required under the GST Law. If the amount of GST is to be reduced, the Contractor must refund to Orora any GST Orora has overpaid.
- 6.6 Clause 6 will continue to apply after expiration or termination of this Contract.
- 6.7 Expressions used in this clause have the same meanings as when used in the GST Law.

## **7. Contract documents**

- 7.1 Any documents provided by Orora to the Contractor remain the property of Orora and must be returned on written demand from the Contract Manager.
- 7.2 The Contractor must supply to Orora the number and format of documents as outlined in the Contract Particulars
- 7.3 Inspection or review by the Contract Manager of any drawings, plans or specifications supplied by the Contractor does not:
- constitute an approval, endorsement, or acknowledgment by the Contract Manager that the drawings, plans or specifications, or the works to which they relate, comply with this Contract; or
  - affect any warranty given by the Contractor under clause 18.1.

## **8. Latent conditions**

- 8.1 The Contract Sum includes all costs of overcoming all conditions on or within the Site (including any prior work by others) which could have been contemplated by a competent contractor who had examined all information made available by Orora to the Contractor for the purpose of making an offer to perform the Services, obtained and examined all information reasonably obtainable from authorities by the making of reasonable enquiries, and inspected the Site and its near surrounds.
- 8.2 If the Contractor becomes aware of a condition on or within the Site (including any prior work by others) which could not have been contemplated under clause 8.1, it must promptly, and before disturbing the condition, give the Contract Manager written notice including full particulars of the condition. The Contract Manager may then give a direction for a Variation under clause 10.4. The Contractor will have no entitlement in relation to such a condition if it fails to comply with this clause.

## **9. Invoices and payment**

- 9.1 The Contractor shall claim issue invoices for Services performed, in accordance with the invoice frequency outlined in the Contract Particulars. Each invoice shall be given in writing to the Contract Manager and shall include Orora's purchase order or contract number, the type and value of Services performed, payments already received and payments already claimed but not yet received and any other relevant details of other moneys then due to the Contractor under this Contract.
- 9.2 Orora will pay invoices as per the terms in the Contract Particulars, or if not specified, within 62 days of the end of the month of invoice.

- 9.3 If the Contract Sum, or any alteration to it, is calculated using rates, the rates:
- will be applied to the services properly performed by the Contractor in accordance with this Contract, as measured by the Contract Manager; and
  - will not be adjusted for rise and fall.
- 9.4 The making of a payment under this Contract is a payment on account only. It is not an admission of the value of the services, of liability, or that the services have been performed satisfactory.
- 9.5 Without limiting Orora's rights under any provision in this Contract, Orora may deduct from any sums due to the Contractor any sum which Orora asserts is or may become payable by the Contractor to Orora, whether or not:
- Orora's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
  - the factual basis giving rise to Orora's right to payment arises out of this Contract, any other contract, or is independent of any contract.
- 9.6 Nothing in this clause affects Orora's right to recover from the Contractor the whole of any sum or any balance owing.

## **10. Variations**

- 10.1 A Variation means:
- a change in the character or quality of the Services;
  - an increase or decrease in the scope of the Services, including for the purpose of retaining a third party to perform the part of the Services omitted (in which case there will be no liability to the Contractor for loss of profit),
- but does not include any work to overcome a breach, act or omission of the Contractor.
- 10.2 The Contract Manager may give the Contractor notice of a proposed Variation. The Contractor shall, as soon as practicable after receiving such notice, notify the Contract Manager whether the proposed variation can be effected.
- 10.3 Within 10 Business Days of the notice of the proposed Variation, the Contractor must submit an estimate of the effect of the proposed Variation on the Contract Sum:
- in the form required by the Contract Manager; and
  - accompanied by a detailed explanation of the basis for that estimate including relevant cost information such as vendor pricing for materials and estimated quantities of plant, materials and labour required.
- 10.4 The Contract Manager may then direct the Contractor to perform the Variation on the basis of the estimate provided, and the Contractor must perform the Variation (except to the extent it would violate relevant laws or government consents).
- 10.5 Unless the Contractor and Orora have agreed a Variation pursuant to this clause 10, the Contractor is barred from making any claim in relation to a Variation or alleged Variation and will have no entitlement to any extra payment as a consequence of performing an alleged Variation or the work the subject of the alleged Variation.
- 10.6 No Variation will vitiate this Contract and the Contractor must not vary the Services except in accordance with this clause 10.

