



Government of **Western Australia**
Department of **Communities**

MINOR WORKS CONTRACT

GUIDANCE NOTES FOR USE

This form of contract is primarily suited to construct only arrangements but may be adapted for use to simple design and construct arrangements if appropriate special conditions are selected. The provisions are simpler than an AS 2124 or similar.

Whilst value is not necessary indicative of project complexity, it is intended that these conditions be used for projects between \$50,000 and \$250,000. This figure is only a guide. The nature of the Work may indicate that this document is appropriate notwithstanding a contract sum in excess of \$250,000 (or below \$50,000). This will need to be considered on a case-by-case basis. For projects outside of the above guide range, or if the project is complex, high risk or unique, you should consider whether there is a more appropriate document.

The key issues to consider when using this document are:

- (a) this is a Principal administered contract (i.e. no Superintendent), however, a consultant can be appointed as principal's representative by giving notice to the relevant contractor under clause 15;
- (b) this contract is for construct only projects and will require incorporation of Special Conditions for design and construct requirements (see Special Conditions Schedule and Attachment B);
- (c) this contract contemplates the construction of works and will require incorporation of Special Conditions for demolition works (see Special Conditions Schedule and Attachment C); and
- (d) this contract contemplates COVID-19 provisions (see Special Conditions Schedule and Attachment D).



MINOR WORKS CONTRACT

Formal Instrument

Party Details

Principal: Housing Authority
5 Newman Court, Fremantle WA 6160
ABN 56 167 671 885

Contractor:¹ [Name]
[Address]
[ACN/ABN]

Contract Details

Contract Number: [insert]

Project: [insert brief description of project]

Works: The construction on the Site of [##] in accordance with this Contract

Site: [insert]

Contract Sum: [insert]
(inclusive of GST unless indicated otherwise)

BACKGROUND

- A. The Principal wishes to engage the Contractor to carry out works in connection with the Project.
- B. The scope of the parties' obligations is set out in this Contract.
- C. The parties agree to enter into this Contract for the delivery of the Works.

¹ If this entity is a trust you may need to consider additional provisions. Refer to Legal and Legislative Services.

AGREEMENT

1. In consideration of payment of the Contract Sum (as set out in this Formal Instrument), or such other sums as may be payable at the time and in the manner set forth in this Contract by the Principal, the Contractor will complete the Works as described in this Contract by the time specified in this Contract.
2. This Contract may be executed in any number of counterparts including scanned, emailed or faxed copies. Each counterpart is an original but the counterparts together are one and the same document.
3. This Contract constitutes the entire agreement between the parties and supersedes all previous agreements, undertakings and communications whether written or oral relating to the subject matter of this Contract.

This AGREEMENT is made on the ____ day of _____ in the year _____

Signed by _____)
for and on behalf of the **Housing Authority**)

.....
Signature of Housing Authority Officer

.....
Housing Authority Officer's position

[*If Contractor is a company - delete if not relevant]

Executed by **[Insert Contractor Name] ACN**)
[Insert ACN] as an agreement under s 127 of)
the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director/Company Secretary
(Delete title which does not apply)

.....
Print name in full

.....
Print name in full

[*If Contractor is an individual - delete if not relevant]

Signed by **[Insert Contractor Name] [Insert**)
ABN])

.....
Signature of Individual

.....
Print name in full

Schedule

Item	Clause		
1.	1(a)	Commencement Date	<p>.....</p> <p style="text-align: center;"><i>(if nothing stated, 14 days after the Date of Contract)</i></p>
2.	1(a)	Contract Documents (list in order of precedence)	<ol style="list-style-type: none"> 1. Formal Instrument. 2. Principal's Specifications (or Preliminary Design or Project Requirements as applicable). 3. Schedule. 4. Special Conditions. 5. General Conditions. 6. Attachment A – Procurement Conditions 7. Contractor Specifications (if applicable), Drawings. 8. 9. <p style="color: red; font-size: small;">Any additional contract documents not already included in the definition of 'Contract Documents' should be listed in order of precedence and attached to the Contract.</p>
3.	1(a)	Date for Practical Completion	<ol style="list-style-type: none"> 1. [Period in calendar days or weeks] commencing on [date period commences]
4.	1(a)	Defects Liability Period	<p>.....</p> <p style="text-align: center;"><i>(if nothing stated, 12 months)</i></p>
5.	1(a)	Warranties and Manuals	<ol style="list-style-type: none"> 1. All warranties and manuals that would reasonably be provided in a project of this nature; and 2. 3.
6.	4(a)	Contractor to provide security	<input type="checkbox"/> <input type="checkbox"/> Yes No <i>(if not ticked, no security to be provided)</i>
7.	4(a)(i)	Amount of Security	<p style="text-align: center;">Minimum of [insert percentage]% of the Contract Sum</p> <p>.....</p> <p style="text-align: center;"><i>(if nothing noted, and Item 6 is completed as 'Yes', then default is 5% of Contract Sum unless noted otherwise)</i></p>

Item	Clause		
8.	4(b)	Retention Amount	<p>(a) Ten per cent (10%) of the value of each progress payment until the amount retained equals five per cent (5%) of the Contract Sum</p> <p>(b) During the Defects Liability Period Retention Moneys shall be reduced to two and one half percent (2.5%) of the Contract Sum</p> <p>(c) bank guarantee can be provided in lieu of Retention. Five per cent (5%) of the Contract Sum. During the Defects Liability Period the Bank Guarantee shall be reduced to two and one half per cent (2.5%) of the Contract Sum.</p> <p>OR</p> <p>Not Applicable</p> <p>.....</p> <p>(if nothing noted, maximum of 5% of Contract Sum)</p> <p>If Contract Security is specified then the default "Not Applicable" remains and the itemised text should be deleted. If Retention Money is specified then delete the "Not Applicable" and keep the text in items (a), (b) and (c)</p>
9.	7(a)	Works which cannot be subcontracted without Principal approval	<p>Work under the Contract that is carried out by subcontractors, suppliers or other parties nominated by the Contractor:</p> <p>a) in its Offer for the purpose of receiving a price preference under the Buy Local Policy or the Aboriginal Enterprise and Employment Preference Policy, and</p> <p>.....</p>
10.	8(a)	Approvals, consents, permits and licences not required to be obtained by the Contractor	<p>.....</p>
11.	13(c)	Contract Works insurance – sum insured	<p>.....</p> <p>(Where not completed the total sum insured shall be the Contract Sum)</p>
12.	13(d)	Amount of Public and Product Liability	<p>.....</p> <p>(if nothing stated, \$20,000,000)</p>

Item	Clause								
		insurance cover							
13.	17(e)	Property Survey Report	<p>..... <i>(If left blank, then unless expressly stated elsewhere in the Contract, no Property Survey Report required)</i></p> <p>When completing this, insert details of the property to be surveyed. It may be adjoining properties, or a property on the site (for example). The wording of clause 17(e) requires photos. If there are any other specific requirements they should be inserted here.</p>						
14.	17(f)	Site Survey/Set Out	<p>..... <i>(If left blank, then unless expressly stated otherwise in the Contract, the Contractor is not required to survey the Site).</i></p>						
15.	23(a)	Liquidated Damages	<p>\$.....per</p> <p>This figure needs to represent a genuine pre-estimate of potential damages the Housing Authority will suffer in the event that completion of the works is delayed. Ideally a methodology for calculation of this figure should be retained on the construction file in case this figure is challenged by the contractor.</p>						
16.	27(a)	Provisional Sum Allowances	<table border="0"> <thead> <tr> <th data-bbox="619 1070 678 1099">Item</th> <th data-bbox="863 1070 1114 1099">Amount (excl GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 1122 639 1151">1.</td> <td data-bbox="639 1122 1114 1151">.....</td> </tr> <tr> <td data-bbox="619 1173 639 1202">2.</td> <td data-bbox="639 1173 1114 1202">.....</td> </tr> </tbody> </table> <p>All provisional sum allowances should be identified here.</p>	Item	Amount (excl GST)	1.	2.
Item	Amount (excl GST)								
1.								
2.								
17.	27(b)	Rate for Profit and Overhead	<p>.....</p> <p>Insert the % for profit and overheads where the work or item is valued in excess of the provisional sum amount Insert "Not Applicable" if Provisional Sums do not apply.</p>						
18.	28(a)	Period for making a Payment Claim	<p>..... <i>(if nothing stated, last Business Day of the calendar month)</i></p>						
19.	38(b)	Address for Service of Notices to the Principal	<p>By post: Attn: Email:</p>						
20.	38(b)	Address for Service of Notices to the Contractor	<p>By post: Attn: Email:</p>						

Item	Clause			
21.	42	Reports to be provided by Contractor	Report Description 1. 2. 3.	Time to be provided <i>Provide sufficient detail if applicable as to what reports are required – consider attaching pro forma template as an attachment to the Contract.</i>

Special Conditions Schedule

Where indicated below, the identified special conditions apply to this Contract and take precedence over the General Conditions of Contract to the extent of any inconsistency.

Special Condition (Design and Construct)	Applicable	Refer
Design and Construct obligations	<p>.....</p> <p>If applicable, state "Yes" and complete the below Items. Where not completed, the special condition does not apply.</p>	<p>Attachment B – Design and Construct clauses B1 to B7</p> <p>Items 2A, 2B, 3A, 12A, 12B, 12C, 12D below.</p>
If Design and Construct obligations apply, the Schedule is amended to include the following Items:		
Item	Clause	
2A	Attachment B	<p>Preliminary Design</p> <p><input type="checkbox"/> Preliminary Design included <input type="checkbox"/> Preliminary Design not included [Where not completed, a preliminary design is not included]</p> <p>Where a Preliminary Design <u>is</u> included, it is comprised of the following documents:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p style="color: red; font-size: small;">List the drawings that are the "preliminary design". It may be one or multiple.</p>
2B	Attachment B	<p>Principal's Project Requirements</p> <p>1. Preliminary Design (if included at Item 2A) 2. Other documents as follows:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p style="color: red; font-size: small;">Include all documents that are the "brief" to the contractor (which are additional to the Preliminary Design). For example, this might be a written brief outlining the performance requirement outcome.</p>

3A	5A (see Attachment B)	Supply of Documents by Contractor – documents required and timing	Documents to be provided by Contractor 1..... 2..... 3..... Times/design stage(s) documents to be provided 1..... 2..... 3.....
12A	13A(a) (see Attachment B)	Professional indemnity insurance – sum insured <i>(if nothing stated, \$1,000,000)</i> <i>Here you need to indicate which other consultants (which the Consultant engages) are required to have PI cover and to what amount. This should be reference to specific types of consultant, eg electrical, structural etc.</i>
12B	13A(b) (see Attachment B)	Professional indemnity insurance – period of insurance <i>(if nothing stated, 6 years)</i>
12C	13A(c) (see Attachment B)	Professional indemnity insurance – category of Consultants ²	1. 2. <i>(if nothing stated, all categories)</i>
12D	13A(c) (see Attachment B)	Professional indemnity insurance – sum insured - Consultants <i>(if nothing stated, the amount stated in Item 12A)</i>
Special Condition (Demolition)		Applicable	Refer
Demolition conditions	 If applicable, state “Yes”. Where not completed, the special condition does not apply.	Attachment C – Demolition Conditions
Special Condition (COVID-19)		Applicable	Refer

² Here you need to indicate which other consultants (which the Consultant engages) are required to have PI cover and to what amount. This should be reference to specific types of consultant, eg electrical, structural etc.

COVID-19 conditions If applicable, state "Yes". Where not completed, the special condition does not apply.	Attachment D – COVID-19 Special Conditions
Special Condition (Other)		
## insert any other special conditions here if applicable or state 'Not Applicable'		

General Conditions

1. Definitions and Interpretation

(a) In the Contract, except where the context otherwise requires:

Amount of Security has the meaning referred to in clause 4(a)(i);

As-Constructed Drawings means the completed as-built drawings and any records referred to in relevant specifications, and as further described in the Schedule;

Claim for Extension of Time has the meaning given to it in clause 20(b);

Commencement Date means the date identified in Item 1;

Construction Programme is a statement in writing showing the dates by which, or the times within which, the various stages or parts of the Works are to be executed or completed, including the following:

- (i) each activity in the critical path (highlighted in colour) described with a time duration clearly shown in working days;
- (ii) each activity indicating, where applicable, the amount of construction float in days allocated to each item;
- (iii) indication of earliest and latest starting and finishing dates for each activity, milestone events, logic dependencies, float times, resource levels and critical path activities;
- (iv) showing all major critical off-site activities of supply, prefabrication, testing, samples, prototypes, shop drawings and required approvals;
- (v) activities of all the Contractor's consultants, subcontractors, suppliers and the like;
- (vi) details having significant bearing on construction program achievement, including human resource requirements at each stage, intended productivity rates, proposed construction methods, plant and equipment required;

Contract means the contract between the Principal and the Contractor for the completion of the Works formed by the Contract Documents;

Contract Documents means the documents identified as a Contract Document in Item 2 as forming part of the Contract;

Contract Sum means the amount specified in the Formal Instrument;

Contractor means the entity referred to in the Formal Instrument;

Contractor's Representative means the person appointed by the Contractor under clause 16;

Date for Practical Completion means the date specified in Item 3 as extended in accordance with this Contract;

Date of Contract means the date of execution of this Contract by both parties;

Date of Practical Completion means the date certified by the Principal in a Practical Completion Certificate as the date upon which Practical Completion was achieved;

Defects Liability Period means the period from the Date of Practical Completion as described in Item 4;

Delay Event means:

- (i) any of the following events occurring on or before the Date for Practical Completion:
 - A. Inclement Weather;
 - B. industrial action (except where that industrial action is limited to the Site or specifically directed at the Contractor or any of its subcontractors);
- (ii) any of the following events:
 - A. delays caused by the Principal, the Principal's Representative or the Principal's employees, consultants, contractors (other than the Contractor) or agents;
 - B. Latent Conditions;
 - C. variations;
 - D. changes in Legislative Requirements;
 - E. breach of Contract by the Principal;
 - F. any other delay or cause which is expressly stated in this Contract to be grounds for an extension of time;

Dispute has the meaning given to it in clause 36(a);

Dispute Notice has the meaning given to it in clause 36(a);

EOT means extension of time;

Excepted Risk means:

- (i) negligent act or omission of the Principal and others for whom the Principal is responsible;
- (ii) risks expressly excluded elsewhere in the Contract;
- (iii) war, invasion, rebellion, revolution and other such activity;
- (iv) nuclear radiation or contamination; or
- (v) design defects for those aspects of the design not provided by, or required to have been provided by, the Contractor;

Final Certificate means the certificate issued by the Principal under clause 29(d);

Final Payment Claim has the meaning referred to in clause 29(a);

Formal Instrument means the formal instrument attached to these General Conditions;

General Conditions means these general conditions of contract;

Inclement Weather means rain or abnormal climate conditions (including cold, high wind, severe dust storm, extreme high temperature), the presence of which makes it unreasonable or unsafe to continue working on the Site whilst the conditions prevail;

Insolvency Event means:

- (i) Where the party is a corporation:
 - A. a receiver, receiver and manager, administrator, liquidator, provisional liquidator or similar officer is appointed to the party or any of its assets or an application is made to a court for an order to appoint any such person;
 - B. the party enters into, or resolves to enter into a scheme of arrangement, compromise or composition with any class of creditors;
 - C. where a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the party; or
 - D. the party is (or states that it is) insolvent for the purposes of section 95A of the *Corporations Act 2001* (Cth) or financially unable to proceed with the Contract
- (ii) Where the party is an individual and the party:
 - A. commits an act of bankruptcy or has a bankruptcy petition presented against him or her or presents his or her own petition;
 - B. is made bankrupt; or
 - C. makes a proposal for a scheme of arrangement or a composition, or has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtors petition or has a sequestration order made under the *Bankruptcy Act 1966* (Cth)

Item means an item in the Schedule and reference to an Item and a number means the Item of that number as located in the Schedule;

Latent Condition means any physical conditions on the Site, including without limitation, contamination and other environmental issues, artificial things, archaeology and the presence of fauna or flora or services, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the Date of Contract if a competent contractor had:

- (i) examined all information made available in writing by the Principal to the Contractor for the purpose of the Works;

- (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Works and obtainable by the making of reasonable enquiries;
- (iii) inspected the Site and its surroundings;

Legislative Requirements includes:

- (i) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Works or any part thereof is being carried out;
- (ii) standards, orders, codes and guidelines applicable to the Works;
- (iii) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works; and
- (iv) fees and charges payable in connection with the foregoing;

Notice of Likely Delay has the meaning given to it in clause 20(a);

Payment Certificate has the meaning given to it under clause 28(d);

Payment Claim has the meaning given to it under clause 28(a);

Practical Completion is that stage when:

- (i) the Works are complete except for minor omissions and minor defects:
 - A. which do not prevent the Works from being reasonably capable of being used for their intended purpose;
 - B. which the Principal determines the Contractor has reasonable grounds for not promptly rectifying; and
 - C. rectification of which will not prejudice the convenient use of the Works; and
- (ii) any tests which are required by this Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (iii) documents and other information required under this Contract which, in the opinion of the Principal, are essential for the use, operation and maintenance of the Works have been supplied to the Principal by the Contractor, including As-Constructed Drawings;

Practical Completion Certificate has the meaning given to it in clause 22(c);

Principal means the entity referred to in the Formal Instrument;

Principal's Representative means the person appointed by the Principal under clause 15(a);

Project means the project referred to in the Formal Instrument;

Retention has the meaning referred to in clause 4(b);

Retention Amount has the meaning referred to in clause 4(b)

Schedule means the schedule attached to these General Conditions;

Security has the meaning referred to in clause 4(a);

Site means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of this Contract as further described in the Formal Instrument;

Special Conditions means the special conditions set out in the Special Conditions Schedule and, if applicable, in Attachments B or C, or both;

Special Conditions Schedule means the special conditions schedule attached to these General Conditions (if any);

Tax Invoice means a tax invoice that complies with the requirements in the 'A New Tax System (Goods & Services Tax) Act 1999 (Cth)';

Warranties and Manuals means the warranties and manuals to be provided by the Contractor as set out in Item 5; and

Works means the work which the Contractor is or may be required to execute under this Contract and includes (without limitation) variations, rectification work, constructional plant and temporary works.

- (b) In the interpretation of the Contract, unless inconsistent with the context:
- (i) If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
 - (ii) The singular includes the plural and vice versa.
 - (iii) A reference to a gender includes any gender.
 - (iv) A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Contract.
 - (v) The word includes and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this Contract.
 - (vi) A reference to a document includes a variation or replacement of it.
 - (vii) A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
 - (viii) A reference to this Contract includes an annexure.
 - (ix) A reference to person includes a reference to:
 - A. an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity;
 - B. if the person is an individual, the person's personal representatives and assigns; and
 - C. if the person is not an individual, the person's successors and assigns.

- (x) A reference to a thing, including a right, is a reference to either the whole thing or a part of the thing.
- (xi) Part performance of an obligation does not constitute performance of an obligation.
- (xii) An agreement, representation or term of this Contract in favour of or on the part of two or more people, benefits or binds them jointly and severally.
- (xiii) A reference to currency is to Australian currency.
- (xiv) A reference to time is to Perth, Western Australia time.
- (xv) A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.
- (xvi) If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.

2. Performance and Payment

- (a) The Contractor shall execute and complete the Works in a proper and workmanlike manner in accordance with the terms of this Contract.
- (b) In the absence of any express requirement to the contrary:
 - (i) the Contractor shall use new materials; and
 - (ii) the Contractor shall provide all materials, labour, plant, equipment, tools and everything else whether of a temporary or permanent nature required for the performance of the Contractor's obligations.
- (c) The Principal shall pay the Contractor the Contract Sum in accordance with the Contract as adjusted by any additions or deductions strictly made pursuant to the Contract. This Contract is not subject to rise and fall in costs.

3. Warranties

- (a) The Contractor warrants to the Principal that at all times it:
 - (i) is suitably qualified and experienced to execute and complete the Works (including its employees and subcontractors), and shall exercise due skill, care and diligence in the execution and completion of the Works;
 - (ii) has checked the Contract Documents for any discrepancies or omissions within and between the Contract Documents, between the Contract Documents and all applicable Legislative Requirements;
 - (iii) has satisfied itself as to the correctness and sufficiency of its allowance for the Works and that the Contract Sum covers the cost of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the Contract;
 - (iv) has informed itself completely of the nature of the work and materials necessary for the execution and completion of the Works, the means of access to and the facilities at the Site and transport facilities for deliveries to and from the Site and the availability and cost of labour; and

- (v) shall comply with all Legislative Requirements in the execution and completion of the Works.

4. Security and Retention

- (a) Where provided for in Item 6, the Contractor shall provide security to the Principal for the purpose of ensuring the performance of the Contractor's obligations under this Contract (**Security**) and the following will apply:
 - (i) the amount of the Security shall be as stated at Item 7 (**Amount of Security**);
 - (ii) the form of the Security shall be either an unconditional irrevocable undertaking or insurance bond given by a financial institution or insurer approved by the Principal, at its discretion. The Principal has the discretion to approve or disapprove the form of Security, acting reasonably;
 - (iii) the Security shall be provided within 14 days from the Date of Contract, but in any event is a condition precedent to the Contractor's entitlement to payment under this Contract.
- (b) In addition to providing any Security under clause 4(a), the Principal is entitled to retain 10% of all amounts payable by the Principal to the Contractor under this Contract for the purpose of ensuring the performance of the Contractor's obligations under this Contract (**Retention**), up to the maximum amount set out at Item 8 (**Retention Amount**).
- (c) The Principal's entitlement to Security and/or Retention shall, subject to clause 4(f), be reduced to 50% of the Amount of Security and/or Retention Amount (whichever is applicable), 14 days after the Date of Practical Completion. The Principal shall release and return that portion of the Security and/or Retention that it is no longer entitled to retain within 14 days of the entitlement ending.
- (d) The Principal's entitlement to the remaining Security and/or Retention ends 14 days after the issue of the Final Certificate and, subject to clause 4(f), the Principal shall release and return that portion of the Security and/or Retention that it is no longer entitled to retain within 14 days of the entitlement ending.
- (e) The Principal may have recourse to Security and/or Retention where:
 - (i) the Principal is expressly entitled to have recourse to the Security and/or Retention pursuant to the Contract; or
 - (ii) the Principal is entitled to the payment of monies by the Contractor under or in connection with this Contract; or
 - (iii) the Principal is entitled to an indemnity from the Contractor under or in connection with this Contract.
- (f) Notwithstanding any other provision of this clause 4, the Principal has a right to retain from any Security and/or Retention a reasonable amount sufficient to cover any unresolved claim by the Principal against the Contractor under or in connection with this Contract (whether or not that claim has been liquidated) where the Principal holds a bona fide belief that it is entitled to that amount.

5. Contract Documents

- (a) The order of precedence between Contract Documents as set out in Item 2 shall apply in the event of any inconsistency between the Contract Documents.
- (b) Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.
- (c) If either party discovers any ambiguity, discrepancy or inconsistency within the Contract Documents that party shall immediately notify the other party of the ambiguity, discrepancy or inconsistency. The Principal shall direct the Contractor as to the interpretation to be followed.
- (d) Where a direction under clause 5(c) causes a delay to the Works or results in additional costs to the Contractor, and it was not reasonable for a competent contractor to have identified the discrepancy, ambiguity or inconsistency during the tender period, then:
 - (i) the Contractor may, subject to clause 20, be entitled to an extension of time; and
 - (ii) where the Contractor has incurred additional costs as a result of the direction, the Contractor shall be entitled to extra costs reasonably incurred, and a valuation shall be made under clause 26(d).