## **11. Defects Liability Period**

- 11.1 At any time up to ten Business Days after the expiry of the Defects Liability Period, the Contract Manager may direct the Contractor to rectify an omission or defect in the Services. The Contractor must comply with any direction within the time stated in the direction, or if no time is stated, then promptly.
- 11.2 If the Contractor fails to comply with a direction given under clause 11.1, or where the rectification work is required urgently,

Orora may perform the services or have the services performed by others. The cost, loss, damage or expense suffered or incurred by Orora of having the services performed will be a debt due from the Contractor to Orora.

## **12. Title and Risk**

- 12.1 Without prejudice to any right of rejection or other rights which Orora has, title to and risk of loss in any materials associated with the Services will pass to Orora on delivery by the Contractor to the Site.

## **13. Provision of the Site**

- 13.1 Providing the insurances are provided as per clause 17; Orora must give the Contractor non-exclusive access to those parts of the Site as are necessary for the performance of the Services from time to time, or for carrying out rectification work.
- 13.2 The Contractor acknowledges that access given under this clause will not be exclusive and that there may be other persons accessing the Site for any purpose (including for the purpose of performing work on the Site). The Contractor must co-operate with those people and may not make any claim against Orora as a consequence of any person being on the Site.
- 13.3 The Contractor must:
- (a) make good at its own cost all fencing, roads, footpaths and any other places or surfaces which are disturbed by the performance of the Services; and
  - (b) keep the Site and adjacent areas clean and tidy during the performance of the Services and remove from the Site all rubbish, debris and waste resulting from the performance of the Services.
- 13.4 The Contractor must at its cost take all measures necessary to protect people and property at the Site, including avoiding unnecessary interference with the passage of people and vehicles and preventing nuisance and unreasonable noise and interference. If there is a possibility that any person may be injured by access to any part of the Site, the Contractor must take whatever steps are necessary to restrict access to that part of the Site.

## **14. Occupational Health and Safety and Environment**

- 14.1 The Contractor is responsible for the management of all occupational health, safety and environmental (OHS&E) matters which may arise in performing the Services, and must take all necessary precautions to prevent any harm, damage or nuisance to the environment.
- 14.2 The Contractor must ensure that the Services are performed in accordance with all applicable OHS&E standards, legislation, permits, and industry codes of practice.
- 14.3 All employees, agents or subcontractors of the Contractor attending any Orora site must comply with any policies, procedures or manuals implemented by Orora from time to time, and with any reasonable written or oral instructions given by site management.
- 14.4 The parties shall meet regularly to discuss OHS&E issues.
- 14.5 The Contractor shall provide on request a copy of their safety management system consisting of:
- (a) OHS&E Policy;
  - (b) roles and responsibilities of Contractor personnel for the Site, and records of relevant skills, competencies, and qualifications;
  - (c) WorkCover certificates of personnel working on site;
  - (d) safe work method statements or job safety analysis (JSA); and
  - (e) where the Contractor will be working on site for an extended period of time and the Contract Manager so requests, a Site specific safety plan.

- 14.6 All persons carrying out work at the Site must have completed the site specific safety induction program and, if performing construction work, meet the legislative training requirements. Workers will not commence work on site until they have received the minimum requirements for OHS&E induction training.