6. Intellectual Property and Copyright Clause

- (a) The Principal:
 - (i) warrants that any design, documents, or method of working specified in the Contract or directed by the Principal does not infringe any patent, registered design, trade mark or name, copyright or other protected intellectual property; and
 - (ii) indemnifies the Contractor in respect of any infringement of its obligations under subclause 6(a)(i).
- (b) The Contractor:
 - (i) must ensure it does not infringe any patent, registered design, trade mark or name, copyright or other protected intellectual property right in connection with the execution of this Contract; and
 - (ii) indemnifies the Principal in respect of any infringement of its obligations under subclause 6(b)(i).

7. Subcontracting, Assignment and Novation

- (a) The Contractor may not subcontract or allow a subcontractor to subcontract work to a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA).
- (b) The Contractor may not subcontract that part of the Works identified in Item 9 without prior written approval from the Principal, which approval will not be unreasonably withheld.
- (c) Subcontracting shall not relieve the Contractor of any liability or obligation under this Contract.

- (d) The Contractor may not assign or novate its rights and obligations under this Contract without the consent of the Principal, which consent shall be entirely at the Principal's discretion.

8. Legislative Compliance

- (a) The Contractor shall comply with all Legislative Requirements in the execution and completion of the Works. The Contractor shall obtain all approvals, consents, permits and licenses required to carry out the Works other than those identified in Item 10.
- (b) Where a change in Legislative Requirements after the Date of Contract requires a change to the Works or the manner of carrying out the Works under this Contract then the Contractor shall, as soon as practicable after it becomes aware of the change, notify the Principal in writing and provide details of the nature of the change to Legislative Requirements and the impact on:
 - (i) the Works;
 - (ii) the Contract Sum; and
 - (iii) the Date for Practical Completion.
- (c) Where a change in Legislative Requirements was not reasonably identifiable by a competent contractor at the time of submitting its tender, and the change:
 - (i) requires the Contractor to incur more or less cost than would have been incurred prior to the change, then subject to compliance with clause 8(b), the Contract Sum shall be adjusted by the difference;
 - (ii) delays the Contractor in achieving Practical Completion, then subject to clause 20, the Contractor may be entitled to an extension of time.
- (d) Where any condition of approval, permit, consent or licence required to be obtained by the Contractor is inconsistent with this Contract, the Contractor shall notify the Principal in writing as soon as practicable and seek a direction.
- (e) The Contractor shall, and shall be deemed to have included in the Contract Sum the cost of any fee, consent, permit, licence or other approval required to be obtained by the Contractor under this Contract, unless expressly stated otherwise.

9. Materials and Defective Work

- (a) If the Principal discovers material or work provided by the Contractor which is not in accordance with the Contract, the Principal may direct the Contractor to remove the material or rectify the work within a specified timeframe.
- (b) If the Contractor fails to comply with the direction in clause 9(a) within the timeframe, the Principal may have the material removed or the work rectified and the cost incurred by the Principal shall be a debt immediately due and payable by the Contractor to the Principal.
- (c) The Principal may accept material or work notwithstanding that it is not in accordance with the Contract, in which case the Contract Sum shall be adjusted by the decrease in value of the Works, if any.

10. Protection of People and Property

- (a) As part of carrying out its obligations under this Contract, the Contractor shall:
- (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (b) Where the Contractor damages property, the Contractor shall promptly rectify the damage and shall be liable to pay any compensation pursuant to law. Where the Principal takes action to protect people or property as a result of the Contractor's failure to do so, any costs properly incurred by the Principal shall be a debt immediately due and payable by the Contractor to the Principal.

11. Commencement of the Works

The Contractor shall, prior to the Commencement Date:

- (a) effect all insurances required under clause 13 and provide evidence of those insurances to the Principal;
- (b) obtain approval from the Principal for the Contractor's representative pursuant to clause 16;
- (c) provide copies of any other documents required under this Contract to be provided to the Principal prior to the Commencement Date.

12. Care of the Works

- (a) The Contractor shall be responsible for the care of the Works, including any unfixed items that the Contractor has been paid for or any items of unfixed plant or material provided by the Principal to the Contractor, until 5pm on the Date of Practical Completion. After the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be performed by the Contractor, including works carried out pursuant to clause 23(c).
- (b) The Contractor shall be liable for any loss or damage to the Works as described in clause 12(a) and shall rectify such loss or damage unless such loss or damage is caused by an Excepted Risk.

13. Insurance

- (a) The Contractor must, prior to the Commencement Date and before commencing the Works, take out and maintain until the expiration of the Defects Liability Period, adequate insurance policies for loss, damage, death or injury arising from or in connection with this Contract. Without limiting the generality of the foregoing, the Contractor shall effect and maintain insurances as set out in clauses 13(b) - (h) with reputable and solvent insurers reasonably acceptable to the Principal and on terms reasonably acceptable to the Principal.

Contract Works Insurance

- (b) The Contractor must effect and maintain insurance, in the joint names of the Contractor and the Principal, covering loss of or damage to the Works and

items referred to in clause 12(a) until such time as the Contractor ceases to be responsible pursuant to clause 12(a).

- (c) The insurance cover referred to in clause 13(b) shall:
 - (i) extend to cover subcontractors;
 - (ii) extend to cover items off Site and in transit to the Site; and
 - (iii) be for an amount not less than the sum identified in Item 11.

Public and Product Liability Insurance

- (d) The Contractor shall effect and maintain Public and Products Liability insurance policy in the joint names of the Principal and the Contractor covering the legal liability of the Contractor, its employees and agents arising out of the Works provided in connection with this Contract for an amount not less than the amount set out in Item 12 for any one occurrence and unlimited as to the number of occurrences happening during any one period of insurance.
- (e) The insurance policy under clause 13(d) must extend to indemnify the Principal to the extent of its vicarious liability arising out of the negligent acts or omissions of the Contractor, its employees or agents in their performance or non-performance of the Works.

Workers Compensation

- (f) The Contractor shall effect and maintain, for the duration of performance of its obligations under this Contract, workers compensation and employers' liability insurance covering all claims and liabilities in respect of any statute including cover for common law liability for an amount of not less than \$50,000,000 for any one occurrence for the death or injury to any person employed by or who is deemed to be a worker of a Contractor under any statute relating to workers compensation arising directly or indirectly out of the performance of the Contract, including off Site.
- (g) If the Contractor is a private company and is required to take out insurance under the *Workers Compensation & Injury Management Act 1981* (As Amended) WA, the Contractor must procure that its working directors are covered under its workers' compensation and employers' liability insurance.

Home Indemnity Insurance

- (h) The Contractor, where required at law, must obtain a policy of home indemnity insurance with respect to the Works which complies with the requirements of section 25D of the *Home Building Contracts Act 1991* (regardless of whether Part 3A of the Home Building Contracts Act requires it).

Proof of Insurance

- (i) Prior to the Commencement Date, and within 5 days of any reasonable request by the Principal, the Contractor shall provide evidence of the insurances required to be effected by it pursuant to this clause 13.
- (j) Where requested by the Principal, acting reasonably, the Contractor shall provide copies of policy wording and schedules in connection with insurances required to be effected by the Contractor under this Contract;

- (k) Where the Contractor fails to provide evidence as required under clause 13(i) or (j), the Principal may at its discretion, effect the insurance and the cost incurred by the Principal shall be a debt immediately due and payable by the Contractor to the Principal.

Cross Liability

- (l) Where a policy of insurance effected by the Contractor under this Contract is required to name the Principal as joint insured, the Contractor shall ensure that the policy includes a cross liability clause pursuant to which the insurer waives all right of subrogation against the insured under the policy.

14. Damage to persons and property other than WUC

- (a) The Contractor shall indemnify the Principal, and its respective employees and agents against any:
 - (i) loss or damage to any property (including, but not limited to, plant, equipment and vehicles and the Principal's property); and
 - (ii) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property, real or personal,

arising out of or as a consequence of the carrying out of the Works by the Contractor provided that the Contractor's liability to indemnify the Principal shall be reduced proportionately to the extent any act or omission of the Principal contributed to the loss, damage, death or injury.

15. Principal's Representative

- (a) The Principal may appoint a representative to carry out the functions and duties of the Principal under this Contract. The Principal must notify the Contractor in writing of the name of the Principal's Representative.
- (b) Any direction given by the Principal's Representative to the Contractor shall have the same effect as if given by the Principal, and the Contractor must comply with all reasonable instructions of the Principal's Representative.

16. Contractor's Representative

- (a) The Contractor shall superintend the works personally or through a competent Contractor representative with sufficient command of the English language so as to be able to communicate effectively.
- (b) The Contractor must notify the Principal in writing of the name of the Contractor's Representative.
- (c) Directions given to the Contractor's Representative shall be deemed to be directions given to the Contractor.
- (d) If the Principal makes a reasonable objection to the appointment of a Contractor's Representative, the Contractor shall terminate the appointment.

17. Site

- (a) The Principal will give sufficient, non-exclusive possession of the Site to the Contractor to enable the Contractor to execute the Works.

- (b) Any failure or delay in giving possession of any part of, or sufficient of, the Site to the Contractor shall not constitute a breach of this Contract but may, subject to the terms of this Contract, entitle the Contractor to an extension of time.
- (c) The Principal and the Principal's Representative, employees, contractors, consultants and agents may, after providing reasonable notice to the Contractor, attend on the Site for any purpose. The Principal shall take all reasonable steps to ensure that the Contractor is not delayed or otherwise impeded by the presence of others on Site.
- (d) The Contractor must, and warrants that it has, made allowance for the impact of:
 - (i) work by others on Site; and
 - (ii) access to the Site by others,on its ability to complete the works by the Date for Practical Completion and for the Contract Sum.
- (e) Where expressly required in a Contract Document (including but not limited to Item 13), the Contractor shall carry out a comprehensive survey of identified properties before commencing work under this Contract. The survey shall accurately show the condition of the applicable properties (including as a minimum, photographic evidence) and a copy of the report shall be provided to the Principal prior to the commencement of any work under this Contract.
- (f) Where expressly required in a Contract Document (including but not limited to Item 14), the Contractor shall engage a licensed surveyor to identify the Site, certify all boundaries and position necessary marker pegs, so that the set out of the works is wholly within the titled boundary. Any discrepancy between the certified survey and other drawings shall immediately be notified to the Principal.

18. Latent Conditions

- (a) If the Contractor becomes aware of a Latent Condition, the Contractor must notify the Principal in writing, where possible before the physical conditions are disturbed and in any event no later than 10 days after becoming aware of the Latent Condition. Such notice shall:
 - (i) specify the Latent Condition and describe how it differs materially from the physical conditions which should reasonably have been anticipated by a competent contractor;
 - (ii) outline how the Contractor proposes the Latent Condition be addressed; and
 - (iii) describe the impact of the Latent Condition on time and cost under this Contract.
- (b) The giving of a notice under clause 18(a) within the specified timeframe shall be a condition precedent to any entitlement to claim an extension of time or additional costs arising out of or in connection with a Latent Condition.
- (c) Following receipt of the information provided under clause 18(a), and subject to clause 18(b), if the Principal determines that a Latent Condition exists:

- (i) the Contractor may be entitled to an extension of time subject to the provisions of clause 20; and
 - (ii) the Contractor may be entitled to extra costs reasonably incurred by reason of the requirement to carry out additional or varied work, in which case a valuation shall be made under clause 26(d).
- (d) The Contractor is required to take all reasonable steps to mitigate costs incurred and delay suffered out of or in connection with a Latent Condition. The Contractor's entitlement to costs and time under this clause shall be reduced proportionally to the extent that the Contractor failed to comply with its obligations of mitigation pursuant to this clause 18(d).