## **15. Non conforming services**

- 15.1 If the Contract Manager is of the opinion that any Services have not been performed satisfactorily, or detects any defects or omissions in the Services, then the Contract Manager may direct the Contractor at the Contractor's expense and within the time directed by the Contract Manager to:
- (a) remove, rectify or replace any defective work;
  - (b) perform any omitted or unsatisfactory Services; and
  - (c) make good all damage, loss or injury caused by the Contractor.
- 15.2 If:
- (a) the Contractor fails to comply with such a direction; and
  - (b) that failure has not been made good within 8 days after the Contractor receives written notice from the Contract Manager that Orora intends to have the subject work rectified by others,
  - (c) Orora may have that work so rectified and the Contract Manager shall certify the cost incurred as moneys due from the Contractor to Orora.
- 15.3 Nothing in this Contract prevents Orora, either directly or through a third party, from rectifying or replacing defective work or performing omitted Services and recovering from the Contractor any incurred expenses or damages. For the avoidance of doubt, action taken by Orora that is consistent with this clause 15 does not in any way affect the liability of the Contractor or break the chain of responsibility in relation to the defective or omitted work.

## **16. Testing**

- 16.1 Unless the Contract Particulars contain an inspection and test plan (ITP) for the Services (and the results of the Services), the Contractor must, if directed by the Contract Manager, provide to the Contract Manager an ITP that is consistent with and incorporates the requirements of this Contract, the Contractor's quality control system, relevant law, government consents and applicable codes and standards. The Contract Manager may direct changes to the ITP submitted by the Contractor, and the Contractor must incorporate such changes at its cost until the Contract Manager is satisfied that the ITP complies with this clause 16.1.
- 16.2 Tests of the Services (or the results of the Services) must be conducted in accordance with this Contract, the approved ITP and the directions of the Contract Manager.
- 16.3 The party obliged to carry out a test or requiring a test to be undertaken must give the other party at least 24 hours notice of the time that the test will be undertaken, and the test may proceed at that time even if the other party does not attend, unless otherwise directed by the Contract Manager.
- 16.4 Subject to clause 16.6 and clause 16.7, the costs of and incidental to tests are deemed to be included in the Contract Sum unless the test:
- (a) is not specified in the approved ITP and is directed by the Contract Manager; or
  - (b) is carried out by the Contractor under clause 16.5, and the test shows that the Services tested are in accordance with this Contract.
- 16.5 Without prejudice to any other right, if a party delays in conducting a test, the other party may conduct the test, after giving reasonable notice to the delaying party.
- 16.6 Results of tests must be made available promptly to each party and to the Contract Manager. If a test reveals that any Services

rendered were not in accordance with this Contract, the Contractor must promptly re-perform the services and retest, at no cost to Orora.

- 16.7 A party may require that a test be repeated and must bear the costs of the repetition unless the repeat of the test does not confirm the previous test.
- 16.8 All test equipment must be maintained, calibrated and certified to the standards of operation and calibration prescribed by applicable codes and standards, or where no such code or standard exists, to the standard prescribed by the manufacturer. If requested by the Contract Manager, the Contractor must provide written evidence that test equipment has been calibrated and certified in accordance with this clause 16.8.

## **17. Insurance**

- 17.1 The Contractor must take out and maintain the following policies of insurance, on terms and with reputable insurers approved by the Contract Manager, from the Site Commencement Date until the Date of Practical Completion:
- (a) public liability insurance to the amount in the Contract Particulars in respect of accidental damage or loss to any property and accidental injury (including death) to any person arising out of the performance of the Services and in respect of product liability;
  - (b) workers' compensation insurance as required under workers' compensation legislation; and
  - (c) if stipulated in the Contract Particulars, construction plant and equipment insurance in respect of the replacement value of all constructional plant, equipment and supplies including temporary works and materials not for incorporation, used or to be used by the Contractor in connection with this Contract.
- 17.2 The insurances referred to in clause 17.1(a) must extend to include Orora as an insured or, where this is unobtainable, contain an agreement by the insurer to waive all rights of subrogation against Orora.
- 17.3 The Contractor must, prior to commencing work on Site, and on demand by the Contract Manager, produce sufficient evidence that the insurances required under clause 17.1 have been effected and are current. If the Contractor fails to do so, Orora may itself effect the insurance. The cost of doing so and maintaining such insurance will be a debt due from the Contractor to Orora.

## **18. Warranties**

- 18.1 The Contractor warrants that the Services (and the results of those Services) will:
- (a) meet all requirement set out in this Contract;
  - (b) strictly conform to any description or sample provided to Orora by the Contractor;
  - (c) be of merchantable quality and fit for any purpose which Orora makes known to the Contractor (expressly or impliedly) or for which the Services are commonly supplied;
  - (d) be performed with due care and skill and by appropriately qualified and trained personnel;
  - (e) be safe and free from defects in design, material and workmanship;
  - (f) be free from all security interests of third persons (and that the Contractor has good title thereto) and will not be subject to any security interests in favour of the Contractor (or any of its related bodies corporate) arising under this Contract or otherwise;
  - (g) not infringe the intellectual property rights of any third person;

18.2 The Contractor warrants that it understands and has been compliant with, and will continue to act in compliance with, the Chain of Responsibility Legislation.

- 18.3 The representations and warranties set out in this clause 18 are in addition to any other warranties or guarantees contained in any relevant request for quotation or implied by law (including Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or otherwise provided by the Contractor. Notwithstanding any other rights which Orora may have under this Contract or at law, if the Contractor breaches any of the warranties set out in this clause 18, Orora may at its option:
- (a) require the Contractor to perform the Services again, at the Contractor's cost and within a reasonable time; or
  - (b) terminate this Contract and require the repayment by the Contractor of any amounts which it may have made pursuant to this Contract.

## **19. Release and indemnity**

- 19.1 The Contractor hereby indemnifies, releases and holds Orora, its directors, officers, employees, related bodies corporate and agents harmless from and against all actions, claims, charges, costs (including those incurred by Orora resulting from a product recall), expenses (including legal fees), losses, damages and other liabilities whatsoever arising directly, indirectly or consequentially out of or otherwise in connection with:
- (a) a breach of this Contract by the Contractor;
  - (b) a breach of any formal written agreement between the Contractor and Orora;
  - (c) the Contractor's negligent act or omission;
  - (d) a breach of any of the warranties set out in clause 18; or
  - (e) any other conduct, act or omission by the Contractor in connection with the Services.
- 19.2 The indemnity in clause 19.1 does not apply to the extent that the loss, damage, injury, death, cost or expense is caused by any breach by Orora of any provision of this Contract or any negligent act or omission of Orora, the Contract Manager or any employee, contractor or agent of Orora.

## **20. Confidentiality**

- 20.1 Both parties must keep confidential any information relating to or contained in this Contract, or made available to them in accordance with this Contract or any related agreement, or acquired while performing the Services.
- 20.2 Confidential information may be disclosed to a party's employees, agents, and contractors on a need-to-know basis for the purposes of performing this contract. All such recipients must agree to keep such information confidential.
- 20.3 Confidential information does not include information that a recipient can prove was in the public domain, has entered the public domain other than by a breach by the recipient, or was already in the recipient's possession.
- 20.4 A party may disclose confidential information if required by law or the requirements of a stock exchange, but must take all reasonable steps to notify the other party before disclosure.
- 20.5 These obligations of confidence shall continue in effect for two years after termination of this Contract.
- 20.6 If required in writing by a party, the other party shall enter into a separate confidentiality agreement. If so required by the Contractor, Orora shall ensure that the Contract Manager also enters into such an agreement.

## **21. Force majeure**

- 21.1 Neither party shall be liable to the other for default or delay in performing its obligations under this Contract caused by any occurrence beyond its reasonable control, including fire, strike, lock-out, industrial disturbance, riot, war, act of God and

governmental order or regulation (**Force Majeure**), provided that the party affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence, and takes reasonable steps to mitigate and overcome the event of Force Majeure.

## 22. Intellectual Property

- 22.1 Title to, copyright in and other intellectual property rights in any documents or other property created by the Contractor for or in connection with the Services (**Contractor's Documents**) shall remain with the Contractor.
- 22.2 The Contractor grants or shall procure the granting to Orora and its related bodies corporate of a royalty free, irrevocable licence to use the Contractor's documents in connection with any subsequent maintenance, use or servicing of (including the supply of replacement parts) or additions, repairs, renovations in connection with the Services, or to any similar or comparable works used by Orora or a related body corporate of Orora and to copy the Contractor's documents for such purposes.
- 22.3 The Contractor shall indemnify Orora in respect of any loss, damage, expense, claim or liability suffered or incurred by Orora as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Services.