19. Progress, Programming and Suspension of the Work

- (a) The Contractor shall commence carrying out the Works on or before the Commencement Date or otherwise as directed in writing by the Principal.
- (b) The Contractor shall proceed with the Works in accordance with any approved Construction Programme and in any event with due expedition and without delay.
- (c) The Contractor shall submit a Construction Programme within 14 days of the Date of Contract to the Principal for approval.
- (d) The Principal may, at its discretion, direct that the Contractor provide an updated Construction Programme where:
 - (i) the Principal grants an extension of time under clause 20;
 - (ii) the Principal considers, acting reasonably, that there is or will be a significant deviation between the actual and anticipated progress of the Works.
- (e) The Contractor shall not deviate from an approved Construction Programme unless directed by or agreed with the Principal. The submission of a Construction Programme or a revised Construction Programme, or approval of a Construction Programme by the Principal, does not relieve the Contractor from its obligations under this Contract to complete the Works by the Date for Practical Completion.
- (f) If the Principal considers that suspension of the whole or part of the Works is necessary due to:
 - (i) an act or omission of the Principal, the Principal's representatives, employees, contractors, consultants or agents; or
 - (ii) an act or omission of the Contractor or its employees, contractors, consultants or agents,

the Principal shall direct the Contractor to suspend the progress of the whole or part of the Works as the Principal deems necessary.
- (g) The Contractor shall bear the reasonable costs of any suspension of the Works pursuant to clause 19(f)(ii).

20. Extension of Time for Practical Completion

- (a) As soon as practicable after the Contractor becomes aware, and in any event within 10 days of the Contractor becoming aware that anything, including an act or omission of the Principal, the Principal's Representative or the Principal's employees, consultants, other contractors or agents, may delay the Works, the Contractor shall notify the Principal in writing with details of the possible delay and the cause notwithstanding that the delay may be ongoing at the time of giving the notice (**Notice of Likely Delay**).
- (b) If the Contractor is or will be delayed in reaching Practical Completion by a Delay Event, and the Contractor issues a written claim to the Principal for an extension of time setting out the number of days claimed and providing all supporting documentation within 10 days of the delay ceasing (**Claim for Extension of Time**), the Contractor shall, subject to this clause 20, be entitled to an EOT for carrying out the Works as the Principal, acting reasonably, assesses the Contractor is entitled to.
- (c) The submission of a Notice of Likely Delay and the Claim for Extension of Time within the prescribed time frames under this clause 20 is a condition precedent to the Contractor's entitlement to an EOT.

Concurrency of events

- (d) Where more than one event causes delay to the Works and the cause of at least one of those events is not a Delay Event, then to the extent that the delays are concurrent, the Contractor shall not be entitled to any EOT.

Assessment

- (e) Where the Contractor is entitled to an EOT, the Principal shall, within 21 days after receipt of a valid Claim for Extension of Time, direct the Contractor as to the revised Date for Practical Completion. If the Principal fails to issue a direction under clause 20(e) within 21 days of receipt of a valid Claim for Extension of Time, the Contractor's Claim for Extension of Time is deemed to have been rejected. A failure to grant an EOT does not cause time to be at large.
- (f) Notwithstanding that the Contractor has not claimed an EOT, the Principal may in its absolute discretion and at any time before Practical Completion, extend the time for Practical Completion for any reason by notice in writing to the Contractor. The Principal is not obliged to exercise its discretion under this clause for the benefit of the Contractor.

21. Delay and Disruption Costs

- (a) Where the Contractor has been granted an EOT by reason of a Delay Event under subclause (ii)A of the definition of Delay Event, and the Contractor has made a written claim for delay damages within 14 days of the EOT being granted, the Principal shall pay the Contractor its reasonable additional costs necessarily incurred by the Contractor by reason of the delay. The giving of a notice by the Contractor within the time frames prescribed in this clause 21(a) is a condition precedent to the Contractor's entitlement to delay damages.
- (b) Other than as set out in subclause 21(a) above, the Principal shall not be liable for, and the Contractor shall not be entitled to, any cost due to delay or disruption for any reason and the Contractor's sole remedy for delay shall be an extension of time to the Date for Practical Completion.

22. Practical Completion

- (a) The Contractor shall execute the Works and achieve Practical Completion by the Date for Practical Completion.
- (b) When the Contractor considers that Practical Completion has been reached, the Contractor shall, in writing, request that the Principal issue a Practical Completion Certificate.
- (c) Within 14 days of receipt of the Contractor's request under clause 22(b), the Principal shall issue a certificate confirming the Date of Practical Completion (**Practical Completion Certificate**) to the Contractor or give reasons why it considers the Works have not reached Practical Completion. Clauses 22(b) and (c) continue until Practical Completion is achieved.
- (d) When the Principal is of the opinion that Practical Completion has been reached, the Principal may issue a Practical Completion Certificate, regardless of whether the Contractor has requested its issue.
- (e) Within 14 days of issue of the Practical Completion Certificate, the Contractor must provide the Principal with copies of all Warranties and Manuals.

23. Damages (Liquidated or Otherwise)

- (a) Where Item 15 is completed and the Contractor fails to reach Practical Completion by the Date for Practical Completion, liquidated damages shall be payable by the Contractor at the rate specified until the Date of Practical Completion or until this Contract is terminated, whatever comes first.
- (b) The Principal is entitled to deduct and set-off any liquidated damages owed to the Principal pursuant to this clause against any amount due to the Contractor under this Contract or to have recourse to Security or Retention where applicable.
- (c) Where the Date for Practical Completion is adjusted after the Contractor has paid liquidated damages, the Principal shall repay any amount of liquidated damages in excess of its entitlement.
- (d) Where Item 15 is not completed and the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Principal shall be entitled to claim general damages for delay.

24. Defects Liability Period

- (a) The Defects Liability Period shall commence at 5pm on the Date of Practical Completion and end at 5pm on expiry of the Defects Liability Period.
- (b) The Contractor shall rectify any defects existing at the Date of Practical Completion as soon as practicable after the Date of Practical Completion.
- (c) At any time during the Defects Liability Period and for 14 days after the expiry of the Defects Liability Period, the Principal may direct the Contractor to rectify, at the Contractor's expense, any omission or defect in the Works identified during, or which became apparent prior to the expiration of the Defects Liability Period. Such direction may state a date by which the Contractor shall commence and/or complete rectification.

- (d) If the rectification of defects under clauses 24(b) or 24(c) is not commenced or completed by the stated dates (or where no dates are stated, within a reasonable period) the Principal may have the rectification carried out by others and the cost of the rectification incurred by the Principal shall be a debt immediately due and payable by the Contractor to the Principal.
- (e) Nothing in this clause prejudices any other rights that the Principal may have with respect to omissions or defects in the Works.
- (f) If the Contractor is required to carry out rectification work, the Contractor shall do so at times and in a manner which causes minimal inconvenience to the occupants or users of the Works.

25. Cleaning Up

- (a) The Contractor shall keep the Site clean and tidy and regularly remove rubbish and surplus material relating to the Works.
- (b) The Principal may issue a written notice to the Contractor requiring compliance with clause 25(a). Where the Contractor fails to comply with the notice within a reasonable period, the Principal may have the cleaning carried out by others and the cost incurred by the Principal shall be a debt immediately due and payable by the Contractor to the Principal.

26. Variations

- (a) The Contractor shall not vary the Works without a written direction from the Principal expressly authorising the variation. Where the Contractor considers that a written direction issued by the Principal varies the Works, but such direction does not expressly acknowledge the direction as a variation, the Contractor must notify the Principal in writing before proceeding and seek the Principal's confirmation.
- (b) Strict compliance with clause 26(a) is a condition precedent to the Contractor's entitlement to any payment in connection with a variation to the Works.
- (c) At any time prior to the Date of Practical Completion, the Principal may direct the Contractor to, and the Contractor shall comply with, any direction to:
 - (i) increase, decrease or omit any part of the Works;
 - (ii) change the character or quality of any material or work;
 - (iii) change the levels, lines, positions or dimensions of any part of the Works;
 - (iv) execute additional work; and/or
 - (v) demolish or remove material or work no longer required by the Principal.
- (d) A variation to the Works shall be valued by the Principal, acting reasonably, as follows (using the order of precedence set out below):
 - (i) where the parties have reached prior agreement, that agreed amount; or
 - (ii) where clause 26(d)(i) does not apply, and the varied works relates to work the subject of tendered rates or prices (or where the variation work

is similar, or analogous, to work the subject of tendered rates or prices), then those rates; or

- (iii) where clauses 26(d)(i) and 26(d)(ii) do not apply, prevailing industry market rates; or
- (iv) where clauses 26(d)(i), 26(d)(ii) and 26(d)(iii) do not apply, on a fair and reasonable basis,

and such amount shall be added to or deducted from the Contract Sum. The amount added to or deducted from the Contract Sum shall include a reasonable amount for profit and overheads.

- (e) Where an extension of time to the Date for Practical Completion has been granted by the Principal on account of authorised variations, the provisions of clause 26(d) shall be deemed to cover all extra costs incurred by the Contractor and no further claim for extra costs shall be accepted by the Principal (including costs under clause 21).

27. Provisional Sums

- (a) Where a provisional sum applies to a component of the works (refer to Item 16), then the amount itself is not payable by the Principal until the Principal directs those works to be carried out. The Contract Sum shall be deemed to include an amount for profit and overhead in addition to (and outside of) the amount of the provisional sum itself (which sum is exclusive of GST).
- (b) In valuing the works the subject of an applicable provisional sum:
 - (i) Where the value of the applicable component of work is the same as the provisional sum allowance, no adjustment is made to the Contract Sum;
 - (ii) Where the value of the applicable component of work is less than the provisional sum allowance:
 - A. The difference shall be deducted from the Contract Sum; and
 - B. A reasonable deduction for overhead shall be applied to the difference and deducted from the Contract Sum;
 - (iii) Where the value of the applicable component of work is more than the provisional sum allowance:
 - A. The difference shall be added to the Contract Sum; and
 - B. An allowance for overhead and profit (refer to Item 17) shall be applied to the difference and added to the Contract Sum.

28. Payment Claims and Payments

- (a) The Contractor may submit payment claims progressively at the intervals set out at Item 18 and on the issue of a Practical Completion Certificate (**Payment Claim**). Payment Claims submitted earlier shall be deemed to have been made on the date set out in Item 18.
- (b) The Payment Claim shall include the following information:
 - (i) the Contract Sum;

- (ii) the total amount previously paid by the Principal to the Contractor;
 - (iii) the value of work carried out by the Contractor in performance of the Works to date for which the Contractor seeks payment by way of the Payment Claim; and
 - (iv) separately identify the Contractor's costs incurred in the performance of any Variation and any other amounts the Contractor claims.
- (c) The Contractor shall not be entitled to claim payment for plant, equipment and materials not incorporated into the Works.
- (d) Within 14 days after receipt of the Payment Claim, and any other information reasonably requested by the Principal, whichever is the later, the Principal shall issue to the Contractor a certificate specifying the amount it considers due to the Contractor (**Payment Certificate**). The Payment Certificate shall include the following information:
- (i) amounts previously deducted by way of retention pursuant to clause 4(b);
 - (ii) retention money to be deducted from the current Payment Claim pursuant to clause 4(b).

Where the Principal fails to issue a Payment Certificate within the prescribed period, the Payment Claim is deemed to be rejected.