## 23. Media

- 23.1 Neither party may make any public announcement or disclosure in relation to this Contract or any of its terms (except as required by any applicable law or regulatory requirement), without the prior written consent of the other party.

## 24. Suspension

- 24.1 Orora has the right, at any time and for any reason, to suspend this Contract or any part of this Contract by notice to the Contractor. When the Contractor receives a notice of suspension from Orora, the Contractor must suspend this Contract until such time as Orora directs this Contract is no longer suspended. At such time, the Contractor must promptly recommence the performance of its obligations under this Contract. Where the suspension of this Contract is not a result of any default or action on the Contractor's part, Orora will reimburse the Contractor for the verified reasonable additional costs the Contractor incurred as a direct consequence of the suspension.

## 25. Termination on default, insolvency and without cause

- 25.1 Each party may terminate this Contract immediately by 10 days notice in writing to the other party if that other party experiences any of the following (each an **Insolvency Event**):
- is insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - is presumed by a court to be insolvent by reason of section 459C(2) of the *Corporations Act*;
  - fails to comply with a statutory demand (within the meaning of section 459F(1) of the *Corporations Act*);
  - has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
  - has a controller within the meaning of section 9 of the *Corporations Act* or similar officer appointed to all or any of its assets or undertaking; or
  - has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

- 25.2 Orora may terminate this Contract immediately by 10 days notice in writing if:
- subject to clause 21, the Contractor stops or suspends or threatens to stop or suspend the Services;
  - the Contractor is subject to a change in control;
  - the Contractor engages in any act of dishonesty or fraud; or
  - the Contractor is not in compliance with Orora's Corporate Code of Conduct and Ethics Policy.

- 25.3 For the purpose of clause 25.2(b), a change in control will be deemed to occur if:

- the Contractor becomes a subsidiary of a person, of which it was not a subsidiary at the Commencement Date; or
- a person becomes entitled to 50% or more of the shares or stock (as to votes or paid up value) of the Contractor, having been entitled to less than 50% of the shares or stock (as to votes or paid up value) of the Contractor at the Commencement Date; or
- a person is able to directly or indirectly control the Contractor where that person was not able to control the Contractor at the Commencement Date.

In this clause 25.3, "control" has the meaning given to it in section 50AA of the *Corporations Act*.

- 25.4 If the Contractor commits a breach of any obligation in this Contract, Orora may give the Contractor written notice (**Notice of Default**), specifying the breach and the date by which the Contractor must rectify the breach.

- 25.5 If the Contractor fails to rectify the default within the time specified in the Notice of Default, Orora may, by notice in writing, do either or both of the following:

- suspend payments due or which may become due under this Contract; and
- either:
  - immediately take over the incomplete Services (including any constructional plant, equipment and unincorporated materials of the Contractor at the Site) and at its option have the Services completed by itself or others; or
  - terminate this Contract, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Contractor had wrongfully repudiated this Contract.

- 25.6 If Orora exercises the power in clause 25.5(b)(i) then, when the Services have been completed, the Contract Manager must calculate the difference between:

- the additional cost of having the Services completed by itself or others, and any other loss, cost, damage or expense suffered or incurred by reason of the Contractor's default; and
- the amount of suspended payments and security called on by Orora.

If the calculation results in a shortfall to Orora, the Contractor must pay the amount of the shortfall to Orora within five Business Days of a written demand for payment and Orora may retain the Contractor's constructional plant, equipment and unincorporated materials until the debt is paid. If the debt is not paid Orora may sell the Contractor's constructional plant, equipment and unincorporated materials and apply the proceeds of sale to the outstanding debt.

- 25.7 Orora may exercise any power under clause 25.5 if the Contractor experiences an Insolvency Event, in which case clause 25.6 will also apply.

- 25.8 Orora may terminate this Contract at any time upon providing one (1) month's written notice to the Contractor, and is not required to exercise good faith when doing so.