- (e) Where the Payment Certificate certifies an amount for payment which is different to that claimed in the Payment Claim, the Principal shall set out the reasons for any difference and the remaining portion of the Payment Claim is deemed to be rejected.
- (f) Upon receipt of the Payment Certificate, the Contractor shall issue a Tax Invoice to the Principal for the amount certified for payment under the Payment Certificate.
- (g) Within 14 days of:
- (i) issue of the Payment Certificate;
 - (ii) receipt of the Contractor's Tax Invoice under clause 28(f); and
 - (iii) receipt of sworn statutory declarations required pursuant to clause 31,
- whichever is the later, the Principal must pay the amount certified in the Payment Certificate.
- (h) The Principal may set off or deduct from any amount payable pursuant to a Payment Certificate any amount that is due and payable to it by the Contractor arising out of or in connection with the Contract.
- (i) The payment of the monies by the Principal to the Contractor shall not be evidence of the value of work or admission of liability or evidence that the work has been executed satisfactorily, but shall be payment on account only.
- (j) Notwithstanding anything in this clause, the Contractor shall not be entitled to any payment under this Contract until it has:
- (i) provided the Principal with Security where required under clause 4;

- (ii) provided any other information required to be provided under this Contract as a condition precedent to an entitlement to payment;
- (iii) provided, following request from the Principal, evidence of adequate insurance pursuant to clause 13; and
- (iv) provided statutory declarations pursuant to clause 31;

29. Final Payment Claim

- (a) Within 28 days of the later of expiration of the Defects Liability Period or completion of any defects notified to it under clause 24, the Contractor shall provide the Principal with a final payment claim headed "**Final Payment Claim**".
- (b) The Final Payment Claim shall include all claims the Contractor makes against the Principal for payment under or in connection with the Contract.
- (c) Where the Contractor does not make a Final Payment Claim in accordance with clause 29(a), the Contractor is deemed to have irrevocably waived any entitlement to bring further claims except in relation to claims the subject of a Dispute Notice issued prior to the date which is 28 days after expiration of the Defects Liability Period. This clause survives expiry of this Contract.
- (d) Within 14 days of receipt of a Final Payment Claim, the Principal shall issue to the Contractor a certificate certifying the amount which, in the Principal's reasonable opinion is finally due from the Principal to the Contractor, or from the Contractor to the Principal arising out of this Contract (**Final Certificate**). Where the Principal fails to issue a Final Certificate, any claim for payment by the Contractor pursuant to the Final Payment Claim is deemed to be rejected. The Principal shall pay any amount certified in the Final Certificate within 14 days of the later of issue of the Final Certificate or receipt of a Tax Invoice issued by the Contractor for the amount certified in the Final Certificate.

30. Effect of Certificates

The issue of any certificate by the Principal under this Contract shall not constitute approval of any of the Works or other matter and shall not prejudice any claim by the Principal.

31. Payment of Workers and Subcontractors

- (a) Within 10 days of the issue of a Payment Certificate or the Final Certificate and before the Principal makes that payment to the Contractor, or at any other time requested by the Principal, the Contractor shall provide a statutory declaration (in a form approved by the Principal) declaring that all workers, subcontractors and suppliers have been paid any amounts due and payable to them as at the date of the Payment Claim (or, if applicable, Final Payment Claim or Principal's request). The Principal is not obliged to pay any amount certified under a Payment Certificate or Final Certificate until the Contractor has complied with its obligations under this clause.
- (b) Where requested by the Principal following receipt of a statutory declaration under clause 31(a), the Contractor shall also provide documentary evidence to support the declaration and a list of the names and contact details of each subcontractor and supplier engaged to perform the Works, within 5 days of the Principal's request.

- (c) The provision of the statutory declaration and additional documentary evidence, if applicable, shall be a condition precedent to any entitlement to payment, notwithstanding that a Payment Certificate has been issued under clause 28(d).
- (d) The Principal may, at its discretion, make a payment directly to a worker, subcontractor or supplier where:
 - (i) the Contractor requests in writing; or
 - (ii) the worker, subcontractor or supplier requests in writing and provides a Court Order or adjudication determination evidencing money due and payable by the Contractor in connection with this Contract.
- (e) Where such payment is made by the Principal, it shall be deemed to be a payment to the Contractor in satisfaction of the Principal's payment obligations under this Contract.
- (f) For the avoidance of doubt, the Contractor consents to the Principal contacting the Contractor's workers, subcontractors and suppliers for the purpose of auditing a statutory declaration provided under this clause.

32. Termination by Principal

- (a) Subject to clause 32(b), the Principal may, by notice in writing, terminate, this Contract if:
 - (i) the Contractor suffers an Insolvency Event; or
 - (ii) the Contractor commits a substantial breach of this Contract,

and the Contractor fails to show reasonable cause why the Principal should not exercise its right to terminate this Contract within 7 days of the Principal giving the Contractor notice in writing.
- (b) Clause 32(a) does not apply to the extent that the right to terminate is stayed by the operation of section 415D, 434J or 451E of the *Corporations Act 2001* (Cth).
- (c) For the purpose of subclause 32(a)(ii), a substantial breach includes, but is not limited to:
 - (i) failing to provide Security where required under this Contract;
 - (ii) failing to provide evidence of insurances where required under this Contract;
 - (iii) failing to carry out the Works in accordance with any Construction Programme, or failing to carry out the Works with due expedition and without delay;
 - (iv) failing to comply with clause 31 or knowingly providing a false or misleading declaration under clause 31;
 - (v) failing to comply with the provisions of any government policies set out in the Contract Documents; and
 - (vi) the Contractor:

- A. becoming a debarred supplier (or having been a debarred supplier as the commencement of the Contract) as defined in section 32 of the *Procurement Act 2020* (WA);
- B. subcontracting, or allowing a subcontractor to subcontract, with a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA); or
- C. failing to terminate a subcontract, or ensure that a subcontractor terminates a subcontract, with a party that has become a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA).

33. Termination by Contractor

- (a) The Contractor may, by notice in writing, suspend performance of its obligations under this Contract if:
 - (i) the Principal fails to make a payment which is due and payable by it under this Contract; or
 - (ii) the Principal fails to issue a Practical Completion Certificate pursuant to clause 22 without providing reasons,

and the Principal fails to show reasonable cause within 7 days of the Contractor giving the Principal notice under this clause why the Contractor should not exercise its right to suspend its obligations under this Contract.

- (b) Where the Principal is not able to show reasonable cause under clause 33(a), and the Contractor suspends performance of its obligations pursuant to clause 33(a), where the breach continues for longer than 28 days after the suspension, the Contractor may by further written notice to the Principal, terminate the Contract.

34. Rights on Termination

- (a) If this Contract is terminated, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting Party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.
- (b) Any costs incurred by the Principal in engaging another contractor to complete the Works arising from termination may be recovered as a debt due and payable by the Contractor to the Principal.

35. Termination for Convenience

- (a) The Principal may, for its convenience and in its absolute discretion, terminate this Contract in whole or in part with 10 days written notice to the Contractor. The written notice shall state the date of termination of the Contract or part thereof.
- (b) If the Principal terminates this Contract under clause 35(a), the Contractor:
 - (i) will be entitled to:
 - A. payment for work carried out prior to the date of termination;

- B. the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:
 - i. the value of the goods or materials is not included in the amount payable under clause 35(b)(i)A; and
 - ii. title in the goods and materials will vest in the Principal upon payment; and
 - C. the reasonable direct cost of removing from the site all labour, plant, equipment and work and other things used in the Works;
- (ii) must:
- A. take all steps possible to mitigate the costs referred to in clause 35(b)(i)C; and
 - B. immediately hand over to the Principal all copies of documents provided by the Principal under this Contract and documents prepared by the Contractor to the date of termination (whether complete or not); and
 - C. assign to the Principal all of its rights under any agreement to which it is a party in connection with the performance of the Works.
- (c) The Principal's liability to the Contractor arising out of, or in connection with, the termination of the Contract under this clause is limited to the amount payable under clause 35(b)
- (d) This clause will survive the termination of the Contract by the Principal.

36. **Dispute Resolution**

- (a) Should any dispute or difference arise between the parties in connection with this Contract (**Dispute**):
 - (i) either party shall give written notice to the other of the existence of the Dispute (**Dispute Notice**);
 - (ii) such notice must provide sufficient detail to identify the nature of the Dispute; and
- (b) Within 7 days of receipt of a Dispute Notice, representatives from each party with authority to settle the Dispute must confer in an attempt to resolve the Dispute.
- (c) Where the Dispute cannot be settled within a further 14 days of conferral under subclause 36(b), either party by further written notice, refer the Dispute to litigation.

37. **Goods and Services Tax (GST) Clause**

- (a) For the purposes of this Clause:

"**GST**" means goods and services tax applicable to any taxable supplies as determined under the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.

"Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act.

- (b) Where the supply of the works under this Contract or any part thereof is a taxable supply under the GST Act:
 - (i) The Contract Sum shall be inclusive of all applicable GST at the rate in force for the time being;
 - (ii) The Principal shall issue a Recipient Created Tax Invoice ("RCTI") in respect of GST payable on each instalment of the Contract Sum and shall provide a copy of the RCTI to the Contractor. The RCTI shall contain all information required for a tax invoice under the GST Act and shall bear the ABN of the Contractor.
 - (iii) The Principal shall issue an adjustment to the Contractor in relation to any adjustment events as they occur.
 - (iv) The Contractor shall not issue tax invoices in respect of WUC or any part thereof.

38. Notices

- (a) A notice must be in writing and in English.
- (b) A party must send a notice to the other party at the address listed in Item 19 or 20.
- (c) A party may vary its address by sending a notice to the other party.
- (d) A party must use the new address from the time that it receives the notice.
- (e) Subject to clause 38(k), to deliver a notice, a party must hand deliver, post, fax or email it to the other party's address.
- (f) A notice takes effect at the time stated in the notice, but if no time is stated or the time stated is before receipt, then a notice takes effect on receipt.
- (g) A notice sent by post is received:
 - (i) 3 days after posting if within Australia; or
 - (ii) 7 days after posting if posted to or from a place outside Australia.
- (h) A notice sent by fax is received:
 - (i) at 5.00pm on the Business Day that the notice is sent; or
 - (ii) if sent after 5.00pm, then on the next Business Day.
- (i) Subject to this clause, a notice sent by email:

- (i) is received at the time that the email reaches the addressee's email address
- (ii) is received at the receiver's street address supplied under this clause.
- (j) Despite any other clause, if a notice is received on a day that is not a Business Day or after 5.00pm, then the notice is received at 9.00am on the next Business Day.
- (k) A party must not fax or email a notice which is a notice purporting to terminate the Contract.

39. Governing Law and Jurisdiction

The Contract shall be governed by, take effect and be construed in accordance with the laws in force in the State of Western Australia.

40. Severability

- (a) If any clause or part of a clause in this Contract is invalid, illegal, or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that clause or part of a clause must be severed and ignored in the interpretation of the Contract.
- (b) The remaining clauses of this Contract shall remain in full force and effect.

41. Waiver

- (a) A waiver by the Principal shall only be effective:
 - (i) if it is in writing; and
 - (ii) in respect of the specific obligation or breach thereof (occurring on that specific occasion) in relation to which it is given.
- (b) The Principal shall make no implied waivers, and the Contractor shall not interpret as a waiver any conduct by the Principal other than that referred to in this subclause.

42. Reports

The Contractor shall provide the Reports set out in Item 21 of the Schedule at the times required in the Schedule.

43. Disclosure of Contract Information and Documents

(a) Public Disclosure of Contract Details

- (i) The Contract award information for all contracts above \$20,000 will be publicly available and published on the Western Australian Government Contracting Information Bulletin Board after this Contract is legally established.
- (ii) Documents and other information relevant to this Contract may be disclosed when required by any Legislative Requirement, including without limitation under the *Freedom of Information Act 1992* (WA). for tabling documents in Parliament or under a Court order.

(b) Access by Auditor General

The parties acknowledge and agree that, notwithstanding any provisions of this Contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Auditor General Act 2006 (WA)* and *Financial Management Act 2006 (WA)* are not limited or affected by the terms of the Contract.

44. Advertisements and Promotions on Site

The Contractor may erect on site, or permit to be erected on site, only those signs:

- (a) required by law;
- (b) specified in the Contract documents; and
- (c) required to identify the Contractor's premises,

unless the Principal agrees otherwise.

45. Record Keeping Responsibilities

- (a) In accordance with the provisions of the *State Records Act 2000 (WA)*, records created or collected by the Contractor in the course of contractual undertakings may be deemed a government-owned asset i.e. ownership and proprietary interest of said documentation shall remain vested with the Principal in perpetuity.
- (b) The Contractor will create, receive and maintain records in accordance with the *State Records Act 2000 (WA)*, in a format that satisfies the Principal's legislative, business and accountability requirements.
- (c) The Contractor shall, upon request from the Principal, forward all records so deemed to the Principal for retention on Practical Completion.

Attachment A – Procurement Conditions

Attachment A – Procurement Conditions

A1. Code of Practice for the Construction Industry

For the purposes of this clause A1, the following words have the following meanings:

- (a) **'Code'** means the National Code of Practice for the Construction Industry as published by the Australian Government from time to time in accordance with the provisions of the *Building and Construction Industry Improvement Act 2005* (Cth) (**'BCII Act'**) and the Office of the Australian Building and Construction Commissioner (**'ABCC'**); and
- (b) **'Guidelines'** means the Implementation Guidelines for the Code published from time to time by ABCC and the Australian Government Department of Employment and Workplace Relations. A copy of the Guidelines can be obtained from the Commonwealth Department of Employment and Workplace Relations.

The Contractor acknowledges that the parties are required to comply with the Code and Guidelines. The Contractor must, and warrants that it will also comply with the Code and Guidelines.

Without limiting the aforementioned provision, the Contractor agrees that it will:

- (d) require compliance with the Code and Guidelines from all its subcontractors and material suppliers;
- (e) require all of its secondary subcontractors and material suppliers to comply with the Code and Guidelines;
- (f) allow a person occupying a position in the ABCC to access any sites, documents and personnel in the control of the Contractor as provided for and consistent with their role to monitor compliance with the Code and Guidelines;
- (g) establish appropriate processes to support freedom of association and ensure that union right of entry to premises in the Contractor's control is in accordance with the law;
- (h) ensure that there is an Occupational Health, Safety and Rehabilitation plan for the Works;
- (i) ensure that where threatened or actual industrial action occurs on Site, the Contractor reports such action to the Principal;
- (j) responds (with the Principal's knowledge) to requests for information concerning Code-related matters made on behalf of the ABCC or the Principal and the ABCC;
- (k) ensure that it and its own subcontractors initiate voluntary remedial action aimed at rectifying non-compliant behaviour (if any) when it is drawn to their attention;
- (l) ensure that the Principal is notified of any alleged breaches, remedial action taken or any other Code-related matters within 21 days of becoming aware of an alleged breach of the Code;

- (m) ensure that sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with the decisions advised by the Principal,

in accordance with the Section 6.3 of the Guidelines.

A2. Government Building Training Policy

Only applicable to all State Government building and construction contracts (including civil and engineering contracts) with an estimated labour value of \$2 million (inc GST) and over for the construction component of the contract, and all State Government maintenance contracts with an estimated labour component of \$2 million (inc GST) and over for the total contract.

(a) Definitions

For the purposes of this clause the following words have the following meanings:

"Apprentice" means a person undertaking a DTWD approved apprenticeship being a structured full-time, part-time or school-based employment based training program that leads to the apprentice gaining a nationally recognised qualification under a training contract for the purposes of the *Vocational Education and Training Act 1996* (WA);

"Construction Apprentices and Trainees" means those Apprentices or Trainees undertaking an apprenticeship or traineeship included on the list of construction apprenticeships and traineeships to be counted for the purposes of the Government Building Training Policy, as reviewed annually by the DTWD and published at www.dtwd.wa.gov.au;

"Construction Trades Worker" means a person, including an Apprentice or Trainee, who is engaged or employed in any of the occupations included on the list of construction trades workforce occupations to be counted for the purposes of the Government Building Training Policy, as reviewed annually by the DTWD and published at www.dtwd.wa.gov.au;

"DTWD" means the Department of Training and Workforce Development. Western Australia;

"Relevant Subcontractor" means any subcontractor engaged by the Contractor for the purposes of carrying out any work required by this Contract;

"Target Training Rate" means the "Target Training Rate" expressed as a percentage for the purposes of the Government Building Training Policy published by the DTWD at www.dtwd.wa.gov.au on an annual basis;

"Total Training Rate" means the percentage rate arrived at by the following formula:

$$\frac{(\text{Con's CA\&Ts}) + (\text{RelSubs' CA\&Ts})}{(\text{Con's CTWs}) + (\text{RelSubs' CTWs})} \times 100$$

WHERE

"Con's CA&Ts" means the total number of Construction Apprentices and Trainees engaged or employed overall in Western Australia (whether carrying out works relevant to this Contract or not) by the Contractor, at any time during the period over which the Total Training Rate is being calculated;

"ReISubs' CA&Ts" means the total number of Construction Apprentices and Trainees engaged or employed overall in Western Australia (whether carrying out works relevant to this Contract or not) by all Relevant Subcontractors only, at any time during the period over which the Total Training Rate is being calculated;

"Con's CTWs" means the average number of full-time equivalent Construction Trades Workers engaged or employed overall in Western Australia (whether carrying out works relevant to this Contract or not) by the Contractor, at any time during the period over which the Total Training Rate is being calculated;

"ReISubs' CTWs" the average number of full-time equivalent Construction Trades Workers engaged or employed overall in Western Australia (whether carrying out works relevant to this Contract or not) by all Relevant Subcontractors only, at any time during the period over which the Total Training Rate is being calculated.

"Trainee" means a person undertaking a DTWD approved traineeship being a structured full-time, part-time or school-based employment based training program that leads to trainees gaining a nationally recognised qualification under a training contract for the purposes of the *Vocational Education and Training Act 1996* (WA);

"Training Records System (TRS)" means the DTWD apprenticeship and traineeship administrative management information system;

"Training Records System Training Contract Identification (ID) Number" means the unique identification number given to each Apprentice and Trainee recorded on the Training Records System.

(b) The Principal

The Principal is committed to implementing the Department of Training and Workforce Development's Government Building Training Policy and adhering to the principles contained in the policy.

As a State Government contracting agency under the policy the Principal is required to report implementation of the policy over each financial year and to include clauses in the Contract to ensure head contractors comply with the policy.

(c) The Contractor

It is a condition of this Contract that the Contractor comply with the Government Building Training Policy and the terms contained in this clause and any breach of the policy or this clause by the Contractor shall be a substantial breach of the Contract.

Without limiting the application of the policy the Contractor must:

- (i) ensure that the Total Training Rate equals or exceeds the Target Training Rate for each financial year during the period between when works commence on the Site and the Date of Practical Completion, calculated consistently with the Government Building Training Policy;
- (ii) obtain from any of their Relevant Subcontractors a count and details of all Relevant Subcontractor's Construction Apprentices and Trainees and their Construction Trades Workers for the purposes of complying with the

Government Building Training Policy and any other information to discharge their reporting obligations below;

- (iii) for each quarter of each financial year submit to the Principal a Total Training Rate Report:
 - A. between each 1 October and 31 October;
 - B. between each 1 January and 31 January; and
 - C. between each 1 April and 30 April; and
 - D. between each 1 July and 31 July

for the duration of the Contract in the manner required by the Principal; and

- (iv) keep all supporting information, documents and evidence that was used to calculate the number of Construction Apprentices and Trainees and Construction Trades Workers either the Contractor or its Relevant Subcontractors employed or engaged for each financial year during the Contract for audit purposes.

(d) **Total Training Rate Reports**

Any Total Training Rate Report submitted by the Contractor under this clause must:

- (i) be in the form prescribed by the Principal and otherwise be a report identifying the Construction Apprentices and Trainees engaged or employed by the Contractor and Relevant Subcontractors in Western Australia and the Construction Trades Workers engaged or employed by the Contractor and its Relevant Subcontractors in Western Australia:
 - A. in the current financial year to date; or
 - B. in the previous financial year for any Total Training Rate Report required to be submitted between 1 July and 31 July;
- (ii) contain the following information:
 - A. Contract name, number and description;
 - B. date of award and date works commenced on site;
 - C. full legal entity name, business name. Australian Business Number for the Contractor and each of their Relevant Subcontractors;
 - D. number of Construction Apprentices and Trainees employed by the Contractor and their Relevant Subcontractors during the financial year, excluding those on probation;
 - E. list of Construction Apprentices and Trainees employed by the Contractor and their Relevant Subcontractors during the financial year, excluding those on probation, their Training Records System (TRS) Training Contract Identification (ID) Number, and their employer;
 - F. average number of Construction Trades Workers (full time equivalents) employed by the Contractor and their Relevant Subcontractors during the period being reported; and

G. the Total Training Rate:

and

(iii) if Training Record System Training Contract Identification Numbers are not available for all Apprentices and Trainees, then the report must contain a statutory declaration by or on behalf of the Contractor declaring:

A. the first name, last name, gender and date of birth of all Apprentices and Trainees who do not have a Training Record System Training Contract Identification Number; and

B. that each of the Apprentices and Trainees referred to in A above were employed by the Contractor or their Relevant Subcontractors during the reporting period as an Apprentice or Trainee for the purposes of the Government Building Training Policy.

(e) **Breach of Contract**

A failure to comply with the requirements of this clause is deemed a substantial breach of Contract, and in addition to any other the rights of the Principal, the Principal may at its absolute discretion:

(i) suspend the Contractor from further contracting opportunities with the Principal for a period of time determined by the Principal;

(ii) downgrade or suspend the Contractor' status for Works Contracts with the Principal;

(iii) notwithstanding any other provision of the Contract, withhold payment of moneys due to the Contractor until the Contractor satisfies the Principal that it has complied with the requirements of the policy, or is making a bona fide attempt to ensure compliance with the policy; or

(iv) do (i), (ii) and (iii) above.

A3. Application of Preferences

Where a Contractor was awarded the Contract on the basis of claiming a financial preference under Aboriginal Enterprise & Employment Tendering Preference and/or the Buy Local Policy (together, the Policies) during the tender period:

(a) Where the Contractor fails to deliver on any of the undertakings made in order to gain the financial preferences under the Policies, the Principal to the Contract may, at its discretion:

(i) Recover from the Contractor as a debt immediately due and payable under this Contract, the whole or any part of the difference between the Contractor's offer and the amount of the next lowest conforming Tender;

(ii) Direct the Contractor to use goods, materials or services that comply with the specific provisions of the Policy or the Contractor's undertakings in regard to the Policy, and where directed by the Principal, such additional costs incurred by the Contractor shall be a cost borne by the Contractor.

- (b) Where the Contractor fails to comply with a direction under (a)(ii) above, the failure to comply will be considered to be a substantial breach for the purpose of this Contract.

A4. Australian Government Building and Construction WHS Accreditation Scheme

Only applicable to all projects where the value of the Commonwealth Government contribution is at least \$6 million (inc GST) and represents at least 50% of the total construction project value, or all projects where the Commonwealth Government contribution is \$10 million (inc GST) or more, irrespective of the proportion of Commonwealth Government Funding, and all projects where the head contracts for building work are greater than \$4 million (inc GST).

- (a) Where the Contractor is required to be accredited under the Australian Government Building and Construction WHS Accreditation Scheme (WHS Scheme), then this clause applies.
- (b) Notwithstanding any other clause to the contrary, and in addition, a failure to either:
 - (i) maintain accreditation under the WHS Scheme or gain accreditation under the WHS Scheme within 12 months of the date of this Contract; or
 - (ii) comply with the requirements of the WHS Scheme at all times during the term of this Contract;is deemed a substantial breach of Contract, and the Principal may at its absolute discretion;
 - (iii) suspend the Contractor from further contracting opportunities with the Principal for a period of time determined by the Principal in its absolute discretion;
 - (iv) notwithstanding any other clause, withhold payment of moneys due to the Contractor until the Contractor satisfies the Principal that it has complied with the requirements of the WHS Scheme; or
 - (v) do both (iii) and (iv) above.
- (c) Maintenance of accreditation is a condition precedent pursuant under this Contract.