Upon termination under this clause 25.8, the Contractor's only right to compensation will be for that portion of the Contract Sum corresponding to the Services performed up to the time of termination, and the Contractor will not be entitled to any other form of compensation from Orora in respect of such termination.

- 25.9 Termination or expiration of this Contract does not affect any accrued rights or remedies of either party, or any provisions which are stated, or by their context are required to survive termination or expiration.

## **26. Disputes**

- 26.1 If a difference or dispute (together called a **Dispute**) between the parties arises out of or relates to this Contract or the breach, termination, validity or subject matter of it, then any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**). Notwithstanding the existence of a Dispute, all parties will continue to perform this Contract.
- 26.2 Within ten Business Days after receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged, confidential, and without prejudice save as to costs.
- 26.3 After expiration of 30 days from the giving of the written notice under clause 26.1, any party which has complied with the provisions of clauses 26.1 and 26.2, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to litigation.

## **27. Notices**

- 27.1 Unless otherwise stated in this Contract, any notices to be given by either party to the other must be in writing in English and shall be served by priority paid registered mail or facsimile transmission.
- 27.2 The particulars for delivery of notices are initially as set out in the Contract Particulars. Each party may change its particulars for delivery of notices by notice to the other party.
- 27.3 Subject to clause 27.4, a communication is given:
- if posted within Australia to an Australian postal address, three Business Days after posting;
  - if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting; or
  - if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- 27.4 If a communication is given:
- after 5.00 pm in the place of receipt; or
  - on a day which is not a Business Day in the place of receipt,
- it is taken as having been given on the next Business Day.

## **28. General**

- 28.1 The Contractor is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by the other party) on or relating to this Contract, any document executed under it or any dutiable transaction evidenced or

effected by it. If a party other than the Contractor pays any duty (including any fine, interest or penalty) on or relating to this Contract, any document executed under it or any dutiable transaction evidenced or effected by it, the Contractor must pay that amount to the paying party on demand.

- 28.2 Except as expressly stated otherwise in this Contract, Orora may conditionally or unconditionally give or withhold any consent to be given under this Contract and is not obliged to give its reasons for doing so.
- 28.3 The Contractor must not assign, novate, or otherwise deal with any of its rights or obligations under this Contract without the prior written consent of Orora.
- 28.4 This Contract applies to services performed prior to its execution.
- 28.5 This Contract may only be varied in writing signed by both parties.
- 28.6 No failure to exercise, or any delay in exercising any right, power or remedy by a party under this Contract operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 28.7 No clause in this Contract is to be construed as requiring any person to act in a manner, or to direct another person to act in a manner that is contrary to the Chain of Responsibility Legislation
- 28.8 Unless stated otherwise in the Contract Particulars, this Contract is governed by the laws of Victoria, Australia and each party will submit to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning this Contract.
- 28.9 Nothing in this Contract is intended to exclude, restrict or modify rights which Orora may have under common law, legislation or otherwise which may not be excluded, restricted or modified by Contract.
- 28.10 Any provision of this Contract that is deemed illegal or unenforceable in the circumstances is to be interpreted in such a manner that allows it to be read as enforceable. Where there is no such interpretation, the parts of the clause(s) that are deemed illegal are unenforceable and are to be severed from this Contract and all other provisions will remain unchanged.
- 28.11 Except as expressly stated otherwise, a party's rights under this Contract are cumulative and are in addition to any other rights.
- 28.12 This Contract contains the entire understanding between the parties as to the subject matter of this Contract. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Contract are merged in and superseded by this Contract and are of no effect. No party is liable to any other party in respect of those matters. No oral explanation or information provided by any party to another:
- affects the meaning or interpretation of this Contract; or
  - constitutes any collateral Contract, warranty or understanding between any of the parties.
- 28.13 This Contract is not intended to create a partnership, joint venture or agency relationship between the parties.
- 28.14 The meaning of general words is not limited by specific examples introduced by "including", or "for example", or similar expressions.
- 28.15 No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.