A5. Obligation to Comply with the Western Australian Building and Construction Industry Code of Conduct 2016

- (a) For the purposes of this clause, "Code" means the Western Australian Building and Construction Industry Code of Conduct 2016. The Code can be downloaded from:

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/wa_bcci_code_conduct_2016_0.pdf
- (b) The Contractor is subject to the Code, and must comply with each of the obligations described in the Code, for the term of this Contract.

A6. Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide Kimberley and Pilbara Regions

Only applicable to construction contracts, including demolitions, valued at \$250,000 (inc GST) and above, and civil works contracts with a labour component valued at \$300,000 (inc GST) and above.

(a) Application of this clause

- (i) This clause A6 applies if:
 - A. the Practice Guide applies to the Contract: and
 - B. the Works are situated in the Kimberley or Pilbara Regions as defined by the Practice Guide.
- (ii) To the extent of any inconsistency between the terms of this clause A6 and any of the other terms of the Contract, the terms of this clause A6 prevail.

(b) Definitions

For the purposes of this clause A6 the following words have the following meanings:

- (i) **"Aboriginal Employment Plan"** means the plan submitted by the Contractor and approved by the Principal that sets out how the Contractor will meet the requirements of the Practice Guide in respect of the Contract;
- (ii) **"Aboriginal Employment Report"** means the report to be provided by the Contractor to the Principal for each Reporting Period in accordance with the Practice Guide and subclause (e);
- (iii) **"Aboriginal Employment Target"** means the employment target for Aboriginal Workers specified in the Aboriginal Employment Plan or such other target as agreed by the parties to the Contract in writing;
- (iv) **"Aboriginal Workers"** has the meaning given in the Practice Guide;
- (v) **"Practice Guide"** means the *Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide* in effect as at the date of the Contract;
- (vi) **"Reporting Period"** means each calendar month from the date of the Contract until the completion of the Works, or such other period specified in the Practice Guide: and
- (vii) **"Site"** means the land and other places made available to the Contractor by the Principal for the purpose of the Contract.

(c) The Principal

The Principal is committed to implementing the Practice Guide and adhering to the principles contained in the Practice Guide.

(d) Contractor Obligations

The Contractor must comply with the Practice Guide and the terms contained in this clause A6. Without limiting the application of the Practice Guide the Contractor must:

- (i) do all things reasonably necessary to meet the Aboriginal Employment Target;
- (ii) within 10 business days after the end of each Reporting Period, submit to the Principal an Aboriginal Employment Report in the manner required by the Principal;
- (iii) keep and provide access to the Principal or its agents, all supporting information, documents and evidence used to prepare the Aboriginal Employment Report for each Reporting Period; and
- (iv) comply with the dispute resolution process in subclause (h).

(e) Aboriginal Employment Report

Unless otherwise agreed by the Principal in writing, each Aboriginal Employment Report submitted by the Contractor must be in the form prescribed by the Principal and contain the following information:

- (i) the Contract name, number and description;
- (ii) date of award and date the Works commenced on the Site;
- (iii) full legal entity name, business name. Australian Business Number for the Contractor and each of its Relevant Subcontractors;
- (iv) the names, dates of birth and addresses of. and total number of hours worked by Aboriginal Workers in connection with the performance of the Works during the Reporting Period;
- (v) the total number of employees and contractors engaged by the Contractor and its Relevant Subcontractors and the total number of hours worked by these persons in connection with the performance of the Works during the Reporting Period; and
- (vi) any other information reasonably requested by the Principal.

(f) Verification of Compliance

- (i) The Principal reserves the right to verify and audit compliance with the Practice Guide and this clause A6.
- (ii) The Contractor must, upon reasonable notice, provide the Principal or its agents, with access at any reasonable time and from time to time to the Site, the Contractor's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Principal in order to verify compliance by the Contractor with the Practice Guide and this clause A6.

(g) Breach of Contract

- (i) A failure to comply with the requirements of the Practice Guide or this clause A6 is deemed a substantial breach of the Contract.

- (ii) (b) Subject to compliance with the dispute resolution provisions in subclause (h) with respect to the Contractor's failure to meet the Aboriginal Employment Target, but otherwise without limitation to any other right of the Principal under this Contract, the Principal may at its absolute discretion do any or all of the following:
 - A. suspend the Contractor from further contracting opportunities with the Principal for a period of time determined by the Principal;
 - B. downgrade or suspend the Contractor's status for works contracts with the Principal; or
 - C. withhold payment of money due to the Contractor until the Contractor satisfies the Principal that it has complied with the requirements of the Practice Guide, or is making a bona fide attempt to ensure compliance with the Practice Guide.

(h) **Dispute Resolution**

- (i) If at any time the Principal or the Contractor reasonably believes that the Contractor is, or will be, unable to meet the Aboriginal Employment Target, the party holding this belief must give a notice in writing to the other party under this clause.
- (ii) On receipt of a notice under subclause (h)(i) the parties agree to use reasonable commercial efforts to agree a resolution:
 - A. by a conference to be held within 14 days of receipt of a notice under subclause (h)(i) between the Superintendent appointed under this Contract (if any) on behalf of the Principal and a representative of the Contractor; and
 - B. if no resolution is achieved under subclause (h)(ii)(b) by a conference to be held within 28 days of receipt of a notice under subclause (h)(i) between the management representatives of each of the Principal and the Contractor.
- (iii) The discussions during any conference convened in accordance with this clause will be on a without prejudice basis.
- (iv) The Principal will not exercise its remedies under this Contract for failing to meet the Aboriginal Employment Target unless it has made reasonable efforts to comply with the dispute resolution procedures set out in this subclause (h).
- (v) Notwithstanding this subclause (h) the Principal and the Contractor shall continue to perform the Contract, and the Contractor shall continue with the Works.

A7. Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide Gascoyne, Mid West, Wheat belt, Peel, South West, Great Southern, Goldfields/Esperance and Metro Regions

Only applicable to construction contracts, including demolitions, valued at \$250,000 (inc GST) and above, and civil works contracts with a labour component valued at \$300,000 (inc GST) and above.

(a) Application of this clause

- (i) This clause A7 applies if:
 - A. the Practice Guide applies to the Contract: and
 - B. the Works are situated in the Gascoyne, Mid West, Wheat belt, Peel, South West, Great Southern, Goldfields/Esperance or Metro Regions as defined by the Practice Guide.
- (ii) To the extent of any inconsistency between the terms of this clause A7 and any of the other terms of the Contract, the terms of this clause A7 prevail.

(b) Definitions

For the purposes of this clause A7 the following words have the following meanings:

- (i) "**Aboriginal Employment Plan**" means the plan submitted by the Contractor and approved by the Principal in accordance with subclause (d);
- (ii) "**Aboriginal Employment Report**" means the report to be provided by the Contractor to the Principal for each Reporting Period in accordance with the Practice Guide and subclause (e);
- (iii) "**Aboriginal Workers**" has the meaning given in the Practice Guide;
- (iv) "**Practice Guide**" means the *Housing Authority Aboriginal Employment Targets in Construction and Civil Works Contracts Practice Guide* in effect as at the date of the Contract;
- (v) "**Reporting Period**" means each calendar month from the date of the Contract until the completion of the Works, or such other period specified in the Practice Guide; and
- (vi) "**Site**" means the land and other places made available to the Contractor by the Principal for the purpose of the Contract.

(c) Contractor Obligations

The Contractor must comply with the Practice Guide and the terms of this clause A7. Without limiting the application of the Practice Guide the Contractor must:

- (i) submit the Aboriginal Employment Plan in accordance with subclause (d);

- (ii) within 10 Business Days after the end of each Reporting Period, submit to the Principal an Aboriginal Employment Report in the manner required by the Principal: and
- (iii) keep and provide access to the Principal or its agents, all supporting information, documents and evidence used to prepare the Aboriginal Employment Report for each Reporting Period.

(d) **Aboriginal Employment Plan**

- (i) Within 30 calendar days after entering into the Contract (or such longer period as agreed by the Principal), the Contractor must submit to the Principal for approval the Aboriginal Employment Plan which complies with the Practice Guide.
- (ii) After receiving the Aboriginal Employment Plan from the Contractor, the Principal must notify the Contractor if it approves the plan or if it requires amendments to the plan.

(e) **Aboriginal Employment Report**

Unless otherwise agreed by the Principal in writing, each Aboriginal Employment Report submitted by the Contractor must be in the form prescribed by the Principal and contain the following information:

- (i) the Contract name, number and description;
- (ii) date of award and date the Works commenced on the Site;
- (iii) full legal entity name, business name. Australian Business Number for the Contractor and each of its Relevant Subcontractors;
- (iv) the names and total number of hours worked by. Aboriginal Workers in connection with the performance of the Works during the Reporting Period;
- (v) the total number of employees and contractors engaged by the Contractor and its Relevant Subcontractors and the estimated total number of hours worked by these persons in connection with the performance of the Works during the Reporting Period; and
- (vi) any other information reasonably requested by the Principal.

(f) **Verification of Compliance**

The Principal reserves the right to verify and audit compliance with the Practice Guide and this clause A7.

Attachment B – Design and Construct

Attachment B – Design and Construct

These provisions *only* apply where the Contractor is engaged on a design and construct basis as indicated in the Special Conditions Schedule.

B1. The following definitions are added to clause 1(a) of the General Conditions:

Contractor's Design Obligations means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents and, if the documents stated in the Schedule (Item 2A and 2B) as describing the Principal's Project Requirements include a Preliminary Design, developing the Preliminary Design;

Consultant means any subcontractor or consultant engaged or retained by the Contractor in respect of, or in relation to, the preparation of the Design Documents;

Design Documents means the drawings, specifications and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works;

Preliminary Design means any preliminary design of the Works included in the documents stated in the Schedule (Item 2A) as describing the Principal's Project Requirements;

Principal's Project Requirements means the written summary or outline of the Principal's requirements for the Works described in the documents stated in the Schedule (Item 2B) and—

- (a) shall include the stated purpose for which the Works are intended;
- (b) may include the Principal's design, timing and cost objectives for the Works; and
- (c) may include a Preliminary Design.

B2. Add the following to clause 3(a) (Warranties) of the General Conditions:

- (vi) The Contractor warrants to the Principal that the Contractor:
 - A. shall engage and retain Consultants, where applicable and appropriate to do so, and who are suitably qualified and experienced;
 - B. has examined and carefully checked any Preliminary Design included in the Principal's Project Requirements and that such Preliminary Design:
 - (i) is suitable, appropriate and adequate for the purpose stated in the Principal's Project Requirements;
 - (ii) complies with all Legislative Requirements;

- C. shall execute and complete the Contractor's Design Obligations and produce the Design Documents:
- (i) to accord with the Principal's Project Requirements;
 - (ii) that will be fit for their stated purpose;
 - (iii) that comply with all Legislative Requirements;
 - (iv) that comply with all applicable codes, standards and other applicable guidelines and legislation for the relevant climatic zones and conditions applicable to the Site including, but not limited to cyclonic and wind conditions and flood risks;
- D. shall execute and complete the work under this Contract in accordance with the Design Documents so that the Works, when completed, shall—
- (i) be fit for their stated purpose; and
 - (ii) comply with all the requirements of the Contract and all Legislative Requirements.

For the purposes of this clause, the stated purpose shall be the purpose expressly stated and/or implied from the documents comprising the Principal Project Requirements.

B3. Add the following as clause 3(b) of the General Conditions:

- (b) The Contractor acknowledges that the warranties provided by it and the Contractor's Design Obligations shall remain unaffected notwithstanding—
 - (i) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
 - (ii) any receipt or review of, or comment or direction on, the Design Documents by the Principal; and
 - (iii) any variation issued pursuant to the terms of this Contract.

B4. Add new clause 5(e) to the General Conditions as follows:

- (e) Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under this Contract.

B5. Add new clause 5A to the General Conditions as follows:

5A Supply of Documents by Contractor

- (a) The Contractor shall supply to the Principal the documents and information required by the Principal and as required under this Contract, at those times or within those design stages applicable to the documents stated in Schedule Item 3A.

- (b) A direction by the Principal to vary anything in the Design Documents shall be a variation to the work under this Contract only to the extent that the Design Documents, before such variation, complied, or would have complied, with the Principal's Project Requirements.
- (c) The Principal shall not be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. Any review of, or comment on or failure to review or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's obligations under this Contract.
- (d) Where the Principal does not comment on the Design Documents submitted pursuant to this clause 5A, the Contractor may proceed and the Principal will be deemed to have had no comment at that particular stage.
- (e) Except where the requirement to submit new or amended documents arises as a result of a change in the Principal's Project Requirements, the Contractor shall not be entitled to any extension of time or any delay costs arising out of or in connection with this clause.

B6. Add new clause 6(c) to the General Conditions:

- (c) Copyright and property in the Design Documents (and any part of the Preliminary Design produced by the Contractor) vests in the Principal and the Principal grants to the Contractor an irrevocable licence to use the Design Documents for the work under this Contract.

B7. Add new clause 13A to the General Conditions as follows:

13A Professional Indemnity Insurance

- (a) Before the Contractor commences work under this Contract, the Contractor shall effect a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in Item 12A or, if no amount is stated, the amount of \$1,000,000.
- (b) The policy and such level of cover shall be maintained until the expiry of the Defects Liability Period and thereafter for a period as is stated in Item 12B.
- (c) The Contractor shall ensure that any consultant engaged by it, if within a category stated in Item 12C, is insured for professional indemnity with a cover not less than the sum stated in Item 12D.
- (d) Where the Contractor engages consultants of the nature described in Item 12C, each Consultant's policy shall be maintained for the same duration as prescribed in subclause (b).

Attachment C – Demolition

Attachment C – Demolition

These provisions *only* apply where indicated in the Special Conditions Schedule.

C1. Add the following as subclauses (f) and (g) to clause 13 of the General Conditions:

- (f) The policy referred to in this clause must be extended to include liabilities arising from Asbestos as described in a form and to an extent satisfactory to the Principal. Alternatively, the Contractor shall effect an additional Asbestos Liability insurance policy covering the legal liability of the Contractor, its employees and agents arising out of or in connection with any Asbestos and abatement Works or Services as specified in the Contract (including stripping, encapsulations, removal, transport, sudden and accidental pollution and clean-up costs) for an amount not less than \$1,000,000.
- (g) If the Asbestos Liability insurance policy is on a “claims made and notified” basis, the Contractor must continue to either maintain the insurance policy until at least 6 years after termination or expiration of the Contractor or alternatively effect a run-off cover under the insurance policy for a period of at least 6 years for an amount not less than \$1,000,000 for any one claim and \$1,000,000 for all claims in the aggregate during any one 12 monthly period of insurance.

C2. Where the Contract is solely for demolition works, clauses 13(b) and (c) of the General Conditions will not apply.

C3. New clause 17(g) to the General Conditions is added as follows:

- (g) (i) Before commencing any demolition, piling, excavations, underpinning, shoring or such works, the Contractor shall carry out a comprehensive survey of adjoining properties and other property, properties or items expressly identified in the Contract;
- (ii) The survey shall be carried out, where possible, in the presence of the owners or representatives of the owners of such adjoining properties.
- (iii) The survey shall be recorded by suitable means to accurately show the condition of the adjoining properties at the time immediately prior to the commencement of work on the Site.
- (iv) The Principal may and shall, if requested, attend the survey. Copies of the survey documents endorsed by the owners of such adjoining properties shall be lodged with the Principal.
- (v) The survey shall not relieve the Contractor of its responsibilities or liabilities for damage to other properties adjacent to the Site.

C4. New clause 17(h) to the General Conditions is added as follows:

- (h) (i) Before commencing work on the Site the Contractor shall engage a licensed surveyor to identify the Site, certify all boundaries and position necessary survey marker pegs.

- (ii) Any discrepancies between the certified survey and the drawings shall be immediately reported to the Principal and work shall not proceed until the Principal's instructions have been received.
- (iii) The survey drawing must include locations to all services, connection points including without limitation:
 - A. telecommunications;
 - B. sewer mains (inverts);
 - C. water;
 - D. power;
 - E. fire hydrants supply; and
 - F. general features.
- (iv) On Practical Completion, the Contractor must submit to the Principal a certificate signed by a licensed surveyor certifying levels to the titled boundary.

C5. The Contractor must comply with and carry out the Work in accordance with any applicable Hazardous Substances Management Plan (as defined by Australian Standard AS 2601-2001).

Attachment D – COVID-19 Special Conditions

Attachment D – COVID-19 Special Conditions

In these special conditions the following definitions apply:

1 Definitions

- (a) **Change in COVID-19 Law** means a COVID-19 Law which:
- (i) comes into effect, or ceases to be in effect, after the Relevant Date but does not include an extension of a declaration or other subordinate legislation in effect on the Relevant Date on the same or substantially the same terms;
 - (ii) necessitates, or results in, a change in the Works or the Contractor's method of working; and
 - (iii) directly results in an increase or decrease in the Costs incurred by the Contractor in carrying out the Works.
- (b) **Costs** means costs necessarily incurred (excluding corporate overhead and profit of the Contractor or a Related Entity of the Contractor).
- (c) **COVID-19** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- (d) **COVID-19 Effects** means impacts on a party's ability to perform its obligations under the Contract arising from COVID-19 (including COVID-19 Laws) and includes impacts to the cost of performing, or delay or disruption to performance of, those obligations.
- (e) **COVID-19 Law** means in relation to Western Australia or the Commonwealth of Australia:
- (i) an act of parliament or statute; and
 - (ii) any subordinate legislation, rules, regulations, declarations, directions or by-laws,

made or amended (to the extent of the amendment) as a direct consequence of COVID-19; and
 - (iii) any document or policy issued under such legislation or subordinate legislation which is made or amended (to the extent of the amendment) as a direct consequence of COVID-19 and with which the Contractor is legally required to comply.
- (f) **COVID-19 Relief Event** means:
- (i) a Change in COVID-19 Law;
 - (ii) a suspension by the Principal under clause 3; or
 - (iii) a delay arising after the Relevant Date caused as a direct result of COVID-19 which:
 - (A) has an adverse effect on the supply of labour, equipment or materials required for the Works; and
 - (B) is not related to a COVID-19 Law.
- (g) **Related Entity** has the same meaning as in the *Corporations Act 2001* (Cth).

- (h) **Relevant Date** means the day being 14 days prior to the Date of Contract.
- (i) **Works** means the works to be carried out under the Contract, including temporary works.

2 COVID-19 EFFECTS

2.1 General

- (a) The parties acknowledge and agree:
 - (i) the potential for COVID-19 Effects; and
 - (ii) the Contractor is deemed to have taken into account, and fully priced and programmed for, all COVID-19 Effects known (or which should reasonably have been known or anticipated) as at the Relevant Date.
- (b) The Contractor must:
 - (i) proactively monitor potential COVID-19 Effects;
 - (ii) use its reasonable endeavours to mitigate COVID-19 Effects;
 - (iii) give fortnightly reports to the Principal on the potential or actual COVID-19 Effects and the steps being taken by the Contractor to avoid or reduce those effects irrespective of whether the Contractor intends to make a claim;
 - (iv) where an entitlement to time or Costs arises under special condition 2 or 3, provide all supporting documentation reasonably requested by the Principal (including programming and costing information) on a fully open book and transparent basis; and
 - (v) include in all subcontracts relief for COVID-19 Effects that is equivalent to the relief provided in the Contract and warrant that any amounts which are due and payable to subcontractors have been duly paid by the Contractor to the relevant subcontractors.

2.2 Notice

- (a) The Contractor must promptly give notice to the Principal if the Contractor becomes aware of any potential or actual COVID-19 Effects which may:
 - (i) delay or disrupt the Works;
 - (ii) increase or decrease the costs of carrying out the Works; or
 - (iii) otherwise have an adverse effect on the Contract,
 - (iv) including a description of the cause of the effect and the way in which the effect is to be avoided or reduced.
- (b) To the extent the Contractor is entitled to relief under this clause 2, relief applies only from the date notice is given by the Contractor under clause 2.2(a) (other than relief for the period between the Relevant Date and the Date of Contract).

2.3 Change in COVID-19 Law

- (a) If there is a Change in COVID-19 Law, the Principal must pay the Contractor, or the Contractor must pay the Principal, as the case may be, the amount of the increased or decreased Costs (as applicable) in carrying out the Works which directly resulted from the Change in COVID-19 Law.
- (b) The Contractor's entitlement to be paid increased Costs under special condition 2.3(a) is reduced by the extent to which:

- (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under special condition 2.1(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (c) The Principal will determine the amount payable under special condition 2.3(a), acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including costing information) to enable a determination to be made under this special condition 2.3.

2.4 Extension of Time

- (a) If:
- (i) the Contractor is or will be delayed in reaching Practical Completion by a COVID-19 Relief Event;
 - (ii) delay is demonstrable by reference to the critical path contained and shown in the then current program; and
 - (iii) the Contractor gives the Principal a claim for an extension of time within 14 days of when the Contractor became aware (or should reasonably have become aware) of the delay including details of the nature, cause and likely extent of the delay,
- the Contractor will be entitled to an extension of time for Practical Completion equal to the period of delay.
- (b) If the effects of the COVID-19 Relief Event are continuing, or not fully ascertainable at the time of giving notice under special condition 2.4(a)(iii), the Contractor may submit further claims every 14 days.
- (c) The Contractor's entitlement to an extension of time is reduced by the extent to which the Contractor could have avoided or reduced the delay by taking reasonable steps under special condition 2.1(b)(ii).
- (d) To the extent the delay is also caused by an event that is not a COVID-19 Relief Event, the delay must be apportioned according to the respective causes' contribution.
- (e) The Principal will determine the period of the extension of time under this special condition 2.4, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including an electronic copy of the then current program) to enable a determination to be made under this special condition 2.4.

2.5 Delay Costs

- (a) Subject to special condition 2.5(b), the Contractor will be entitled to the additional Costs that it has incurred in respect of the period of the extension of time granted under special condition 2.4.
- (b) The Contractor will only be entitled to the Costs incurred in demobilising and remobilising the Contractor's personnel, subcontractors and equipment if there is a suspension under special condition 3.
- (c) The Contractor's entitlement to be paid Costs under special condition 2.5(a) or special condition 2.5(b) is reduced by the extent to which:
- (i) the Contractor could have avoided or reduced the Costs by taking reasonable steps under special condition 2.1(b)(ii); and
 - (ii) the Costs are otherwise recovered or recoverable by the Contractor.
- (d) The Principal will determine the amount of Costs payable under this special condition 2.5, acting reasonably. The Contractor must provide all supporting documentation reasonably requested by the Principal (including costing

information) to enable a determination to be made under this special condition 2.5.

3 Suspension for COVID-19 Effects

- (a) Without prejudice to any other rights the Principal may have under the Contract, the Principal may, if the Principal determines in its absolute discretion that the suspension of the whole or part of the Works is necessary due to COVID-19 Effects, direct the Contractor to suspend the performance of the whole or part of the Works for such time as the Principal thinks fit.
- (b) As soon as the reason for any suspension no longer exists, the Principal must notify the Contractor in writing.
- (c) Upon notice from the Principal, the Contractor must recommence performance of the Works as soon as reasonably possible.
- (d) The Contractor must ensure that its subcontracts contain a suspension clause on the same terms as this special condition 3.

4 Limit to Contractor's Rights

- (a) The Contractor's entitlements under special conditions 2 and 3 are the Contractor's sole remedy in respect of COVID-19 Effects and under no circumstances will the Contractor be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, loss of opportunity, loss of revenue, any redundancies or any other economic loss.
- (b) Except for a breach of special condition 2 or 3 by the Principal, the Contractor is absolutely barred from making any claim against the Principal and the Principal may plead this clause as a bar to any claim by the Contractor against the Principal (whether under the Contract or otherwise at law or in equity) in respect of COVID-19 Effects.

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